

Draft Translation
by
MYANMAR LEGAL SERVICES LIMITED

Foreign Investment Law

(2012, the Union Parliament Law No. 21)
1374, 3rd. Wanning Day of Thadingyut

The Union Parliament hereby enacts the following Law:

CHAPTER I Title and Definition

1. This Law shall be called the **Foreign Investment Law**.
2. The following expressions contained in this Law shall have the meanings given hereunder:
 - (a) “**State**” means the Republic of the Union of Myanmar;
 - (b) “**Commission**” means the Myanmar Investment Commission formed under this Law;
 - (c) “**Union Government**” means the Union Government of the Republic of the Union of Myanmar;
 - (d) “**Citizen**” includes an associate citizen or a naturalized citizen also. For the purpose of this law, it includes economic organizations formed solely by the citizens;
 - (e) “**Foreigner**” means a person who is not a citizen. For the purpose of this law, it includes economic organizations inclusive of foreigners;
 - (f) “**Promoter**” means any citizen or any foreigner submitting an investment proposal to the Commission;
 - (g) “**Proposal**” means together with the prescribed application submitted by a promoter to the Commission for approval of an intended investment, the accompanied draft contract, financial evident documents and company’s evident documents;
 - (h) “**Permit**” means the order in which the approval of the Commission of a proposal is expressed;
 - (i) “**Foreign Capital**” includes the following which are invested in an economic enterprise by any foreigner under a permit:
 - (1) foreign currency;
 - (2) property actually required for the business and which is not available within the State such as machinery, equipment, machinery components, spare parts and instruments;
 - (3) rights which can be evaluated the intellectual property such as license, trademarks, patent, industrial design, copyrights;
 - (4) technical know-how;
 - (5) re-investment out of benefits accrued to the enterprise from the above or out of share of profits;

- (j) “**Investor**” means a person or an economic organization making an investment under a permit;
- (k) “**Bank**” means any bank permitted by the Union Government, within the Republic of the Union of Myanmar;
- (l) “**Investment**” means various kinds of owned property controlled by the investor in accordance with this law within the State’s territory. Such expression shall have the meaning hereunder:
 - (1) Moveable property, immovable property and other rights over the property which can mortgage and can be mortgaged;
 - (2) A Company’s shares, stocks and debentures (a) bonds;
 - (3) Financial rights or activities under a contract determined as a value relating to the finance;
 - (4) Intellectual property rights according to the existing laws;
 - (5) Functional rights granted according to the law or according to the Contract including exploration and production of natural resources.
- (m) “**Person who has the right to lease or right to use Land**” means a person who is entitled to lease land or use the land by paying the fees to the State stipulated for a certain period of time

CHAPTER II

Relevant Economic Activities

- 3. This Law shall apply to economic activities prescribed by the Commission by notification from time to time with the prior approval of the Union Government.
- 4. Following investment activities are prescribed as restricted or prohibited activities:
 - (a) Business which can affect the traditional culture and customs of the national races within the State;
 - (b) Business which can affect the public health;
 - (c) Businesses which can affect the natural environment and eco system of the people;
 - (d) Business which can import hazardous and poisonous wastages into the State;
 - (e) Manufacturing activities which uses or produces hazardous chemicals according to the international conventions;
 - (f) Manufacturing and Services activities which can be allowed for Myanmar citizens in accordance with prescribed rules and regulations;
 - (g) Business which can import utensils, medicine, and technologies which are under experimental stage and not yet approved to use in a foreign country;
 - (h) Long term and short term agricultural activities prescribed by the State by rules which can be carried out by the Citizens;
 - (i) Livestock breeding activities prescribed by the State by rules which may be carried out by the Citizens;

- (j) Marine fishing activities in Myanmar sea waters prescribed under the Rules which may be carried out by the Citizens;
 - (k) Except in the areas approved by the Union Government prescribed as economic zones, foreign investment activities that will be carried out within 10 miles from the meeting line of the boundary of the State and a neighbouring foreign country.
5. The Commission may allow the restricted and prohibited activities mentioned in section 4 especially for the benefits of the State and the People, especially the National Races by taking prior approval from the Union Government.
6. The Commission shall submit to the Union Parliament through the Union Government relating to large foreign investments which shall be of huge benefits for the State and Citizens' security status, economy status, environmental status and social status.

