AGREEMENT BETWEEN JAPAN AND THE KINGDOM OF MOROCCO FOR THE PROMOTION AND PROTECTION OF INVESTMENT

The Government of Japan and the Government of the Kingdom of Morocco,

Desiring to further promote investment in order to strengthen the economic relationship between Japan and the Kingdom of Morocco (hereinafter referred to as "the Contracting Parties");

Intending to further create stable, equitable, favourable and transparent conditions for greater investment by investors of a Contracting Party in the Territory of the other Contracting Party;

Recognising that the reciprocal promotion and protection of such investment will be conducive to stimulation of business initiative and increase prosperity in both Contracting Parties;

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

Recognising the inherent right of the Contracting Parties to regulate and resolving to preserve their flexibility to set legislative and regulatory priorities, safeguard public welfare, and protect legitimate public welfare objectives, such as public health, safety, the environment, the conservation of living or non-living exhaustible natural resources, the integrity and stability of the financial system and public morals;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(a) The term "investment" means every kind of asset made in accordance with applicable laws and regulations, and owned or controlled, directly or indirectly, by an investor, that has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk or certain duration, including, in particular, though not exclusively:

(i) An enterprise and a branch of an enterprise;

(ii) Shares, stocks or other forms of equity participation in an enterprise;

(iii) Bonds, debentures, loans and other forms of debt;

(iv) Rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;

(v) Claims to money and to any performance under contract having a financial value;

(vi) Intellectual property rights, as referred to in the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement and similar international agreements to which both Contracting Parties are parties;

(vii) Concessions, licences, authorisations, permits and similar rights conferred by laws and regulations or under contracts, including those to search for, cultivate, extract or exploit natural resources; and

(viii) Any other movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;

Note: For the purpose of this Agreement, the investment does not include:

(i) Debt securities issued by a Contracting Party or loan to a Contracting Party or to a public enterprise; or

(ii) Claims to money that arise solely from:

(A) The commercial contracts for the sale of goods or services by a national or an enterprise in the Territory of a Contracting Party to a national or an enterprise in the Territory of the other Contracting Party; or

(B) The extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (a)(iii).

An investment includes the amounts yielded by an investment, in particular, profit, interest, capital gains, dividends, royalties and fees (hereinafter referred to as "investment returns").

A change in the form in which assets are invested does not affect their character as an investment, provided that the change is not inconsistent with the laws and regulations of the Contracting Party where the assets are invested.

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

(i) A natural person having the nationality of that Contracting Party in accordance with its applicable laws and regulations, provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality; or

(ii) An enterprise of that Contracting Party carrying out substantial business activities in the Territory of that Contracting Party,

That is making or has made an investment in the Territory of the other Contracting Party;

Note: For greater certainty, a branch of an enterprise of a non-Contracting Party, which is located in the Territory of either Contracting Party, shall not be deemed as an investor of that Contracting Party. For the purposes of this Agreement, the term "branch of an enterprise" means a branch located in the Territory of either Contracting Party and carrying out business activities therein.

(c) An enterprise is:

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

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

(d) The term "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 private or government owned or controlled;

(e) The term "investment activities" means operation, management, conduct, maintenance, use, enjoyment and sale or other disposal of investments;

(f) The term "Territory" means:

(i) With respect to Japan, its territory, and the exclusive economic zone and the continental shelf with respect to which Japan exercises sovereign rights or jurisdiction in accordance with international law; and

(ii) With respect to the Kingdom of Morocco, the territory of the Kingdom of Morocco, and any maritime area situated beyond the territorial waters of the Kingdom of Morocco which has been or might be in the future designated by the laws of the Kingdom of Morocco, in accordance with the United Nations Convention on the Law of the Sea, as being an area into which the rights of the Kingdom of Morocco relative to the sea-bed and to the maritime subsoil as well as to natural resources can be exercised;

(g) The term "freely usable currency" means freely usable currency as defined under the Articles of Agreement of the International Monetary Fund; and

(h) The term "the WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994.

Article 2. Admission and Promotion of Investment

1. Each Contracting Party shall, subject to its applicable laws and regulations, including those with regard to foreign ownership and control, admit investment of investors of the other Contracting Party, and shall as far as possible encourage and create favourable conditions for investors of the other Contracting Party to make investments in its Territory.

2. Substantial expansion, modification or transformation of an investment which is subject to admission and performed according to the laws and regulations in force in the Contracting Party in whose Territory the investment is made, is considered as a new investment.

