

# **AGREEMENT BETWEEN THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF THE REPUBLIC OF THE UNION OF MYANMAR FOR THE LIBERALISATION, PROMOTION AND PROTECTION OF INVESTMENT**

Japan and the Republic of the Union of Myanmar (hereinafter referred to as "the Contracting Parties"),

Desiring to further promote investment in order to strengthen the economic relationship between the Contracting Parties;

Intending to further create stable, equitable, favourable and transparent conditions for greater investment by investors of one 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 both Contracting Parties;

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

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

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, including:

(i) an enterprise and a branch of an enterprise;

(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 and exploitation 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;

Investments include 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 investment.

(b) the term "investor of a Contracting Party" means:

(i) A natural person having the nationality of that Contracting Party in accordance with its applicable laws and regulations; or

(ii) An enterprise of that Contracting Party,

that seeks to make, is making or has made investments in the Area of the other Contracting Party;

Note: It is understood that an investor of a Contracting Party seeks to make investments in the Area of the other Contracting Party only when the investor has taken concrete steps necessary to make investments, such as when the investor has made an application for a permit or licence which authorises the establishment of investments.

(c) 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;

(d) the term "investment activities" means establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments;

(e) the term "Area" means with respect to a Contracting Party:

(i) the territory of that Contracting Party; and

(ii) the exclusive economic zone and the continental shelf with respect to which that Contracting Party exercises sovereign rights or jurisdiction in accordance with international law;

(f) the term "existing" means being in effect on the date of entry into force of this Agreement;

(g) the term "freely usable currency" means freely usable currency as defined under the Articles of Agreement of the International Monetary Fund; and

(h) the term "the WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994.

## **Article 2. 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 to prevent a Contracting Party from adopting or maintaining a measure that prescribes special formalities in connection with investment activities of investors of the other Contracting Party in its Area, provided that such special formalities do not impair the substance of the rights of such investors under this Agreement.

## **Article 3. Most-favoured-nation Treatment**

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 investors of a nonContracting Party and to their investments with respect to investment activities.

## **Article 4. Treatment of Investment**

1. Each Contracting Party shall in its Area accord to investments of investors of the other Contracting Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

2. Each Contracting Party shall observe any obligation it may have entered into with regard to investments and investment activities of investors of the other Contracting Party.

## **Article 5. Access to the Courts of Justice**

Each Contracting Party shall in its Area accord to investors of the other Contracting Party treatment no less favourable than the treatment which it accords in like circumstances to its own investors or investors of a nonContracting Party 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 such investors' rights.

## **Article 6. Prohibition of Performance Requirements**

1. Neither Contracting Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with investment activities of an investor of a Contracting Party or of a non-Contracting Party in its Area:

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from natural or legal persons or any other entity in its Area;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor;
- (e) to restrict sales of goods or services in its Area that investments of the investor produce or provide by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to restrict the exportation or sale for export;
- (g) to appoint, as executives, managers or members of boards of directors, individuals of any particular nationality;
- (h) to transfer technology, a production process or other proprietary knowledge to a natural or legal person or any other entity in its Area, except when:
  - (i) the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or
  - (ii) the requirement concerns the transfer of intellectual property rights which is undertaken in a manner not inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to as "the TRIPS Agreement");

Note: The requirement prohibited under this Subparagraph, irrespective of its objectives or effects, shall be deemed to include any requirement by a Contracting Party, either explicit or implicit, that an investor offer or accept:

- (i) a rate or amount of royalty below a certain level; or
- (ii) a given range of period as the term of a licence contract,

In regard to any licence contract freely entered into between the investor and a natural or legal person or any other entity in its Area. For greater certainty, a "licence contract" referred to in this note means any licence contract concerning the transfer of technology, a production process, or other proprietary knowledge, including where such transfer is not subject to a requirement prohibited under this subparagraph.

- (i) to locate the headquarters of that investor for a specific region or the world market in its Area;
- (j) to achieve a given level or value of research and development in its Area; or
- (k) to supply one or more of the goods that the investor produces or the services that the investor provides to a specific region or the world market, exclusively from the Area of the former Contracting Party.

