

**AGREEMENT BETWEEN THE GOVERNMENT OF THE RUSSIAN FEDERATION
AND THE GOVERNMENT OF JAPAN ON THE ENCOURAGEMENT AND
PROTECTION OF CAPITAL INVESTMENTS (MOSCOW, NOVEMBER 13, 1998)**

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

are willing to strengthen economic co-operation between them,

are intending to foster favourable conditions for capital investments by the investors of one country on the territory of the other country by means of according the favourable treatment of capital investments and business activities relating thereto as well as the protection of capital investments, and

recognising that the encouragement and protection of capital investments will act as incentive for capital and technology flow between the two countries,

have agreed for the following:

Article 1

For the purposes of the present Agreement:

(1) The term "capital investment" means all kinds of valuables, in particular:

- a) the rights relating to movable and immovable property;
 - b) shares and other forms of interest in companies;
 - c) investment related right of claim of monetary means or any contractual obligation of financial value;
 - d) the rights to intellectual property including patents, trademarks, industrial designs, integrated circuit designs, brand names, references to sources or origin marks and non-disclosable information; and
 - e) concession rights including the right to prospect and use natural resources;
- Variations in the form of valuables investment do not effect their nature as capital investments.

(2) The term "incomes" means the amounts of money received as a results of capital investments, in particular: profit, interest, capital gain, dividends, license fees and commissions.

(3) The term "companies" means corporations, partnership-companies and associations with limited and unlimited liability, with a legal personality or without it, with a monetary profit or without it.

The companies set up under the applicable law of one Contracting Party and located on the territory thereof shall be deemed the companies of this Contracting Party.

(4) The term "investors" means:

(a) the natural persons: who are citizens in respect of the Russian Federation and who are subjects of Jan in respect of Japan; and

(b) the companies in compliance with the definition provided in Item 3 of the present article.

(5) The term "investment-related business activities" means:

(a) running branches, agencies, representative offices, plants/factories and other institutions dealing with business activities;

(b) controlling and managing companies founded or acquired by investors;

(c) hiring accountants and other technical experts, administrative personnel, lawyers/solicitors, agents and other specialists;

(d) entering into and performing under agreements; and

(e) using, owning or disposing of capital investments and incomes in connection with the conduct of business activities.

Article 2

1. Each Contracting Party, proceeding from its right to exercise powers under the applicable law, shall encourage and create favourable conditions for the investors of the other Contracting Party to make capital investments on its territory and permit such capital investments in accordance with such right.

2. The investors of each Contracting Party shall be accorded a treatment on the territory of the other Contracting Party not less favourable than the one it offers to the investors of any third country in respect of the measures of permitting capital investment.

Article 3

1. The investors of each Contracting Party shall be accorded treatment on the territory of the other Contracting Party not less favourable than the one it offers to the investors of any third country in respect of capital investments, incomes and investment-related business activities.

2. The investors of each Contracting Party shall be accorded treatment on the territory of the other Contracting Party not less favourable than the one it offers to the investors of such other Contracting Party in respect of capital investments, incomes and investment-related business activities.

3. The capital investments and incomes of investors of each Contracting Party at any time shall be accorded a just and equitable treatment as well as permanent protection and security on the territory of the other Contracting Party. Neither Contracting Party shall apply unjustified or discriminatory measures on its territory to the investment-related business

activity of the investors of the other Contracting Party. Each Contracting Party shall observe any of its obligations assumed in respect of the capital investments made by an investor of the other Contracting Party.

Article 4

The investors of each Contracting Party shall be accorded on the territory of the other Contracting Party treatment not less favourable than the one accorded for the investors of such other Contracting Party or investors of any third country in terms of access to the courts, administrative tribunals and agencies of any level of jurisdiction for the purpose of protecting and exercising their rights.

Article 5

1. The capital investments and incomes of the investors of each Contracting Party shall not be subjected to expropriation, nationalisation or any other measures equal in their effect to expropriation or nationalisation, on the territory of the other Contracting Party, except for the cases when such measures are taken in the public interests in a legally established manner on the nondiscriminatory basis with quick and adequate and effective compensation.

2. The compensation specified in Item 1 of the present article shall correspond to the normal market value of the capital investments and incomes as of the time of the public announcement of the expropriation, nationalisation or any other measure equal in its effect thereto or the execution of the expropriation, nationalisation or such measures, depending of which occurred earlier, without this value being reduced due to the eventual confiscation. Such a compensation shall be payable without delay with the account being taken of interest for the whole period of time ending on payment date. It shall be feasible, freely convertible and it shall be transferred and paid in such a form as to place the investors into a position no less favourable than the one in which they would have found themselves if the compensation were paid just on the date of the expropriation, nationalisation or any other measures equal in their effect to expropriation or nationalisation.

