

No. 19780

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**JAPAN  
and  
EGYPT**

**Agreement concerning the encouragement and reciprocal protection of investment (with protocol and agreed minutes). Signed at Tokyo on 28 January 1977**

*Authentic text: English.*

*Registered by Japan on 20 May 1981.*

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**JAPON  
et  
ÉGYPTE**

**Accord relatif à l'encouragement des investissements et à leur protection réciproque (avec protocole et procès-verbal approuvé). Signé à Tokyo le 28 janvier 1977**

*Texte authentique : anglais.*

*Enregistré par le Japon le 20 mai 1981.*

## AGREEMENT<sup>1</sup> BETWEEN JAPAN AND THE ARAB REPUBLIC OF EGYPT CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT

Japan and the Arab Republic of Egypt,

Desirous of strengthening economic co-operation between the two countries,

Intending to create favourable conditions for investment by nationals and companies of each country within the territory of the other country, and

Recognizing that the encouragement and reciprocal protection of investment will stimulate the flow of capital and technology for the benefit of the economies of 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;
  - (c) Rights with respect to movable and immovable property;
  - (d) Patents of invention, rights with respect to trade marks, trade names, trade labels and any other industrial property, and rights with respect to know-how;
  - (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; and

(4) The term “companies” means corporations, partnerships, companies and other 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.

*Article 2.* 1. Each Contracting Party shall within its territory promote as far as possible investment by nationals and companies of the other Contracting Party and admit such investment in accordance with the applicable laws and regulations of the former Contracting Party.

2. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of any third country in respect of the admission of investment.

<sup>1</sup> Came into force on 14 January 1978, i.e., one month after the date of exchange of the instruments of ratification, which took place at Cairo on 14 December 1977, in accordance with article 14 (2).

*Article 3.* 1. Neither Contracting Party shall within its territory subject investments and returns of nationals and companies of the other Contracting Party to treatment less favourable than that accorded to investments and returns of nationals and companies of the former Contracting Party or of nationals and companies of any third country.

2. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies of any third country with respect to engaging in all types of business activities in connection with their investment including:

- (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 which they have established or acquired;
- (c) The employment of accountants and other technical experts, executive personnel, attorneys, agents and other specialists;
- (d) The making and performance of contracts.

*Article 4.* Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies 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 defence of their rights.

*Article 5.* 1. Investments and returns of nationals and companies 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 nationals and companies of either Contracting Party shall not be subjected to expropriation, nationalization, restriction or any other measure the effects of which would be tantamount to expropriation, nationalization or restriction, within the territory of the other Contracting Party unless the following conditions are complied with:

- (a) The measures are taken for a public purpose and under due process of law;
- (b) The measures are not discriminatory, and
- (c) The measures 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, restriction or any other comparable measure 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. It shall be effectively realizable and freely transferable. Adequate provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization, restriction or any other comparable measure for the determination and payment thereof.

4. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable

than that accorded to nationals and companies of such other Contracting Party or to nationals and companies 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.* Nationals and companies of either Contracting Party who suffer within the territory of the other Contracting Party damages in relation to their investments, returns, or activities in connection with their investment, owing to the outbreak of hostilities or a state of national emergency, shall be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies of any third country, as regards restitution, compensation or other valuable consideration. Payments made under the present article shall be effectively realizable and freely transferable.

*Article 7.* If either Contracting Party makes payment to any of its nationals or companies under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer to the former Contracting Party of any right or claim of such national or company in such investment on account of which such payment is made and the subrogation of the former Contracting Party to any claim or cause of action of such national or company arising in connection therewith. As regards the transfer of payment to be made to that former Contracting Party by virtue of such transfer of right or claim, the provisions of paragraphs 2 to 4 of article 5, article 6 and article 8 shall apply *mutatis mutandis*.

*Article 8.* Nationals and companies of either Contracting Party shall be accorded by the other Contracting Party treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies of any third country with respect to payments, remittances and transfers of funds or financial instruments effected in connection with investment made by nationals and companies of the former Contracting Party between the territories of the two Contracting Parties as well as between the territories of such other Contracting Party and of any third country, including transfer of:

- (1) Capital,
- (2) Returns,
- (3) Repayment of loans,
- (4) Value of total or partial liquidation of an investment.

*Article 9.* The present Agreement shall also apply to investments and returns of nationals and companies of either Contracting Party made or 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.* The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

*Article 11.* Each Contracting Party shall consent to submit any legal dispute that may arise out of investment made by a national or company of the other Contracting Party to 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,<sup>1</sup> at the request

<sup>1</sup> United Nations, *Treaty Series*, vol. 575, p. 159.

of such national or company. Any company of the former Contracting Party which was or is controlled by nationals and companies of the other Contracting Party prior to or on the date on which the parties to such a dispute consent to submit the dispute to conciliation or arbitration shall, in accordance with the provisions of article 25 (2) (b) of the Convention, be treated for the purposes of the Convention as a company of such other Contracting Party. In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure, the national or company affected shall have the right to choose.

*Article 12.* Companies in which nationals and companies of either Contracting Party have a substantial interest shall within the territory of the other Contracting Party be accorded:

- (1) Treatment no less favourable than that accorded to like companies in which nationals and companies 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 nationals and companies of such other Contracting Party or nationals and companies 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 and article 6.

*Article 13.* 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 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 reach its decisions by a majority of votes. Such decisions shall be final and binding.

*Article 14.* 1. The present Agreement shall be ratified, and the instruments of ratification thereof shall be exchanged at Cairo as soon as possible.

2. The present Agreement shall enter into force one month after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall continue in force thereafter for another period of ten years and so forth, until terminated as provided herein.

3. 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 the end of each subsequent ten-year period.

4. In respect of investments and returns made or 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 ten 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 twenty-eighth day of January of the year one thousand nine hundred and seventy-seven.

For Japan:  
SHOJI SATO

For the Arab Republic of Egypt:  
A. G. EL-NAZER

#### PROTOCOL

At the time of signing the Agreement between Japan and the Arab Republic of Egypt concerning the encouragement and reciprocal 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 grant any right or impose any obligation in respect of copyright.

2. (1) Nothing in the Agreement shall be construed so as to derogate from the obligations undertaken by either Contracting Party towards the other Contracting Party by virtue of the provisions of the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at London on June 2, 1934,<sup>1</sup> or of any subsequent revision thereof, so long as such provisions are in force between the Contracting Parties.

(2) Without prejudice to the provisions of the foregoing sub-paragraph and notwithstanding the provisions of paragraph 1 of article 3 of the Agreement, the treatment accorded by either Contracting Party in respect of industrial property right to nationals and companies of the other Contracting Party may be limited to treatment no less favourable than that accorded to nationals and companies of the former Contracting Party.

3. With reference to the provisions of paragraph 2 of article 2 of the Agreement, either Contracting Party may require that the treatment with respect to the enjoyment of rights on immovable property shall be dependent on reciprocity.

4. In respect of housing projects, the provisions of paragraph 2 of article 2 of the Agreement shall not require the Arab Republic of Egypt to accord to nationals of Japan and to companies of Japan in which the majority of capital is not held by nationals of one or more member states of the League of Arab States, treatment which has been accorded to nationals of such member states or to companies in which the majority of capital is held by nationals of one or more such member states.

5. The provisions of paragraph 1 of article 3 of the Agreement relative to the grant of national treatment and the provisions of article 12 of the Agreement in respect of the matters set forth in the aforesaid provisions shall not be construed so as to extend to:

<sup>1</sup> League of Nations, *Treaty Series*, vol. CXCH, p. 17.

- (1) The conditions of registration of aircraft in the national register of either Contracting Party and matters arising from such registration, and
- (2) Matters related to or arising from the nationality of ship.