CHAPTER III Objectives

7. Exploitation of abundant resources of the country with a view to catering to the needs of the nation in the first instance; exporting whatever surplus available; job creation for the people in line with the progress and expansion of work; to develop human resources to develop the infrastructure such as banking and finance, highway roads, cross-country highways, national electricity and energy works; to develop high-tech including modern data collection technology, to develop communication network, international standard railway, maritime and airway transport in the whole country; to encourage the Citizen to enable to work together with foreigners; and to develop the business activities and investment projects in line with the international standards.

Chapter IV Basic Principles

8. Investments shall be made in accordance with the following basic principles:
- (a) To support the primary objective of national economic development plan and activities which are not able to be carried out by the State or for lack of financing and technology;
 - (b) Opening up of more employment opportunities;
 - (c) Promotion and expansion of exports;
 - (d) Manufacturing goods to substitute imports;
 - (e) To manufacture products which require large investment;
 - (f) To develop and achieve high technology for development of manufacturing activities;
 - (g) To support production and services works requiring large volume of capital investment;
 - (h) To expose activities which would save energy consumption;
 - (i) Regional development;

- (j) To explore and extract new energy and to develop sustainable energy resources such as new bio-based energy;
- (k) To develop modern industry;
- (l) Conservation and protection of environment;
- (m) To support obtaining information and exchange of technology;
- (n) Not to injure the sovereignty of the State and the security of the nation;
- (o) To develop citizens' knowledge and education;
- (p) To develop banking activities in line with international standards;
- (q) To arise and develop modern services required for the State and Citizens;
- (r) For sufficiency of the State's energy and resources for long term and short term domestic use.

CHAPTER V Form of Investment

9. Investment may be made in any of the following forms:
- (a) investment made by a foreigner to the extent of one hundred per cent foreign capital for activities approved by the Commission;
 - (b) joint-venture made between a foreigner and a citizen or a concerned government department or an organization;
 - (c) Operating in any system mutually agreed according to the deed of contract.
10. (a) When investing under section 9:
- (1) The company must be formed in line with the existing laws;
 - (2) When forming a joint –venture under section 9 (b), the foreign investment capital and the citizen's portion of investment capital may be specified as agreed with the joint ventured foreign investor and the citizen investor;
 - (3) When a foreigner makes an investment, depending on the business sector, the minimum requirement of foreign capital of a foreign investor shall be prescribed by the Commission depending upon the nature of the business activity with the approval of the Union Government;
 - (4) If a foreigner performs a business activity restricted or prohibited with a citizen, the ratio of the foreign investor's capital may be proposed according to ratio prescribed in the Rules.
- (b) When performing investment under sub section (a), if liquidation is performed before the expiration of the term by approval, or if liquidation is performed upon expiration of the term, it shall be conducted according to the existing laws of the State.

CHAPTER VI
Formation of the Commission

11. (a) The Union Government shall:
- (1) form the Myanmar Investment Commission to perform the duties of this law relating to the investments with an appropriate person from the Union level as the Chairman, and appropriate persons of the concerned Ministers of the Ministry of the Union Parliament, Government department, Government organizations, and skilled professionals from non-Governmental organizations and appropriate persons as members;
 - (2) When forming the Commission, among the members, Vice Chairman, Secretary and Joint Secretary shall be specified and empowered to perform their duties.
- (b) Members who are not government personnel shall enjoy a salary, fees and honorarium as allowed by the Ministry of National Planning and Economic Development.