2. Neither Contracting Party may condition the receipt or continued receipt of an advantage, in connection with investment activities of an investor of a Contracting Party or of a non-Contracting Party in its Area, on compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced provided in its Area, or to purchase goods from natural or legal persons or any other entity in its Area;
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor;
- (d) to restrict sales of goods or services in its Area that investments of the investor produce or provide by relating such sales in any way to the volume or value of its exports or foreign exchange earnings; or
- (e) to restrict the exportation or sale for export.

3. (a) Nothing in paragraph 2 shall be construed to prevent a Contracting Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities of an investor of a Contracting Party or of a nonContracting Party in its Area, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its Area.

(b) Subparagraphs 2(a) and 2(b) shall not apply to requirements imposed by an importing Contracting Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

(c) Nothing in this Agreement shall be construed to derogate from the obligations of a Contracting Party under the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement.

4. Paragraphs 1 and 2 shall not apply to any requirement other than the requirements set out in those paragraphs.

## **Article 7. Non-conforming Measures**

1. Articles 2, 3 and 6 shall not apply to:

(a) any existing non-conforming measure that is maintained by the following, as set out in the Schedule of each Contracting Party in Annex I:

(i) the central government of a Contracting Party; or

(ii) a prefecture of Japan or a state, a region or a Union Territory of the Republic of the Union of Myanmar;

Note: In the case of the Republic of the Union of Myanmar, a state, a region or a Union Territory includes a Self-Administered Division and a Self-Administered Zone.

(b) any existing non-conforming measure that is maintained by a local government other than a prefecture and a state, a region and a Union Territory referred to in subparagraph (a)(ii);

(c) the continuation or prompt renewal of any nonconforming measure referred to in subparagraphs (a) and (b); or

(d) an amendment or modification to any nonconforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure as it existed immediately before the amendment or modification, with Articles 2, 3 and 6.

2. Articles 2, 3 and 6 shall not apply to any measure that a Contracting Party adopts or maintains with respect to sectors, sub-sectors or activities set out in its Schedule in Annex II.

3. Neither Contracting Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule in Annex II, require an investor of the other Contracting Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective.

4. In cases where a Contracting Party makes an amendment or a modification to any existing non-conforming measure set out in its Schedule in Annex I or where a Contracting Party adopts any new or more restrictive measure with respect to sectors, sub-sectors or activities set out in its Schedule in Annex II after the date of entry into force of this Agreement, the Contracting Party shall, prior to the implementation of the amendment or modification or the new or more restrictive measure, or in exceptional circumstances, as soon as possible thereafter:

(a) notify the other Contracting Party of detailed information on such amendment or modification, or such measure; and

(b) hold, upon request by the other Contracting Party, consultations in good-faith with the other Contracting Party with a view to achieving mutual satisfaction.

5. Each Contracting Party shall endeavour, where appropriate, to reduce or eliminate the non-conforming measures specified in its Schedules in Annexes I and II respectively.

6. Articles 2, 3 and 6 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in Articles 3 through 5 of the TRIPS Agreement.

7. Articles 2, 3 and 6 shall not apply to any measure that a Contracting Party adopts or maintains with respect to government procurement.

## **Article 8. Transparency**

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements which pertain to or affect the implementation and operation of this Agreement.

Note: This paragraph shall not be construed so as to oblige either Contracting Party to make available to the public administrative rulings and judicial decisions which are protected under the laws and regulations of the Contracting Party.

2. Each Contracting Party shall make publicly available the names and addresses of the competent authorities responsible for laws, regulations, administrative procedures and administrative rulings, referred to in paragraph 1.

3. Each Contracting Party shall, upon request by the other Contracting Party, promptly respond to specific questions and provide that other Contracting Party with information on matters set out in paragraph 1, including that relating to a contract each Contracting Party enters into with regard to investment.

4. Paragraphs 1 and 3 shall not be construed so as to oblige either Contracting Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice privacy or legitimate commercial interests.

## **Article 9. Public Comment Procedures**

Each Contracting Party shall, in accordance with the laws and regulations of the Contracting Party, endeavour to provide, except in cases of emergency or of purely minor nature, a reasonable opportunity for comments by the public before the adoption, amendment or repeal of regulations of general application that affect any matter covered by this Agreement.

