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**Japan
and
Kenya**

**Agreement between the Government of Japan and the Government of the Republic of Kenya
for the promotion and protection of investment. Nairobi, 28 August 2016**

Entry into force: *14 September 2017, in accordance with article 26*

Authentic texts: *English and Japanese*

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**Japon
et
Kenya**

**Accord entre le Gouvernement du Japon et le Gouvernement de la République du Kenya
relatif à la promotion et à la protection des investissements. Nairobi, 28 août 2016**

Entrée en vigueur : *14 septembre 2017, conformément à l'article 26*

Textes authentiques : *anglais et japonais*

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[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT BETWEEN
THE GOVERNMENT OF JAPAN
AND THE GOVERNMENT OF THE REPUBLIC OF KENYA
FOR THE PROMOTION AND PROTECTION OF INVESTMENT

The Government of Japan and the Government of the Republic of Kenya,

Desiring to further promote investment in order to strengthen the economic relationship between Japan and the Republic of Kenya (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 Area of the other Contracting Party;

Recognising the growing importance of the progressive liberalisation of investment for stimulating initiative of investors and for promoting prosperity in the Contracting Parties;

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

Recognising the importance of the cooperative relationship between labour and management in promoting investment between the Contracting Parties;

Convinced that this Agreement will contribute to the further development of the overall relationship between the Contracting Parties; and

Recognising that this Agreement is designed to allow each Contracting Party to regulate, and to introduce new measures relating to, investments in its Area in order to meet national public policy objectives;

Have agreed as follows:

Article 1
Definitions

For the purposes of this Agreement,

- (a) the term "investment" means every kind of asset owned or controlled, directly or indirectly, by an investor and has characteristics of an investment such as commitment of capital or other resources, the expectation of gain or profit, or assumption of risk, including:
 - (i) a local enterprise or branch;
 - (ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
 - (iii) bonds, debentures, loans and other forms of debt, including rights derived therefrom;
 - (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, including copyrights and related rights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;
 - (vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations and permits, including those for the exploration, prospect, exploitation and extraction of natural resources; and
 - (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges.

An investment includes the amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as an investment.

- (b) the term "investor of a Contracting Party" means:
 - (i) a natural person, who under the law of the Contracting Party:
 - (A) in respect of Japan, is a national of Japan; and
 - (B) in respect of the Republic of Kenya, is a citizen or national of the Republic of Kenya; or
 - (ii) an enterprise of that Contracting Party, that seeks to make, is making or has made an investment in the Area of the other Contracting Party;
- (c) an enterprise is:
 - (i) "owned" by an investor if more than fifty (50) percent of the equity interest in it is owned by the investor; and
 - (ii) "controlled" by an investor if the 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 or not for profit, and whether private or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, organisation or company;
- (e) the term "investment activities" means operation, management, maintenance, use, enjoyment and sale or other disposal of investments;
- (f) the term "Area" means:

- (i) in respect of Japan, the territory of Japan, 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) in respect of the Republic of Kenya, the land territory, internal waters, territorial sea and the airspace above them, as well as the maritime zone beyond the territorial sea, including the seabed and subsoil, over which the Republic of Kenya exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law, for the purpose of exploration and exploitation of the natural resources of such areas; and
- (g) the term "freely usable currency" means freely usable currency as defined under the Articles of Agreement of the International Monetary Fund.

Article 2
Promotion and Admission of Investment

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its Area.
2. 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.

Article 3
National Treatment

1. Each Contracting Party shall in its Area 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 shall not be construed so as to prevent a Contracting Party from adopting or maintaining a measure that prescribes special formalities in connection with investment activities of foreign investors in its Area in accordance with its laws and regulations, provided that such special formalities do not impair the substance of the rights of investors of the other Contracting Party under this Agreement.