CHAPTER VII
Duties and Powers of the Commission

12. The duties of Commission are as follows:
- (a) The Commission shall in scrutinizing a proposal take into consideration facts such as whether such proposal is in compliance with the basic principles of Chapter 4 of this law, financial credibility, economic justification of the business enterprise and appropriateness of technology and protection and conservation of environment;
 - (b) To take immediate action if the investor complains of not fully receiving the rights entitled under this law;
 - (c) To scrutinize the proposals if it contradicts with the existing laws;
 - (d) To submit six-monthly report of performance to the Union Parliament through Union Government;
 - (e) To submit effective advice to Union Government from time to time to facilitate promotion of local and foreign investments;
 - (f) Stipulating types of investment, amount of investment and terms of business and amending of the same with the prior approval of Union Government;
 - (g) For Regional and State economic development, relating to the foreign investment projects to be carried out according to the approval by the Union Government, to coordinate with the relevant Regional and State government organizations;
 - (h) Identifying immediately and taking prompt action if antiques or natural resources are discovered above or under the permitted land which are not related to the permitted project and not specified in the primary contract;
 - (i) Monitoring whether the investor complies with this law, its rules, regulations, notifications, directives, procedures, orders, and the conditions of the contract, upon

the investment projects and if it is not complying, to make them comply and to take action according to the law to the non compliance investment project;

- (j) To prescribe investment activities which are not required for tax exemption and relief;
- (k) To serve the duty designated occasionally by the Union Government.

13. The Powers of the Commission are as follows:

- (a) To accept any proposal by scrutinizing which in its opinion will promote the interests of the State and which is not contradicting with any existing law;
- (b) When proposal is accepted, to issue a permit to the promoter or the investor;
- (c) In case an extension, or amendment of the term of the permit or the agreement is submitted by those concerned the Commission may allow or reject as appropriate after scrutinizing with the specific terms;
- (d) To demand for submission of evidence or facts as required from the promoter or the investor;
- (e) If it is proved evident that the investor does not comply with the Proposal submitted to get the Permit and its attached documents or does not comply with the conditions of the Permit, necessary order can be passed up to the extent of suspending the project;
- (f) to grant permission or reject when the promoter or the investor proposed a bank to conduct financial transactions and to prescribe the bank as required to conduct financial transactions.

14. The Commission may form committees and sub committees as required to perform its duties.

15. To submit reports of the Commission's performances to the Cabinet meeting from time to time.

16. To submit quarterly reports of the progress of the projects permitted by the Commission to the Union Government.

CHAPTER VIII

Duties and Rights of the Investors

17. Duties of the Investor are as follows:

- (a) To comply with the existing law of the Republic of the Union of Myanmar;
- (b) To conduct business by forming a company in accordance with the existing Laws;
- (c) To comply with the provisions of this law, rules, procedures, notification, order, directive and condition of the permit;
- (d) To utilize the land rented or granted by the Commission as per designated conditions of the Commission and the conditions of the contract;

- (e) To sublet, mortgage, transfer shares and transfer of business to other individuals of the land and buildings permitted to do business by permit, during the term of the business shall be performed only by approval of the Commission;
- (f) Shall not change the topography and the of the land permitted to lease and utilize without the approval of Commission;
- (g) To report immediately to the Commission when resources or antiques treasure trove not related to the permitted project are discovered above or under the land leased or permitted to be utilized, not provided in the contract; to continue the operation if the Commission permits and if not permitted to continue the operation, to move out to a place chosen by the investor by obtaining approval of substitute;
- (h) Not to cause environment pollution and damages relating to the investment activities in accordance with the existing laws;
- (i) If it is a foreign company, when transferring all the shares of a foreign party to a foreign individual or to a citizen, it can be carried out only after obtaining prior approval from the Commission and registering the share transfer in accordance with the laws;
- (j) If it is a foreign company, when transferring partial shares of the foreign party to a foreign individual or to a citizen, it can be carried out only after obtaining prior approval from the Commission and registering the share transfer in accordance with the laws;
- (k) The investor shall transfer the competent high tech functioned to the concerned department or organization systematically according to the provisions of the contract.

