# AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE AND THE GOVERNMENT OF THE REPUBLIC OF THE UNION OF MYANMAR ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Singapore and the Government of the Republic of the Union of Myanmar (hereinafter referred to individually as a "Party", and collectively as the "Parties""),

DESIRING to create favourable conditions for greater economic co-operation between them and in particular for investments by investors of one Party in the territory of the other Party based on the principles of equality and mutual benefit;

RECOGNISING the important contribution investments can make to sustainable economic growth and development, and seeking to promote, protect, and facilitate such investments within the territories of the Parties;

RECOGNISING that the encouragement and reciprocal protection of such investments will be conducive to stimulating business initiative and increasing prosperity in both Parties; and

REAFFIRMING the Parties' right to regulate and to introduce new measures, such as health, safety, and environmental measures relating to investments in their territories in order to meet legitimate public policy objectives;

HAVE AGREED AS FOLLOWS:

## Chapter I. General Provisions

### Article 1. Definitions

For the purposes of this Agreement:

**enterprise** means any legal entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, and engaged in substantive business operations in the territory of that Party, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation; and a branch of an enterprise;

**freely usable currency** means "freely usable currency" as determined by the International Monetary Fund under the Articles of Agreement of the International Monetary Fund and any amendments thereto;

**ICSID** means the International Centre for Settlement of Investment Disputes;

**ICSID Additional Facility Rules** means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes, as amended and in effect on April 10, 2006;

**ICSID Arbitration Rules** means the Rules of Procedure for Arbitration Proceedings (Arbitration Rules), as amended and in effect on April 10, 2006;

**ICSID Convention** means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington on March 18, 1965;

**investment** means every kind of asset in the territory of a Party, owned or controlled, directly or indirectly, by an investor of the other Party, that has the characteristics of an investment (1) and has been made in accordance with the applicable laws and regulations of the former Party. Forms that an investment may take include but are not limited to: (2)

(a) an enterprise;

(b) shares, stocks, and other forms of equity participation in an enterprise, including rights derived there from;

(c) bonds, debentures, and loans and other debt instruments (3), including rights derived therefrom;

(d) futures, options, and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) claims to money or to any contractual performance related to a business and having an economic value;

(g) intellectual property rights which are recognised pursuant to the laws and regulations of each Party and international agreements to which the host Party is a party, and goodwill;

(h) licences, authorisations, permits, and similar rights conferred pursuant to applicable domestic law;

(i) business concessions required to conduct economic activities and having financial value conferred by law or under a contract, including any concessions to search for, cultivate, extract or exploit natural resources; and

(j) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;

**investor** means:

(a) an enterprise of a Party; or

(b) a natural person of a Party;

that has made an investment;

**measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, or administrative action, and includes measures taken by:

(a) central, regional or local governments and authorities; and

(b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

**natural person** means any natural person who under the laws, regulations and national policies of a Party:

(a) is a national or citizen of that Party; or

(b) has the right of permanent residence in that Party, where both that Party and the other Party recognise permanent residents and accord substantially the same treatment to their respective permanent residents as they accord to their respective nationals in respect of measures affecting investment;

**New York Convention** means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted at the United Nations in New York on June 10, 1958;

**return** means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalty payments, payments in connection with intellectual property rights, and all other lawful income. For the purposes of the definition of "investment", returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments;

**territory** means:

(a) in respect of the Republic of Singapore: its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea which has been or might in the future be designated under its national law, in accordance with international law, as an area within which Singapore may exercise sovereign rights or jurisdiction with regards to the sea, the sea-bed, the subsoil, and the natural resources;

(b) in respect of the Republic of the Union of Myanmar: its land territory, internal waters, the territorial sea, the continental shelf and the exclusive economic zone, including the seabed and subsoil, and the airspace above them, over which the Republic of the Union of Myanmar exercises sovereign rights or jurisdiction under its national laws, in accordance with international law;

**UNCITRAL Arbitration Rules** means the Arbitration Rules of the United Nations Commission on International Trade Law,

adopted at the United Nations in New York on December 15, 1976, as revised in 2010; (4) and

**WTO Agreement** means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on April 15, 1994.

(1) Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take. The characteristics of an investment include the commitment of capital, the expectation of gain or profit, or the assumption of risk.

(2) The term "investment" does not include an order or judgment entered in a judicial or administrative action.

(3) For the purpose of this Agreement, "loans and other debt instruments" described in (c) and "claims to money or to any contractual performance" described in (f) of this Article refer to assets which relate to a business activity and do not refer to assets which are of a personal nature, unrelated to any business activity.

(4) For greater certainty, the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration do not apply to arbitrations submitted under Section One (Settlement of Disputes Between a Party and an Investor of the Other Party) of Chapter II] (Dispute Settlement) of this Agreement.

### Article 2. Applicability of Agreement (5)

1. Each Party shall admit the entry of investments made by investors of the other Party pursuant to its applicable laws and regulations.

2. The provisions in this Agreement shall apply to existing investments made by investors of one Party in the territory of the other Party, as at the date of entry into force of this Agreement as well as to investment made after the entry of force, but shall not apply to claims arising out of events which occurred, or claims which had been raised, prior to the entry into force of this Agreement.

3. This Agreement shall not apply to:

(a) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to investors of the Party or investments of investors of the Party; and

(b) matters of taxation in the territory of either Party, which shall, except as set out in Article 8 (Transfers) and Article 31 (Taxation), be governed by any tax treaty between the Parties and the domestic laws of each Party.

(5) For greater certainty, this Agreement shall not apply to measures affecting natural persons seeking access to the employment market of either Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis. This Agreement shall not prevent either Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory.

## Chapter II. Protection

### Article 3. Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of the other Party treatment in accordance with the customary international law minimum standard of treatment of aliens,(6) including fair and equitable treatment and full protection and security.

2 For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Party. The obligation to provide "fair and equitable treatment" and "full protection and security" as described below does not require treatment in addition to or beyond that which is required by this standard, and does not create additional substantive rights.

(a) The obligation to provide "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal

systems of the world.

(b) The obligation to provide "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

## Article 4. National Treatment (7)

Each Party shall accord to investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the management, conduct, operation, and sale or other disposition of investments.

(6) Customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to this Article, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

(7) Article 4 (National Treatment) is to be interpreted subject to Annex I (National Treatment).

## Article 5. Most-favoured-nation Treatment

1. Each Party shall accord to investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the management, conduct, operation, and sale or other disposition of investments.

2 The provisions of this Article shall not be construed so as to oblige one Party to extend to the investors of the other Party and investments of investors of the other Party the benefit of any treatment, preference or privilege resulting from:

(a) any existing or future customs union, free trade area, free trade arrangement, common market, monetary union or similar international agreement or other forms of regional cooperation to which either of the Parties is or may become a party; or the adoption of an agreement designed to lead to the formation or extension of such a union, area or arrangement;

(b) any bilateral investment agreements (also commonly referred to as "investment guarantee agreement', "investment promotion and protection agreements" or "international investment agreements") initialled, signed or in force prior to the entry in force of this Agreement; (8)

(c) any existing or future international investment agreements between or among Member States of a regional economic community, including investment agreements between or among Member States of a regional economic community and any one or more third States; or

(d) any arrangement with a non-Party or parties in the same geographical region designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields within the framework of specific projects.

3. For greater certainty, this Article shall not apply to investor-State dispute settlement procedures that are available in other agreements to which either Party is a party.

(8) For greater certainty, "bilateral investment agreement" includes any subsequent reviews or amendments to that agreements.

## Article 6. Expropriation (9)

1. Neither Party shall nationalise, expropriate, or subject to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation"), the investments of investors of the other Party unless such a measure is taken on a non- discriminatory basis, for a public purpose, in accordance with due process of law, and upon payment of compensation in accordance with this Article.

2. The expropriation shall be accompanied by the payment of prompt, adequate and effective compensation. Compensation

shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, whichever is earlier. Such compensation shall be effectively realisable, freely usable, and freely transferable in accordance with Article 8 (Transfers), and made without undue delay. The compensation shall include interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

3. Notwithstanding paragraphs 1 and 2, any measure of expropriation relating to land, which shall be as defined in the existing domestic legislation of the Party taking the measure, shall be for a purpose and upon payment of compensation in accordance with the aforesaid legislation.

4, Any measure of expropriation or valuation may, at the request of the investors affected, be reviewed by a judicial or other independent authority of the Party taking the measure in the manner prescribed by its laws.

3. This Article does not apply to the issuance of compulsory licenses 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 the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement.(10)

(9) Article 6 (Expropriation) is to be interpreted in accordance with Annex II (Expropriation).

