

# AGREEMENT BETWEEN JAPAN AND MONGOLIA CONCERNING THE PROMOTION AND PROTECTION OF INVESTMENT

Japan and Mongolia,

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 trademarks, industrial designs, layout-designs of integrated circuits, copyrights, patents, trade names, indications of source or appellations of origin and undisclosed information; 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, in relation to one Contracting Party, nationals as defined in sub-paragraph (3) of the present Article and companies as defined in subparagraph (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 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.

## **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 paragraph 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 or right or claim and the transfer of such payment, the provisions of paragraph 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 free transfers of funds in connection with investment 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 acquire, 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;

(6) Payments made in accordance with the provisions of Article 6; and

(7) Wages and other remuneration received by nationals of the former Contracting Party who have a right to work in the territory of the latter Contracting Party in connection with the investment.

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 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.

## **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 an investor of either Contracting Party and the other Contracting Party with respect to investment within the territory, of such other 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 an investor of the former Contracting Party from seeking administrative or judicial settlement within the territory of such other Contracting Party.

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

(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 on March 18, 1965 so long as the Convention is in force between the Contracting parties, or conciliation or arbitration under the Additional Facility Rules of the International Center for Settlement of Investment Disputes so long as the Convention is not in force between the Contracting Parties; or

(2) Arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976.

3. A Contracting Party which is a party to a legal dispute referred to in paragraph 2 of this Article shall give its consent to the submission of the dispute to international conciliation or arbitration referred to in paragraph 2 in accordance with the provisions of the present Article.

4. The decision of arbitration shall 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 the country in whose territories such execution is sought.

5. So long as an investor of either Contracting Party is seeking 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.

6. 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 to 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 therein for the purpose of making investment and carrying on business activities in connection therewith.

### **Article 14.**

1. Each Contracting Party shall in accordance with its applicable laws and regulations promptly 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.

2. Each Contracting Party shall, upon request by the other contracting Party, in accordance with its applicable laws and regulations promptly respond to specific questions of, and provide information to, the other Contracting Party on matters referred to in paragraph 1 of the present Article.

### **Article 15.**

Neither Contracting Party shall within its territory apply measures constituting local content requirements, export restrictions or import restrictions or other trade related investment measures which are not consistent with the Agreement on Trade-Related Investment Measures, Annex 1A of the Marrakesh Agreement Establishing the World Trade Organization.

### **Article 16.**

1. Both Contracting Parties shall establish a Joint Committee (hereinafter referred to as the "Committee") with a view to accomplishing the objectives of the present Agreement. The function of the Committee shall be to discuss and review the implementation and operation of the present Agreement.

2. Unless otherwise agreed by the Contracting Parties, the Committee shall meet periodically and otherwise at the request of either Contracting Party.

### **Article 17.**

1. The present Agreement shall enter into force on the thirtieth day after an exchange of diplomatic notes informing each other that the respective legal procedures necessary for the 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 in duplicate, in the English language, at Tokyo, this fifteenth day of February, 2001.

For Mongolia:

For Japan:

Yohei Kono

At the time of signing the Agreement between Japan and Mongolia 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 the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex IC of the Marrakesh Agreement Establishing the World Trade Organization, and other international agreements concluded under the auspices of the world Intellectual Property Organization.

2. Nothing in the Agreement shall be construed so as to oblige either Contracting Party to extend to investors of the other Contracting party treatment accorded to investors of a third country by virtue of international agreements in respect of protection of intellectual property rights, to which the former Contracting party is a party.

3. 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.

4. It is confirmed that the provisions of Article 3 of the Agreement do not prevent either Contracting Party from differentiating between treatments accorded to residents and non-residents in accordance with its laws and regulations relating to taxes.

5. 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.

6. 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 Protocol.

DONE in duplicate, in the English language, at Tokyo, this fifteenth day of February, 2001.

For Japan:

Yohei Kono

For Mongolia: