

AGREEMENT BETWEEN JAPAN AND THE ISLAMIC REPUBLIC OF IRAN ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENT

Preamble

Japan and the Islamic Republic of Iran (hereinafter referred to as the "Contracting Parties"),

Desiring to intensify economic cooperation to the mutual benefit of both Contracting Parties;

Intending to utilise their economic resources and potential facilities in the area of investment as well as to create and maintain favourable conditions for investment by the investors of the Contracting Parties in each other's Territory; and

Recognising the need to promote and protect investment by the investors of the Contracting Parties in each other's Territory;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement, the meanings of the terms used therein are as follows:

1. The term "investment" refers to every kind of asset, invested directly or indirectly by an investor of a Contracting Party in the Territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting Party, including the following:

- (a) an enterprise and a branch of an enterprise;
- (b) shares, stocks or other forms of equity participation in an enterprise;
- (c) bonds, debentures, loans and other forms of debt;
- (d) futures, options and other derivatives;
- (e) rights under contracts, including turnkey, construction, management, production or revenuesharing contracts;
- (f) claims to money and to any performance under contract having a financial value;
- (g) intellectual property rights, including copyrights and related rights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;
- (h) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations, and permits, including those for the exploration and exploitation of natural resources; and
- (i) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges.

The term "investment" shall also refer to the amounts yielded by an investment, in particular, profit, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as an investment.

2. The term "investor of a Contracting Party" refers to the following person or enterprise of a Contracting Party who makes an investment in the Territory of the other Contracting Party:

- (a) a natural person who, according to the laws and regulations of the former Contracting Party, is considered to be its national; or

(b) an enterprise which is established under the laws and regulations of the former Contracting Party and whose headquarters or whose real economic activities are located in the Territory of that Contracting Party.

3. The term "enterprise" refers to any legal person or any other entity duly constituted or organised under the applicable laws and regulations, whether or not for profit, including any corporation, trust, partnership, sole proprietorship, joint venture, association, organisation or company.

4. The term "investment activities" refers to operation, management, maintenance, use, enjoyment and sale or other disposal of investments.

5. The term "freely usable currency" refers to freely usable currency as defined under the Articles of Agreement of the International Monetary Fund.

6. The term "Territory" refers to areas under the sovereignty of either Contracting Party, as the case may be, including territorial sea, and the exclusive economic zone and the continental shelf over which either Contracting Party exercises sovereign rights or jurisdiction in accordance with international law.

Article 2. Promotion of Investment

1. Either Contracting Party shall encourage its investors to invest in the Territory of the other Contracting Party.

2. Either Contracting Party shall, in accordance with its laws and regulations, create favourable conditions for attraction of investment by investors of the other Contracting Party in its Territory.

Article 3. Admission of Investment

1. Either Contracting Party shall, subject to its rights to exercise powers in accordance with its applicable laws and regulations, including those with regard to foreign ownership and control, admit investment by investors of the other Contracting Party.

2. This Agreement shall apply to investment approved by the competent authority of the host Contracting Party, if such approval is required by its laws and regulations. The competent authority in the Islamic Republic of Iran is Organization for Investment, Economic and Technical Assistance of Iran or any other authority which may succeed it.

Article 4. Protection of Investment

1. Each Contracting Party shall in its Territory accord to investors of the other Contracting Party and to their investments treatment no less favourable than that it accords in like circumstances to its own investors and their investments or to investors of any non-Contracting party and their investments with respect to investment activities, whichever is more favourable to the investor.

2. If a Contracting Party has accorded or would accord in future special advantages or rights to investors of any non-Contracting party by virtue of any agreement establishing a free trade area, a customs union, a common market or a similar regional organisation or by virtue of any convention for the avoidance of double taxation, it shall not be obliged to accord such advantages or rights to investors of the other Contracting Party.

3. Paragraph 1 does not prevent either Contracting Party from differentiating between treatments accorded in accordance with its laws and regulations relating to taxes.

Article 5. General Treatment

Investments of investors of a Contracting Party shall, at all times, be accorded fair and equitable treatment and shall enjoy full protection and security in Territory of the other Contracting Party. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

Article 6. Observance of Obligations

Either Contracting Party shall observe any obligation it has entered into with respect to investments of investors of the other Contracting Party.

Article 7. Performance Requirements

A Contracting Party shall not, in its Territory, impose in connection with investment activities, any measures, which are not discriminatory, on investment by investors of the other Contracting Party concerning export requirements, export-import balancing requirements or export restrictions.