(10) For greater certainty, the term "revocation of intellectual property rights" includes the cancellation or nullification of such rights and the term "limitation of intellectual property rights" includes exceptions to such rights.

## Article 7. Compensation for Losses

1. Investors of one Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, civil disturbances, a state of national emergency, revolt, insurrection, riot or other similar situations in the territory of the latter Party, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, no less favourable than that which the latter Party accords to investors of any non-Party or to its own investors, whichever is more favourable. Any resulting compensation shall be made in freely usable currency and be freely transferable in accordance with Article 8(Transfers).

2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:

(a) requisitioning of the investment or part thereof of the investor by the latter Party's forces or authorities; or

(b) destruction of the investment or part thereof of the investor by the latter Party's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss.

## Article 8. Transfers

1. Each Party shall allow all transfers relating to investments of an investor of the other Party in its territory to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital, including the initial contribution;

(b) profits, dividends, capital gains and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;

(e) payments made pursuant to Article 6(Expropriation) and Article 7 (Compensation for Losses); and

(f) payments arising under Chapter III (Dispute Settlement).

2. Each Party shall permit such transfers to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

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

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

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences and the recovery of proceeds of crimes;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings;

(f) social security, public retirement or compulsory savings schemes;

(g) the requirement to register and satisfy the formalities imposed by the Central Bank of a Party which, in the case of Myanmar, includes formalities imposed by the Ministry of Planning and Finance, Myanmar Financial Intelligence Unit, Securities and Exchange Commission, and Myanmar Investment Commission; or

(h) taxation.

4. The Parties understand that paragraph 3(d) of this Article can apply to measures taken in accordance with the international standards of the Financial Action Task Force to prevent money laundering, terrorism, and proliferation financing.

5. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles af Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Agreement regarding such transactions, except under Article9(Restrictions to Safeguard the Balance of Payments) or at the request of the International Monetary Fund.

## Article 9. Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on payments or transfers related to investments. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1 shall:

(a) be consistent with the Articles of Agreement of the Iniernational Monetary Fund;

(b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(c) not exceed those necessary to deal with the circumstances described in paragraph 1;

(d) be temporary and be phased out progressively as the situation specified in paragraph | improves; and

(e) be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-Party.

3. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the other Party.

4. To the extent that it does not duplicate the process under the World Trade Organization, the International Monetary Fund, or any other similar processes, the Party adopting any restrictions under paragraph 1 shall commence consultations with the other Party in order to review the restrictions adopted by it.

## Article 10. Subrogation

1. In the event that either Party (or any agency, institution, statutory body or corporation designated by it), as a result of an indemnity it has given in respect of an investment or any part thereof, makes payment to its own investors in respect of any of their claims under this Agreement, the other Party acknowledges that the Party making payment to its own investors(or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own investors. The subrogated rights or claims shall not be greater than the original rights or claims of the said investor.

2. Any payment made by one Party (or any agency, institution, statutory body or corporation designated by it) to its investors shall not affect the right of such investors to make their claims against the other Party in accordance with Section One (Settlement of Disputes between a Party and an Investor of the Other Party) of Chapter III (Dispute Settlement).

# Chapter III. Dispute Settlement

## Section ONE. Settlement of Disputes between a Party and an Investor of the other Party

### Article 11. Scope

1. This Section shall apply to disputes between a Party and an investor of the other Party concerning an alleged breach of an obligation of the former under this Agreement which causes loss or damage to the investor or its investment.

2. This Section shall not apply to any dispute concerning any measure adopted or maintained or any treatment accorded to investors or investments by a Party in respect of tobacco or tobacco-related products. (11)

(11) For the purpose of this Agreement, "tobacco or tobacco-related products" means products under Harmonised System Chapter 24 (Tobacco and Manufactured Tobacco Substitutes) and tobacco-related products falling outside Harmonised System Chapter 24 (Tobacco and Manufactured Tobacco Substitutes).

### Article 12. Institution of Arbitral Proceedings

1. The disputing parties shall initially seek to resolve the dispute by consultations and negotiations.

2. Where the dispute cannot be resolved as provided for under paragraph 1 within 6 months from the date of a written request for consultations and negotiations, then, unless the disputing parties agree otherwise, the disputing investor may submit the dispute to arbitration:

(a) under the ICSID Convention and the ICSID Arbitration Rules, provided that both the respondent Party and the Party of the disputing investor are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the respondent Party or the Party of the disputing investor is a party to the ICSID Convention;

(c) under the UNCITRAL Arbitration Rules; or

(d) to any other arbitral institutions or under any other arbitration rules, if the disputing parties so agree.

