

Foreign Investment Rules (2013)

Government of the Republic of the Union of Myanmar

Ministry of National Planning and Economic Development

Notification No.11/2013

(31 January 2013)

The Ministry of National Planning and Economic Development, in exercise of the powers conferred under Section 56, sub-clause (a) of the Myanmar Foreign Investment Law, and with the approval of the Union Government, prescribes the following rules:

CHAPTER 1

Title and Definition

1. These rules shall be called **Foreign Investment Rules**.
2. The expressions contained in these rules shall have the same meaning as are assigned to them in the Myanmar Foreign Investment Law. In addition, the following expressions shall have the meanings given hereunder:—
 - (a) “Ministry” means the Ministry of National Planning and Economic Development;
 - (b) “Office of the Commission” means the Directorate of Investment and Company Administration (DICA), which is undertaking the activities of Myanmar Investment Commission;
 - (c) “Director General” means the Director General of the DICA;
 - (d) “Form” means the form attached to these rules;
 - (e) “Schedule” means the schedule mentioned in these rules.
 - (f) “BOT” means Build, Operate, and Transfer
 - (g) BTO means Build, Transfer after the construction is completed to the concerned organization and Operate.
 - (h) “Capital assets” means land, building, vehicle and equipment used in the economic activities. In this context, share, promissory note and other similar agreements are also included.

CHAPTER 2

Applicable Economic Activities

3. The Commission shall, with the approval of the Union Government, prescribe, by notification, the economic activities related to Foreign Investment Law based on the following facts:

- (a) Labor-intensive enterprises that encourage employment growth;
- (b) Enterprises that will produce the more value on production of the State;
- (c) Large investment- enterprises;
- (d) High Technology-intensive enterprises;
- (e) Enterprises aiming at affordable consumption of goods and services by the citizens;
- (f) Manufacturing and Services Enterprises heading towards improvement of living standards of the citizens.

4. The Commission shall prescribe the type of economic activities whether restricted or prohibited investment business, or investments which will allow only as joint-venture business with citizens, or investment businesses which will allow only on specific stipulated condition and submit to the Union Government for approval.

5. Upon approval from the Union Government, the Commission shall notify the type of economic activities whether restricted or prohibited business, or investments which will allow only as joint-venture business with citizens, or investment businesses which will allow only on specific stipulated condition by Notification.

6. The Commission shall, with prior approval from the Union Government, amend , by notification, from time to time, the type of economic activities prescribed in the interest of the Union and citizens;

7. Manufacturing and services activities that citizens may carry out are prescribed as stated in Schedule (1);

8. Agriculture and short-term/long-term cultivation activities that can be carried out by citizens are prescribed as stated in Schedule (2);

9. Livestock breeding activities that can be carried by citizens are prescribed as stated in Schedule (3);

10. Sea-fisheries that can be carried out by citizens are prescribed as stated in Schedule (4);

11. The Ministry shall, with the approval of the Union Government, amend, by notification, from time to time, the type of economic activities prescribed in the rules 7, 8, 9, and 10.

12. The Commission may, with the approval of the Union Government, prescribe the collective manufacturing and services zones including industrial zones carried within 10 miles of the national borders , agriculture and livestock breeding zones, tourism zones, commercial zones as economic zones;

13. The Commission may submit to the Union government and get approval when stipulating economics zones mentioned in rule 12 above by the directions of the Union government, or when proposed by the concerned Regional or State government, private authorized division or state organizations, or when the concerned Regional or State government, private authorized division or state organizations or when the concerned Regional or State government, private authorized division or state organizations agreed the Proposal of the Investors or the Promoters.

14. If the foreign investor has proposed to carry out restricted or prohibited business activities, the Commission shall, in the interest of the Union and citizens especially the native people, scrutinize the Proposal based on the following conditions:

- (a) The opinion of relevant local population or civil societies on the proposed investment;
- (b) The opinion of relevant regional administrative entities on the proposed investment;
- (c) Depending on the region in which the business is to be carried out, the opinion of Nay Pyi Taw Council or the government of Region or State.

15. The Commission shall, with its recommendation, submit the Proposal that meets the conditions contained in Rule 14 to the Union Government for approval.

16. Upon receipt of the approval of the Union Government, the Commission shall issue the foreign investment permit to the promoter or the investor.

CHAPTER 3

Form of Investment

17. The investment may be carried out in any of the following forms:

- (a) investment made by a foreigner to the extent of one hundred per cent foreign capital except the business forms specified in Rule 5 by the Commission;
- (b) if a joint venture is formed between a foreigner and a citizen or the relevant Government department and organization, the ratio of foreign capital and citizen capital may be mutually agreed upon the terms of the contract;
- (c) In carrying out business activities by mutual contract, it shall be conducted systems with government and private jointly including the systems such as BOT, BTO or any other system.

18. In submitting investment proposal, permission to incorporate or register as a foreign company has to be applied simultaneously to DICA in accord with existing Company Law.

19. When the Commission approves the proposal and issue the investment permit, DICA shall issue foreign company incorporation or registration at the same time. If the investor or promoter requests for the issuance of foreign company registration in advance for the purpose of facilitating investment activities, the Director General may issue the Incorporation permit (temporary) or Registration (temporary) given justifiable reasons are provided. However, the Incorporation permit (temporary) or Registration (temporary) may not be regarded as an investment permit.

20. If a joint-venture is carried out with citizen in prohibited or restricted business, the ratio of foreign capital should not exceed 80 per cent of the total capital. This provision may be amended by the Commission, by notification, from time to time, with the permission of the Union Government.

21. Liquidation before the expiry of the term of the contract or on the conclusion of the business shall be exercised in accordance with existing Myanmar Companies Act with the prior approval from the Commission.