3. For greater certainty, investment returns that are reinvested in accordance with the laws and regulations of the Contracting Party in whose Territory the reinvestment is made, enjoy the same protection accorded to the initial investment.

4. In order to encourage mutual investment flows, each Contracting Party may provide information, both to the other Contracting Party and to investors of the other Contracting Party, regarding investment opportunities in its Territory.

5. Each Contracting Party shall as far as possible within a reasonable period of time publish or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings of general application as well as international agreements which pertain to or affect the implementation and operation of this Agreement.

6. Each Contracting Party shall, upon request by the other Contracting Party and within a reasonable period of time, respond to specific questions and provide that other Contracting Party with information on judicial decisions of general application and matters set out in paragraph 5, including that relating to a contract each Contracting Party enters into with regard to investment.

7. Paragraphs 5 and 6 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.

8. Each Contracting Party shall, in accordance with its applicable laws and regulations, endeavour to provide, except in cases of emergency or of purely minor nature, a reasonable opportunity for comments by the public before the adoption, amendment or repeal of regulations of general application that affect any matter covered by this Agreement.

Article 3. National Treatment and Most-favoured-nation Treatment

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

2. Paragraph 1 does not prevent either Contracting Party from differentiating between treatments accorded in accordance with its legislation relating to taxes.

3. Paragraph 1 shall not apply to:

(a) Subsidies including grants, government supported loans, guarantees and insurance; or

(b) The treatment accorded under the terms and conditions of government procurement contract concluded by a Contracting Party or a public enterprise.

4. Paragraph 1 shall not be construed to prevent a Contracting Party from adopting or maintaining a measure that prescribes special formalities in connection with investment activities of investors of the other Contracting Party in its Territory, provided that such special formalities do not impair the substance of the rights of such investors under this Agreement.

5. Each Contracting Party shall in its Territory 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.

6. For greater certainty, the treatment referred to in paragraph 5 does not encompass international dispute settlement procedures or mechanisms.

7. Paragraph 5 shall not be construed so as to oblige a Contracting Party to extend to investors of the other Contracting Party and to their investments the benefits of any treatment, preference or privilege by virtue of any existing or future:

(a) Free trade area, customs union, economic or monetary union, common market, or other form of regional agreement;

(b) Multilateral agreements in respect of protection of intellectual property rights; or

(c) International agreement or arrangement relating wholly or mainly to taxation,

To which the former Contracting Party is a party or may become a party in the future.

Article 4. General Treatment

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

Note: The Contracting Parties confirm their shared understanding that "customary international law" generally and as specifically referred to in this Article results from a general and consistent practice of States that they follow from a sense of legal obligation. The Contracting Parties also confirm that the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

2. For greater certainty, a change of the regulation of a Contracting Party does not constitute by itself a violation of paragraph 1.

3. It is understood that:

(a) "fair and equitable treatment" includes the obligation of the Contracting Parties to guarantee access to the courts of justice and administrative tribunals and not to deny justice in criminal, civil or administrative proceedings in accordance with the principle of due process of law; and

(b) "full protection and security" requires each Contracting Party to ensure the necessary level of police protection required under customary international law.

4. Neither Contracting Party shall, within its Territory, in any way impair investment activities of investors of the other Contracting Party by unreasonable, arbitrary or discriminatory measures.

Article 5. Prohibition of Performance Requirements

The Contracting Parties reaffirm their obligations under the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement. Any dispute concerning the application of this Article shall not be covered by the provisions of Article 16 related to the international arbitration.

Article 6. Relation to other Agreements

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

Article 7. Measures Against Corruption

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

Article 8. Entry, Sojourn and Residence of Investors

Each Contracting Party shall, subject to its laws and regulations related to entry, sojourn and residence of aliens, permit natural persons having the nationality of the other Contracting Party to enter and remain in its Territory for the purpose of engaging in activities connected with investments.

Article 9. Expropriation and Compensation

1. Neither Contracting Party shall expropriate or nationalise investments in its Territory 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.

2. The compensation shall amount to the fair market value of the expropriated investments immediately before the expropriation was publicly announced or the expropriation occurred, whichever is the 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 undue delay and shall include interest at a commercially reasonable rate, taking into account the length of time until the date of payment. It shall be effectively realisable and freely transferrable and shall be freely convertible into freely usable currencies, at the market exchange rate prevailing on the date of expropriation.