For the avoidance of doubt, the disputing investor may submit a claim on its own behalf in respect of loss or damage that has been incurred by the disputing investor, or on behalf of an enterprise of the respondent Party that the disputing investor owns or controls, either directly or indirectly, in respect of loss or damage that has been incurred by the enterprise.

3. Each Party hereby consents to the submission of a dispute to arbitration under paragraph 2 in accordance with the provisions of this Section, conditional upon:

(a) the submission of the dispute to such arbitration taking place within 3 years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Agreement causing loss or damage to the disputing investor or its investment;

(b) the disputing investor not being an enterprise of the respondent Party until the disputing investor refers the dispute for arbitration pursuant to paragraph 2;

(c) the disputing investor providing written consent to arbitration in accordance with the provisions set out in this Section;

and

(d) the disputing investor providing written notice, which shall be submitted at least 90 days before the claim is submitted, to the respondent Party of its intent to submit the dispute to such arbitration and which:

(i) states the name and address of the disputing investor and, where a dispute is submitted on behalf of an enterprise, the name, address, and place of constitution of the enterprise;

(ii) nominates one of the fora referred to in paragraph 2 as the forum for dispute settlement;

(iii) waives the disputing investor's right to initiate or continue any proceedings (excluding proceedings for interim measures of protection referred to in Article 16 (Interim Measures of Protection) before any of the other dispute settlement fora referred to in paragraph 2 in relation to the matter under dispute; and

(iv) briefly summarises the alleged breach of the respondent Party under this Agreement (including the provisions alleged to have been breached), the legal and factual basis for the dispute, and the loss or damage allegedly caused to the disputing investor or its investment by reason of that breach.

4. The consent under paragraph 3 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and

(b) Article II of the New York Convention for an "agreement in writing".

5. A claim that is submitted for arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

## Article 13. Constitution of the Arbitral Tribunal

1. Unless the disputing parties otherwise agree, the arbitral tribunal shall be composed of three arbitrators, who shall not be nationals or permanent residents of either Party. Each disputing party shall appoint one arbitrator and the disputing parties shall agree upon a third arbitrator, who shall be the chairman of the arbitral tribunal. If an arbitral tribunal has not been established within 90 days from the date on which the claim was submitted to arbitration, either because a disputing party failed to appoint an arbitrator or because the disputing parties failed to agree upon the chairman, the Secretary-General of ICSID, upon request of either disputing party, shall appoint, at his or her own discretion, the arbitrator or arbitrators not yet appointed. If the Secretary-General is a national or permanent resident of either Party, or he or she is otherwise unable to act, the Deputy Secretary-General of ICSID, who is not a national or permanent resident of either Party, may be invited to make the necessary appointments.

2: The arbitrators shall:

(a) have experience or expertise in public international law or international investment law; and

(b) be independent from the Parties and the disputing investor, and not be affiliated to or receive instructions from any of them.

## Article 14. Place of Arbitration

Unless the disputing parties otherwise agree, the tribunal shall determine the place of arbitration in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

## Article 15. The Arbitral Proceedings

1. A tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and the applicable rules and principles of international law.

2. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, a tribunal shall address and decide as a preliminary question any objection by the respondent Party that, as a matter of law, a claim submitted is not a claim for which an award in favour of the disputing investor may be made under Article 18 (Award).

(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent Party to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent Party to submit its response to the amendment).

(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

(c) In deciding an objection under this paragraph, the tribunal shall assume to be true the disputing investor's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant article of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

(d) The respondent Party does not waive any objection as to competence or any argument on the merits merely because the respondent Party did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 3.