3. The investors of each Contracting Party shall enjoy treatment on the territory of the other Contracting Party no less favourable than the one it offers to the investors of such other Contracting Party or the investors of any third country relating to the provisions of Items 1 and 2 of the present article.

Article 6

The investors of each Contracting Party who sustained a damage on the territory of the other Contracting Party relating to their capital investments, incomes or investment-related business activities as a result of the commencement of hostilities or emergencies in the country, such as a revolution, mutiny, uprising or riot, shall be accorded treatment not less favourable than the one accorded to the investors of such other Contracting Party or the investors of any third country in respect of any measures taken by the other Contracting Party, including indemnity, compensation or another valuable. If payments are made in compliance with the present article they shall be feasible, freely convertible and transferable.

Article 7

If a Contracting Party or an agency authorised thereby effects a payment for the benefit of any investor of this Contracting Party as an indemnity, guarantee or within the framework of an insurance policy executed under the legislation of that Contracting Party in relation to capital investments and incomes on the territory of the other Contracting Party than such other Contracting Party shall recognise the assignment of any right or claim of such an investor to the former Contracting Party or an agency authorised thereby, in respect of such capital investments and incomes offset by such payment and subrogation by the former Contracting Party or an agency authorised thereby in respect of any claim or grounds for the actions of such an investor that has occurred in relation thereto. The provisions of Articles 5, 6 and 8 shall apply to the payment the former Contracting Party or the agency authorised thereby have to make by the virtue of such a right or claim assignment and transfer of such a payment, with the necessary amendments.

Article 8

1. The investors of each Contracting Party shall be granted a guarantee by the other Contracting Party of the unobstructed transfer of payments relating to the investors' capital investments, between the territories of the Contracting Parties and also between the territories of such other Contracting Party and any third country, in particular the transfer of:

- (1) the original capital and additional amounts of money for the purpose of maintaining or increasing capital investments;
- (2) incomes;
- (3) the amounts of money paid to repay loans;
- (4) the proceeds received in connection with a full or a partial liquidation of capital investments;
- (5) the compensation paid in compliance with the provisions of Article 5;
- (6) the payments made in compliance with the provisions of Article 6; and
- (7) the wages/salaries and other kinds of reward received in relation to capital investments by citizens or subjects of the former Contracting Party who are entitled to work on the territory of the other Contracting Party.

2. Neither of the Contracting Parties shall obstruct the transfer which is to be effected with no delay in a freely convertible currency at the market exchange rate effective as of the date of transfer in relation to spot transactions in the currency of transfer.

3. Notwithstanding the provisions of Item 1 of the present article, in exceptional financial or economic circumstances each Contracting Party may impose currency restrictions under its legislation and the articles of the Agreement with the International Monetary Fund, given the fact that such a Contracting Party has acceded to the said articles of the Agreement.

4. The investors of each Contracting Party shall be accorded a treatment on the territory of the other Contracting Party no less favourable than the one it offers to the investors of such other Contracting Party or the investors of any third country in respect of the measures specified in the provisions of Items 1 - 3 of the present article.

Article 9

The present Agreement shall be also applicable to all capital investments and incomes of the investors of each Contracting Party on the territory of the other Contracting Party under the applicable law of such other Contracting Party prior to the effective date of the present Agreement, May 9, 1958, or after that date.

Article 10

Nothing in the present Agreement shall be construed to diminish:

(a) the legislation, administrative practices and proceedings or the administrative or legal decisions of each Contracting Party;

(b) the obligations under the international treaties which became final between the Contracting Parties;
or

(c) the obligations each Contracting Party can assume in respect of the capital investments made by an investor of the other Contracting Party; which provide treatment more favourable than the one granted by the present Agreement, to capital investments, incomes and investment related business activities.

Article 11

1. All disputes between a Contracting Party and an investor of the other Contracting Party in connection with capital investments on the territory of the former Contracting Party shall be settled in an amicable manner by negotiation wherever possible. This provision shall not be interpreted to obstruct the investors of each Contracting Party seeking for an administrative or judicial settlement of a dispute on the territory of the other Contracting Party.

