

AGREEMENT BETWEEN THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF THE RUSSIAN FEDERATION CONCERNING THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of Japan and the Government of the Russian Federation (hereinafter referred to as "the Contracting Parties"),

Desirous of strengthening economic cooperation between the two countries,

Intending to create favourable conditions for investments by investors of each country within the territory of the other country, by means of the favourable treatment for investments and business activities in connection therewith and the protection of investments, and

Recognizing that the promotion and protection of investments will stimulate the flow of capital and technology between the two countries,

Have agreed as follows:

Article 1.

For the purposes of the present Agreement:

(1) The term "investment" comprises every kind of asset including:

- (a) Rights with respect to movable and immovable property;
- (b) Shares and other types of holding of companies;
- (c) Claims to money or to any performance under contract having a financial value which are associated with investments;
- (d) Intellectual property rights including patents, trademarks, industrial designs, layout-designs of integrated circuits, trade names, indications of source or appellation of origin and undisclosed information; and
- (e) Concession rights including those for the exploration and exploitation of natural resources.

A change in the form in which assets are invested does not affect their character as investments.

(2) The term "returns" means the amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees.

(3) The term "companies" means corporations, partnerships, companies and associations whether or not with limited liability, whether or not with legal personality and whether or not for pecuniary profit

Companies constituted under the applicable laws and regulations of one Contracting Party and having their seat within its territory shall be deemed companies of that Contracting Party.

(4) The term "investors" means:

- (a) Physical persons who are, in respect of Japan, nationals of Japan and, in respect of the Russian Federation, citizens of the Russian Federation; and
- (b) Companies as defined in sub-paragraph (3) of the present Article.

(5) The term "business activities" in connection with the investments includes:

- (a) The maintenance of Branches, agencies, offices, factories and other establishments appropriate to the conduct of

business activities;

(b) The control and management of companies established or acquired by investors;

(c) The employment of accountants and other technical experts, executive personnel, attorneys, agents and other specialists;

(d) The making and performance of contracts; and

(e) The use, enjoyment or disposal, in relation to the conduct of business activities, of investments and returns.

Article 2.

1. Each Contracting party shall, subject to its rights to exercise powers in accordance with the applicable laws and regulations, encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and, subject to the same rights, shall admit such investments.

2. Investors of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to investors of any third country in respect of the matters relating to the admission of investments.

Article 3.

1. Investors of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to investors of any third country in respect of investments, returns and business activities in connection with the investment.

2. Investors of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to investors of such other Contracting Party in respect of investments, returns and business activities in connection with the investment.

3. Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall receive the most constant protection and security within the territory of the other Contracting Party. Neither Contracting Party shall, within its territory, in any way impair by unreasonable or discriminatory measures, the business activities in connection with the investments of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments made by an investor of the other Contracting Party.

Article 4.

Investors of either contracting Party shall within the territory of the other Contracting party be accorded treatment no less favourable than that accorded to investors of such other Contracting Party or to investors of any third country with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction both in pursuit and in defense of their rights.

Article 5.

1. Investments and returns of investors of either Contracting Party shall not be subjected to expropriation, nationalization or any other measure the effect of which would be tantamount to expropriation or nationalization, within the territory of the other Contracting Party unless such measures are taken for a public purpose and under due process of law, are not discriminatory, and are taken against prompt, adequate and effective compensation.

2. The compensation referred to in the provisions of paragraph 1 of the present Article shall represent the equivalent of the normal market value of the investments and returns affected at the time when expropriation, nationalization or any other measure the effect of which would be tantamount to expropriation or nationalization was publicly announced or when such measure was taken, whichever is the earlier, without reduction in that value due to the prospect of the very seizure which ultimately occurs. Such compensation shall be paid without delay and shall carry an appropriate interest taking into account the length of time until the time of payment. It shall be effectively realizable, freely convertible and freely transferable and shall be paid in a manner which would place investors in a position no less favourable than the position in which such investors would have been if the compensation had been paid immediately on the date of expropriation, nationalization or any other measure the effect of which would be tantamount to expropriation or nationalization.