4. The investors affected by expropriation shall have the right, under the laws and regulations of the Contracting Party that has taken the expropriation, to prompt review, by a judicial authority or administrative tribunals or duly authorised administrative agencies of that Contracting Party, of the legality of the expropriation and the amount of the compensation, in accordance with the principles set out in this Article.

5. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with international agreements on intellectual property to which both Contracting Parties are parties.

Note: For greater certainty, expropriation shall be interpreted in accordance with the Annex.

Article 10. Compensation for Losses or Damages

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 Territory 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 Territory 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 transferrable, and freely convertible at the market exchange rate into freely usable currencies.

3. Without prejudice to paragraph 1, investors of a Contracting Party who, in any of the situations referred to in that paragraph, suffer a loss in the Territory of the other Contracting Party resulting from requisitioning, or destruction which was not required by the necessity of the situation, of their property or part thereof by the latter's forces or authorities shall be accorded by the latter Contracting Party prompt, adequate and effective restitution or compensation.

Article 11. Transfers

1. Each Contracting Party shall ensure that all transfers relating to investments in its Territory of an investor of the other Contracting Party, subject to fulfilment of his or her fiscal obligations under the applicable legislation of the former Contracting Party relating to taxes, may be freely made into and out of its Territory 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, fees and other current incomes accruing from investments;

(c) Payments made under a contract in connection with investments;

(d) Proceeds of the total or partial sale or liquidation of investments;

(e) Earnings and remuneration of personnel from the other Contracting Party engaged in activities in connection with investments in the Territory of the former Contracting Party;

(f) Payments made in accordance with Articles 9 and 10; and

(g) Payments arising out of the settlement of an investment dispute under Article 16.

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

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

(a) Bankruptcy, insolvency or the protection of the rights of creditors;

(b) Issuing, trading or dealing in securities;

(c) Criminal or penal offences; or

(d) Ensuring compliance with orders or judgements in adjudicatory proceedings.

Article 12. Temporary Safeguard Measures

1. Notwithstanding Article 11, a Contracting Party may adopt or maintain measures relating to cross-border capital transactions as well as payments or transfers for transaction related to investments:

(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:

(a) Shall be consistent with the Articles of Agreement of the International Monetary Fund, 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;

(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.

Article 13. 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. A Contracting Party shall not be prevented from taking non-discriminatory measures of general application in pursuit of monetary and related credit policies or exchange rate policies.

3. Where the measures taken by a Contracting Party pursuant to paragraphs 1 and 2 do not conform with any other provisions of this Agreement, they shall be taken for the purposes referred to in those paragraphs and not be used as a means of avoiding the obligations of the Contracting Party under this Agreement.

Article 14. Subrogation

1. If a Contracting Party or its designated agency (hereinafter referred to as "insurer") makes a payment to any of its own investors under an indemnity, guarantee or insurance contract, pertaining to an investment of such investor made in the Territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the insurer of any right or claim of such investor on account of which such payment is made and shall recognise that the insurer is entitled 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 the insurer by virtue of such assignment of right or claim and the transfer of such payment, the provisions of Articles 9, 10 and 11 shall apply mutatis mutandis.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

Article 15. Consultations

Representatives of the Contracting Parties may, whenever necessary, hold consultations on any matter affecting the

implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a time agreed upon through diplomatic channels.

Article 16. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. For the purposes of this Article, "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 obligation of the former Contracting Party under this Agreement with respect to the investor of that other Contracting Party or its investments in the Territory of the former Contracting Party.

2. Subject to subparagraph 6(b), 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 Territory of the Contracting Party that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Party").

3. Any investment dispute shall, as far as possible, be settled amicably through consultations and negotiations conducted in good faith between the disputing investor and the disputing Party (hereinafter referred to in this Article as "the disputing parties"). To this end, the disputing investor shall deliver to the disputing Party a written request for consultations setting out a brief description of facts regarding the measure or measures at issue. The consultation shall be commenced no later than thirty days after the date of its receipt by the disputing Party. Nothing in this paragraph precludes the use of non-binding, third party procedures, such as good offices, conciliation or mediation.

