

# **AGREEMENT BETWEEN JAPAN AND THE LAO PEOPLE'S DEMOCRATIC REPUBLIC FOR THE LIBERALISATION, PROMOTION AND PROTECTION OF INVESTMENT**

Japan and the Lao People's Democratic Republic, Desiring to further promote investment in order to strengthen the economic relationship between the two countries;

Intending to further create favourable conditions for greater investment by investors of one country in the Area of the other country;

Recognising the growing importance of the progressive liberalisation of investment for stimulating initiative of investors and for promoting prosperity in both countries;

Recognising that these objectives can be achieved without relaxing health, safety and environmental measures of general application; and

Recognising the importance of the cooperative relationship between labour and management in promoting investment between both countries;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement,

(1) The term "investments" means every kind of asset owned or controlled, directly or indirectly, by an investor, including:

- (a) An enterprise;
- (b) Shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
- (c) Bonds, debentures, loans and other forms of debt, including rights derived therefrom;
- (d) Rights under contracts, including turnkey, construction, management, production or revenue sharing contracts;
- (e) Claims to money and to any performance under contract having a financial value;
- (f) Intellectual property rights;
- (g) 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
- (h) Any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges.

Investments include the amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.

(2) The term "investor of a Contracting Party" means:

- (a) A natural person having the nationality of that Contracting Party in accordance with its applicable laws and regulations; or
- (b) An enterprise of that Contracting Party.

A branch of an enterprise of a non-Contracting Party, which is located in the Area of a Contracting Party, shall not be

deemed as an investor of that Contracting Party.

(3) An enterprise is:

(a) "owned" by an investor if more than fifty (50) percent of the equity interest in it is owned by the investor; and

(b) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.

(4) The term "an enterprise of a Contracting Party" means any legal person or any other entity duly constituted or organised under the applicable laws and regulations of that Contracting Party, whether or not for profit, and whether private or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, organisation, company or branch.

(5) The term "Area" means with respect to a Contracting Party (a) the territory of that Contracting Party; and (b) the exclusive economic zone and the continental shelf with respect to which that Contracting Party exercises sovereign rights or jurisdiction in accordance with international law.

(6) The term "the WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organisation, done at Marrakesh, April 15, 1994, as may be amended.

## **Article 2. National Treatment**

1. Each Contracting Party shall in its Area accord to investors of the other Contracting Party and to their investments treatment no less favourable than the treatment it accords in like circumstances to its own investors and their investments with respect to the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment, and sale or other disposal of investments (hereinafter referred to as "investment activities").

2. Notwithstanding paragraph 1, each Contracting Party may prescribe special formalities in connection with investment activities of investors of the other Contracting Party in its Area, provided that such special formalities do not impair the substance of the rights of such investors under this Agreement.

## **Article 3. Most-favoured-nation Treatment**

Each Contracting Party shall in its Area accord to investors of the other Contracting Party and to their investments treatment no less favourable than the treatment it accords in like circumstances to investors of a non-Contracting Party and to their investments with respect to investment activities.

## **Article 4. Promotion of Investment**

Each Contracting Party shall encourage and promote investment in its Area by an investor of the other Contracting Party in accordance with its laws and regulations applicable from time to time.

## **Article 5. General Treatment**

1. Each Contracting Party shall accord to investments of the other Contracting Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

Note 1: This Article prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors 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.

Note 2: A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not ipso facto establish that there has been a breach of this Article.

2. Each Contracting Party shall observe any obligation it may have entered into in a written form with regard to investments of investors of the other Contracting Party.

## **Article 6. Access to the Courts of Justice**

Each Contracting Party shall in its Area accord to investors of the other Contracting Party treatment no less favourable than

the treatment which it accords in like circumstances to its own investors or investors of a non-Contracting Party with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defence of such investors' rights.

## **Article 7. Prohibition of Performance Requirements**

1. Neither Contracting Party shall impose or enforce, as a condition for investment activities in its Area of an investor of the other Contracting Party, any of the following requirements:

- (a) To export a given level or percentage of goods or services;
- (b) To achieve a given level or percentage of domestic content;
- (c) To purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from natural or legal persons or any other entity in its Area;
- (d) To relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor;
- (e) To restrict sales of goods or services in its Area that investments of that investor produce or provide by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) To appoint, as executives, managers or members of boards of directors, individuals of any particular nationality;
- (g) To transfer technology, a production process or other proprietary knowledge to a natural or legal person or any other entity in its Area, except when the requirement (i) is imposed or enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or (ii) concerns the transfer of intellectual property rights which is undertaken in a manner not inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to as "the TRIPS Agreement");
- (h) To locate the headquarters of that investor for a specific region or the world market in its Area;
- (i) To hire a given number or percentage of its nationals;
- (j) To achieve a given level or value of research and development in its Area; or
- (k) To supply one or more of the goods that the investor produces or the services that the investor provides to a specific region or the world market, exclusively from the Area of the former Contracting Party.