3. Investors of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to investors of such other Contracting Party or to investors of any third country with respect to the matters set forth in the provisions of paragraph 1 and 2 of the present Article. paragraph 1 and 2 of the present Article.

Article 6.

Investors of either Contracting Party who suffer within the territory of the other Contracting Party damage in relation to their investments, returns or business activities in connection with the investments, owing to the outbreak of hostilities or a state of national emergency such as revolution, revolt, insurrection or riot, shall be accorded treatment no less favourable than that accorded to investors of such other Contracting Party or to investors of any third country, as regards any measure to be taken by the other Contracting Party including restitution, compensation or other valuable consideration. In case payments are made under the present Article; the payments shall be effectively realizable, freely convertible and freely transferable.

Article 7.

If either Contracting Party or its designated agency makes payment to any investor of that Contracting Party of an indemnity, guarantee or contract of insurance given in accordance with the applicable laws and regulations of that Contracting Party in respect of investments and returns in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer to the former Contracting Party or its designated agency of any right or claim of such investor in such investments and returns on account of which such payment is made and the subrogation of the former Contracting Party or its designated agency to any claim or cause of action of such investor arising in connection therewith. As regards payment to be made to that former Contracting Party or its designated agency by virtue of such transfer of right or claim and the transfer of such payment, the provisions of Article 5, Article 6 and Article 8 shall apply mutatis mutandis.

Article 8.

1. Investors of either Contracting Party shall be guaranteed by the other Contracting Party free transfers in connection with investments made by such investors between the territories of the Contracting Parties as well as between the territories of such other Contracting Party and of any third country, including the transfer of:

- (1) Initial capital and additional amounts to maintain or increase investments;
- (2) Returns;
- (3) Funds in repayment of loans;
- (4) Proceeds of the total or partial liquidation of investments;
- (5) Compensation paid in accordance with the provisions of Article 5; Article 5;
- (6) Payments made in accordance with the provisions of Article 6; and Article 6; and
- (7) Wages and other remuneration received by nationals or citizens of the former Contracting Party who have a right to work in the territory of the latter Contracting Party in connection with the investments.

2. Neither Contracting Party shall prevent transfers from being made without delay in a convertible currency at the market rate of exchange existing on the date of the transfer with respect to spot transactions in the currency to be transferred.

3. Notwithstanding the provisions of paragraph 2 of the present Article, either Contracting Party may, in exceptional financial or economic circumstances, impose such exchange rate restrictions in accordance with its laws and regulations and in conformity with the Articles of Agreement of the International Monetary Fund so long as such Contracting Party is a party to the said Articles of Agreement.

4. Investors of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to investors of such other Contracting Party or to investors of any third country with respect to the matters set forth in the provisions of paragraphs 1 to 3 of the present Article.

Article 9.

The present Agreement shall also apply to all investments and returns of investors of either Contracting Party acquired within the territory of the other Contracting Party in accordance with the applicable laws and regulations of such other Contracting Party prior to the entering into force of the present Agreement and on or after May 9, 1958.

Article 10.

Nothing in the present Agreement shall be construed so as to derogate from:

- (a) Laws and regulations, administrative practices or procedures, or administrative or judicial decisions of either Contracting Party;
- (b) Obligations under the international agreements which are in force between the Contracting Parties; or
- (c) Obligations which either Contracting Party may have entered into with regard to investments made by an investor of the other Contracting Party;

That entitle investments, returns or business activities in connection with the investment to treatment more favourable than that accorded by the present Agreement.

Article 11.

1. Any dispute between either Contracting Party and an investor of the other Contracting Party with respect to investments within the territory of the former Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute. This shall not be construed so as to prevent investors of either Contracting Party from seeking administrative or judicial settlement within the territory of the other Contracting Party.