6. The following measures shall, in particular, be deemed “treatment less favourable” within the meaning of the provisions of paragraph 2 of article 3 of the Agreement if directed in a discriminatory way against nationals or companies of the other Contracting Party: restricting the purchase of raw or auxiliary materials, of power or fuel, or of means of production or operation of any kind, impeding the marketing of products inside or outside the country, restricting the fund raising or the opening of inter-enterprise commercial credit as well as any other measures having similar effects.

7. Notwithstanding the provisions of paragraph 2 of article 3 of the Agreement, either Contracting Party may within its territory impose restrictions upon the extent to which aliens are accorded national treatment with respect to carrying on activities concerning banking and to the acquisition of ship or of any interest in ship.

8. The provisions of paragraph 2 of article 3 of the Agreement shall not prevent either Contracting Party from prescribing special formalities in connection with the activities of foreign nationals and companies within its territory, but such formalities may not impair the substance of the rights set forth in the aforesaid paragraph.

9. 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 activities in connection therewith.

10. Notwithstanding the provisions of article 3 of the Agreement, either Contracting Party reserves the right to accord special tax advantages on the basis of reciprocity or by virtue of agreements for the avoidance of double taxation or for the prevention of fiscal evasion.

11. The provisions of paragraphs 2 and 3 of article 5 of the Agreement providing for the payment of compensation shall extend to interests held directly or indirectly by nationals and companies of either Contracting Party in investments and returns subjected to expropriation, nationalization, restriction or any other measure the effects of which would be tantamount to expropriation, nationalization or restriction within the territory of the other Contracting Party.

12. The provisions of article 8 of the Agreement shall not preclude either Contracting Party from imposing such exchange restrictions as are consistent with the rights and obligations that it has or may have as a contracting party to the articles of Agreement of the International Monetary Fund.

13. The term “substantial interest” as used in the provisions of article 12 of the Agreement means such extent of interest as to permit the exercise of control or decisive influence on the company. Whether an interest held by nationals and companies of either Contracting Party amounts to a substantial interest shall be decided in each case through consultations between the Contracting Parties.

DONE in duplicate, in the English language, at Tokyo, this twenty-eighth day of January of the year one thousand nine hundred and seventy-seven.

For Japan:  
SHOJI SATO

For the Arab Republic of Egypt:  
A. G. EL-NAZER

## AGREED MINUTES

The undersigned wish to record the following understanding which they have reached during the negotiations for the Agreement between Japan and the Arab Republic of Egypt concerning the encouragement and reciprocal protection of investment (hereinafter referred to as "the Agreement") signed today:

1. It is confirmed that the compensation referred to in the provisions of article 5 of the Agreement includes such payments for delay as may be considered appropriate in international law.

2. It is confirmed that the matters set forth in the provisions of article 8 of the Agreement include the rate of exchange prevailing under the applicable laws and regulations of each Contracting Party.

3. (1) In view of the special circumstances which now prevail for housing conditions in the Arab Republic of Egypt as a result of the recent events in the Middle East and under which member states of the League of Arab States are contributing to reconstruction and rehabilitation in the Arab Republic of Egypt, it is recognized that investment in the housing projects referred to in the provisions of paragraph 4 of the protocol to the Agreement should be reserved to nationals of member states of the League of Arab States and to companies in which the majority of capital is held by nationals of one or more such member states.

(2) It is understood that the term "housing projects" as used in the provisions of paragraph 4 of the protocol to the Agreement means projects for housing entailing ownership of residential buildings such as apartments and individual houses, excluding hotels and office buildings, which are carried on for the purpose of investment and that construction industries or management in the field of such projects is not included in the housing projects so long as they are carried on without ownership of such residential buildings.

4. It is understood that the term "interests held indirectly by nationals and companies of either Contracting Party in investments and returns" as used in the provisions of paragraph 11 of the protocol to the Agreement includes the interests held by nationals and companies of either Contracting Party in investments and returns through other companies in which such nationals and companies have direct interests.

Tokyo, January 28, 1977.

For Japan:  
SHOJI SATO

For the Arab Republic of Egypt:  
A. G. EL-NAZER