2. The provisions of paragraph 1 above do not preclude either Contracting Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities in its Area of an investor of the other Contracting Party, on compliance with any of the requirements set forth in paragraph 1 (g) through (k) above.

## **Article 8. Reservations and Exceptions**

1. Articles 2, 3 and 7 shall not apply to:Articles 2, 3 and 7 shall not apply to:

(a) Any non-conforming measure that is maintained by the following on the date of entry into force of this Agreement, with respect to the sectors or matters specified in Annex I:

- (i) The central government of a Contracting Party; or
- (ii) A prefecture of Japan or a province of the Lao People's Democratic Republic;

(b) Any non-conforming measure that is maintained by a local government other than a prefecture and a province referred to in subparagraph (a)(ii) on the date of entry into force of this Agreement;

(c) The continuation or prompt renewal of any nonconforming measure referred to in subparagraphs (a) and (b); or

(d) An amendment or modification to any nonconforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 2, 3 and 7.

2. Each Contracting Party shall, on the date of entry into force of this Agreement, notify the other Contracting Party of the following information on any non-conforming measure referred to in subparagraph 1(a):subparagraph 1(a):

- (a) The sector or matter, with respect to which the measure is maintained;
- (b) The domestic or international industry classification codes, where applicable, to which the measure relates;
- (c) The level of the government which maintains the measure;
- (d) The obligations under this Agreement with which the measure does not conform;
- (e) The legal source of the measure; and
- (f) The succinct description of the measure.

3. Articles 2, 3 and 7 shall not apply to any measure that a Contracting Party adopts or maintains with respect to the sectors or matters specified in Annex II.

4. Where a Contracting Party maintains any non-conforming measure on the date of entry into force of this Agreement with respect to the sectors or matters specified in Annex II, the Contracting Party shall, on the same date, notify the other Contracting Party of the following information on the measure:

- (a) The sector or matter, with respect to which the measure is maintained;
- (b) The domestic or international industry classification codes, where applicable, to which the measure relates;
- (c) The obligations under this Agreement with which the measure does not conform;
- (d) The legal source of the measure; and
- (e) The succinct description of the measure.

5. Neither Contracting Party shall, under any measure adopted after the date of entry into force of this Agreement with respect to the sectors or matters specified in Annex II, require an investor of the other Contracting Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective.

6. In cases where a Contracting Party makes an amendment or a modification to any non-conforming measure notified pursuant to paragraph 2 or 4, or where a Contracting Party adopts any new measure with respect to the sectors or matters specified in Annex II, after the date of entry into force of this Agreement, the Contracting Party shall, as soon as possible:

- (a) Notify the other Contracting Party of detailed information on such amendment, modification or new measure; and
- (b) Respond, upon the request by the other Contracting Party, to specific questions from the other Contracting Party with respect to such amendment, modification or new measure.

7. Each Contracting Party shall endeavour, where appropriate, to reduce or eliminate the non-conforming measures that it adopts or maintains with respect to the sectors or matters specified in Annexes I and II respectively.

8. Articles 2 and 3 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in Articles 3 through 5 of the TRIPS Agreement.

9. Articles 2, 3 and 7 shall not apply to any measure that a Contracting Party adopts or maintains with respect to government procurement.

## **Article 9. Transparency**

1. Each Contracting Party shall as soon as possible publish, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements which pertain to or affect investment activities.
2. Each Contracting Party shall, upon request by the other Contracting Party, as soon as possible respond to specific questions and provide that other Contracting Party with information on matters set out in paragraph 1 above, including that relating to contract each Contracting Party enters into with regard to investment.
3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige either Contracting Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice privacy or legitimate commercial interests.

## **Article 10. Measures Against Corruption**

Each Contracting Party shall ensure that measures and efforts are undertaken to prevent and combat corruption regarding matters covered by this Agreement in accordance with its laws and regulations.

## **Article 11. Entry, Sojourn and Residence**

Each Contracting Party shall, in accordance with its applicable laws and regulations, give sympathetic consideration to applications for the entry, sojourn and residence of a natural person having the nationality of the other Contracting Party who wish to enter the territory of the former Contracting Party and remain therein for the purpose of investment activities.