CHAPTER 4

Formation of the Commission and Meeting

22. The number of commission members shall be “odd” number;

23. The term of a commission member shall not exceed 3 years. However, depending on skill and other needs, the Union Government may assign a member more than three years.

24. If a commission member is, for any reason, no longer able to resume duty before the expiry of three year term, the member who replaces that position shall be responsible only for the remaining term of the his predecessor.

25. Commission meetings should be convened at least twice in a month.

26. The Chairman of the Commission shall act as chairperson in the meetings. In the absence of the Chairman, Deputy Chairman as a chairperson, and the Secretary as a chairperson if both Chairman and Deputy Chairman are absent or any member shall act as the Chairperson.

27. The meeting is effective if the attendance is more than 50%.

28. The Commission shall make decisions with the agreements of the members, who attended the meeting. The absent members of the Commission shall not object, reject, or modify the decisions made by the attending members.

29. The Commission may, as required, invite the Minister of relevant Ministry or Deputy Minister, subject matter experts and others to the meeting.

30. The Commission shall allow the promoter or investor or their assistants to take part in the meetings to explain and discuss.

CHAPTER 5

Application for Permit

31. When a promoter or an investor submit proposal to the Commission, the following information contained in the Proposal Form (1) shall be completed and signed by the promoter:

- (a) name of promoter or investor, proof of citizenship, address, place of business, actual business conducted by relevant law, effective place of headquarter, place of incorporation, type of business;
- (b) if investment is to be made by joint-venture, particulars mentioned in clause (a) relating to the joint-venture partner;
- (c) evidence in support of clause (a) or clause (b);
- (d) commercial and financial evidences of the promoter or persons wishing to take part in the joint-venture;
- (e) particulars relating to production or services activities in which investment is to be made;
- (f) the intended term of investment, the period of construction;
- (g) place or places in the Union where investment is to be made;
- (h) techniques and systems to be used in the production and sale;
- (i) the type and quantum of energy to be used;
- (j) the quantity and value of the main machineries, equipment, raw materials and similar materials required to be used during the period of construction;
- (k) the type and area of land required;
- (l) volume and value of annual production of the enterprise and volume and value of services;
- (m) annual requirement of foreign exchange to carry on the business and the estimated amount of foreign exchange earnings;
- (n) volume and value of goods to be sold locally and abroad annually;
- (o) economic justification;
- (p) environmental protection and conservation scheme complying with the existing laws;
- (q) intended form of organization in the Union where investment is to be made;

(r) if a partnership is to be formed, draft partnership agreement, the ratio and amount of capital to be contributed by the partners, the profit sharing ratio and the rights and responsibilities of the partners;

(s) if a limited company is to be formed, draft contract, drafts of the Memorandum of Association and Articles of Association, authorized capital of the company, types of shares, the number of shares to be subscribed by the shareholders;

(t) name, citizenship, address and designation of the executives of the organization in which investment is to be made;

(u) the total capital of the organization in which investment is to be made, the ration of local and foreign capital, total amount of foreign capital to be brought into the Union, the value of the various types of foreign capital and the period within which such foreign capital is to be brought in;

32. The proposal shall be submitted together with the draft of the land lease contract entered into either with citizen or Government department and organization, or the draft contract of joint-venture in which two parties intend to carry out business by contract;

33. Proposals for the economic activities that are considered capital intensive by the Commission, and that are prescribed to undergo environmental impact assessment by the Ministry of Environmental Protection and Forestry have to be submitted along with Environmental and Social Impact Assessment.

34. If the proposed investment is natural resources based and related to State-owned Enterprises Law, the application has to be submitted to the Commission through the relevant Union Ministry;

35. Proposal for any business activity, which is not related to those of Rule 34, can be submitted directly to the Commission by the promoter or the investor;

36. Upon receipt of the proposal as per Rule 35, the Commission shall scrutinize whether or not sufficient information is provided, and if it is sufficient, accept it or if insufficient, explain the promoter to have it completed and resubmitted;

37. In order to scrutinize accepted proposals sector by sector, a Proposal Review Group, composed of high ranking officers from the following departments, is to be formed to perform preliminary scrutiny: -

(a) Directorate of Investment and Company Administration

(b) Myanmar Customs Department

(c) Internal Revenue Department

(d) Department of Labour

(e) Ministry of Electric Power

(f) Department of Human Settlement and Housing Development

(g) Directorate of Industrial Supervision and Inspection

(h) Directorate of Trade

(i) Reporting Department of Project Scrutinizing and Development

(j) Environmental Conservation Department

38. In performing preliminary scrutiny as per Rule 37, subject matter experts from relevant Government departments or organizations shall be invited if necessary.

39. The Director General shall be the head of the Proposal Review Group.

40. The Proposal Review Group shall meet once every seven day, and scrutinize the proposals received before the meeting and present the acceptable proposals to the Commission for further action in accord with the rules. If the proposal is approved, the Commission shall, by mail or other means of communication, inform the promoter and if is not approved, the Commission shall provide reasons for being rejected.

41. The promoter or the investor or its delegated person shall attend the meeting of the Proposal Review Group.

CHAPTER 6

Further Actions on the Proposal

42. Once the proposal is accepted, the Commission shall, depending on the location, request for remarks from the Nay Pyi Taw Council or relevant government of the Region or State for comments on whether the proposal could be acceptable or not, and remarks from the Ministry of Environmental Protection and Forestry on the investor's protection or mitigation measures on the social and environmental impact.