18. Rights of the Investors are as follows:

- (a) The right to sell, exchange, or in any way transfer the assets in accordance with the existing laws with the approval of the Commission;
- (b) If it is a foreigner or a foreign company, wish to sell its shares wholly or partially to a foreigner or a Myanmar citizen or a foreign company or to a Myanmar company perpetually;
- (c) To expand the primary investment of the proposal, or increasing the foreign capital by the approval of the Commission;
- (d) To submit to the Commission for review and amend to get its entitled rights in full in accordance with the existing laws;
- (e) To submit and apply to the Commission to obtain benefits and take action for injuries in accordance with the existing laws;
- (f) To submit to the Commission to apply to the Commission to enjoy more incentives for invention of new technologies, to improve the quality of products, to promote production of goods, and to reduce environmental pollutions at the investment entity performing under the permit;
- (g) To the develop economy for the whole country, investors who made investments made in less developed and bad transportation areas, shall have the right to enjoy

more incentives on the duration of relief and exemptions stated in Chapter 12 stipulated by the Commission with the approval of the Government.

CHAPTER IX Application for Permit Approval

19. The investor or a promoter, in order to obtain a permit for foreign investment, shall submit the proposal to the Commission in accordance with the stipulations.
20. The Commission may:
 - (a) Accept or reject the proposal within 15 days after the assessment is made on receiving of proposal as per section 19;
 - (b) Exercise to allow or not allow within 90 days to the proposer on receiving it.
21. The investor or promoter shall establish the investment activities after receiving the permit of the Commission, after signing the necessary contract with concerning government department/organization or person/organization.
22. When the concerned person apply, the Commission may allow to increase or reduce or amend the term and conditions of the contract in accordance with this law.

Chapter X Insurance

23. The investor shall place the designated type of insurance at any authorized insurance agency prescribed within the State.

Chapter XI Appointment of Employees and Workers

24. The investor:
 - (a) Shall appoint, when appointing citizen skilled workers, technicians and staff, at least 25% of citizen within first 2 years from the commencement date, at least 50% within second two years, at least 75% within third 2 years however in complex projects the time limit may be extended as the Commission considers necessary;
 - (b) Shall arrange to provide training and courses to promote professional skills for the citizen employees appointed under sub-section (a);
 - (c) Only citizen shall be appointed in operations which does not require expertise;
 - (d) Shall carry out labour recruitment through the Employment and Labour Recruitment Office, local labour recruitment agencies or by own arrangement;
 - (e) Shall employ, in employing Citizen skilled workers, technicians and staff, by signing the employment agreement mutually between the employer and employee in accordance with the existing labour laws and rules;
 - (f) When appointing citizen skilled workers, technicians and employee the appointment contract shall be signed between employer and employee as per the existing labour law and rules;

- (g) As a proportionate distribution of the level of expertise, when appointing citizens same as foreigners, rights must be arranged without segregation.
25. A foreigner working for the investment project with approval shall apply to the Commission for the work permit and stay permit issued by the State.
26. The investor:
- (a) Shall sign the employment agreement as prescribed when employing staff and labourers;
 - (b) When prescribing rights and duties of the employer and the employee and work rules in the employment contract, including the minimum wages, leave, holidays, overtime charges, severance pay, workmen's compensation, social security and other worker's securities ; work rules, Shall perform to get the right as per existing labour law and rules including minimum wages in salary, leave, holiday, overtime charges, grievances, compensation, social security and other labour related insurance, arrangements must be made to obtain rights according to the existing labour laws and rule;
 - (c) The disputes arising between the employers, employees, among the workers and technicians and staff shall be settled according to the concerned existing laws.