## **Article 12. Expropriation and Compensation**

1. Neither Contracting Party shall expropriate or nationalise investments in its Area of investors of the other Contracting Party or take any measure equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") except: (a) for a public purpose; (b) in a non-discriminatory manner; (c) upon payment of prompt, adequate and effective compensation pursuant to paragraphs 2, 3 and 4; and (d) in accordance with due process of law and Article 5.

2. Compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is earlier. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be paid without delay and shall include interest at a commercially reasonable rate, taking into account the length of time until the time of payment. It shall be effectively realisable and freely transferable and shall be freely convertible into the currency of the Contracting Party of the investors concerned, and into freely usable currencies as defined in the Articles of Agreement of the International Monetary Fund, as may be amended, at the market exchange rate prevailing on the date of expropriation.

4. Without prejudice to the provisions of Article 17, the investors affected by expropriation shall have a right of access to the courts of justice or administrative tribunals or agencies of the Contracting Party making the expropriation to seek a prompt review of the investors' case and the amount of compensation in accordance with the principles set out in this Article.

## **Article 13. Protection from Strife**

1. Each Contracting Party shall accord to investors of the other Contracting Party that have suffered loss or damage relating to their investments in the Area of the former Contracting Party due to armed conflict or a state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that former Contracting Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that which it accords to its own investors or to investors of a non-Contracting Party, whichever is more favourable to the investors of the other 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 market exchange rate into the currency of the Contracting Party of the investors concerned and freely usable currencies.

## **Article 14. Subrogation**

If a Contracting Party or its designated agency makes a payment to any investor of that Contracting Party under an indemnity, guarantee or insurance contract, pertaining to an investment of such investor in the Area of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated agency of any right or claim of such investor on account of which such payment is made and shall recognise the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as the original right or claim of the investor. As regards payment to be made to that former Contracting Party or its designated agency by virtue of such assignment of right or claim and the assignment of such payment, the provisions of Articles 12, 13 and 15 shall apply *mutatis mutandis*.

## **Article 15. Transfers**

1. Each Contracting Party shall ensure that all transfers relating to investments in its Area of an investor of the other Contracting Party may be freely made into and out of its Area without delay. Such transfers shall include, in particular, though not exclusively:

- (a) The initial capital and additional amounts to maintain or increase investments;
- (b) Profits, interest, capital gains, dividends, royalties and fees and 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 engaged from the other Contracting Party who work in connection with investments in the Area of the former Contracting Party;
- (f) Payments made in accordance with Articles 12 and 13; and
- (g) Payments arising out of the settlement of a dispute under Article 17.

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

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

- (a) Bankruptcy, insolvency or the protection of the rights of creditors;
- (b) Issuing, trading or dealing in securities;
- (c) Criminal or penal offences; or
- (d) Ensuring compliance with orders or judgments in adjudicatory proceedings.

## **Article 16. Settlement of Investment Disputes between the Contracting Parties**

1. Each Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other Contracting Party may make with respect to any matter affecting the operation of this Agreement.

2. Any dispute between the Contracting Parties as to the interpretation or application of this Agreement, not satisfactorily adjusted by diplomacy, shall be referred for decision to an arbitration board. Such arbitration board shall be composed of three arbitrators, with each Contracting Party appointing one arbitrator within a period of thirty days from the date of receipt by either Contracting Party from the other Contracting Party of a note requesting arbitration of the dispute, and the third arbitrator to be agreed upon as President by the two arbitrators so chosen within a further period of thirty days, provided that the third arbitrator shall not be a national of either Contracting Party.

3. If the third arbitrator is not agreed upon between the arbitrators appointed by each Contracting Party within the further period of thirty days referred to in the provisions of paragraph 2 above, the Contracting Parties shall request the President of the International Court of Justice to appoint the third arbitrator who shall not be a national of either Contracting Party.

4. The arbitration board shall within a reasonable period of time reach its decisions by a majority of votes. Such decisions shall be final and binding.

5. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the President of the arbitration board in discharging his or her duties and the remaining costs of the arbitration board shall be borne equally by the Contracting Parties, unless the Contracting Parties agree otherwise.

## **Article 17. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. For the purposes of this Article, an investment dispute is a dispute between a Contracting Party and an investor of the other Contracting Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any right conferred by this Agreement with respect to investments of investors of that other Contracting Party.

2. Nothing in this Article shall be construed so as to prevent an investor who is a party to an investment dispute (hereinafter referred to in this Article as "disputing investor") from seeking administrative or judicial settlement within the Area of the Contracting Party that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Party").

3. An investment dispute shall, as far as possible, be settled amicably through consultation or negotiation between the disputing investor and the disputing Party (hereinafter referred to in this Article as "the disputing parties").