2. If any legal dispute that may arise out of investments made by an investor of such other Contracting Party cannot be settled through such negotiations, the dispute shall at the request of the investor concerned be submitted to:

(1) Conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, March 18, 1965 (hereinafter referred to as "the Washington Convention"), as long as the Washington Convention is in force between the Contracting Parties;

(2) Conciliation or arbitration under the Additional Facility Rules of the International Center for Settlement of Investment Disputes, so long as the Washington Convention is not in force between the Contracting Parties; or

(3) Arbitration the Arbitration Rules of the United Nations Commission on International Trade Law.

3. The decision of arbitration be final and binding upon both parties to the dispute. This decision shall be executed by the applicable laws and regulations concerning the execution of decision in force in the country in whose territories such execution is sought.

4. So long as an investor of either Contracting Party is seeking administrative or judicial settlement within the territory of the other Contracting party or arbitral decision in accordance with any applicable previously agreed dispute-settlement procedures, concerning a dispute that may arise out of investments made by such investor, or in the event that a final judicial settlement on such dispute has been made, such dispute shall not be submitted to arbitration referred to in the provisions of the present Article.

5. In case a legal dispute arises out of investments made by a company of either Contracting Party and such company is controlled by investors of the other Contracting Party on the date on which such company makes a request to the former Contracting Party to submit the dispute to arbitration, such company of the former Contracting Party shall be treated for the purpose of the provisions of the present Article as a company of such other Contracting Party.

Article 12.

1. A company in which investors of either Contracting Party have a substantial interest shall within the territory of the other Contracting Party be accorded, except when the company is a company of a third country and international agreement between such other Contracting Party and such third country concerning promotion and protection of investments is applicable to the companies of such third country:

(1) Treatment no less favourable than that accorded to like companies in which investors of any third country have a substantial interest with respect to the matters set forth in the provisions of paragraph 2 of Article 2; and

(2) Treatment no less favourable than that accorded to like companies in which investors of such other Contracting Party or investors of any third country have a substantial interest with respect to the matter set forth in the provisions of Article 3, paragraphs 1 and 2 of Article 5, Article 6 and Article 9.

2. The term "substantial interest" referred to in the provisions of paragraph 1 of the present Article means such extent of interest as to permit the exercise of control or decisive influence on the company. Whether an interest held by investors of either Contracting Party amounts to a substantial interest shall be decided in each case through consultation between the Contracting Parties.

Article 13.

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 the present Agreement.

Article 14.

Either Contracting Party shall in accordance with its applicable laws and regulations give sympathetic consideration to applications for the entry, sojourn and residence of nationals or citizens of the other Contracting Party who wish to enter the territory of the former Contracting Party and remain therein for the purpose of making investments and carrying on business activities in connection therewith.

Article 15.

Each Contracting Party shall make public in the customary form all laws, regulations, administrative procedures, and judicial decisions that pertain to or affect investments. The provisions of the present 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 the privacy or the legitimate commercial interests.

Article 16.

Neither Contracting Party shall within its territory apply trade-related investment measures which constitute local content requirements, export restrictions or export-import balancing requirements. Notwithstanding the above, either Contracting Party may apply measures that are consistent with the relevant multilateral agreements on trade-related investment measures to which either of the Contracting Parties are a party on the date of signature of the present Agreement.

Article 17.

1. The present Agreement shall enter into force on the thirtieth day after an exchange of diplomatic notes informing each other that their respective legal procedures necessary for entry into force of the present Agreement have been completed. It shall remain in force for a period of ten years and shall continue in force thereafter until terminated as provided in paragraph 2 of the present Article.

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

3. In respect of investments and returns acquired prior to the date of termination of the present Agreement, the provisions of Article 1 to 16 shall continue to be effective for a further period of fifteen years from the date of termination of the present Agreement.