4. If the investment dispute cannot be settled through such consultations within six months from the date of the receipt by the disputing Party of a written request for consultations pursuant to paragraph 3, the disputing investor may, subject to subparagraph 6(b), submit the investment dispute to one of the following international arbitrations:

(a) 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 (hereinafter referred to in this Article as "the ICSID Convention"), so long as the ICSID Convention is in force between the Contracting Parties;

(b) Arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, provided that either Contracting Party, but not both, is a party to the ICSID Convention;

(c) Arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law; and

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

5. Subject to Article 5, each Contracting Party hereby consents to the submission of an investment dispute by a disputing investor to arbitration set forth in paragraph 4 chosen by the disputing investor, except for investment disputes regarding the obligations of the disputing Party under paragraphs 5 through 8 of Article 2.

6. (a) Notwithstanding paragraph 5, no investment disputes may be submitted to 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.

(b) Once the disputing investor has submitted an investment dispute to the competent court or administrative tribunal of the disputing Party or to one of the arbitrations set forth in paragraph 4, the choice of the disputing investor shall be final and the disputing investor may not submit thereafter the same dispute to other arbitrations or competent court or administrative tribunal.

(c) Notwithstanding paragraphs 4 and 5, no investment dispute may be submitted to the arbitration set forth in paragraph 4 unless the disputing investor gives the disputing Party written waiver of any right to initiate before any competent court or administrative tribunal of the disputing Party with respect to any measure of the disputing Party alleged to constitute a breach referred to in paragraph 1.

7. An arbitral tribunal established under paragraph 4 shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law. In this context, the domestic law of the disputing Party shall be considered, when it is relevant to the claim, as a matter of fact.

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

(a) Written notice of the investment dispute submitted to the arbitration no later than thirty days after the date on which the

investment dispute was submitted; and

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

9. The Contracting Party which is not the disputing Party may, upon written notice to the disputing parties, make submissions to the arbitral tribunal on a question of interpretation of this Agreement. The disputing Party may make comments concerning the said interpretation.

10. The arbitral tribunal may award only:

(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) One or both of the following remedies, only if there has been such a breach:

(i) 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.

The arbitral tribunal may also award cost and attorney's fees in accordance with applicable arbitration rules.

The arbitral tribunal shall not award punitive damages.

11. The disputing Party may make available to the public in a timely manner all documents, including an award, submitted to, or issued by, an arbitral tribunal established under paragraph 4, subject to redaction of:

(a) Confidential business information;

(b) Information which is privileged or otherwise protected from disclosure under the applicable laws and regulations of either Contracting Party; and

(c) Information which shall be withheld pursuant to the relevant arbitration rules.

12. Unless the disputing parties agree otherwise, the arbitration shall be held in a country that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (hereinafter referred to in this Article as "the New York Convention").

13. The disputing Party may not assert as a defence, counterclaim, right of set-off or for any other reason, that the disputing investor has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

14. The award rendered by the arbitral tribunal shall be final and binding upon the disputing parties. This award shall be executed in accordance with the applicable laws and regulations, as well as relevant international law including the ICSID Convention and the New York Convention, concerning the execution of award in force in the country where such execution is sought.

15. No measures of constraint, such as attachment, arrest or execution, in connection with an arbitration referred to in paragraph 4 or any proceeding before a court of a State other than the disputing Party with respect to the award of that arbitration, shall be taken, before or after that award, against the property of the disputing Party in use or intended for use for government non-commercial purposes.

The following categories, in particular, of property of the disputing Party shall be considered as property in use or intended for use by the disputing Party for government non-commercial purposes under this paragraph:

(a) Property, including any bank accounts, which is used or intended for use in the performance of the functions of the diplomatic mission of the disputing Party or its consular posts, special missions, missions to international organisations, or delegations to organs of international organisations or to international conferences;

(b) Property of a military character or used or intended for use in the performance of military functions;

(c) Property of the central bank or other monetary authority of the disputing Party;

(d) Property forming part of the cultural heritage of the disputing Party or part of its archives and not placed or intended to be placed on sale; and

(e) Property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale.

Article 17. Settlement of Dispute between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall be as far as possible settled through consultation between the Contracting Parties.

2. If the dispute is not satisfactorily adjusted within six months from the receipt of the notification of the dispute, it shall be submitted, at the request of either Contracting Party, to an Arbitral Tribunal in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be constituted in the following way: each Contracting Party shall appoint an arbitrator and these two arbitrators shall agree upon a national of a non-Contracting Party to be appointed as President of the Arbitral Tribunal. The arbitrators shall be appointed within three months and the President within five months from the date of receipt by either Contracting Party from the other Contracting Party of a note requesting arbitration of the dispute.