4. If the investment dispute cannot be settled through such consultation or negotiation within three months from the date on which the disputing investor requested the consultation or negotiation in writing and if the disputing investor has not submitted the investment dispute for resolution under courts of justice or administrative tribunals or agencies, the disputing investor may submit the investment dispute to one of the following international conciliations or arbitrations:

(a) Conciliation or arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965, as may be amended (hereinafter referred to in this Article as "ICSID Convention"), so long as the ICSID Convention is in force between the Contracting Parties;

(b) Conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, as may be amended, so long as the ICSID Convention is not in force between the Contracting Parties;

(c) Arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, as may be amended; and

(d) If agreed with the disputing Party, any arbitration in accordance with other arbitration rules.

5. The applicable arbitration rules shall govern the arbitration set forth in paragraph 4 except to the extent modified in this Article.

6. The disputing investor who intends to submit the investment dispute to conciliation or arbitration pursuant to paragraph 4 shall give to the disputing Party written notice of intent to do so at least 90 days before the claim is submitted. The notice of intent shall specify:

(a) The name and address of the disputing investor;

(b) The specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the investment dispute sufficient to present the problem clearly, including the obligations under this Agreement alleged to have been breached;

(c) Conciliation or arbitration set forth in paragraph 4 which the disputing investor will choose; and paragraph 4 which the disputing investor will choose; and

(d) The relief sought and the approximate amount of damages claimed.

7.

(a) Each Contracting Party hereby consents to the submission of investment disputes by a disputing investor to conciliation or arbitration set forth in paragraph 4 chosen by the disputing investor.

(b) The consent given by subparagraph (a) and the submission by a disputing investor of a claim to arbitration shall satisfy the requirements of:

(i) Chapter II of the ICSID Convention or the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, as may be amended, for written consent of the parties to a dispute; and

(ii) Article II of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as may be amended (hereinafter referred to as "New York Convention") for an agreement in writing.

8. Notwithstanding paragraph 7, no claim may be submitted to conciliation or arbitration set forth in paragraph 4, if more than three years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, the knowledge that the disputing investor had incurred loss or damage referred to in paragraph 1.

9. Notwithstanding paragraph 4, the disputing investor may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of damages before an administrative tribunal or agency or a court of justice under the law of the disputing Party.

10. Unless the disputing parties agree otherwise, an arbitral tribunal established under paragraph 4 shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If the disputing investor or the disputing Party fails to appoint an arbitrator or arbitrators within 60 days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of the International Centre for Settlement of Investment Disputes (hereinafter referred to in this Article as

"ICSID"), may be requested by either of the disputing parties, to appoint the arbitrator or arbitrators not yet appointed from the ICSID Panel of Arbitrators subject to the requirements of paragraphs 11 and 12.

11. Unless the disputing parties agree otherwise, the third arbitrator shall not be a national of either Contracting Party, nor have his or her usual place of residence in the territory of either Contracting Party, nor be employed by either of the disputing parties, nor have dealt with the investment dispute in any capacity.

12. In the case of arbitration referred to in paragraph 4, each of the disputing parties may indicate up to three nationalities, the appointment of arbitrators of which is unacceptable to it. In this event, the Secretary-General of the ICSID may be requested not to appoint as arbitrator any person whose nationality is indicated by either of the disputing parties.

13. Unless the disputing parties agree otherwise, the arbitration shall be held in a country that is a party to the New York Convention.

14. An arbitral tribunal established under paragraph 4 shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

15. The disputing Party shall deliver to the other Contracting Party:

(a) Written notice of the claim submitted to the arbitration no later than 30 days after the date on which the claim was submitted; and

(b) Copies of all pleadings filed in the arbitration.

16. On written notice to the disputing parties, the Contracting Party which is not the disputing Party may make submissions to the arbitral tribunal on a question of interpretation of this Agreement.

17. The arbitral tribunal may order an interim measure of protection to preserve the rights of the disputing investor, or to facilitate the conduct of arbitral proceedings, including an order to preserve evidence in the possession or control of either of the disputing parties. The arbitral tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in paragraph 1.

18. The award rendered by the arbitral tribunal shall include:

(a) A judgment whether or not there has been a breach by the disputing Party of any obligation under this Agreement with respect to the disputing investor and its investments; and

(b) A remedy if there has been such breach. The remedy shall be limited to one or both of the following:

(i) Payment of monetary damages and applicable interest; and

(ii) Restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

Costs may also be awarded in accordance with the applicable arbitration rules.