## **Article 10. Administrative Procedures**

1. Where the competent authorities of a Contracting Party take a decision in respect of the matters relating to investment activities of an investor of the other Contracting Party upon application by the investor, the competent authorities shall endeavour to:

(a) commence the review of the application without delay upon its arrival at their offices;

(b) provide, upon request, the investor with information concerning the status of the review of the application within a reasonable period of time;

(c) inform the investor of the decision within a reasonable period of time after the submission of the application considered complete under the laws and regulations of the former Contracting Party, taking into account the standard period of time referred to in paragraph 3; and

(d) in case where they take a decision to refuse or not to approve the application, inform concurrently the investor of the grounds for the decision.

2. The competent authorities of a Contracting Party shall, in accordance with the laws and regulations of the Contracting Party, establish criteria concerning the decision referred to in paragraph 1. The competent authorities shall endeavour to:

(a) make such criteria as specific as possible; and

(b) make available to the public such criteria except in cases of extraordinary administrative inconvenience.

3. The competent authorities of a Contracting Party shall, with respect to the decision referred to in paragraph 1, endeavour to:

(a) establish standard periods of time between the arrival of applications at their offices and the rendering of the decisions in response to the applications; and

(b) make available to the public such periods of time, if established.

## **Article 11. Measures Against Corruption**

Each Contracting Party shall ensure that measures and efforts are undertaken to prevent and combat corruption regarding matters covered by this Agreement in accordance with its applicable laws and regulations.

## **Article 12. Entry, Sojourn and Residence of Investors**

Each Contracting Party shall, in accordance with its applicable laws and regulations, give sympathetic consideration to applications for entry, sojourn and residence of a natural person having the nationality of the other Contracting Party who wishes to enter the territory of the former Contracting Party and remain therein for the purpose of investment activities.

## **Article 13. Expropriation and Compensation**

1. Neither Contracting Party shall expropriate or nationalise investments in its Area of investors of the other Contracting Party or take any measure equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) upon payment of prompt, adequate and effective compensation pursuant to paragraphs 2, 3, and 4; and

(d) in accordance with due process of law and Article 4.

2. The compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is earlier. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be paid without delay and shall include interest at a commercially reasonable rate, taking into account the length of time until the time of payment. It shall be effectively realisable and freely transferable and shall be freely convertible into the currency of the Contracting Party of the investors concerned, and into freely usable currencies at the market exchange rate prevailing on the date of expropriation.

4. Without prejudice to the provisions of Article 18, the investors affected by expropriation shall have a right of access to the courts of justice or administrative tribunals or agencies of the Contracting Party making the expropriation to seek a prompt review of the investors' case and the amount of compensation in accordance with the principles set out in this Article.

## **Article 14. Protection from Strife**

1. Each Contracting Party shall accord to investors of the other Contracting Party that have suffered loss or damage relating to their investments in the Area of the former Contracting Party due to armed conflict or a state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that former Contracting Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that which it accords to its own investors or to investors of a nonContracting Party, whichever is more favourable to the investors of the other Contracting Party.

2. Any payment as a means of settlement referred to in paragraph 1 shall be effectively realisable, freely transferable and freely convertible at the market exchange rate into the currency of the Contracting Party of the investors concerned and freely usable currencies.

## **Article 15. Subrogation**

If a Contracting Party or its designated agency makes a payment to any investor of that Contracting Party under an indemnity, guarantee or insurance contract, pertaining to an investment of such investor in the Area of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated agency of any right or claim of such investor on account of which such payment is made and shall recognise the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as the original right or claim of the investor. As regards payment to be made to that former Contracting Party or its designated agency by virtue of such assignment of right or claim and the transfer of such payment, the provisions of Articles 13, 14, and 16 shall apply mutatis mutandis.

## **Article 16. Transfers**

1. Each Contracting Party shall ensure that all transfers relating to investments in its Area of an investor of the other Contracting Party may be freely made into and out of its Area without delay. Such transfers shall include, in particular, though not exclusively:

(a) the initial capital and additional amounts to maintain or increase investments;

- (b) profits, interest, capital gains, dividends, royalties, fees and other current incomes accruing from investments;
- (c) payments made under a contract including loan payments in connection with investments;
- (d) proceeds of the total or partial sale or liquidation of investments;
- (e) earnings and remuneration of personnel from the other Contracting Party engaged in activities in connection with investments in the Area of the former Contracting Party;
- (f) payments made in accordance with Articles 13 and 14; and
- (g) payments arising out of the settlement of a dispute under Article 18.