43. Upon receipt of the request for remarks from the Commission, Nay Pyi Taw Council, or the government of the Region or State shall scrutinize and reply with remarks signed by the Chairman of the Nay Pyi Taw Council or the relevant Prime Minister or the delegated person of the Region or State within seven days from the date of receiving the request to the Commission whether or not the proposed investment proposal is acceptable.

44. The Ministry of Environmental Protection and Forestry shall review the investor's protection or mitigation measures on the social and environmental impact and reply with remarks to the Commission within seven days from the date of receiving the request by the Union Minister himself or its delegated person in the most efficient communication system.

45. The relevant Union Ministry shall reply to the Commission within seven days of receiving the Commission's request for remarks on investment proposal. In order to timely respond to the request, respective Union Ministry shall form an Investment Assessment Group headed by a Director (or) any officer at the same level. The relevant Union Ministry shall lay down its own investment policies to be exercised by that group. The Commission should be informed of the duty assignments of that group and be updated on any change of the members of the group.

46. The Commission, after receiving the remarks, shall present the proposal to the most immediate Commission's meeting.

CHAPTER 7

Scrutiny of Proposal

47. The Commission shall scrutinize investment proposals in the following manners:-

(a) scrutinizing whether or not the proposal is in conformity with the basic principles of Chapter 4 of Myanmar Investment Law;

(b) scrutinizing financial credibility in the following manners:-

1. scrutinizing banking statements;

2. scrutinizing audited final accounts of a most recent year of the company;

3. scrutinizing performance report of the company

(c) scrutinizing economic justification based on the following particulars;

1. estimated annual net profit;

2. estimated annual foreign exchange earnings as well as foreign exchange requirement for the operation,

3. recoupment period;

4. prospects of new employment;

5. prospects of increased national income;

6. local and foreign market conditions;

7. local consumption needs;

(d) scrutinizing appropriateness of technology by technical experts;

- (e) scrutinizing remarks from the Ministry of Environmental Protection and Forestry on the protection measures of social and environmental impact;
- (f) scrutinizing whether or not the investment is socially and economically responsible and is accountable to the Union and its citizens;
- (g) scrutinizing whether or not the proposal is contrary to the provisions of the existing laws;

CHAPTER 8

Issuance of Permit

48. After the proposal is approved by the Commission, the Permit Form (2) shall be issued within 90 days from date the proposal was approved. The copy of the Permit shall be forwarded to the relevant Union Ministries.

CHAPTER 9

Further Actions after Obtaining Permit

49. After the permit is granted by the Commission, the promoter or investor shall complete the production or services activities within the construction period or within extended construction period if extension is granted. After the completion of construction activities, the final status of construction shall be reported to the Commission within 30 days of the completion date.

50. The investor shall commence production or services as soon as the expiry of the construction period.

51. During the course of operations, the investor shall, without failure, submit Progress Report Form (3) to the Commission every three month by mail or in any other mode of communication.

52. During the course of operation, should the investor encounter with any condition specified in Rule 121, the company shall report to the Commission within 24 hours.

53. Should a need arise to register, or obtain license/permit from the Government department or organization or relevant Union Ministry due to the nature of work or other matters , the investor shall proceed in accord with the prescribed terms and conditions.

54. The promoter or investor shall:

(a) comply with Environmental Protection Law in dealing with environmental protection matters related to the business;

(b) shall carry out socially responsible investment in the interest of the Union and its people;

- (c) shall co-operate with authorities for occasional or mandatory inspection;
- (d) shall exercise due diligence to be in conformity and harmony with norms and standards prescribed by relevant Union Ministry in conducting construction of factories, workshops, buildings, and other activities;
- (e) shall enforce Safety and Health measures in the workplace;
- (f) shall exercise in conformity and harmony with terms and conditions, and standards prescribed by relevant Union Ministry in transporting, storing, and utilizing hazardous, toxic and other similar materials;
- (g) shall not carry out activities to the detriment of consumers in terms of product quality and standards;

55. The Permit for mineral exploration shall not involve any activity related to survey exploration or production. The investor, after conducting exploration, shall submit to the Commission through the Ministry of Mining for permit to conduct survey exploration and production.

CHAPTER (10)

Determining Construction Period

56. The investor shall, from the date that the Commission issued the Permit, complete the construction activities during the prescribed construction period.
57. In case an extension of construction period is needed for different reasons, the investor shall provide explanation of the cause(s) of the delay and apply for an extension to the Commission 60 days prior to the expiration of the originally prescribed construction period.
58. Upon receipt of application for an extension by the investor, the Commission may conduct necessary scrutiny and grant, subject to sound justification, an extension of construction period, which shall not exceeding 50% of the originally permitted construction period.
59. Extension of construction period shall not be granted more than once except it is due to unavoidable events such as natural disaster, emergency political instability, riots, demonstrations, State emergency, arm resistance, and war.
60. For exploration survey of oil and gas and minerals, processing for survey exploration, mining, promote development, and commercial production, construction period shall, with the approval of the Commission, be stipulated in accord with the terms and conditions contained in the agreement.
61. If the construction activities are not completed during the permitted construction period or extended period, the Commission may invoke the investment Permit. In this regard, the Commission shall not be liable to compensate in any way or indemnify the investor.

CHAPTER (11)

Sub-lease, mortgage, transfer of share, transfer of business

62. During the tenure of permit, if the investor would like to sub-lease or mortgage the lands and buildings approved for investment without altering the type of business, the investor shall, with the agreement of a person entitled to lease of land or use of land, submit application in Sub-lease Form (4) or Mortgage Form (5) to the Commission and proceed only with the approval of the Commission. If the land is Vacant, Fallow, and Virgin, approval of the Union Government has to be attached and submitted.

63. Upon receipt of application as per Rule 62, the Commission shall scrutinize the following facts:–

- (a) whether or not the reason to sub-lease or mortgage is correct;
- (b) whether or not it is detrimental to the interest of the State and it's people, due to the sub-lease or mortgage;
- (c) whether or not the beneficiary of the sub-lease or mortgage could keep on carrying out the business successfully;

64. If sub-lease or mortgage is considered to be permissible based on the findings of the scrutiny, the request should be submitted to the most immediate Commission's meeting whether the request is to be approved or not in accord with the decisions of the Commission.

65. If the investor would like to transfer all shares to a foreigner or a citizen for good, the Share Transfer Form (6) shall be filled out and submitted to the Commission. In apply for share transferring, the transferor shall obtain and enclose tax clearance from the Internal Revenue Department. If the land is Vacant, Fallow, and Virgin, approval of the Union Government has to be enclosed and submitted.

66. Upon receipt of application as per Rule 65, the Commission shall scrutinize the following facts:–

- (a) whether or not the reason to transfer all shares is accurate;
- (b) whether or not the interest of the Union and it's people could be detrimental due to the transfer of all shares;
- (c) whether or not the beneficiary of the transfer of all shares could keep on carrying out the business successfully;

67. If the transfer of all shares is considered to be permissible based on the findings of the scrutiny, the request should be submitted to the most immediate Commission's meeting whether the request is to be approved or not in accord with the decisions of the Commission.

68. If approval is granted, the transferor (seller) shall return his Permit to the Commission.

69. If the transferee (buyer) is a foreigner, application for registration or incorporation as a foreign company has to be submitted to DICA in accord with the existing laws. If the transferor agrees, the existing name of the company may continue to be used.

70. If the transferee (buyer) is a citizen, application for permit has to be submitted to the Commission in accord with Myanmar Citizen Investment Law. After obtaining the permit from the Commission, the transferee shall register as a citizen company with DICA in accord with the existing Company Law.

71. In the issuance of the new permit, if the period of exemptions and reliefs, as per Section-27 of Exemptions and Reliefs of Myanmar Foreign Investment Law, of the original investor remains, the transferee (buyer) is entitled to enjoy the said remaining period of exemptions and reliefs. If the period of exemptions and reliefs has already expired, the transferee (buyer) shall not further enjoy the said exemptions and reliefs because of the issuance of the new permit.

72. If partial shares are to be transferred to a foreigner or a citizen for good, Share Transfer Form (7) shall be completed and submitted to the Commission.

73. Upon receipt of application as per Rule 72, the Commission shall scrutinize the following facts:—

(a) whether or not the reason to transfer partial shares is accurate;

(b) whether or not the interest of the Union and its people could be detrimental due to the transfer of partial shares;

(c) whether or not the beneficiary of the transfer of partial shares could keep on carrying out the business successfully;

74. If partial transfer of shares is considered to be permissible based on the findings of the scrutiny, the request should be submitted to the most immediate Commission's meeting where the request is to be approved or not in accord with the decisions of the Commission.

75. If approval is granted, application for registration of share transfer has to be submitted, enclosed with the Commission's approval, to DICA.

76. In carrying out functions of scrutiny contained in Rule 63, 66, and 73, a scrutinizing group, which will be composed of experts from relevant Government departments and organizations may be formed with the approval of the Commission.

CHAPTER 12

Insurance

77. All economic organization formed under a permit shall effect insurance with any authorized local insurance enterprise in respect of the followings types of insurance:—

- (a) machinery insurance;
- (b) fire insurance;
- (c) marine insurance;
- (d) physical injury insurance;
- (e) natural disaster insurance;
- (f) life insurance

78. In addition to the insurance types stated in Rule 77, an economic organization shall acquire other types of insurance prescribed by any existing law based on the category of economic activity.

CHAPTER 13

Appointment of Staff and Workers

79. In submitting the proposal, the investor shall specify the number of skilled workers, technicians and staff for skilled business as well as the number of unskilled workers.

80. By the time the business begins commercial operation, skilled citizen workers, technicians and staff for skilled business shall be appointed in accord with Section (11), Clause 24 of the Myanmar Foreign Investment Law. In carrying out appointment, the wages will not be less than the minimum level prescribed in accord with relevant rules, regulations, by-laws, procedures, notifications, orders, and directives.

81. In appointing staff and workers, the investor shall comply with and exercise in accord with the existing labor laws.

82. After appointing the citizen staff and workers or foreign staff and workers, the investor shall, within 30 days, enter into employment agreement in accord with the terms and conditions prescribed by the Ministry of Labor, Employment and Social Security.

83. The investor shall send and submit to the Commission the annual program for practicing and training for improvement of working skills for the citizen workers before 31 January every year.

84. For foreign staff and worker working for the investment business under the permission, the investor shall, as recommended by the Commission, apply for work permit in accord with Foreign Workers Law from the Ministry of Labor, Employment and Social Security in Work Permit Form (8). Local residence permit has to be applied for at the Commission in Local Residence Form (9).

85. Upon receipt of the application as per Rule 84, the representative of the Departmental Coordination Group, which is attached to the Commission, shall scrutinize and issue the permit.

86. The investor shall have all workers, who are receiving wages either in Myanmar currency or foreign currency, registered with the Social Security Board.

87. The investor shall be registered with the Social Security Board within 15 days of the commencement of the business and submit the copy of the registration card from the Social Security Board to the Commission.

88. In order to keep on investment activities, the recommendation from the relevant social security office indicating that there is no payable balance to the social security system shall be submitted to the Commission every 6 month.

89. Before receiving reimbursement of benefits granted at the expiry of agreement, the recommendation from the relevant social security office indicating that there is no outstanding payable contribution to the social security system shall be submitted.

90. Disputes arisen between workers or workers' organization and employer or employer's organization shall be settled in accord with The Settlement of Labor Dispute Law.

91. Immigration of foreigners related to investment activities shall be complied with and exercised in accord with existing immigration law and rule, procedure, order, notification, regulation.

CHAPTER 14

Exemptions and Reliefs

92. The promoter or the investor shall apply for one or more or all exemptions or reliefs by submitting Tax Exemption and Relief Form (10) to the Commission in accord with Section 12, Clause 27 (b) to (k) of the Foreign Investment Law.

93. If the investor or promoter has applied for exemptions and reliefs specified in Rule 92, the Commission may scrutinize and grant it as necessary. In scrutinizing it, the Commission may ask for necessary evidences and documents from the investor or promoter, relevant government department, organization, and other relevant organization.

94. Commencement on commercial scale to any business for the production of goods or services shall be prescribed as follow:—

(a) for production business for export, the date on Shipping Documents or Airway Bill or any similar document commonly used in international commerce; that date shall not be beyond 180 days from the completion date of construction period;

(b) for production business for domestic market, the date that the business starts earning revenue; that date shall not be beyond 90 days from the completion date of construction period;

(c) for services business, the date of opening the business operation; that date shall not be beyond 90 days from the completion date of construction period;

95. The promoter or investor shall submit Report Form (11) to the Commission to report the commencement date of production or services in accord with Rule 94.

96. The Commission shall, in allowing tax exemption or tax relief, scrutinize and approve the date of commencement on commercial scale based on the submission of the promoter or investor. In doing so, the type of tax exemption or tax relief shall be specified, and relevant departments or organizations and investor shall be informed of such arrangement.

CHAPTER 15

Rights to Use Land

97. The Commission may, to carry out any business permitted by the Commission, permit the lease of the land of the person entitled to lease of land or use of land to the investor the following lands with the prior approval of the Union Government:

(a) government-administered lands;

(b) lands owned by the government department, organization

(c) private lands owned by citizens

98. The investor may, in accord with the Vacant, Fallow, Virgin Land Management Law, be permitted to lease land for carrying out agricultural, livestock breeding businesses on commercial scale by using the vacant, fallow and virgin lands and works for economic development relating to it.

99. The Commission may permit the investor to lease the land for the term actually required based on the category of business and investment volume up to initial 50 years from a person entitled to lease the land or a person the right to use land.

100. The Commission may, if the investor is desirous to continue to carry out after the expiry of the term permitted to the investor under Rule 99 and if the agreement is obtained from the person entitled to lease land or the person having the right to use land, permit to extend two consecutive terms of 10 years based on investment volume and category of business.

101. In carrying out investment activities in agricultural, livestock breeding businesses on commercial scale by using the vacant, fallow and virgin lands and works for economic development relating to it, application shall be submitted to the Central Management Committee for Vacant, Fallow, Virgin Land in accord with the Vacant, Fallow, Virgin Land Law. In this regard, the investor may, as stipulated in the said Law, be permitted the lease period or use period up to initial 30 years of the vacant, fallow, virgin land based on the investment volume in agriculture and livestock breeding. For continuation of business after the expiry of the term permitted, further lease of the land, depending on the category of business and investment volume, may be permitted in accord with the Vacant, Fallow, Virgin Land Management Law.

102. The investor may carry out a joint-venture business with citizen in agriculture and livestock breeding on appropriate technology and capital ratio basis on the Vacant, Fallow, Virgin Land allowed to the citizen for carrying out business.

103. The person who is allowed to lease or use vacant, fallow, virgin land shall pay the insurance premium in accord with the provisions of Vacant, Fallow, Virgin Land Management Law.

104. The person who is allowed to lease or use vacant, fallow, virgin land shall sell, exchange or transfer the land in other way only with the approval of the Union Government.

105. The investor may carry out seasonal contract farming of fruit and vegetable on the land permitted to citizen only by joint-venture with the citizen.

106. The investor may carry out a joint-venture business with citizen in agriculture and livestock breeding on appropriate technology and capital ratio basis on the land permitted to the citizen.

107. The Commission may, for the purpose of the development of the entire Nation, approve longer land lease period than the period stipulated in the Rule 99 and 100 or 10 years more than the leased period to the investors who invest in the least developed and less accessible regions with prior approval of the Union Government.

108. In order to lease the land to carry out a business, the investor or the promoter shall fill out and submit to the Commission the Land Lease Form (12) enclosed with agreement from a person entitled to lease of land or a person entitled to use of land.

109. If application has been submitted as per Rule 108, the Commission shall, depending on the region of the business activities, obtain the comments from the Nay Pyi Taw council or the government of the Region or State whether or not the application to use land is agreeable or not.

110. If the proposed land is the land owned or administered by the government department or government organization, the application should be enclosed with the agreement from the relevant government department or organization to lease land.

111. In carrying out the matters of land lease after obtaining the permit of the Commission, a person entitled to lease land or a person having the right to use land and the investor shall conclude the land lease agreement and send to the Commission.

112. Regarding the rate of lease of land owned by the government department or organization, the Commission may approve the rate stipulated by the relevant Union Ministry.

113. The rate of the rental of the land leased by the investor from a person who is entitled to lease land or a person having right to lease land and conclusion of agreement yearly in accord with the current price according to the lease period shall be discussed, determined and submitted the rate of rental of the land lease to the Commission.

114. In determining the rate of land lease rental, the rate to be paid once for 365 days from the date of the beginning of the lease shall be basically calculated and leased.

115. In leasing Government department-owned land or Government organization-owned land, the relevant Government department or Government organization shall demand land lease premium from the investor.

116. The Commission may terminate the business related to the following land lease issues:

(a) If a person entitled to lease land or a person having right to use land submits to the Commission that the investor fails to pay land lease rental in accord with the promise contained in the contract or fails to comply with other promises contained in the contract,

(b) if the Commission knows, after making necessary investigations, that the investor violates any existing law on the leased land;

(c) if the investor is declared black list or, if the Court or any organ of power decides to close the business after it was adjudicated in accord with law due to violation of any existing law.

117. The investor shall:

(a) if desirous to terminate the business due being out of calculation, loss or other causes, shall submit to the Commission at least six months in advance.

(b) inform, within 24 hours, the Commission about the discovery of treasures, natural resources, ancient objects on the land permitted for carrying out agriculture, livestock breeding and any other legally approved businesses;

(c) re-transfer the land within seven days from the day of liquidation by both parties to a person entitled to lease land or a person having right to use land after carrying out in accord with the promises contained in the contract concluded by him and a person entitled to lease land or a person having right to use land.

(d) if the business is terminated before the expiry of the term of lease contract due to the causes specified in Rule 116 or to other causes, it shall be transferred only after fully paid the rental up to completion of the period contained in the original contract so as not to aggrieve to a person entitled to lease land or a person having right to use land.

118. The relevant person entitled to lease land or the person having right to use land shall inform and submit within seven days from the day of acceptance of the land that he has leased.

119. The works that is not related to business contained in the original investment proposal shall not have the right to be carried out on the land that is leased and being used by the investor.

120. The natural resources, above and under the ground, at the land that is leased and being used by the investor shall not be explored.

121. If the investor finds natural resource or antique object not included in the original agreement that is not relating to business permitted, above and underground of the land of which the investor is entitled to lease or use shall inform with 24 hours to the Commission. As soon as the Commission is informed, it shall consult with relevant Union Ministry, relevant Region/State government. If the Commission permits as agreed by the relevant Union Ministry, it may be continued to carry out on such land. If the permission is not obtained, it shall transfer to the place arranged in substitution and carry out.

122. The investor has the right to repair, alter amend and use the natural surface appearance or altitude of the land for which the investor has obtained the right of lease or use only with the approval of the relevant Union Ministry or a person entitled to lease land or a person having right to use land.

123. If it is scrutinized and found out that the investor has carried out business that causes environmental pollution or has not taken action to minimize environmental pollution at the land for which he is entitled to lease or use, or if it is scrutinized and found that the work carries out causes nuisance to the persons who reside around such place due to noise or by culture and if relevant persons officially object, the Commission may terminate the lease or tendering right to use after making necessary inquiry.

124. The investor does not have the right to carry out any other works except the works relating to farm crops cultivation and production without the approval of the Union Government in leasing and carrying out the farms on which the citizen has obtained the right to carry out in accord with the existing laws.

125. The investor, for operating any business, does not have the right to lease and carry out the following lands:

(a) religious lands;

(b) cultural heritage and natural heritage regions designated by relevant Ministries;

(c) lands restricted for Union defense and security;

(d) lands under litigation;

(e) lands restricted by the State from time to time;

(f) lands where exists place or building which may cause situation such as impact on public environment noise, pollution, impact on culture within urban residential area due to the business of the investor.

126. The investor shall, if it is necessary to transfer and clear houses, buildings, farm and garden lands, fruit trees and edible plants etc, on the land on which work is carried out relating to carrying out of invested businesses, discuss and carry out with the approval of the relevant Government department, Region and State Government together with the statement of agreement and satisfaction of the relevant owner on the transfer and resettlement of them, paying in local current price and paying damages. In place that public not desirous to transfer and vacant, it shall not have the right to lease the land and invest.

127. The investor shall use the land that he has obtained the right to lease or use in accord with the terms and conditions prescribed by the Commission and terms and conditions contained in the contract.

128. The investor shall carry out any matter on sub-lease, mortgage transfer of share, transfer of business of the land that he has obtained the right to lease or use with the permission of the Commission to any other person within the stipulated period of term only with the approval of the Commission.

129. If the investment business includes establishment of city, construction of hotel, school, hospital, residential buildings, establishment of mill and factory, depending on the location in which the business is to be carried out, it shall be submitted to the Commission and carried out only when it is allowed in accord with the city development plans of the relevant Nay Pyi Taw Council, Government of the Region and State, relevant Development Committee and Government department, Government organization.

130. The investor shall carry out only when the permission of the Commission is obtained for altering and carrying out other business after terminating the originally proposed business, extending and operating other business in addition to the business originally proposed on the land he has leased.

131. Vacant, Fallow, and Virgin Land Management Central Committee can, under the following situations, acquire minimally required piece of vacant, fallow, and virgin land that was already approved for investment;

(a) discovering ancient heritage on the approved vacant, fallow, and virgin land;

(b) a need arise to carry out infrastructure project or special project in the interest of the Union;

(c) discovering different type mineral resources other than the intended mineral for which exploration was approved on the vacant, fallow, and virgin land;

132. In reacquiring the land in accord with the rule, the Vacant, Fallow, and Virgin Land Management Central Committee will, for the purpose of arranging compensation within appropriate term, coordinate with relevant department or organization to calculate the current value of the cost already incurred for the actual investment by the person entitled to lease or use the land.

CHAPTER 16

Foreign Capital

133. The investor shall open an account and deposit the foreign currency contained in the proposal in conformity with the permit of the Commission for any business in a bank within the State which has the right to operate work in foreign currency.

