

AGREEMENT BETWEEN JAPAN AND THE PEOPLE'S REPUBLIC OF BANGLADESH CONCERNING THE PROMOTION AND PROTECTION OF INVESTMENT

Japan and the People's Republic of Bangladesh,

Desirous of strengthening economic cooperation between the two countries,

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

Recognizing that the promotion and protection of investment 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 "investments" comprises every kind of asset including:

- (a) Shares and other types of holding of companies;
- (b) Claims to money or to any performance under contract having a financial value which are associated with investment;
- (c) Rights with respect to movable and immovable property;
- (d) Intellectual property rights, including undisclosed Information, and trade names; and
- (e) Concession rights including those for the exploration and exploitation of natural resources.

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

(3) The term "nationals" means, in relation to one Contracting Party, physical persons possessing the nationality of that Contracting Party.

(4) 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.

(5) The term "investors" means nationals as defined in sub-paragraph (3) of the present Article and companies as defined in sub-paragraph (4) of the present Article.

(6) The term "business activities in connection with the investment" 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 investment in its territory, and, subject to the same rights, shall admit such 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 any third country in respect of the matters relating to the admission of investment.

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 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 Parties in respect of investments, returns and business activities in connection with the investment.

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 receive the most constant protection and security within the territory of the other Contracting Party.

2. 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.

3. The compensation referred to in the provisions of paragraph 2 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.

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 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 investment, 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 under 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 paragraphs 2 to 4 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 freedom of payments, remittance, and transfer of funds or financial instruments effected in connection with investment made by such investors between the territories of the two Contracting Parties as well as between the territories of such other Contracting Party and of any third country.

Such funds or financial instruments shall include funds for payments, funds in repayment of loans, proceeds from sales, and the proceeds of the total or partial liquidation of an investment.

2. Notwithstanding the provisions of paragraph 1 of the present Article, either Contracting Party may, in exceptional financial or economic circumstances, impose such exchange 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.

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 paragraphs 1 and 2 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.

Article 10.

1. Any dispute between either Contracting Party and an investor of the other Contracting Party with respect to investment within the territory of the former Contracting Party shall, as far as possible, be settled amicably through consultation 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 investment made by an investor of such other Contracting Party cannot be settled through such consultation, such former Contracting Party shall consent to submit the dispute to conciliation or arbitration at the request of such investor in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on March 18, 1965, so long as both Contracting Parties are parties to the said Convention.

3. So long as an investor of either Contracting Party is pursuing administrative or judicial settlement within the territory of the other Contracting Party concerning a dispute that may arise out of investment 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.

4. In case a legal dispute arises out of investment 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 that the former Contracting Party to submit the dispute to conciliation or arbitration, such company of the former Contracting Party shall be treated for the purposes of the provisions of the present Article as a Company of such other Contracting Party.

Article 11.

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 investment 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 matters set forth in the provisions of Article 3, paragraphs 1 to 3 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 consultations between the Contracting Parties.

Article 12.

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 the present Agreement.

2. Any dispute between the Contracting Parties as to the interpretation or application of the present 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 period referred to in the provisions of paragraph 2 of the present Article, 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 both Contracting Parties.

Article 13.

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 of the other Contracting Party who wish to enter the territory of the former Contracting Party and remain herein for the purpose of making investment and carrying on business activities in connection therewith.

Article 14.

1. The present Agreement shall enter in to 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 there after 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 Articles 1 to 13 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 in duplicate, in the English language, at Tokyo, this tenth day of November, 1998.

For Japan: M. Koumura

For the People's Republic of Bangladesh: Abdus Samad Azad

At the time of signing the Agreement between Japan and the People's Republic of Bangladesh concerning the Promotion and Protection of Investment (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 be construed so as to derogate from the rights and obligations under International agreements in respect of protection of intellectual property rights to which they are parties, including Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of Marrakesh Agreement Establishing the World Trade Organization, and other treaties concluded under the auspices of the World Intellectual Property Organization.

2. The provisions 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.

3. Notwithstanding the provision of paragraph 2 of Article 3 of the Agreement, the treatment accorded by either Contracting Party to investor of the other Contracting Party may be limited to the treatment no less favourable than that accorded to Investor 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.

4. 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 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 Agreement

DONE in duplicate, in the English language, at Tokyo, this tenth day of November, 1998.

For Japan: M. Koumura

For the People's Republic of Bangladesh: Abdus Samad Azad