

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;

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.

- (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:

- (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 non-Contracting 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;

- (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.

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:

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;

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").

- (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.

- (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

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. 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.

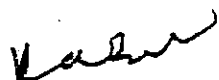
6. The Annexes to this Agreement shall form an integral part of this Agreement.

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

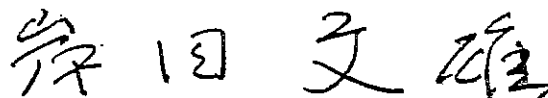
DONE at Tokyo, on this fifteenth day of December, 2013, in duplicate in the English language.

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

FOR THE GOVERNMENT OF JAPAN:



DR. KAN ZAW
UNION MINISTER
MINISTRY OF NATIONAL PLANNING
AND ECONOMIC DEVELOPMENT



FUMIO KISHIDA
MINISTER FOR FOREIGN AFFAIRS