19. The award rendered in accordance with paragraph 18 shall be final and binding upon the disputing parties. The disputing Party shall carry out without delay the provisions of the award and provide in its Area for the enforcement of the award in accordance with its relevant laws and regulations.

20. Neither Contracting Party shall give diplomatic protection, or bring an international claim, in respect of an investment dispute which the other Contracting Party and an investor of the former Contracting Party have consented to submit or submitted to arbitration set forth in paragraph 4, unless the other Contracting Party shall have failed to abide by and comply with the award rendered in such investment dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the investment dispute.

## **Article 18. General and Security Exceptions**

1. Notwithstanding any other provisions in this Agreement other than the provisions of Article 13, each Contracting Party may:

(a) Take any measures which it considers necessary for the protection of its essential security interests;

(i) Taken in time of war, or 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;
  - (b) Take any measure in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security;
  - (c) Take any measure necessary to protect human, animal or plant life or health;
  - (d) Take any measure necessary for the maintenance of public order. The public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society; or
  - (e) Take any measure imposed for the protection of national treasures of artistic, historic or archaeological value.
2. In cases where a Contracting Party takes any measure, pursuant to paragraph 1 above, that does not conform with the obligations of the provisions of this Agreement other than the provisions of Article 13, that Contracting Party shall not use such measure as a means of avoiding its obligations.
3. In cases where a Contracting Party takes any measure, pursuant to paragraph 1 of this Article, that does not conform with the obligations of the provisions of this Agreement other than the provisions of Article 13, that Contracting Party shall, prior to the entry into force of the measure or as soon thereafter as possible, notify the other Contracting Party of the following elements of the measure: (a) sector and sub-sector or matter; (b) obligation or article in respect of the measure; (c) legal source of the measure; (d) succinct description of the measure; and (e) purpose of the measure.

## **Article 19. Temporary Safeguard Measures**

1. A Contracting Party may adopt or maintain measures not conforming with its obligations under Article 2 relating to cross-border capital transactions and Article 15:
- (a) In the event of serious balance-of-payments and external financial difficulties or threat thereof; or
  - (b) In cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.
2. Measures referred to in paragraph 1 above:
- (a) Shall be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended, so long as the Contracting Party taking the measures is a party to the said Articles;
  - (b) Shall not exceed those necessary to deal with the circumstances set out in paragraph 1 above;
  - (c) Shall be temporary and shall be eliminated as soon as conditions permit;
  - (d) Shall be promptly notified to the other Contracting Party; and
  - (e) Shall avoid unnecessary damages to the commercial, economic and financial interests of the other Contracting Party.
3. Nothing in this Agreement shall be regarded as altering the rights enjoyed and obligations undertaken by a Contracting Party as a party to the Articles of Agreement of the International Monetary Fund, as may be amended.

## **Article 20. Prudential Measures**

1. Notwithstanding any other provisions of this Agreement, a Contracting Party shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of its financial system.
2. In cases where a Contracting Party takes any measure, pursuant to paragraph 1 above, that does not conform with the obligations of the provisions of this Agreement, that Contracting Party shall not use such measure as a means of avoiding its obligations.

## **Article 21. Intellectual Property Rights**

1. Nothing in this Agreement shall be construed so as to derogate from the rights and obligations under multilateral agreements in respect of protection of intellectual property rights to which the Contracting Parties are parties.

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

3. The Contracting Parties shall give due consideration to the adequate and effective protection of intellectual property rights and shall promptly consult with each other for this purpose at the request of either Contracting Party. Depending on the results of the consultation, each Contracting Party shall, in accordance with its applicable laws and regulations, take appropriate measures to remove the factors which are recognised as having adverse effects to the investments.

## **Article 22. Taxation**

1. Nothing in this Agreement shall apply to taxation measures except as expressly provided for in paragraphs 2, 3 and 4 of this Article.

2. Article 1, paragraph 1 of Article 5, Articles 6, 9, 12, 25 and 27 shall apply to taxation measures.

3. Articles 16 and 17 shall apply to disputes under paragraph 2 above.

4. Article 23 shall apply to taxation measures regarding matters set out in paragraph 2 of this Article.

## **Article 23. Joint Committee**

1. The Contracting Parties shall establish a Joint Committee (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 discuss and review the implementation and operation of this Agreement;

(b) To review the exceptional measures maintained, amended, modified or adopted pursuant to paragraph 1 of Article 8 for the purpose of contributing to the reduction or elimination of such exceptional measures;

(c) To discuss the exceptional measures adopted or maintained pursuant to paragraph 3 of Article 8 for the purpose of encouraging favourable conditions for investors of the Contracting Parties; and

(d) 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 shall determine its own rules of procedure to carry out its functions.