3. In the event that the respondent Party so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 2and any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, ifa disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

4, When deciding the respondent Party's objection under paragraph 2 or 3, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claim of the disputing investor or the respondent Party's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

## Article 16. Interim Measures of Protection

Neither Party shall prevent the disputing investor from seeking interim measures of protection, not involving the payment of damages or resolution of the substance of the matter in dispute, before the courts or administrative tribunals of the respondent Party, prior to the institution of proceedings before any of the dispute settlement fora referred to in paragraph 2 of Article 12 (Institution of Arbitral Proceedings), for the preservation of its rights and interests,

## Article 17. Diplomatic Protection

Neither Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party shall have consented to submit or have submitted to arbitration under this Section, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this Article, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

## Article 18. Award

1. Where a tribunal makes a final award against a respondent Party, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the respondent Party may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

2. An award made by a tribunal shall be final and binding upon the disputing parties. Each Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

3. Where a claim is submitted on behalf of an enterprise of the respondent Party, the arbitral award shall be made to the enterprise.

4. In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of the proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.

## Article 19. Consolidation

1. Where two or more claims have been submitted separately to arbitration under this Section, and the claims raised have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order, in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of this Article.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General of ICSID and to all the disputing parties sought to be covered by the order, specifying the name and address of each of the disputing parties sought to be covered by the order; the nature of the order sought; and the grounds on which the order is sought.

3. Unless the Secretary-General of ICSID finds within 30 days after receiving a request in conformity with paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the consolidation order otherwise agree, the tribunal established under this Article shall comprise 3 arbitrators, who shall not be nationals or permanent residents of either Party, and who shall be appointed as follows:

(a) one arbitrator appointed by agreement of the disputing investors;

(b) one arbitrator appointed by the respondent Party; and

(c) the chairman of the arbitral tribunal appointed by the Secretary-General of ICSID.

5. If, within the 60 days after the Secretary-General of ICSID receives a request made under paragraph 2, the respondent Party fails or the disputing investors fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General of ICSID, on request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration in accordance with Article 12 (Institution of Arbitral Proceedings), have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more claims, whose determination it considers would assist in the resolution of the other claims; or

(c) instruct a tribunal previously established under Article 13 (Constitution of the Arbitral Tribunal) to assume jurisdiction over and to hear and determine together, all or part of the claims, provided that:

(i) that tribunal, at the request of any disputing investor, not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the disputing investors shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether any previous hearing must be repeated.

7. Where a tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration pursuant to Article 12 (Institution of Arbitral Proceedings) and that has not been named in a request made under paragraph 2, may make a written request to the tribunal that it be included in any order issued under paragraph 6, specifying:

(a) the name and address of the disputing investor; (b) the nature of the order sought; and (c) the grounds on which the order is sought.

The claimant shall provide the Secretary-General of ICSID with a copy of such written request.

8. A tribunal established pursuant to this Article shall conduct the proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 13 (Constitution of the Arbitral Tribunal) shall not have jurisdiction to decide a claim or a part of a claim over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established pursuant to this Article may, pending its decision under paragraph 6, order that the proceedings of a tribunal established under Article 13 (Constitution of the Arbitral Tribunal) be stayed, unless the latter tribunal has already adjourned its proceedings.

# Section TWO. Settlement of Disputes Betweenthe Parties

## Article 20. Scope

1. This Section applies to the settlement of disputes between the Parties arising from the interpretation or application of the provisions of this Agreement.

2. This Section shall not apply to any dispute concerning any measure adopted or maintained or any treatment accorded to investors or investments by a Party in respect of tobacco or tobacco-related products. (12)

(12) For the purpose of this Agreement, "tobacco or tobacco-related products" means products under Harmonised System Chapter 24 (Tobacco and Manufactured Tobacco Substitutes) and tobacco- related products falling outside Harmonised System Chapter 24 (Tobacco and Manufactured Tobacco Substitutes).

## Article 21. Consultations and Negotiations

1. Either Party may request in writing, consultations on the interpretation or application of this Agreement. If a dispute arises between the Parties on the interpretation or application of this Agreement, it shall, to the extent possible, be settled amicably through consultations and negotiations.

2. In the event the dispute is not settled through the means mentioned above within 6 months from the date such negotiations or consultations were requested in writing, then, unless the Parties agree otherwise, either Party may submit such dispute to an arbitral tribunal established in accordance with this Section or, by agreement of the Parties, to any other international tribunal.

## Article 22. Constitution of the Arbitral Tribunal

1. Arbitration proceedings shall initiate upon written notice delivered by one Party (hereinafter referred to as "requesting Party") to the other Party (hereinafter referred to as "respondent Party") through diplomatic channels. Such notice shall contain a statement setting forth the provisions of Chapter II (Protection) alleged to have been breached, the legal and factual grounds of the claim, a summary of the development and results of the consultations and negotiations pursuant to Article 21 (Consultations and Negotiations), the requesting Party's intention to initiate proceedings under this Section, and the name of the arbitrator appointed by such requesting Party.

2. Within 30 days after delivery of such notice, the respondent Party shall notify the requesting Party the name of its appointed arbitrator.

3. Within 30 days following the date on which the second arbitrator was appointed, the Parties shall appoint, by mutual agreement, a third arbitrator, who shall be the chairman of the arbitral tribunal. In the event that the Parties fail to mutually agree on the appointment of the third arbitrator, the arbitrators appointed by the Parties shall, within 30 days, appoint the third arbitrator, who shall be the chairman of the arbitral tribunal.

4. The arbitrators shall:

(a) have experience or expertise in public international law or international investment law; and

(b) be independent from the Parties, and not be affiliated to or receive instructions from either of them.

5. With regard to the selection of arbitrators under paragraphs 1, 2 and 3 of this Article, both Parties and, where relevant,

the arbitrators appointed by them, shall not select arbitrators that are nationals or permanent residents of either Party.

6. If the required appointments have not been made: within the time limits set forth in paragraphs 2 and 3 above, either Party may invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President is a national or a permanent resident of either Party, or he or she is otherwise unable to act, the Vice-President of the International Court of Justice shall be invited to make the said appointments. If the Vice-President of the International Court of Justice is a national or a permanent resident of either Party, or he or she is otherwise unable to act, the Member of the International Court of Justice next in seniority who is not a national nor a permanent resident of either Party shall be invited to make the necessary appointments.

7. In the event an arbitrator appointed under this Article resigns or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator, and he or she shall have the same powers and duties that the original arbitrator had.

8. Each Party shall bear the costs of its appointed arbitrator and of any legal representation in the proceedings. The costs of the chairman of the arbitral tribunal and of other expenses associated with the conduct of the arbitration shall be borne equally by the Parties, unless the arbitral tribunal decides that a higher proportion of costs be borne by one of the Parties.

### Article 23. Place of Arbitration

Unless the Parties agree otherwise, the place of arbitration shall be determined by the arbitral tribunal.

### Article 24. The Arbitral Proceedings

1. An arbitral tribunal established under this Section shall decide all questions relating to its competence and, subject to any agreement between the Parties, determine its own procedure. At any stage of the proceedings, the arbitral tribunal may propose to the Parties that the dispute be settled amicably. At all times, the arbitral tribunal shall afford a fair hearing to the Parties.

2. The arbitral tribunal shall decide the issues in dispute in accordance with this Agreement and the applicable rules and principles of international law.

3. The arbitral tribunal shall reach its decision by majority vote. The award shall be issued in writing and shall contain the applicable factual and legal findings. A signed award shall be delivered to each Party. The award shall be final and binding on the Parties.

## Chapter IV. Final Provisions

### Article 25. Other Obligations

If the legislation of either Party or international obligations existing at present or established hereafter between the Parties in addition to this Agreement, results in a position entitling investments by investors of the other Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement.

### Article 26. Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Agreement to an investor of the other Party that is an enterprise of such Party and to investments of such an investor where the denying Party establishes that the enterprise is owned or controlled by persons of a non-Party, or of the denying Party, and has no substantive business operations in the territory of the other Party.

### Article 27. Transparency

1. Each Party shall ensure that its laws, regulations, and administrative rulings of general application pertaining to or affecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons or the other Party to become acquainted with them, International agreements pertaining to or affecting investors or investment activities to which a Party is a signatory shall also be published.

2. To the extent possible, each Party shall make the measures and international agreements of the kind referred to in paragraph 1 available on the internet. Each Party shall, upon request by the other Party, promptly respond to specific

questions from and provide information to the other Party with respect to matters referred to in paragraph 1.

## Article 28. Information Requirements and Disclosure of Information

1. Notwithstanding Article 4 (National Treatment) or Article 5 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party, or its investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or its investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

2 Nothing in this Agreement shall require either Party to provide confidential information the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

## Article 29. General Exceptions (13)

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party or its investors where like conditions prevail, or a disguised restriction on investments of investors of the other Party in the territory of a Party, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures:

(a) necessary to protect public morals or to maintain public order; (14)

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with 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 a contract;

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

(iii) safety;

(d) imposed for the protection of national treasures of artistic, historic or archaeological value;

(e) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption; or

(f) aimed at ensuring the equitable or effective (15) imposition or collection of direct taxes in respect of investments of investors of a Party.