Article 8. Expropriation and Compensation

1. Investments of investors of either Contracting Party shall not be subjected to expropriation, nationalisation or any other measure equivalent to expropriation or nationalisation (hereinafter referred to as

"expropriation") by the other Contracting Party, except an expropriation is taken for public purposes, in accordance with due process of law, in a non-discriminatory manner and upon payment of effective, prompt and appropriate compensation.

2. The amount of compensation shall be equivalent to the fair market value of the investment immediately before the expropriation has been taken, announced or made public, whichever is the earliest.

3. Compensation shall be calculated in a currency which is convertible into freely usable currency at the prevailing market exchange rate at the date of actual payment.

4. The expropriating Contracting Party shall be under a commitment to pay compensation without undue delay. In case of undue delay the financial cost related to the delayed payment shall be borne by the expropriating Contracting Party from the date of expropriation until the date of actual payment. Such financial cost related to the delayed payment shall be calculated in a currency which is convertible into freely usable currency at the prevailing market exchange rate.

5. Compensation and financial cost related to the delayed payment shall be effectively realisable and freely transferable.

6. The investor affected shall have the right, under the law of the Contracting Party making the expropriation, to prompt review by a judicial authority or administrative tribunals or agencies of that Contracting Party of its case, including the valuation of its investment and the payment of compensation, in accordance with the principles set out in this Article.

7. For the purpose of this Article, the term "financial cost related to the delayed payment" refers to extra amount of money which is accrued, in accordance with international banking practice, due to the delayed payments.

Article 9. Losses or Damages

1. Investors of either Contracting Party whose investments suffer losses or damages due to any armed conflict, revolution, insurrection, civil disturbance or any other similar state of emergency in the Territory of the other Contracting Party shall be accorded by the other Contracting Party treatment as regards restitution, indemnification, compensation or any other settlement no less favourable than that accorded to its own investors or to investors of any non-Contracting party, whichever is more favourable to the investors of former Contracting Party.

2. Any payment as a means of settlement referred to in paragraph 1 shall be effectively realisable, freely transferable and freely convertible at the prevailing market exchange rate into freely usable currencies.

Article 10. Subrogation

If a Contracting Party or its designated agency subrogates an investor pursuant to a payment made under an insurance or guarantee agreement:

(a) such subrogation shall be recognised by the other Contracting Party; and

(b) the former Contracting Party or its designated agency shall be entitled to exercise the rights with respect to the investment of the investor which the investor would have been entitled to exercise.

Article 11. Transfer

1. Each Contracting Party shall permit the transfers related to investments referred to in this Agreement, to be made freely and without delay into and out of its Territory. Such transfer shall include, in particular, though not exclusively:

(a) the initial capital and additional amounts to maintain or increase investments;

- (b) profits, capital gains, dividends, royalties, fees or other current incomes accruing from investments;
- (c) payments made under a contract including loan payments in connection with investments;
- (d) proceeds of the total or partial sale or liquidation of investments;
- (e) earnings and remuneration of personnel from abroad who work in connection with investments in the Territory of the former Contracting Party;
- (f) payments made in accordance with Articles 8, 9 and 10; and
- (g) payments arising out of a dispute.

2. Each Contracting Party shall further ensure that such transfers may be made without delay in freely usable currencies at the prevailing market exchange rate on the date of the transfer.

3. Notwithstanding paragraphs 1 and 2, a Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good-faith application of its laws and regulations relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, futures, options or derivatives;
- (c) criminal or penal offences;
- (d) reporting or record keeping of transfers of currency or other monetary instruments when necessary to assist law enforcement or financial regulatory authorities; or
- (e) ensuring compliance with orders or judgements in adjudicatory proceedings.

Article 12. Denial of Benefits

A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise and to its investments where the former Contracting Party establishes that:

- (a) the enterprise is owned or controlled by an investor of a non-Contracting Party which does not maintain diplomatic relations with the denying Contracting Party; or
- (b) the enterprise is owned or controlled by an investor of a non-Contracting Party or of the denying Contracting Party, and has no substantive business operations in the Territory of the other Contracting Party.

Article 13. General and Security Exemptions

1. Subject to the requirement that such measures are not applied by a Contracting Party in a manner which would constitute a means of arbitrary or unjustifiable discrimination against, or a disguised restriction on investors of the other Contracting Party and their investments in the Territory of the former Contracting Party, nothing in this Agreement shall be construed so as to prevent the former Contracting Party from adopting or enforcing measures:

- (a) necessary to protect human, animal or plant life or health;
- (b) necessary to protect public morals or to maintain public order, provided that the public order exception may only be invoked where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society;
- (c) necessary to secure compliance with the laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contract;
 - (ii) the protection of the privacy of the

Individual in relation to the processing and dissemination of personal data and the protection of confidentiality of personal records and accounts; or

- (iii) safety; or
- (d) imposed for the protection of national treasures of artistic, historic or archaeological value.

2. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or enforcing measures:

(a) which it considers necessary for the protection of its essential security interests:

(i) taken in time of war, armed conflict, or

Other emergency in that Contracting Party or in international relations; or

(ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons; or

(b) in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 14. Intellectual Property Rights

1. The Contracting Parties shall grant and ensure the adequate and effective protection of intellectual property rights, and promote efficiency and transparency in intellectual property protection system. For this purpose, the Contracting Parties shall promptly consult with each other at the request of either Contracting Party.

Depending on the results of the consultation, each Contracting Party shall, in accordance with its laws and regulations, take appropriate measures to remove the factors which are recognised as having adverse effects to the investments of investors of the other Contracting Party.

2. Nothing in this Agreement shall affect the rights and obligations of the Contracting Parties under multilateral agreements in respect of protection of intellectual property rights to which the Contracting Parties are parties.

3. Nothing in this Agreement shall be construed so as to oblige either Contracting Party to extend to investors of the other Contracting Party and to their investments treatment accorded to investors of a non-Contracting Party and to their investments by virtue of multilateral agreements in respect of protection of intellectual property rights, to which the former Contracting Party is a party.

Article 15. Taxation

Nothing in this Agreement shall affect the rights and obligations of either Contracting Party under any convention for the avoidance of double taxation. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

Article 16. Temporary Safeguard Measures

1. A Contracting Party may adopt or maintain restrictive measures with regard to cross-border capital transactions as well as payments or transfers including transfers referred to in Article 11 for transactions related to investments:

(a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(b) in exceptional cases where movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular monetary and exchange rate policies.

2. Restrictive measures referred to in paragraph 1 shall:

(a) be applied in such manner that the other Contracting Party is treated no less favourably than any non-Contracting Party;

(b) be consistent with the Articles of Agreement of the International Monetary Fund;

(c) not exceed those necessary to deal with the circumstances set out in paragraph 1;

(d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves;

(e) be promptly notified to the other Contracting Party; and

(f) avoid unnecessary damages to the commercial, economic and financial interests of the other Contracting Party.

Article 17. Prudential Measures

1. Notwithstanding any other provisions of this Agreement, a Contracting Party shall not be prevented from taking

prudential measures to ensure and maintain the stability of its financial system.

2. Where the measures taken by a Contracting Party pursuant to paragraph 1 do not conform with this Agreement, they shall not be used as a means of avoiding the obligations of the Contracting Party under this Agreement.

Article 18. Settlement of Disputes between an Investor of a Contracting Party and the other Contracting Party

1. If any dispute arises, as a result of breaching of an obligation under this Agreement, between an investor of a Contracting Party and the other Contracting Party, it shall be notified in writing by the investor of a Contracting Party to the other Contracting Party, and the investor of a Contracting Party and the other Contracting Party shall endeavour to settle the dispute amicably.

2. If this dispute has not been settled within a period of six months from the date at which it was notified in writing by the investor of a Contracting Party to the other Contracting Party, it shall be submitted, at the request in writing and choice of the investor of a Contracting Party for settlement to:

(a) the competent court of the other Contracting Party in the Territory of which the investment has been made;

(b) an ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(c) an arbitral tribunal established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention), if both Contracting Parties are parties to the Convention.

For greater certainty, the dispute may be submitted to the competent court referred to in sub-paragraph (a) before the expiration of that six-month period.

3. A dispute primarily referred to the competent courts of the host Contracting party, as long as it is pending, cannot be referred to arbitration without agreement between the parties to the dispute, and after that a final judgment is rendered, it cannot be referred to arbitration.

4. The ad hoc arbitral tribunal specified under subparagraph 2(b) of this Article shall be established as follows:

(a) Each party to the dispute shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint by mutual agreement a third arbitrator, who must be a national of the third country, and who shall be designated as Chairperson of the arbitral tribunal. All the arbitrators must be appointed within three months from the receipt of the request for arbitration referred to in paragraph 2.

(b) If the necessary appointments of arbitrators have not been made in the period specified in the subparagraph (a) above, either party, in the absence of any other agreement, may invite the Secretary General of the Permanent Court of Arbitration at the Hague to make the necessary appointments.

5. The arbitral award shall be final and binding upon the parties to the dispute. The arbitral award shall be issued in accordance with this Agreement and the applicable principles of international law. The arbitral tribunal shall make its award by a majority of votes.

6. Each Contracting Party hereby consents to the submission of a claim to arbitration under this Article.

Article 19. Settlement of Disputes between the Contracting Parties

1. All disputes arising between the Contracting Parties relating to the interpretation or application of this Agreement shall as far as possible, in the first place, be settled amicably by consultation. In case of disagreement, a Contracting Party may, while sending a notice to the other Contracting Party, refer the case to an arbitral tribunal of three members consisting of two arbitrators appointed by the Contracting Parties and a Chairperson.

2. In case the dispute is referred to the arbitral tribunal, each Contracting Party shall appoint one arbitrator within sixty days from the receipt of the notification and the arbitrators appointed by the Contracting Parties shall appoint the Chairperson within sixty days from the date of the latter appointment. If either Contracting Party does not appoint its own arbitrator or the appointed arbitrators do not agree on the appointment of the Chairperson within the said periods, each Contracting Party may request the Secretary General of the Permanent Court of Arbitration to appoint the arbitrator of the failing Contracting Party or the Chairperson, as the case may be. However the Chairperson shall be a national of a State having diplomatic relations with both Contracting Parties at the time of the appointment.

3. In case the Chairperson is to be appointed by the Secretary General of the Permanent Court of Arbitration, if the Secretary General of the Permanent Court of Arbitration is prevented from carrying out the said function or if he or she is a national of either Contracting Party, the appointment shall be made by the Deputy Secretary General of the Permanent Court of Arbitration and if the Deputy Secretary General is also prevented from carrying out the said function or if he or she is a national of either Contracting Party, the appointment shall be made by the senior member of the said court who is not a national of either Contracting Party.

4. Subject to other provisions agreed by the Contracting Parties, the arbitral tribunal shall determine its procedure and the place of arbitration.

5. The arbitral award shall be final and binding upon the Contracting Parties. The arbitral award shall be issued in accordance with this Agreement and the applicable principles of international law. The arbitral tribunal shall make its award by a majority of votes.

6. Each Contracting Party shall bear the cost of the arbitrator of its choice and its representation in the arbitral proceedings. The cost of the Chairperson of the arbitral tribunal in discharging his or her duties and the remaining costs of the arbitral tribunal shall be borne equally by the Contracting Parties.

Article 20. Joint Committee on Investment

1. The Contracting Parties shall establish a Joint Committee on Investment (hereinafter referred to as "the Committee") with a view to accomplishing the objectives of this Agreement. The functions of the Committee shall be:

(a) to exchange information on and to discuss investment-related matters within the scope of this Agreement which relate to improvement of investment environment; and

(b) to discuss any other investment-related matters concerning this Agreement.

2. The Committee may, as necessary, make appropriate recommendations by consensus to the Contracting Parties for the more effective functioning or the attainment of the objectives of this Agreement.

3. The Committee shall be composed of representatives of the Contracting Parties. The Committee may, upon mutual consent of the Contracting Parties, invite representatives of relevant entities other than the Governments of the Contracting Parties with the necessary expertise relevant to the issues to be discussed, and hold joint meetings with the private sectors.

4. The Committee shall determine its own rules of procedure to carry out its functions.

5. The Committee may establish sub-committees and delegate specific tasks to such sub-committees.

6. The Committee shall meet upon the request of either Contracting Party.

Article 21. Final Provisions

1. The Contracting Parties shall notify each other, through diplomatic channels, of the completion of their respective internal procedures necessary for the entry into force of this Agreement.

2. This Agreement shall enter into force on the thirtieth day after the date of the receipt of the latter notification, and remain in force for a period of ten years. After the initial ten year period, this Agreement shall remain in force thereafter unless one of the Contracting Parties gives a notice in writing of its termination to the other Contracting Party. In this case, the Agreement shall be considered terminated six months after the receipt of that notice.

3. After the termination of this Agreement its provisions shall apply to investments acquired prior to the date of the termination of this Agreement for a further period of ten years.

4. Subject to the provisions of paragraph 2 of Article 3, this Agreement shall also apply to all investments of investors of either Contracting Party acquired in the Territory of the other Contracting Party in accordance with the laws and regulations of that other Contracting Party prior to the entry into force of this Agreement.

5. This Agreement shall not apply to claims arising out of events which occurred prior to its entry into force.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this

Agreement.

DONE in duplicate at Tokyo, on the fifth day of the second month in the twenty-eighth year of Heisei, corresponding to the sixteenth day of Bahman 1394 of Iranian Calendar and the fifth day of February, 2016 in the Japanese, Persian and English languages, all the three texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

FOR JAPAN:

Fumio Kishida

FOR THE ISLAMIC REPUBLIC OF IRAN:

A. Taiebnia