4. The Committee may establish sub-committees and delegate specific tasks to such sub-committees. The Committee, upon mutual consent of the Contracting Parties, may hold joint meetings with the private sectors.

5. Unless otherwise decided by the Contracting Parties, the Committee shall meet once a year, and otherwise at the request of either Contracting Party.

## **Article 24. Environmental Measures**

The Contracting Parties recognise that it is inappropriate to encourage investment by investors of the other Contracting Party by relaxing environmental measures. To this effect each Contracting Party should not waive or otherwise derogate from such environmental measures as an encouragement for the establishment, acquisition or expansion in its Area of investments by investors of the other Contracting Party.

## **Article 25. Observance of the Agreement by Local Governments**

In fulfilling the obligations under this Agreement, each Contracting Party shall take such reasonable measures as may be available to it to ensure the observance of this Agreement by local governments in its Area.

## **Article 26. Denial of Benefits**

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of the other Contracting Party and to its investments if the enterprise is owned or controlled by an investor of a non-Contracting Party and the denying Contracting Party:

(a) Does not maintain diplomatic relations with the non-Contracting Party; or

(b) Adopts or maintains measures with respect to the non-Contracting Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation, a Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of the other Contracting Party and to its investments if the enterprise is owned or controlled by an investor of a non-Contracting Party and the enterprise has no substantial business activities in the Area of the other Contracting Party.

## **Article 27. Final Provisions**

1. This Agreement shall enter into force on the thirtieth day after the date of exchange of diplomatic notes informing each other that their respective legal procedures necessary for the entry into force of this Agreement have been completed. It shall remain in force for a period of ten years after its entry into force and shall continue in force unless terminated as provided in paragraph 2 below. This Agreement shall also apply to all investments of investors of either Contracting Party acquired in the Area of the other Contracting Party in accordance with the applicable laws and regulations of that other Contracting Party prior to the entry into force of this Agreement.

2. A Contracting Party may, by giving one year's advance notice in writing to the other Contracting Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

3. In respect of investments acquired prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination of this Agreement.

4. This Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled, prior to its entry into force.

5. The Annexes to this Agreement shall form an integral part of this Agreement.

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

DONE in duplicate at Tokyo, on this sixteenth day of January, 2008, in the English language.

FOR JAPAN:

FOR THE LAO PEOPLE'S DEMOCRATIC REPUBLIC: Thongloun Sisoulith

Reservations for Measures referred to in Subparagraph 1(a) of Article 8

"Obligations under this Agreement" specifies the obligations under Articles 2, 3 and 7 for which a non-conforming measure is maintained.

Part 1

Reservations of Japan

1. Sector of Matter

Agriculture, Forestry and Fisheries (Plant Breeder's Right)

Obligations under this Agreement

National Treatment (Article 2)

Most-Favoured Nation Treatment (Article 3)

2. Sector of Matter

Agriculture, Forestry and Fisheries, and Related Services (except fisheries within the territorial sea, internal waters, exclusive economic zone and continental shelf provided for in the reservation No. 5 in Reservations of Japan in Part 1 of Annex II)

Obligations under this Agreement

National Treatment (Article 2)

3. Sector of Matter

Air Transport

Obligations under this Agreement

National Treatment (Article 2)

Most-Favoured-Nation Treatment (Article 3)

Prohibition of Performance Requirements (Article 7)

4. Sector of Matter

Banking

Obligations under this Agreement

National Treatment (Article 2)

5. Sector or Matter

Drugs and Medicines Manufacturing

Obligations under this Agreement

National Treatment (Article 2)

6. Sector or Matter

Freight Forwarding Business

Obligations under this Agreement

National Treatment (Article 2)

Most-Favoured-Nation Treatment (Article 3)

Prohibition of Performance Requirements (Article 7)

7. Sector or Matter

Heat Supply

Obligations under this Agreement

National Treatment (Article 2)

8. Sector or Matter

Information and Communications

Obligations under this Agreement

National Treatment (Article 2)

Prohibition of Performance Requirements (Article 7)

9. Sector or Matter

Leather and Leather Products Manufacturing

Obligations under this Agreement

National Treatment (Article 2)

10. Sector or Matter

Matters Related to the Nationality of a Ship

Obligations under this Agreement

National Treatment (Article 2)

Prohibition of Performance Requirements (Article 7)

11. Sector or Matter

Mining

Obligations under this Agreement

National Treatment (Article 2)

12. Sector or Matter

Oil Industry

Obligations under this Agreement

National Treatment (Article 2)