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

DONE at Moscow on the thirteenth day of November 1998, in duplicate, in the Japanese, Russian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of Japan:

For the Government of the Russian Federation:

PROTOCOL

At the time of signing the Agreement between the Government of Japan and the Government of the Russian Federation concerning the Promotion and Protection of Investments (hereinafter referred to as "the Agreement"), the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement:

1. Nothing in the Agreement shall apply to investments made by investors of either Contracting Party in violation of the applicable laws and regulations of such Contracting Party.
2. Notwithstanding the provisions of sub-paragraph (1) of Article 1 of the Agreement, nothing in the Agreement shall be construed so as to grant any right or impose any obligation in respect of copyright.
3. Nothing in the Agreement shall be construed so as to derogate from the obligations undertaken by either Contracting Party towards the other Contracting Party by virtue of the provisions of the Paris Convention for the Protection of Industrial Property of March 20, 1883, or of any subsequent revision thereof, so long as such provisions are in force between the Contracting Parties.
- 4.(1) The provisions of paragraph 1 of Article 3 of the Agreement shall not be construed so as to oblige the Government of the Russian Federation to extend the benefits to the investors of Japan, which the Government of the Russian Federation is extending, or will extend in the future, by virtue of agreements between the Russian Federation and the states which had earlier formed part of the Union of Soviet Socialist Republics.

(2) The Government of the Russian Federation shall, on the date on which the Agreement comes into force, notify the Government of Japan of the benefits that are not extended to the investors of Japan in accordance with the provisions of sub-paragraph (1) of the present paragraph.

(3) In case the Government of the Russian Federation introduces new benefits that are not extended to the investors of Japan in accordance with the provisions of sub-paragraph (1) of the present paragraph after the date on which the Agreement comes into force, the Government of the Russian Federation shall notify the Government of Japan of such benefits within 60 days from the date of the introduction of such benefits.

(4) The Government of Japan may make representations with respect to such benefits notified by the Government of the Russian Federation in accordance with the provisions of Article 13 of the Agreement.
- 5.(1) Notwithstanding the provisions of paragraph 2 of Article 3 of the Agreement, each Contracting Party shall reserve the right to determine economic fields and areas of activities where activities of foreign investors shall be excluded or restricted, in accordance with its applicable laws and regulations, in case it is really necessary for the reason of national security.

(2) Each Contracting Party shall, on the date on which the Agreement comes into force, notify the other Contracting Party of the economic fields and areas of activities determined by the former Contracting Party in accordance with the provisions of sub-paragraph (1) of the present paragraph.

(3) In case either Contracting Party determines new economic fields and areas of activities in accordance with the provisions of sub-paragraph (1) of the present paragraph after the date on which the Agreement comes into force, such Contracting Party shall notify the other Contracting Party of such fields and areas within 60 days from the date of the determination of such fields and areas.

(4) Each Contracting Party may make representations with respect to such fields and areas notified by the other Contracting Party in accordance with the provisions of Article 13 of the Agreement.

(5) Each Contracting Party will do its best to eliminate all economic fields and areas of activities notified in accordance with the provisions of the present paragraph as soon as possible. The Contracting Parties shall hold periodic consultations, through diplomatic channels or other consultative fora, for the purpose of reviewing the effort made by each Contracting Party to eliminate such economic fields and areas of activities.
6. The provisions of paragraphs 1 and 2 of Article 3 of the Agreement shall not be construed so as to oblige either Contracting Party to extend to investors of the other Contracting Party special tax advantages accorded on the basis of reciprocity with a third country or by virtue of agreements for the avoidance of double taxation or for the prevention of fiscal evasion.

7. Notwithstanding the provisions of paragraph 2 of Article 3 of the Agreement, the treatment accorded by either Contracting Party to investors of the other Contracting Party may be limited to the treatment no less favourable than that accorded to investors of any third country in connection with:

(a) The conditions of registration of aircraft in the national register of either Contracting Party and matters arising from such registration, and matters related to or arising from the nationality of ship; and

(b) The acquisition of ship or of any interest in ship.

8. Notwithstanding the provisions of paragraph 2 of Article 3 of the Agreement, either Contracting Party may prescribe special formalities in connection with the activities of foreign nationals or citizens and companies within its territory, provided that such formalities may not impair the substance of the rights set forth in the aforesaid paragraph.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed the present Protocol.

DONE at Moscow on the thirteenth day of November 1998, in duplicate, in the Japanese, Russian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of Japan

For the Government of the Russian Federation