2. Each Contracting Party shall further ensure that such transfers may be made without delay in freely usable currencies at the market exchange rate prevailing on the date of the transfer.

3. Notwithstanding paragraphs 1 and 2, a Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good-faith application of its laws and regulations relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offenses; or
- (d) ensuring compliance with orders or judgments in adjudicatory proceedings.

## **Article 17. Settlement of Dispute between the Contracting Parties**

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 implementation of this Agreement.

2. Any dispute between the Contracting Parties as to the interpretation and application of this Agreement, not satisfactorily adjusted by diplomacy, shall be referred for decision to an arbitration board. Such arbitration board shall be composed of three arbitrators, with each Contracting Party appointing one arbitrator within a period of thirty days from the date of receipt by either Contracting Party from the other Contracting Party of a note requesting arbitration of the dispute, and the third arbitrator to be agreed upon as President by the two arbitrators so chosen within a further period of thirty days, provided that the third arbitrator shall not be a national of either Contracting Party.

3. If the third arbitrator is not agreed upon between the arbitrators appointed by each Contracting Party within the further period of thirty days referred to in paragraph 2, the Contracting Parties shall request the President of the International Court of Justice to appoint the third arbitrator who shall not be a national of either Contracting Party.

4. The arbitration board shall within a reasonable period of time reach its decision by a majority of votes. Such decision shall be final and binding.

5. Each Contracting Party shall bear the cost of the arbitrator of its choice and its representation in the arbitral proceedings. The cost of the President of the arbitration board in discharging his or her duties and the remaining costs of the arbitration board shall be borne equally by the Contracting Parties.

## **Article 18. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. For the purposes of this Article, "investment dispute" is a dispute between a Contracting Party and an investor of the other Contracting Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any obligation of the former Contracting Party under this Agreement with respect to the investor of that other Contracting Party or its investments in the Area of the former Contracting Party.

2. Subject to subparagraph 7(b), nothing in this Article shall be construed so as to prevent an investor who is a party to an investment dispute (hereinafter referred to in this Article as "disputing investor") from seeking administrative or judicial settlement within the Area of the Contracting Party that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Party").

3. Any investment dispute shall, as far as possible, be settled amicably through consultations between the disputing investor and the disputing Party (hereinafter referred to in this Article as "the disputing parties").

4. If the investment dispute cannot be settled through such consultations within three months from the date on which the disputing investor requested in writing the disputing Party for consultations, the disputing investor may, subject to subparagraph 7(a), submit the investment dispute to one of the following international arbitrations:

(a) arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965 (hereinafter referred to in this Article as "the ICSID Convention"), so long as the ICSID Convention is in force between the Contracting Parties;

(b) arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, provided that either Contracting Party, but not both, is a Party to the ICSID Convention;

(c) arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law; and

(d) if agreed with the disputing Party, any arbitration in accordance with other arbitration rules.

5. Each Contracting Party hereby consents to the submission of an investment dispute by a disputing investor to arbitration set forth in paragraph 4 chosen by the disputing investor.

6. Notwithstanding paragraph 5, no investment disputes may be submitted to arbitration set forth in paragraph 4, if more than three years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, the knowledge that the disputing investor had incurred loss or damage referred to in paragraph 1.

7. (a) In the event that an investment dispute has been submitted to courts of justice or administrative tribunals or agencies or any other binding dispute settlement mechanism established under the laws and regulations of the disputing Party, any arbitration set forth in paragraph 4 can be sought only if the disputing investor withdraws, in accordance with the laws and regulations of the disputing Party, its claim from such domestic remedies before the final decisions are made therein.

(b) In the event that an investment dispute has been submitted for resolution under one of the arbitrations set forth in paragraph 4, the same investment dispute shall not be submitted for resolution under courts of justice, administrative tribunals or agencies or any other binding dispute settlement mechanism established under the laws and regulations of the disputing Party.

8. An arbitral tribunal established under paragraph 4 shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

9. The disputing Party shall deliver to the other Contracting Party:

(a) written notice of the investment dispute submitted to the arbitration no later than thirty days after the date on which the investment dispute was submitted; and

(b) copies of all pleadings filed in the arbitration.