13. Sector or Matter

Railway Transport

Obligations under this Agreement

National Treatment (Article 2)

14. Sector or Matter

Registration of Aircraft in the National Register

Obligations under this Agreement

National Treatment (Article 2)

Prohibition of Performance Requirements (Article 7)

15. Sector or Matter

Road Passenger Transport

Obligations under this Agreement

National Treatment (Article 2)

16. Sector or Matter

Security Guard Services

Obligations under this Agreement

National Treatment (Article 2)

17. Sector or Matter

Water Supply and Waterworks

Obligations under this Agreement

National Treatment (Article 2)

18. Sector or Matter

Water Transport

Obligations under this Agreement

National Treatment (Article 2)

Most-Favoured-Nation Treatment (Article 3)

Part 2

Reservations of the Lao People's Democratic Republic

1. Sector or Matter

All Sectors - Term of the investment license

Obligations under this Agreement

National Treatment (Article 2)

2. Sector or Matter

All Sectors - Registered capital of the joint venture

Obligations under this Agreement

National Treatment (Article 2)

3. Sector or Matter

All Sectors - Importation of registered capital

Obligations under this Agreement

National Treatment (Article 2)

4. Sector or Matter

All Sectors - Timeframe of the examination of application by foreign investor

Obligations under this Agreement

National Treatment (Article 2)

5. Sector or Matter

All Sectors - Requirement for hiring nationals

Obligations under this Agreement

National Treatment (Article 2)

Prohibition of Performance Requirements (Article 7)

6. Sector or Matter

All Sectors - Requirement for export

Obligations under this Agreement

Prohibition of Performance Requirements (Article 7)

7. Sector or Matter

All Sectors – Requirement for achieving a given level or percentage of domestic content

Obligations under this Agreement

Prohibition of Performance Requirements (Article 7)

8. Sector or Matter

All Sectors – Requirement for transferring technology

Obligations under this Agreement

Prohibition of Performance Requirements (Article 7)

9. Sector or Matter

Manufacture of all types of alcohol

Obligations under this Agreement

National Treatment (Article 2)

10. Sector or Matter

Manufacture of medicine

Obligations under this Agreement

National Treatment (Article 2)

11. Sector or Matter

Manufacture of all types of motor vehicle

Obligations under this Agreement

National Treatment (Article 2)

12. Sector or Matter

Hotel - less than 51 rooms or 2 stars

Obligations under this Agreement

National Treatment (Article 2)

13. Sector or Matter

Travel agencies and tour operators services for specific areas

Obligations under this Agreement

National Treatment (Article 2)

14. Sector or Matter

Construction and related consultancy activities

Obligations under this Agreement

National Treatment (Article 2)

15. Sector or Matter

Road and water transportation

Obligations under this Agreement

National Treatment (Article 2)

16. Sector or Matter

Fare for domestic air and water transport

Obligations under this Agreement

National Treatment (Article 2)

17. Sector or Matter

Water supply

Obligations under this Agreement

National Treatment (Article 2)

Reservations for Measures referred to in Paragraph 3 of Article 8

"Obligations under this Agreement" specifies the obligations under Articles 2, 3 and 7 for which a non-conforming measure is maintained or may be adopted.

Part 1

Reservations of Japan

1. Sector or Matter

Aerospace Industry

Obligations under this Agreement

National Treatment (Article 2)

Prohibition of Performance Requirements (Article 7)

2. Sector or Matter

Arms and Explosives Industry

Obligations under this Agreement

National Treatment (Article 2)

Prohibition of Performance Requirements (Article 7)

3. Sector or Matter

Broadcasting Industry

Obligations under this Agreement

National Treatment (Article 2)

Prohibition of Performance Requirements (Article 7)

4. Sector or Matter

Energy

Obligations under this Agreement

National Treatment (Article 2)

Prohibition of Performance Requirements (Article 7)

5. Sector or Matter



Fisheries within the Territorial Sea, Internal Waters, Exclusive Economic Zone and Continental Shelf

Obligations under this Agreement

National Treatment (Article 2)

Most-Favoured-Nation Treatment (Article 3)

Prohibition of Performance Requirements (Article 7)

6. Sector or Matter

Land Transaction

Obligations under this Agreement

National Treatment (Article 2)

Most-Favoured-Nation Treatment (Article 3)

7. Sector or Matter

Maintenance, Designation or Elimination (including privatisation) of a Public Monopoly

Obligations under this Agreement

National Treatment (Article 2)

Prohibition of Performance Requirements (Article 7)

8. Sector or Matter

Obligations under this Agreement

National Treatment (Article 2)

Prohibition of Performance Requirements (Article 7)