(13) For greater certainty, the application of the general exceptions to these provisions shall not be interpreted so as to diminish the ability of governments to take measures where investors are not in like circumstances due to the existence of legitimate regulatory objectives.

(14) The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(15) For the purpose of this sub-paragraph, footnote 6 of Article XIV of the General Agreement on Trade in Services in Annex 1B to the WTO Agreement (GATS) is incorporated into and forms an integral part of this Agreement, mutatis mutandis.

## Article 30. Security Exceptions (16)

Nothing in this Agreement shall be construed to:

(a) require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

(b) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

(16) For greater certainty, nothing in this Agreement shall prevent a Party from taking any action which it considers necessary for the protection of critical public infrastructure, such as the communications, power, water and transportation infrastructure, including but not limited to imposing restrictions on operators of such infrastructure and preventing deliberate attempts intended to disable or degrade such infrastructure.

## Article 31. Taxation

1. Article 6 (Expropriation) and Section One (Settlement of Disputes between a Party and an Investor of the Other Party) of Chapter III (Dispute Settlement) shall apply to taxation measures to the extent that such taxation measures constitute expropriation as provided for in Article 6 (Expropriation), provided that they are inconsistent with Article 4 (National Treatment). (17) An investor that seeks to invoke Article 6 (Expropriation) with respect to a taxation measure must first refer to the competent taxation authorities of both Parties as described in paragraph 2, at the time that it gives notice under Section One (Settlement of Disputes between a Party and an Investor of the other Party) of Chapter III (Dispute Settlement), the issue of whether that taxation measure involves an expropriation as provided for under Article 6 (Expropriation). If the competent taxation authorities of both Parties do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation as provided for under Article 6 (Expropriation) within a period of 6 months of such referral, the investor may submit its claim to arbitration under Section One (Settlement of Disputes between a Party and an Investor of the Other Party) of Chapter III (Dispute Settlement).

2. For the purposes of this Article, "competent taxation authorities" means:

(a) in the case of the Republic of the Union of Myanmar, the Ministry of Planning and Finance; and

(b) in the case of the Republic of Singapore, the Ministry of Finance; or their successors.

(17) With reference to Article 6 (Expropriation), in assessing whether a taxation measure constitutes expropriation, the following apply: (i) the imposition of taxes does not generally constitute expropriation. The mere introduction of new taxation measures or the imposition of taxes in more than one jurisdiction in respect of an investment, does not in and of itself constitute expropriation; and (ii) taxation measures which are consistent with internationally recognised tax policies, principles and practices do not constitute expropriation. In particular, taxation measures aimed at preventing the avoidance or evasion of taxes should not, generally, be considered to be expropriatory.

## Article 32. Entry Into Force, Duration and Termination

1. Each Party shall notify the other Party of the fulfilment of its internal legal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day from the date of notification of the later Party.

2. This Agreement, including its Annexes, may be amended by mutual consent of the Parties in writing. The amendments shall enter into force in accordance with the same legal procedure prescribed under paragraph 1.

3. This Agreement shall remain in force for a period of 10 years and shall continue in force thereafter unless, after the expiry of the initial period of 9 years, either Party notifies the other Party in writing of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Party.

4. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall remain in force for a further period of 10 years from that date.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Yangon, on this 24" day of September, 2019 in English.

FOR THE GOVERNMENT OF THE REPUBLIC OF THE UNION OF MYANMAR

THAUNG TUN

Union Minister for Investment and Foreign Economic Relations

FOR THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

CHAN CHUN SING

Minister for Trade and Industry

## ANNEX I. National treatment

Article 4 (National Treatment) shall not apply to any measure relating to:

(a) for Singapore:

(i) the collection, purification, treatment, disposal, and distribution of water, including waste water, in Singapore; and

(ii) real estate, including but not limited to the ownership, purchase, development, management, maintenance, use, enjoyment, sale or other disposal of real estate, in Singapore;

(b) for Myanmar:

ownership, sale, purchase, development and management of land.

## ANNEX II. Expropriation

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Paragraph 1 of Article 6 (Expropriation) addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by paragraph 1 of Article 6 (Expropriation) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by- case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character of the government action.

(b) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations.