

-unofficial translation-

Foreign Investment Law

(2012, Pyidaungsu Hluttaw Law No. 21)

3rd Waning of Thadingyut 1374 ME

2nd November, 2012

The Pyidaungsu Hluttaw enacted this law.

Chapter (1)

Title and Definition

1. This law shall be called the Foreign Investment Law.
2. The words and expressions in this law shall mean as designated hereunder-
 - (a) The state means the Republic of the Union of Myanmar.
 - (b) Commission means Myanmar Investment Commission formed by this law.
 - (c) The Pyidaungsu government means the government of the Republic of the Union of Myanmar.
 - (d) Citizen means an associate citizens or a naturalized citizen. This also includes the economic organization formed with the citizen.
 - (e) Foreigner means a person who is not a citizen. It also includes an economic organization formed only with foreign investment.
 - (f) Sponsor means a citizen or foreigner who proposed to the commission in connection with the investment.
 - (g) The proposal means the application submitted to commission by the sponsor together with the draft contract, financial evidence and company documents to get the permission the proposed investment.
 - (h) Permit means the order which describe the approval of commission on the proposal.
 - (i) Foreign capital means and includes the following invested by a foreigner in the business as per the permit –
 - 1) Foreign currency
 - 2) Machinery, equipment, part of machinery, accessory, tool and other not available in the country.
 - 3) License patent design, machine design, trade mark, copy right and right of valuation on the intellectual property.
 - 4) Competency and technology.
 - 5) The reinvested money with the increment from above or the share dividend.
 - (j) The investor means in investor as per approval or an economic organization
 - (k) Bank means a domestic bank approved by Pyidaungsu Government.
 - (l) The investment means or property supervised by the investor under this law in the territory of the country. this expression includes the following:-
 - 1) Movable property, immovable property and lawful right of pledge and mortgage on other property right.
 - 2) The share of company, stocks and debenture or a certificate of loan.
 - 3) Contractual monetary right or activity designated as financial value.
 - 4) The right of intellectual property in accord with the existing law.
 - 5) Right of business vested by the concerning law or contract including right of mineral exploration and extraction.

(m) The lessee of land or land user means someone who gets land lease to carry out a type of business upto a certain period by paying tenancy fees to the state as designated.

Chapter (2)

The Applicable Economic Activities

3. This law shall apply to the economic activities prescribed by the notification of the commission with the prior approval of Pyidaungsu Government.
4. The investment economic activities are designated as restricted or prohibited activities:-
 - (a) The activities prejudicial to the traditional cultures and customs of the ethnic nationalities in the country.
 - (b) The activities prejudicial to public health.
 - (c) The activities prejudicial to the natural resources, environment and biodiversity.
 - (d) The activities of importing hazardous or toxic waste material into the country.
 - (e) The factory or activities which produces or use the hazardous chemicals according to the international agreement.
 - (f) Production work and service activity specified by the rules and regulations for the citizen.
 - (g) The import of technology, medicine in utensils pending lab-test or not designated for use.
 - (h) Agriculture in short-term and long-term plantation that could be carried out by the citizens according to the rules and regulations.
 - (i) The livestock breeding that could be carried out by citizens according to the rules and regulations.
 - (j) The fishery in sea which is which can be carried out by citizens according to the rules and regulations.
 - (k) The investment activities within atleast ten miles of the boundary demarcation within the state territory except economic zones specified by the Union Government.
5. If the restricted or prohibited investment activities under section (4) is to be exercised, the commission may permit with the approval of Pyidaungsu Government for the benefit of citizen and specially for the benefit ethnic nationalities.
6. For foreign investment in large projects which are considered to substantially to benefit the security of the government and citizen, economic benefit in the surrounding area and living standard of the citizen, the Commission is to submit to the Union Parliament through the Union Government.

Chapter (3)

Objectives

7. - To produce the minerals of the state for the sufficient enjoyment of the public and to export the surplus.
 - Job creation for the people inline with the progress and expansion of work.
 - To develop human resources to develop the infra-structure such as banking and finance work, highway roads, cross-country highway, 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 be able to do in competition with foreigners.

- To develop the investment work in line with the international standard.

Chapter (4)
Fundamental Principle

8. - The investment shall be approved subject to the following principles:-
- (a) To support the primary objective of national economic development plan, the activities not sufficient with monetary and technology, still not exercisable by the state in citizen.
 - (b) To develop job opportunities
 - (c) The expansion of export
 - (d) To produce products for import substitution
 - (e) To produce production commodity which needs large investment.
 - (f) To develop high-tech production works in the high skill and high-tech development.
 - (g) To support production and services works needing large investment volume.
 - (h) To create works needing lesser energy.
 - (i) Local development.
 - (j) To explore and extract new energy and to develop sustainable energy resources such as new bio-based energy.
 - (k) To develop the modern industry.
 - (l) Environment Conservation.
 - (m) to support data in technology exchange.
 - (n) Non-prejudicial to the sovereignty of the state and public safety.
 - (o) To develop the citizen intellect and intelligent.
 - (p) Do develop banks and banking works commensurate with international standard.
 - (q) To create modern service agencies necessary for the state and citizen.
 - (r) To suffice short-term and long-term domestic utilization of the state energy in resources.

Chapter (5)
Pattern of Investment

9. Investment may be exercised in the following patterns,
- (a) Foreign investment activities with hundred percent capital which is permitted by the commission.
 - (b) Joint venture between foreigners and citizens and state economic enterprises.
 - (c) To work in accordance to the agreed upon contract.
10. (a) Investment under Section (9) the Pattern investment shall be:-
- (1) The company must be formed in line with the existing laws.
 - (2) When forming a joint-venture under section (9) (b), the ratio of the foreign capital and local capital is to be decided by the parties forming joint venture company.
 - (3) When invested by the foreigner the minimum investment amount shall be determined by the commission with the approval of the Union Government based on the project wise.
 - (4) When forming joint-venture in restricted sectors not allowed to invest with full capital, the ratio of foreign investment is to propose in accordance to the procedures of the Foreign Investment Law.

(b) When performing investment under subsection (a), if liquidation is exercised with the termination right before the expiration of contract or liquidation is performed on expiration, the existing law of the country shall be followed.

Chapter (6)

Formation of Commission

11. (a) The Pyidaungsu Government shall –

(1) Concerning investment under this law and to carry out duties, a Commission shall be formed with a Chairman of a Union Minister and members shall comprised of Union Ministries, person drawn from government departments and person comprising of professional and other person deemed to have expertise who are not government servants.

(2) When forming the commission, vice President, secretary and joint-secretary shall be nominated and empowers.

(b) Non-government services commission member shall be entitled to salary, expense and allowance permitted by the ministry of national planning and economic development.

Chapter (7)

the Duties and Power of the Commission

12. The duties of commission are as follows:-

(a) When assessing investment proposal, to scrutinize whether the proposal is compliant with fundamental principle of chapter (4) of this law, the financial trust-worthiness the economic advantage or the activities, suitability of technology and environment conservations.

(b) To take immediate action if the investor complaints of not fully getting rights entitled as per law.

(c) To assess the proposal if it is against the existing law.

(d) To submit six-monthly report of performance to the Pyidaungsu Hluttaw through pyidaungsu government.

(e) To submit the advise to the Pyidaungsu government for the sake of the easy internal and external investment or to facilitate support.

(f) To classify type of investment, amount of investment and term of works and amending of the same with the prior approval of pyidaungsu Government.

(g) To coordinate with state and regional government for the foreign investment projects which are being approved by the Union Government. (h) To monitor and be aware of if the mineral resources or the antique material, not connected with works and not contained in the contract on and underground of the permitted land.

(i) To assess whether the investor comply with laws, rules and regulations notifications, directives and the condition of contract and if failed to follow, to instruct for compliance and if still not comply, to take action under the law.

(j) To designate investment activities not needing to allow tax exemption and relief.

(k) To serve the duty designated occasionally by the Pyidaungsu Government.

13. The power of commission are as follows:-

(a) To assess and accept the proposal not against the existing law with the consideration of the benefit of the state.

(b) To issue the approval if the proposal is accepted, to the sponsor or investor.

(c) To assess and accept or reject as designated if the application is submitted to extend or amend the term of permit or the agreement.

(d) To call for the necessary document and fact from the sponsor or investor.

(e) To demand for presentation of supporting documents from the Promotor who proposed to invest.

(f) To permit or reject the bank propose by the sponsor or investor to function the monetary works.

14. The commission may form committee and body when performing duties.

15. The commission functional report shall be occasionally putup to the Pyidaungsu Government meeting.

16. The progress of works permitted by the commission shall be reported every three months to the Pyidaungsu Government.

Chapter (8)

The Duties and rights of the Investor

17. The duties of investor are as follows:-

(a) To abide by the existing law of the Republic of the Union of Myanmar.

(b) To form the company and do business as per the existing law.

(c) To follow the 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 and the condition of the contract.

(e) To sublet mortgage, transfer share and transfer of business to the other individual, during the term of business, for the invested activities, the land and buildings allowed by the approval, with the approval of the commission.

(f) Not to change the significant topography and the formation of the land permitted to utilize without the approval of commission.

(g) To report to the commission at once when the mineral resources or antique material or treasure trove not permitted in the contract on and the underground of the land permitted to utilize, if permitted by the commission work may continue on the said land, otherwise move to a substituted land that may request by the investor.

(h) To perform not to affect environmental pollution and spoilage as per existing law in connection with the investment activities.

(i) If all share of foreign investment company is transferred to citizen or a foreigner outright, the prior permit shall be taken from the commission and the approval permit is returned only then the share transfer shall be registered as per existing law.

(j) If some share of foreign investment company is transferred to citizen or a foreigner outright, the prior permit shall be taken from the commission and the approval permit is returned only then the share transfer shall be registered as per existing law.

(k) To transfer the high-tech competency technology functioned by him to the concerning works department or organization systematically as per the provision of the contract.

18. The right of investor is as follow-

(a) To exercise the right of selling, exchanging or transferring otherwise as per existing law with the approval of commission.

(b) If the investor is a foreign company shall have right to sell its all shares / part of shares to foreigner/ citizen or another foreign company / local company.

(c) To expand the primary investment activities with the approval of commission.

(d) To reassess, revise and submit to the commission to get the entitled right fully as per existing law.

(e) To put up the application to the commission to get the lawful entitled benefits or for the settlement of grievances.

(f) In respect to permission given for a foreign investment project, the investor shall have right to submit to the Commission regarding invention of advance technology for production of quality products, enhanced production, reduction of environmental effect in the surrounding area for more benefit to accrue.

(g) For benefits of the whole country if foreign investment is to make in the areas difficult in excess, the Commission shall permit more exemption and relief as stated under Chapter (12).

Chapter (9)

Application for permit Approval

19. The investor or sponsor, if wanted to do foreign investment, shall submit the proposal as designated to the commission to get approval.

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) Shall exercise to allow or not to allow within 90 days to the proposer on receiving it.

21. The investor or sponsor shall institute the investment activities on receiving the approval of commission, after signing the necessary contract with concerning government department / organization or personel, organization.

22. The commission may allow to increase or reduce or amend the term and condition of the contract in accordance with law.

Chapter (10)

Insurance

23. The investor shall place the designated type of insurance at any insurance agency which has the right of the insurance in the country.

Chapter (11)

The 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, atleast 50% within second two years, atleast 75% within third 2 years however in the academic basis works the time limit may be extended as deemed to be suitable by the commission.

(b) Shall arrange to provide training and courses for the citizen employee to be appointed under section (a) for the progress of competency.

(c) Only citizen shall be appointed and the unskilled works.

(d) When recruiting labour, it may be exercised from the government labour exchange or internal labour agencies at the discretion of the investor.

(e) When appointing citizen skilled workers, technicians and employee the appointment contract shall be signed between employer and employee as per the existing the labour law and rules.

(f) Shall arrange salary standard without segregation the citizen employee shall be provided the same as foreigner employee as proportionate division of professional level.

25. The foreigner working at the investment activities 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 appointment agreement as designated when employing staff and labour.

(b) 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, when defining rights in duties of the employer and employee under the appointment agreement and conditions of works.

(c) The disputes arising among employer, employee, employer and employee, workers and technicians or among the staff shall be settled according to existing law.

Chapter (12) **Exemption and Relief**

27. The commission shall provide tax exemption or relief under subsection (a) from among the following exemption / relief, to the investor for the support of following investment in the country, moreover any or of the remaining exemption / relief may be allowed to enjoy when applying so.

(a) From the year of starting production or services activities including the starting years upto continuous five years with tax exemption, and if beneficial for the state depending on the progress of investment activities tax exemption / relief for suitable period.

(b) To reinvest the profit from works, the reserve fund is allotted and reinvested within one year, the tax exemption / relief on that reinvested profit for the sake of taxation.

(c) The depreciation rate as per designated by Government, calculated on the machinery, equipment, building or other working capital, the calculated depreciation may be deducted from the profit.

(d) If the products of any production work is exported, then the tax exemption shall be allowed on upto 50% of the profit that export.

(e) Right of paying tax by the foreigner on his income in the same rate as the citizen.

(f) The expenses for the research and development necessary for the country, shall be deducted from the income.

(g) The right of carrying the loss of the continuous three years in continuation with the tax exemption and relief on each enterprise under subsection (a), within two years.

(h) To enjoy Duty, other internal tax or both with exemption and relief on the imported machinery, equipment, tools machinery part imported to be use during the establishment period.

(i) Right of exemption / relief of duty other internal tax or both on the imported raw material for 3 years after establishment.

(j) Exemption or relief of duty, other internal tax or both on the imported machinery, equipment, tools machinery part and accessories necessary for the expanded work with the approval of commission.

(k) The exemption and relief of commercial tax on the products manufactured for export.

Chapter (13) **Assurance and Guarantee**

28. The Pyidaungsu Government shall not nationalize the economic activities formed with the approval during the contract period or the extended period if allowed.
29. The Pyidaungsu Government assures that the investment activities run with the approval of commission shall not be terminated during the contract period without sufficient cause.
30. The Pyidaungsu Government give assurance and guarantee for repatriation of rightful investment amount in the type of foreign currency on the expiry date of the contract.

Chapter (14) **Permission of Landuse**

31. The commission may allow the investor upto initial (50) years of land use or grant necessary for the economic activities or industry depending on type and amount of investment.
32. The commission may allow the investor extension (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 on the land with the initial agreement of land guarantee or land user, with the prior consent of Pyidaungsu Government for the economic development of the country.
34. The commission may occasionally stipulate the tenancy rate of land owned by government department / organization with the prior consent of Pyidaungsu Government.
35. Investment on the rights of the citizens in the agricultural and livestock sectors, locals and foreign investors shall be allowed in joint venture under contract system.
36. The commission, may designate the tenancy period longer than the period grant and use under this law, with the consent of Pyidaungsu Government, for those who want to invest in the less developed and poor communication regions, for the economic development of the whole country.

Chapter (15) **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. The foreign capital carrier may withdraw the foreign capital designated by the commission within stipulated period on termination.

Chapter (16) **Transfer Right of Foreign Currency**

39. The investor has the right to remit abroad, through the foreign bank in the country according to the exchange rate of the concerning foreign currency –
- (a) The foreign currency entitled by the investor of foreign currency.
 - (b) The foreign currency approved by the commission to with draw by the foreign capital carrier.
 - (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 (17)
Foreign Currency Matters

40. The investor –

- (a) Can remit abroad through any foreign bank according to exchange rate of the concerning currency.
- (b) Shall exercise the 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 (18)
Administration penalties

42. The commission may award the following administrative penalties / penalty to be investor who violated the 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 issue of permit

Chapter (19)
Arbitration

43. If any dispute arise out of investment activities-

- (a) The disputes among personal shall be amicably settled.
- (b) Unless settled by subsection (a) -
 - (1) Unless method of solution is included in the contract, the existing laws of the country shall be followed.
 - (2) If method of solution is stipulated in the contract, the said method of solution shall be followed.

Chapter (20)
General

44. The commission may issue under this law if any proposal of mutual benefit between the investor and Pyidaungsu Government or Government department / organization legally empowered by the Pyidaungsu Government to carry out feasibility study, exploration calculated and extraction upto the commercial production stage by using the capital of the investor on joint-venture with the state or citizen in the extraction works of large volume to invest, in the oil & gas and mining works to suffice the energy requirement of the state in 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 Pyidaungsu Government or any empowered government department / organization and citizen JV partner.

45. The investor sanctioned by the foreign investment law of 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 formed to be deliberately miss representing in connection with the schedules, documents, finance and labour employment attached with the proposal to commission and concerning government department / organization.

47. Not withstanding 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 imposed by the commission under the power vested by this law.

50. There shall be no action taken under civil or criminal procedure against any commission member or any member of committee of body, any serviceman for the matter executed in good faith according to the power instructed by this law.

51. To carry out the provision of this law, the ministry of national planning and economic development or any government organization–

(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 (SLORC law No. 10/1988) about to be revoked shall continuous to work and enjoy benefit upto expiration as per conditions of the contract.

53. The Commission shall submit to the nearest Pyidaungsu Hluttaw meeting through Pyidaungsu 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 fact of international treaty and agreement approved and accepted by the Republic of the Union of Myanmar, the provision of international treaty and protocol shall prevail.

55. Before the promulgation of rule and procedure after enactment of this law the rules and regulation issued under the law of (SLORC Law No. 10/1988), unless repugnant to this law, may be exercised.

56. When executing the provision of this law-

(a) The ministry of national planning and economic development shall promulgate the necessary rule, regulations, procedure, order, notification and directive within (90) days of the commencement of this law with the approval of Pyidaungsu Government.

(b) The commission may issue the necessary order notification in directive

57. The foreign investment law of the Union of Myanmar (SLORC Law No. 10/1988) is revoked by this law.

(Signed) -----

President

The Republic of The Union of Myanmar

NOTE: The original signed version of the law is in Myanmar language, since Myanmar language is the official language of the Union of Myanmar. If there is any confusion or misunderstanding, please refer to the original Myanmar language version of the law.