Chapter XII

Exemption and Relief

27. The Commission shall, for the purpose of promoting foreign investments within the State, grant the investor exemption or relief from taxes mentioned in sub-section (a) out of the following exemptions or reliefs from taxes. In addition, may grant any or more than one or all of the remaining exemptions or reliefs from taxes when applied:
- (a) in respect of any enterprise for the production of goods or services, exemption from income-tax for a period extending to 5 consecutive years, inclusive of the year of commencement of production of goods or services; in case where it is beneficial for the State, exemption or relief from income tax for a further reasonable period depending upon the success of the enterprise in which investment is made;
 - (b) exemption or relief from income-tax on profits of the business if they are maintained in a reserve fund and re-invested therein within 1 year after the reserve is made;
 - (c) right to deduct depreciation in respect of machinery, equipment, building or other capital assets used in the business, at the rate fixed by the State to the extent of the original value for the purpose of income-tax assessment;
 - (d) if the goods produced by any enterprise are exported, relief from income-tax up to 50 percent on the profits accrued from the said export;
 - (e) right to pay income-tax on the income of the foreigners at the rates applicable to the citizens residing within the country;
 - (f) right to deduct from the assessable income, such expenses incurred in respect of research and development relating to the enterprise which are actually required and are carried out within the State;

- (g) right to carry forward and set-off up to 3 consecutive years from the year the loss is sustained in respect of such loss sustained within 2 years immediately following the enjoyment of exemption or relief from income tax as contained in sub-section (a), for each individual enterprise;
- (h) exemption or relief from customs duty or other internal taxes or both on machinery, equipment, instruments, machinery components, spare parts and materials used in the business, which are imported as they are actually required for use during the period of construction;
- (i) exemption or relief from customs duty or other internal taxes or both on such raw materials imported for the first 3 years' commercial production following the completion of construction;
- (j) upon increase of capital with the permission of the Commission and if the primarily permitted project is expanded within the permitted term, exemption or relief from customs duty or other internal taxes or both on machinery, equipment, instruments, machinery components, spare parts and materials used in the business, which are imported as they are actually required for use during the period of construction of such expanded project;
- (k) the exemption and relief of commercial tax on the products manufactured for export.

Chapter XIII Guarantees

- 28. The Union Government guarantees that an economic enterprise formed under a permit shall not be nationalized during the term of the contract or during an extended term, if so extended.
- 29. The Union Government assures that the investment activities operating under the permit of Commission shall not be terminated before the expiration of the term of the permit without sufficient cause.
- 30. On the expiry of the term of the contract, the Union Government guarantees a foreign investor its rights to pay in the foreign currency in which such investment was made.

Chapter XIV Permission of Land Use

- 31. The Commission may allow the investor up to initial 50 years of land use or land lease as actually required by the economic activities or industry depending upon the type and amount of investment.
- 32. The Commission may allow the investor an extension of 10 years and another 10 years depending on amount and type of investment continuously after expiration of the duration allow under section 31.
- 33. The Commission may allow to invest upon the land from the person who has the right to lease or having the right to use the land under the initial agreement with the prior consent of Union Government for the economic development of the country.
- 34. The Commission may occasionally stipulate the rental rate of land owned by Government departments/organizations with the prior consent of Union Government.

35. Investor has a right to carry out contract farming system of seasonal crops for carrying out agriculture production business and livestock breeding in farms entitled to carry out by Citizens as a form of Joint Venture.
36. The Commission may prescribe a longer lease or right to use land period in remote and underdeveloped places with lack of transportation with the prior consent of Union Government, for the economic development of the whole State.

Chapter XV Foreign Capital

37. The Commission shall register the name of investor according to the foreign currency accepted by the bank as foreign capital. When so registering the type of foreign capital shall be described.
38. Upon termination of business, the person who brought in foreign capital may withdraw the foreign capital permitted by the Commission within the prescribed period.

Chapter XVI Right to Transfer Foreign Currency

39. The investor has the right to remit the following money abroad in the relevant currency, according to the exchange rate prescribed through the local bank having the right to operate foreign banking activity:
 - (a) The foreign currency entitled by the investor who brought in the foreign currency;
 - (b) The foreign currency approved by the Commission to withdraw by the person who brought in the foreign currency;
 - (c) The net profit after deducting taxes and funds from the annual profit entitled by the investor;
 - (d) Due remaining money after deducting taxes and reserving living expenses from the salary and allowance received by the foreign employee.