2. If any legal dispute that might arise in relation to the capital investments made by an investor of such other Contracting Party cannot be settled through the said negotiations it may be referred, on the request of the investor concerned, for:

(1) conciliation or arbitration as provided under the provisions of the Convention on the Settlement of investment Disputes between States and Citizens of Other States signed in Washington on March 18, 1965 (Hereafter referred to as "the Washington Convention"), given that the Washington Convention took effect for both Contracting Parties;

(2) conciliation or arbitration as provided in the Additional Rules of the International Centre for the Settlement of Investment Disputes, given that the Washington Convention did not take effect between both Contracting Parties; or

(3) arbitration in accordance with the UN Arbitration Rules of the UN Commission on the International Trade Law.

3. The arbitration decision shall be final and binding on both Parties to the dispute. Performance under such a decision shall be governed by the applicable law concerning decision execution and effective in the country in whose territory performance under such a decision is claimed.

4. If an investor of each Contracting Party claims an administrative or judicial settlement of a dispute on the territory of the other Contracting Party or an arbitration decision in conformity with any applicable dispute settlement proceedings agreed upon in advance in respect of a dispute that might arise relating to the capital investments made by such an investor or if a final court decision has been returned in relation to such a dispute this dispute shall not be referred to the arbitration tribunal specified in the provisions of the present article.

5. In case when a legal dispute arises in respect of the capital investments made by a company of each Contracting Party and such a company is controlled by investors of the other Contracting Party as of the date when such a company files a petition addressed to the former Contracting Party claiming the dispute's being referred to the arbitration tribunal, than for the purposes of the provisions of the present article such a company of the former Contracting Party shall be deemed a company of the other Contracting Party.

Article 12

1. A company in which investors of each Contracting Party have a significant interest shall be offered the following on the territory of the other Contracting Party, save the case when the company is a third country's company covered by an international agreement between such other Contracting Party and such a third country on the encouragement and protection of capital investments:

(1) treatment no less favourable than the one offered to such companies in which investors of any third country have a significant interest, in terms of the provisions of Item 2 Article 2; and

(2) treatment no less favourable than the one offered to such companies in which investors of such other Contracting Party or investors of any third country have a significant interest, in terms of the provisions of Article 3, Items 1 and 2 Article 5, Article 6 and Article 9.

2. The term "significant interest" mentioned in the provisions of Item 1 of the present Article means a degree of interest allowing the control of or decisive influence on the company. The interest of investors of each Contracting Party shall be assessed in each particular case through consultations between the Contracting Parties to decide if it is significant or not.

Article 13

Each Contracting Party shall consider in a friendly manner and provide an adequate opportunity for consultations in respect of the other Contracting Party's statements that the other Contracting Party might make relating to any case whereby the application of the present Agreement is affected.

Article 14

Each Contracting Party, acting under the applicable law, shall extend a friendly consideration to entry, temporary stay and residence applications filed by citizens and subjects of the other Contracting Party who are willing to enter the territory of the former Contracting Party and stay there to make capital investments and pursue investment related business activities.

Article 15

Each Contracting Party shall publish, in its ordinary form, all laws, regulatory acts, administrative proceedings and court decisions relating to capital investments or affecting them. The provisions of the present article shall not be deemed to obligate each Contracting Party to disclose the confidential information of which the disclosure obstructs law-enforcement activities or in any other way is contrary to the public interest or which can damage private or lawful commercial interests.

Article 16

Neither of the Contracting Parties shall apply on its territory trade-related investment measures, which comprise local component provisions, export restrictions or provide provisions requiring export import balance alignment. Notwithstanding the aforesaid, each Contracting Party may apply measures in conformity with the multilateral agreements on trade-related investment measures to which each Contracting Party is a party as of the date when the present Agreement is signed.

Article 17

1. The present Agreement shall come into force on the thirtieth day after the exchange of diplomatic notes whereby mutual notification is done of the completion of the relevant legal proceedings required for the present Agreement to take effect. The Agreement shall remain valid for ten years and shall retain its effect until the termination thereof as provided in Item 2 of the present Agreement.

The Russian Federation ratified the present Agreement by Federal Law No. 44-FZ of February 29, 2000

2. Having filed a written notice with the other Contracting Party, each Contracting Party may terminate the present Agreement at the end of the first ten-year term or at any time thereafter.

3. In respect of the capital investments made prior to the termination date of the present Agreement the provisions of the present Agreement's Articles 1 - 16 shall remain valid during the further fifteen years after that date.

To certify the aforesaid the duly authorised representatives of their respective Governments signed the present Agreement.

Executed in the City of Moscow on November 13, 1998 in two copies, each in the Russian, Japanese and English languages, with all texts having authentic force. The English language text shall be used in case of discrepancies in the interpretation.

For the Government
of the Russian Federation
(signature)

For the Government
of Japan
(signature)