10. The Contracting Party which is not the disputing Party may, upon written notice to the disputing parties, make submissions to the arbitral tribunal on a question of interpretation of this Agreement.

11. The arbitral tribunal may award only:

(a) a judgment whether or not there has been a breach by the disputing Party of any obligation under this Agreement with respect to the disputing investor and its investments; and

(b) one or both of the following remedies, only if there has been such a breach:

(i) monetary damages and applicable interest; and

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

The arbitral tribunal may also award cost and attorney's fees in accordance with this agreement and applicable arbitral rules.

12. The disputing Party may make available to the public in a timely manner all documents, including an award, submitted to, or issued by, an arbitral tribunal established under paragraph 4, subject to redaction of:



(a) confidential business information;

(b) information which is privileged or otherwise protected from disclosure under the applicable laws and regulations of either Contracting Party; and

(c) information which shall be withheld pursuant to the relevant arbitration rules.

13. Unless the disputing parties agree otherwise, the arbitration shall be held in a country that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (hereinafter referred to in this Article as "the New York Convention").

14. The award rendered by the arbitral tribunal shall be final and binding upon the disputing parties. This award shall be executed in accordance with the applicable laws and regulations, as well as relevant international law including the ICSID Convention and the New York Convention, concerning the execution of award in force in the country where such execution is sought.

## **Article 19. General and Security Exceptions**

1. Subject to the requirement that such measures are not applied by a Contracting Party in a manner which would constitute a means of arbitrary or unjustifiable discrimination against, or a disguised restriction on investors of the other Contracting Party and their investments in the Area of the former Contracting Party, nothing in this Agreement shall be construed so as to prevent the former Contracting Party from adopting or enforcing measures:

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

(b) necessary to protect public morals or to maintain public order, provided that the public order exception may only be invoked where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society;

(c) necessary to secure compliance with the 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 contract;

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

(iii) safety; or

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

2. Nothing in this Agreement other than Article 14 shall be construed to prevent a Contracting Party from adopting or enforcing measures:

(a) which it considers necessary for the protection of its essential security interests:

(i) taken in time of war, or armed conflict, or other emergency in that Contracting Party or in international relations; or

(ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons; or

(b) in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

## **Article 20. Temporary Safeguard Measures**

1. A Contracting Party may adopt or maintain measures not conforming with its obligations under Article 2 relating to cross-border capital transactions and Article 16:

(a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

2. Measures referred to in paragraph 1:

(a) shall be consistent with the Articles of Agreement of the International Monetary Fund, so long as the Contracting Party

taking the measures is a party to the said Articles;

(b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1;

(c) shall be temporary and shall be eliminated as soon as conditions permit;

(d) shall be promptly notified to the other Contracting Party; and

(e) shall avoid unnecessary damages to the commercial, economic and financial interests of the other Contracting Party.

3. Nothing in this Agreement shall be regarded as altering the rights enjoyed and obligations undertaken by a Contracting Party as a party to the Articles of Agreement of the International Monetary Fund.

## **Article 21. Prudential Measures**

1. Notwithstanding any other provisions of this Agreement, a Contracting Party shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of its financial system.

2. Where the measures taken by a Contracting Party pursuant to paragraph 1 do not conform with this agreement, they shall not be used as a means of avoiding the obligations of the Contracting Party under this Agreement.

## **Article 22. Intellectual Property Rights**

1. The Contracting Parties shall grant and ensure the adequate and effective protection of intellectual property rights, and promote efficiency and transparency in intellectual property protection system. For this purpose, the Contracting Parties shall promptly consult with each other at the request of either Contracting Party. Depending on the results of the consultation, each Contracting Party shall, in accordance with its applicable laws and regulations, take appropriate measures to remove the factors which are recognised as having adverse effects to the investments of investors of the other Contracting Party.

2. Nothing in this Agreement shall affect the rights and obligations of the Contracting Parties under multilateral agreements in respect of protection of intellectual property rights to which the Contracting Parties are parties.

3. Nothing in this Agreement shall be construed so as to oblige either Contracting Party to extend to investors of the other Contracting Party and to their investments treatment accorded to investors of a non-Contracting Party and to their investments by virtue of a multilateral agreements in respect of protection of intellectual property rights, to which the former Contracting Party is a party.

## **Article 23. Taxation**

1. Nothing in this Agreement shall apply to taxation measures except as expressly provided for in paragraphs 3, 4 and 5 of this Article.

2. Nothing in this Agreement shall affect the rights and obligations of either Contracting Party under tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

3. Articles 1, 5, 8, 13 and 28 shall apply to taxation measures.

4. Articles 17 and 18 shall apply to disputes regarding taxation measures to the extent covered by paragraph 3.

5. Article 24 shall apply to matters regarding taxation measures to the extent covered by paragraph 3.

## **Article 24. Joint Committee**

1. The Contracting Parties shall establish a Joint Committee (hereinafter referred to as "the Committee") with a view to accomplishing the objectives of this Agreement. The functions of the Committee shall be:

(a) to discuss and review the implementation and operation of this Agreement;

(b) to review the non-conforming measures maintained, amended or modified pursuant to paragraph 1 of Article 7 for the

purpose of contributing to the reduction or elimination of such non-conforming measures;

(c) to discuss the non-conforming measures adopted or maintained pursuant to paragraph 2 of Article 7 for the purpose of encouraging favourable conditions for investors of the Contracting Parties;

(d) to exchange information on and to discuss investment-related matters within the scope of this Agreement, which relate to improvement of investment environment; and

(e) to discuss any other investment-related matters concerning this Agreement.

2. The Committee may, as necessary, make appropriate recommendations by consensus to the Contracting Parties for the more effective functioning or the attainment of the objectives of this Agreement.

3. The Committee shall be composed of representatives of the Contracting Parties. The Committee may, upon mutual consent of the Contracting Parties, invite representatives of relevant entities other than the Government of the Contracting Parties with the necessary expertise relevant to the issues to be discussed, and hold joint meetings with the private sectors.

4. The Committee shall determine its own rules of procedure to carry out its functions.

5. The Committee may establish sub-committees and delegate specific tasks to such sub-committees.

6. The Committee shall meet upon the request of either Contracting Party.

## **Article 25. Health, Safety and Environmental Measures and Labour Standards**

Each Contracting Party shall refrain from encouraging investment by investors of the other Contracting Party by relaxing its health, safety or environmental measures or by lowering its labour standards. To this effect each Contracting Party should not waive or otherwise derogate from such measures or standards as an encouragement for the establishment, acquisition or expansion in its Area of investments by investors of the other Contracting Party and of a non-Contracting Party.

## **Article 26. Denial of Benefits**

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of the other Contracting Party and to its investments if the enterprise is owned or controlled by an investor of a non-Contracting Party and the denying Contracting Party:

(a) does not maintain diplomatic relations with the non-Contracting Party; or

(b) adopts or maintains measures with respect to the non-Contracting Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation, a Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of the other Contracting Party and to its investments if the enterprise is owned or controlled by an investor of a non-Contracting Party and the enterprise has no substantial business activities in the Area of the other Contracting Party.

3. For the purpose of this Article, an enterprise is:

(a) "owned" by an investor if more than fifty percent of the equity interest in it is owned by the investor; and

(b) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions;

## **Article 27. Headings**

The headings of the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

## **Article 28. Final Provisions**

1. This Agreement shall enter into force on the thirtieth day after the date of exchange of diplomatic notes informing each other that their respective legal procedures necessary for the entry into force of this Agreement have been completed. It

shall remain in force for a period of ten years after its entry into force and shall continue in force unless terminated as provided in paragraph 2.

2. A Contracting Party may, by giving one year's advance notice in writing to the other Contracting Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

3. This Agreement shall also apply to all investments of investors of either Contracting Party acquired in the Area of the other Contracting Party in accordance with the applicable laws and regulations of that other Contracting Party prior to the entry into force of this Agreement.

4. In respect of investments acquired prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination of this Agreement.

5. This Agreement shall not apply to claims arising out of events which occurred prior to its entry into force.

6. The Annexes to this Agreement shall form an integral part of this Agreement.

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

DONE at Tokyo, on this fifteenth day of December, 2013, in duplicate in the English language.

FOR THE GOVERNMENT OF JAPAN:

FOR THE GOVERNMENT OF THE REPUBLIC OF THE UNION OF MYANMAR:

Kan Zaw