9. Sector or Matter

Public Law Enforcement and Correctional Services and Social Services

Obligations under this Agreement

National Treatment (Article 2)

Most-Favoured-Nation Treatment (Article 3)

Prohibition of Performance Requirements (Article 7)

10. Sector or Matter

Subsidies

Obligations under this Agreement

National Treatment (Article 2)

Most-Favoured-Nation Treatment (Article 3)

Part 2

Reservations of the Lao People's Democratic Rep

1. Sector or Matter

Manufacture of all types of weapons

Obligations under this Agreement

National Treatment (Article 2)

Most-Favoured-Nation Treatment (Article 3)

2. Sector or Matter

Manufacture for processing of all types of narcotic drugs

Obligations under this Agreement

National Treatment (Article 2)

3. Sector or Matter

Manufacture of cultural items destructive of the national culture and tradition

Obligations under this Agreement

National Treatment (Article 2)

4. Sector or Matter

Manufacture of chemical substances and industrial waste hazardous to human life and environment

Obligations under this Agreement

National Treatment (Article 2)

5. Sector or Matter

Manufacture of wood and wood products

Obligations under this Agreement

National Treatment (Article 2)

6. Sector or Matter

Exploitation of timber and non-timber forest products of natural forest

Obligations under this Agreement

National Treatment (Article 2)

7. Sector or Matter

Hunting, trapping, wildlife propagation including related service activities

Obligations under this Agreement

National Treatment (Article 2)

8. Sector or Matter

Operation of fish hatcheries in the Mekong River

9. Sector or Matter

Production and processing of local fishes

Obligations under this Agreement

National Treatment (Article 2)

10. Sector or Matter

Security activities

Obligations under this Agreement

National Treatment (Article 2)

11. Sector or Matter

Activities of political organisation

Obligations under this Agreement

National Treatment (Article 2)

12. Sector or Matter

Funeral and related activities

Obligations under this Agreement

National Treatment (Article 2)

13. Sector or Matter

Pedagogy, teaching of other religious and producing specialist for national security

Obligations under this Agreement

National Treatment (Article 2)

14. Sector or Matter

All Sectors-Ownership, utilisation of land (\*)

Obligations under this Agreement

National Treatment (Article 2)

15. Sector or Matter

Mining (\*)

Obligations under this Agreement

National Treatment (Article 2)

16. Sector or Matter

Nuclear energy

Obligations under this Agreement

National Treatment (Article 2)

17. Sector or Matter

Energy, except nuclear energy (\*)

Obligations under this Agreement

National Treatment (Article 2)

18. Sector or Matter

Gambling

Obligations under this Agreement

National Treatment (Article 2)

19. Sector or Matter

Subsidies

Obligations under this Agreement

National Treatment (Article 2)

20. Sector or Matter

Broadcasting and television

Obligations under this Agreement

National Treatment (Article 2)

21. Sector or Matter

Retail and wholesale services(\*)

Obligations under this Agreement

National Treatment (Article 2)

22. Sector or Matter

Share purchasing of the state- owned enterprise

Obligations under this Agreement

National Treatment (Article 2)

23. Sector or Matter

Ownership of domestic and international electricity transmission grids

Obligations under this Agreement

National Treatment (Article 2)

24. Sector or Matter

Domestic electricity distribution

Obligations under this Agreement

National Treatment (Article 2)

25. Sector or Matter

Telecommunication (\*)

Obligations under this Agreement

Prohibition of Performance Requirements (Article 7)

26. Sector or Matter

Air and railway transportation

Obligations under this Agreement

National Treatment (Article 2)

27. Sector or Matter

Banking and other financial services

Obligations under this Agreement

National Treatment (Article 2)

28. Sector or Matter

All Sectors – ASEAN

Obligations under this Agreement

Most-Favoured-Nation Treatment (Article 3)

Note: If the Lao People's Democratic Republic enters into an ASEAN agreement on investment after the date of entry into force of this Agreement, it shall, upon the request of Japan, consider according to investors of Japan and their investments treatment no less favourable than that it accords, in like circumstances, to investors of non-Contracting Party which is a member country of the ASEAN pursuant to such ASEAN agreement.

\* Any amendment or modification of an existing measure or adoption of a new measure shall not be more restrictive to existing investors of Japan and their investments than the measure applied to such investors or investments immediately before such amendments or modification or adoption.

"Existing investors of Japan and their investments" mean investors of Japan whose investments are present in the Area of the Lao People's Democratic Republic, and investments of investors of Japan that are present in the Area of the Lao People's Democratic Republic, immediately before the amendment or modification.