Chapter XVII Foreign Currency Matters

40. The investor:
 - (a) can remit abroad through any foreign bank having the right to operate foreign banking at described exchange rate of the relevant currency;
 - (b) shall exercise monetary matters of works by opening foreign currency bank account or kyat currency bank account and the currency accepted by the foreign bank and Myanmar.
41. The employees working in the economic activity formed with permission shall open foreign currency account or kyat currency account at any foreign bank in the country.

Chapter XVIII Administrative Penalties

42. The Commission may impose the following administrative penalties/penalty to a investor who violates any provision of this law, rules, regulations, procedure, notification, order or directive or any condition of the permit:
- (a) Warning;
 - (b) temporary suspension of tax exemption and relief;
 - (c) revocation of permit;
 - (d) black listed with no further issuance of any kind of permit in any business activity.

Chapter XIX Arbitration

43. If any dispute arises out of investment activities:
- (a) The disputes arisen between individuals shall be amicably settled;
 - (b) If not successful to settle by sub-section (a):
 - (1) If it is not provided in the relevant contract for dispute settlement, the State's existing laws must be complied;
 - (2) If it is provided in the concerned contract, it shall be settled according to the terms of the contract.

Chapter XX Miscellaneous

44. The Commission may issue under this law if any proposal of mutual benefit between the investor and Union Government Department/Organization legally empowered by the Union Government to carry out feasibility study, exploration calculated and extraction up to the commercial production stage by using the capital of the investor in joint-venture with the State or citizen in the extraction works of large volume to invest, in the oil and gas and mining works to meet the energy requirement of the State, its citizen and to export the surplus. If the investment activities can be performed with the commercial extraction, to cover the benefit the proportionate profit shall be divided between the investor in Union Government or any empowered Government department/organization.
45. The investor sanctioned by the foreign investment law of the Union of Myanmar (SLORC Law No.10/1988) before the existence of this law shall be deemed to be invested under this law.
46. The investor shall be criminally prosecuted if any evidence is found that the investor is deliberately making a misrepresentation in the schedules, documents, finance and labour employment attached with the proposal to the Commission and concerning Government Department/Organization.
47. Notwithstanding any provision in the existing law the matters regarding any provision of this law shall be exercised by this law.
48. The Commission shall convene meetings as designated.

49. The decision made by the Commission under the power vested by this law shall be final and conclusive.
50. There shall be no action taken under civil or criminal procedure against any Commission member or any member of the committee, any serviceman for matters executed in good faith and in accordance with this Law.
51. To carry out the provision of this Law, the Ministry of National Planning and Economic Development:
- (a) Shall execute the clerical works;
 - (b) Shall incur the expenses.
52. The investor working with the permit of the Commission of Union of Myanmar Foreign Investment Law (State Law and Order Restoration Council Law No. 10/1988) which will be revoked by this Law shall continue under the permit and contract provisions until the expiration of the term.
53. The Commission shall submit to the earliest Union Parliament session meeting through the Union Government if prejudicial to the benefit of the State and citizen as a crucial matter, when permitting the foreign investment activities as per section 3 and section 5.
54. If any provision of this Law is in conflict with any conditions of international treaties and agreements approved and accepted by the Republic of the Union of Myanmar, the provision of international treaty and agreements shall prevail.
55. Before the promulgation of Rules and Procedures after enactment of this Law , the rules and regulations issued under the Law of (SLORC Law No. 10/1988), unless repugnant to this Law, may be continued to apply.
56. When implementing the provisions of this Law:
- (a) The Ministry of National Planning and Economic Development shall issue the necessary rules, regulations, procedures, orders, notifications and directives within 90 days of the promulgation of this Law with the approval of Union Government;
 - (b) The Commission may issue the necessary orders, notifications and directives.
57. The Foreign Investment Law of the Union of Myanmar (State Law and Order Restoration Council Law No.10/1988) is hereby repealed by this Law.

Signed

Thein Sein
President

The Republic of the Union of Myanmar