134. In proposing to invest, except the appropriated money for the matter proposed for capital in kind contained in clause (ii) of sub-article (i) (2) to be imported, the matters contained in clauses (iii) and (iv) of sub-article (f) of article 2. The foreign currency proposed for local investment shall be deposited in full or if it is carried out step by step according to the period of years, the volume of foreign currency to be invested and used shall be deposited according to Rule 133 to the bank by opening the account.

135. The investor shall submit in advance to the Commission the appropriated foreign currency amount which is to be brought in yearly upon the whole foreign currency amount which is to be brought in to State for the business to be invested by the investor.

136. The investor shall after having opened the bank account, send and submit within seven days to the Commission mentioning the address of a bank where he has opened account number and person who is entitled to draw attached the copy of bank statement.

137. The investor has the right to make account transfer from his bank account for the following expenditures:

(a) for the matters to be paid in foreign currency in the country;

(b) for the matters to make bank account transfer to the affiliated company business in the country or the citizen or the citizen-owned company business for the matters related to business which the investor has invested.

138. The investor shall not draw and expend, make bank account transfer the foreign currency from his bank account for other matters not related to business that he has invested.

139. The investor shall, according to appropriation sent in advance to the Commission as contained in Rule 135, fill the foreign currency to be filled to his bank account in lump sum or in installments within the limited period.

140. In filling the foreign currency as contained in Rule 139, it shall not account transfer and fill so by account transferring form foreign bank account opened at any bank in the country by any foreigner or citizen or both of them in the State for doing any business.

141. If the investor refill foreign currency brought from aboard to his bank account shall inform and submit to the Commission together with bank statement within seven days from the day of entering into the foreign currency account of the bank account.

142. The investor shall send and submit in advance to the Commission the appropriation to be filled relating to foreign currency which is to be brought in and refilled the State for extending investment amount and carrying out and; extending and carrying out business in accord with the permission of the Commission.

143. The investor shall amend and draw, as may be necessary, the appropriation to be filled of foreign currency that is originally sent to the Commission in respect of reducing his investment amount, decreasing business by the permission of the Commission and send again and submit to the Commission.

144. The investor shall assign to any auditing business recognized by the Union which is registered and carrying out business in the State and accept regular audit once in 365 days for each business invested by him. In undergoing audit, all documents and lists submitted as evidence shall be submitted either in Myanmar or English. If written in other language, notarial translation of English has to be submitted together.

145. The investor shall send and submit the audit report to the Commission within 30 days after accepting the audit as contained in Rule 144.

CHAPTER 17

Right to Transfer Foreign Currency

146. The investor may transfer the following currencies abroad through the bank prescribed by the Commission in the relevant foreign currency:

(a) following foreign currency entitled to by the person who has brought in foreign capital;

1. foreign currency permitted for withdrawal by the Commission to the person who has brought in foreign capital;

2. indemnity received in accord with existing law

(b) foreign currency permitted by the Commission for withdrawal to the person who has brought in foreign capital;

1. entitled share proceeds received by the foreign investor after transferring shares in accord with law;

2. transfer of entitled distribution after liquidating the invested business;

3. foreign currency received after returning the Permit to the Commission on the expiry of permit term;

4. foreign currency equivalent to the amount reduced from investment due to scaling down of the investment;

(c) net profit after deducting all taxes and the relevant funds from the annual profit received by the person who has brought in foreign capital

(d) legitimate balance, after causing payment to be made in respect of taxes and after deducting in the manner prescribed, living expenses incurred for himself and his family, out

of the salary and lawful income obtained by the foreign staff during performance of service in the Union.

147. If the investor would like to make non normal account transfers to outside of the Union, the Foreign Currency Transfer Form (13) enclosed with the following supporting documents shall be addressed to the Commission:

(a) Auditor's report for the relevant investment business;

(b) Bank statements

148. The Commission may permit to transfer as per Rule 147 the same amount as applied or lesser than such amount after scrutiny for the application by the investor to transfer foreign currency outside the country.

149. The investor has the right to make account transfer in foreign currency from the foreign account opened in the bank by a citizen or a citizen-owned business in the State after submitting the sufficient documents of the local kyats obtained from carrying out business that he has invested.

150. The investor shall, if desirous to extend and invest the business without transferring to outside the country the profits obtained from carrying out the economic business that he has invested to the Commission and submit obtain permission.

151. The investor shall not deposit into his bank account the kyats obtained by selling any invested assets by converting as foreign currency without the permission;

152. The investor shall not buy and use any foreign capital to be brought from abroad mentioned in his proposal in kyat in the country without the permission of the Commission.

153. The investor shall not pay the expenditures to be expended in the State in kyat obtained by selling any assets imported from abroad as contained in the proposal for the business invested by him.

154. Capital shall not be transferred outside the country before the commencement of investment on commercial scale.

CHAPTER 18

Matters on Foreign Currency

155. The investor shall: -

(a) Be transferable abroad through any bank within the Union which has the right to carry out foreign banking in the relevant foreign currency at the stipulated exchange rate;

(b) carry out financial matters relating to the business by opening a foreign account in the category of foreign currency accepted by the bank within the Union which has the right to carry out foreign banking or a kyat account

(c) the investor may exchange his legally earned Kyats with any foreign currency being handled by the local banks permitted to do foreign currency transaction.

156. The foreigners serving in any economic organization formed under the permit shall open a foreign account in the category of foreign currency accepted by the bank within the Union which has the right to carry out foreign banking or a kyat account.

CHAPTER 19

Departmental Coordinating Team

157. In order to accelerate, facilitate, monitor, and streamline the tasks related to foreign investment activities in accord with Clause 14 of the Foreign Investment Law, the Inter-departmental Coordinating Taskforce shall be formed with high level officers from the following departments: -

- (a) Myanmar Central Bank;
- (b) Ministry of Electric Power;
- (c) DICA;
- (d) Custom Department;
- (e) Directorate of Trade;
- (f) Department of Labor;
- (g) Department of Immigration and National Registration;
- (h) Industrial Supervision and Inspection department;
- (i) Internal Revenue department

158. Deputy director of DICA shall head this group.

159. The office of the Departmental Coordinating Team shall be enclosed to the DICA. If necessary, branch offices may be formed.

160. Relevant departments shall confer the right to endorse as well as a decision making authority of high level officers of Inter-departmental Coordinating Taskforce. Should need arise, relevant departments should respond to the submission of the relevant high level officer.

161. In order to monitor and inspect the progress of the construction of business permitted, to determine the date of commencement for commercial operation, to analyze the operational situation, the Departmental Coordinating Team shall perform field research and report to the Commission.

162. Departmental Coordinating Team will carry out duties under the supervision of the Director General.

CHAPTER 20

Administrative Penalties

163. The Commission may form an investigation team when it finds out or was informed of or reported of violations against any of the provisions of the Myanmar Foreign Investment Law, rules, regulations, by-laws, procedures, notifications, orders, directives issued under this Law or terms and conditions contained in the permit.

164. The investigation team, headed by any member of the Commission, shall be composed of highly respected subject matter experts from relevant government departments, organizations, and societies. The size of the investigation team should not be smaller than three members including the head.

165. The investigation team is authorized to request and examine documents and evidences related to the case from relevant government departments, organizations, individuals from societies and other individuals.

166. The investigation team shall submit the findings of investigation within 21 days from the date of notification of organization of the team. In doing so, the team should review and submit which administrative penalties contained in Section (18) Clause (42) of Myanmar Investment Law should be applied.

167. The Commission shall present and discuss about the case in the meeting regarding passing of administrative penalties. The investor being investigated for the case should also be allowed to attend the meeting.

168. Penalty shall be in effect on the day that the Commission made the decision.

CHAPTER 21

Settlement of Disputes

169. If any dispute arises in respect of the investment business, dispute arisen between persons of dispute shall be settled amicably;

170. If such disputes cannot be settled under Rule 169:

(a) it shall be complied and carried in accord with the existing laws of the Union if the dispute settlement mechanism is not stipulated in the relevant agreement;

(b) it shall be complied and carried in accord with the dispute settlement mechanism if it is stipulated in the relevant agreement;

171. If disputes arise, the investor shall describe the circumstances and inform the Commission;

172. In settling the disputes, the investor shall inform the Commission which dispute settlement mechanism under Rule 170 will be used;

173. In settling the disputes, the investor may, if necessary, submit the supporting documents of the Commission as evidences. If other evidences are needed, he may request from the Commission;

174. If the need arise to have a staff of the Commission witnessed in the court, the investor shall request for permission from the Commission.

CHAPTER 22

Miscellaneous

175. The investors who continued to enjoy exemptions and relief under the Union of Myanmar Foreign investment Law (which was cancelled by the Myanmar Foreign Investment Law) shall continue to enjoy the entitlements under Chapter 12 of the Myanmar Foreign Investment Law.

176. The investors whose exemptions and relief under the Union of Myanmar Foreign investment Law has expired shall not enjoy again the entitlements stipulated under Chapter 12 of the Myanmar Foreign Investment Law.

177. If the credible evidence is appeared that the investor intentionally make false statement or conceal the accounts, instrument documents, financial documents, employment documents attached to the proposal prepared and submitted to the Commission, relevant Government department and organization, the Commission shall take action against the investor in accord with law.

178. If the investor, who is carrying out business in accord with the terms and conditions under the Union of Myanmar Foreign investment Law, would like to carry out business in accord with the provisions of Myanmar Foreign Investment Law, he shall apply to the Commission.

179. The investment activities by not-for-profit production and services enterprises are not subject to these rules.

180. These rules shall not be applicable to activities conducted particularly for trading.

181. The Ministry may collect service charges, by notification, from the promoter for the services rendered by the Commission in respect of approving the proposal submitted by the promoter.

Schedule (1)

Economic Activities Allowed only to Citizens

(Ref. Rule 7)

Production

1. Forest Conservation;
2. Manufacturing of traditional medicines;
3. Drilling of shallow oil well up to the depth of 1000 feet;
4. Small and medium sized mineral production activities;
5. Cultivation of indigenous (traditional) medicinal plants;
6. Wholesale of semi-finished products, scrap metals;
7. Traditional food production;
8. Manufacturing of religious items ;
9. Manufacturing of Traditional and Cultural items

Services

1. Private specialist traditional hospitals;
2. Trading of raw ingredients for traditional medicines;
3. Ambulance services;
4. Construction of health care centers for Old People;
5. Railway car restaurants, contracted freight forwarding activities, railcar cleaning services, railcar management services;
6. Agency services;
7. Generation of electricity under 10 megawatt;

8. Publishing and publication of periodicals in ethnic languages including Myanmar;

Schedule (2)

Agriculture and short-term/long-term cultivation activities that can be carried out by citizens

(Ref. Rule 8)

1. Agricultural activities that require small capital;
2. Crop processing by modern technology, stand-alone traditional framing;

Schedule (3)

Livestock Breeding Activities that can be carried out only by the citizens

(Ref. Rule 9)

1. Livestock breeding activities that require small capital, home-based breeding;
2. Traditional livestock breeding without using modern technology;

Schedule (4)

Sea-fisheries that can be carried out by citizens

(Ref Rule 10)

1. Deep off shore fishing of salt water fish, prawns and other sea mammals in Myanmar territorial waters
2. Fishing in lakes, ponds and close to shore.