4. If within the period specified in paragraph 3 the necessary appointment of the third arbitrator has not been made, the Contracting Parties shall, unless otherwise agreed, invite the President of the International Court of Justice to make the necessary appointment. If the President of the International Court of Justice is a national of either Contracting Party or if he or she is otherwise prevented from discharging the said function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointment. If the Vice-President of the International Court of Justice is a national of either Contracting Party or if he or she is also prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointment.

5. The Arbitral Tribunal shall issue its decision on the basis of the provisions of this Agreement and rules and principles of international law.

6. Unless the Contracting Parties agree otherwise, the Arbitral Tribunal shall within a reasonable period of time reach its decision by a majority of votes and that decision shall be final and binding on both Contracting Parties.

7. Each Contracting Party shall bear the expenses of the arbitrator appointed by it and those connected with representing it in the arbitral proceeding. The other expenses, including those of the President, shall be borne in equal parts by the two Contracting Parties.

Article 18. Taxation

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

2. An arbitral tribunal established under Article 16 shall not have the authority for interpretation or application of the tax laws of either Contracting Party.

Article 19. Health, Safety and Environmental Measures and Labour Standards

Each Contracting Party shall refrain from encouraging investments by investors of the other Contracting Party by relaxing its health, safety or environmental measures, or by lowering its labour standards. To this effect, each Contracting Party should not waive or otherwise derogate from such measures or standards as an encouragement for the establishment, acquisition or expansion in its Territory of investments by investors of the other Contracting Party.

Article 20. 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 Territory of the other Contracting Party.

Article 21. General and Security Exceptions

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

(a) Necessary to protect human, animal or plant life or health;

(b) Necessary to protect public morals or to maintain public order, provided that the public order exception may only be invoked where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society;

(c) Necessary to secure compliance with the laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:

(i) The prevention of deceptive and fraudulent practices or to deal with the effects of a default on contract;

(ii) The protection of the privacy of the individual in relation to the processing and dissemination of personal data and the protection of confidentiality of personal records and accounts; or

(iii) Safety; or

(d) Imposed for the protection of national treasures of artistic, historic or archaeological value.

2. Notwithstanding any other provisions in this Agreement other than the provisions of Article 10 and paragraph 15 of Article 16, each Contracting Party may take any measure:

(a) 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; or

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

Article 22. Application of the Agreement

This Agreement shall also apply to all investments of investors of either Contracting Party made in the Territory of the other Contracting Party in accordance with the laws and regulations of that other Contracting Party prior to the entry into force of this Agreement. However, this Agreement shall not apply to the disputes which occurred before its entry into force.

Article 23. Final Provisions

1. Each Contracting Party shall send through diplomatic channels to the other Contracting Party the notification confirming that its internal procedures necessary for the entry into force of this Agreement have been completed. This Agreement shall enter into force on the thirtieth day after the date of receipt of the latter notification.

2. This Agreement shall remain in force for a period of ten years and shall continue in force unless terminated as provided in paragraph 3.

3. 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.

4. Upon the request of either Contracting Party, the Contracting Parties shall undertake a review of this Agreement, with a view to further promoting investment between the Contracting Parties.

5. In respect to investments made 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.

6. The Annex 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 Rabat, on this eighth day of January, 2020 in the Japanese, Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

FOR THE GOVERNMENT OF JAPAN:

Suzuki Keisuke

FOR THE GOVERNMENT OF THE KINGDOM OF MOROCCO:

Mohcine Jazouli

Annex. Referred to in Article 9 Expropriation and Compensation

1. The Contracting Parties confirm their shared understanding that paragraph 1 of Article 9 is intended to reflect customary international law concerning the obligation of States with respect to expropriation.

2. Paragraph 1 of Article 9 addresses the following two situations:

(a) The first situation is direct expropriation where investments are nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and

(b) The second situation is indirect expropriation where a measure or a series of measures of a Contracting Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

3. The determination of whether a measure or a series of measures of a Contracting Party, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) The economic impact of the measure or series of measures, although the fact that such measure or series of such measures has an adverse effect on the economic value of investments, standing alone, does not establish that an indirect expropriation has occurred;

(b) The extent to which the measure or series of measures interferes with distinct and reasonable expectations arising out of investments; and

(c) The character of the measure or series of measures, including the duration of such measure, whether such measure is non-discriminatory and whether such measure is disproportionate with regard to the public interest purpose.

4. Except in rare circumstances, such as when a measure or a series of measures of a Contracting Party is extremely severe or disproportionate in light of its purpose, non-discriminatory measures of a Contracting Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriation.