

Government of the Republic of the Union of Myanmar
Ministry of National Planning and Economic Development

Notification No. 11/2013

The 5th Waning Day of Pyatho, 1374 ME
(31st January, 2013)

In exercise of the power conferred under sub-section (a) of Section 56 of the Republic of the Union of Myanmar Foreign Investment Law (Law No. 21 of Pyidaungsu Hluttaw, 2012), the Ministry of National Planning and Economic Development has prescribed these Rules with the approval of Union Government:

Chapter I

Title and Definition

1. These Rules shall be called the Foreign Investment Rules.
2. The expressions contained in these Rules are to have same meaning contained in the Foreign Investment Law. Moreover, the following expressions shall have the meanings given hereunder:
 - (a) **Ministry** means the Ministry of National Planning and Economic Development.
 - (b) **Commission Office** means Directorate of Investment and Company Administration which is responsible to implement the duties and responsibilities of Myanmar Investment Commission.
 - (c) **Director General** means Director General of the Directorate of Investment and Company Administration.
 - (d) **Form** means the form stipulated in these Rules.
 - (e) **Schedule** means the schedule prescribed in these Rules.
 - (f) **BOT** means Building, Operating and Transfer from the business operator to the relevant person at the expiry of the contract term.
 - (g) **BTO** means Building, Transfer from the business operator to the relevant person after the building and operating the business.
 - (h) **Asset** means land, building, vehicles and other asset relating to the business. In this expression share, bond and other similar instruments are also included.

Chapter II

Applicable Economic Activities

3. The Commission shall issue the Notification and designate the economic activities applicable to the Foreign Investment Law with the approval of the Union Government. In doing so it shall base on the following criteria:
 - (a) labour intensive industry with the view to create employment opportunities for the citizens;
 - (b) business which enables to produce value added of products of the Union;

- (c) business which is capital intensive industry;
- (d) business applying high technology;
- (e) business producing goods and services which focuses on to causing the welfare of consumption of citizens;
- (f) business which supports to promote the living standard of the citizens;
- (g) business which support the technology and increase the capital for the small and medium enterprises operated by citizens;

4. The Commission shall submit and obtain approval from the Union Government for the designation of investment businesses which are categorized by prohibited business for investment within the Union, investment business only to form joint - venture with citizens and investment business only permitted with the specific condition.

5. After obtaining the approval from the Union Government, the Commission shall issue the Notification for the prohibited business for investment within the Union, investment business only to form joint - venture with citizens and investment business only permitted with the specific condition.

6. The Commission may amend the changes of designated businesses for the benefit of the Union and its citizens especially for the benefit of indigeneous groups of the people of the Union with the prior approval of the Union Government.

7. The manufacturing and service businesses which are enable to carry out by the citizens are prescribed in the **Schedule I**.

8. The agricultural businesses and short term and long term plantation businesses which are enable to carry out by the citizens are prescribed in the **Schedule II**.

9. The livestock breeding businesses which are enabling to carry out by the citizens are prescribed in the **Schedule III**.

10. The fishing businesses at the Myanmar's territorial waters which are enabling to carry out by the citizens are prescribed in the **Schedule IV**.

11. The Commission may, from time to time, amend the designated businesses prescribed according to the Rules 7, 8, 9 and 10 by submitting to the Pyidaungsu Hluttaw through the Union Government.

12. The Commission may designate the combined zones of manufacturing and service businesses including industrial zones, tourism zones, trade zones, located within 10 miles from the border lines between the Union and its neighbouring countries as Economic Zones by submitting to the Union Government.

13. Designation of Economic Zones prescribed under Rule 12, the Commission shall submit and obtain the permission from the Union Government when the Union Government has given instruction or proposed by the Government of relevant Region or State or by the leading body of Self-Administered Division or Self-Administered Zone, or proposed by the investor or developer with the approval of the Government from the relevant Region or State or the leading body of Self-Administered Division or Self-Administered Zone upon the proposal of the investor or developer.

14. The Commission shall, when the foreign investor has proposed to carry out the investment business which is restricted or prohibited, for the benefit of the Union and its citizens especially for the benefit of the indigenous groups of people of the Union, scrutinize based on the following criteria:

- (a) comments of the local people or social organizations of the relevant location upon the proposed investment;
- (b) comments of the local administrative bodies of the relevant location upon the proposed investment;
- (c) comments of the Nay Pyi Taw Council or the Government of relevant Region or State or the leading body of Self-Administered Division or Self-Administered Zone depending on the relevant location where the investment business is to be carried out;

15. Commission shall submit and obtain the approval from the Union Government for the investment proposals which are completed with the requirements stated in the Rule 14 together with its own comment.

16. Commission shall issue the permit for the foreign investment to the promoter or the investor after getting the approval of the Union Government.

Chapter III

Form of Investment

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

- (a) carrying out with one hundred percent foreign capital by the foreigner in other business except for the businesses prescribed with the Notification issued by the Commission under Rule 5;
- (b) carrying out the capital contribution of foreigner and citizen by concluding the contract in accord with the mutual agreement if it is formed as a joint-venture between a foreigner and a citizen or the relevant government department and organization;
- (c) carrying out in various forms of cooperation systems between the Government and private including BOT system , BTO system or other system according to any system of Contractual Agreement;

18. The application for the establishment or the registration as a foreign company according to the existing Company Law shall be applied to the Directorate of Investment and Company Administration together with the submitting of foreign investment proposal.

19. The Director General of the Directorate of Investment and Company Administration has the right to issue the Certificate of Incorporation (temporary) and Form of Permit (temporary) if the promoter or investor has requested to issue in advance. However, issuance in advance of the Certificate of Incorporation (temporary) and Form of Permit (temporary) is not meant to the permission for the investment.

20. The maximum foreign investment capital ratio shall not be more than eighty percent of the total investment amount if the foreigner has formed joint-venture with the citizen to carry out

prohibited or restricted businesses. The Commission may amend the said stipulation by issuing notification from time to time with the approval of the Union Government.

21. The liquidation of business shall obtain prior approval from the Commission when obtain the right to terminate before the expiry of term of contract or after completion of the business activities and shall be abided by the existing Companies Act.

Chapter IV

Formation of the Commission and Convening the Meeting

22. The Commission shall be formed more than nine members and shall have odd number.

23. The term of each Commission member shall not exceed three years. However, the Union Government may assign the Commission member for more than three years when it is required for expertise and other requirements.

24. If one of the members of the Commission cannot fulfill the duty before three year tenure, the term of the assigned successor for that vacancy shall be same as the remaining term of the predecessor.

25. The Commission shall convene the meetings at least twice a month.

26. The Commission Chariman shall act as a Chairman of the meeting. The Vice-Chairman or Secretary or one of the Commission members shall chair the meeting when the Chairman or Vice-Chairman or both of them are not available.

27. The quorum of the meeting shall meet more than 50 percent of the Commission members.

28. The Commission shall make the decision by the conformity of more than fifty percent of the members who have attended the Commission meeting. The decision made by these attended Commission members at the meeting shall not be objected, denied or amended by the Commission members who are not present.

29. The Commission, carrying out its duties prescribed in these Rules shall be implemented with transparency, responsibility, accountability and fair competition among the investors with the view to clear vision of the people including the investors. The Commission shall prevent from the monopoly investment.

30. The Commission may, if necessary, invite relevant Ministry, Union Minister or Deputy Minister, technical experts and other relevant persons to the meeting.

31. The Commission shall allow the promoter or investor and their supporting persons for investment to attend and make explanations and discussions at the meetings.

Chapter V

Application for the Permit

32. The investor or the promoter shall, in submitting proposal, fill the **Proposal Form (1)** by completing the following particulars and signed by the promoter or investor:

- (a) name of investor or promoter, citizenship, address, business location, actual operating business in accord with the relevant law, location of head office of effective management, location of incorporated business organization, type of business;
- (b) facts contained in clause (a) related to person desirous to join in the joint-venture if the investment is formed as joint-venture;
- (c) documents related to the clause (a) or (b);
- (d) business and financial documents of the investor, promoter or a person desirous to join in the joint-venture;
- (e) facts related to manufacturing or service business desirous to invest;
- (f) duration of investment and construction period;
- (g) location of investment business in the Union;
- (h) technical know-how to be used for the production and system of sales;
- (i) type and volume of energy consumption;
- (j) quantity and value of required main machinery, equipments, raw materials and similar materials to be used in business during the construction period;
- (k) required area and type of land;
- (l) estimated amount and value of the annual production or service to be carried out from the business;
- (m) annual required foreign currency expenditure for business and estimated foreign currency income;
- (n) estimated amount, value and period of annual sales of products in local and export;
- (o) condition of economic justification;
- (p) measures for conservation and prevention plan for the environmental and social impacts according to the provisions of the relevant existing law;
- (q) form of investment in the Union;
- (r) if desirous to form partnership, the draft contract, share ratio and amount of the shares to be contributed by the partners, ratio for allocation of profit and duties and responsibilities of the partners;
- (s) if desirous to form limited company, draft contract, draft memorandum of association and articles of association, authorized capital of the company, type of shares, amount of share to be contributed by the shareholders;
- (t) name, citizenship, address and designation of the directors for the investment organization;

- (u) total paid up capital of the investment organization, ratio of local and foreign capital contribution and total foreign capital brought in and brought in period into the Union;
- (v) undertaking to follow the terms of the contract;

33. Draft land lease contract to be signed with citizen or government departments, organizations and draft contract related to business for the joint-venture or by mutual contract shall be submitted together with the investment proposal.

34. In submitting the proposal for the capital intensive investment projects designated by the Commission and designated businesses which need to assess the environmental impact by the Ministry of Environmental Conservation and Forestry, the environmental impact assessment and social impact assessment reports shall be attached together with the investment proposal.

35. In submitting the proposal which is natural resource-based investment businesses and investment under the State-owned Economic Enterprises Law, shall be submitted to the Commission through the relevant Union Ministry.

36. The investor or promoter shall submit the proposal directly to the Commission office for the investment businesses which are not related to the condition mentioned in the Rule 35.

37. The Commission Office shall scrutinize after receiving the proposal submitted under Rule 36, whether the stipulated facts are completed in accord with the requirements and accept the complete proposal. If the investment proposal is not completed, the investor or promoter shall be requested to resubmit by completing the requirements.

38. The Commission shall form the Proposal Assessment Team to scrutinize the completed proposals respectively with the senior officials from the following departments:

- (a) Directorate of Investment and Company Administration;
- (b) Customs Department;
- (c) Internal Revenue Department;
- (d) Directorate of Labour;
- (e) Relevant Department under the Ministry of Electric Power;
- (f) Department of Human Settlement and Housing Development;
- (g) Department of Industrial Supervision and Inspection;
- (h) Directorate of Trade;
- (i) Project Appraisal & Progress Reporting Department;
- (j) Department of Environmental Conservation;

39. The technicians and experts from the relevant organizations and departments are invited to attend for the preliminary scrutiny under Rule 37, as may be necessary.

40. The Director General is responsible as a team leader of the Proposal Assessment Team.

41. The Proposal Assessment Team shall convene the meeting once a week to make assessment on the proposals received before the meeting period and the acceptable proposals shall be submitted to the Commission in accordance with the Rules. If the proposal is approved or declined by the Commission, the approval or reasons of decline shall be informed to the investor or promoter by mail or any other means of communication systems.

42. The Proposal Assessment Team shall invite the promoter or the investor or the authorized person on behalf of the promoter or the investor to attend the meeting.

Chapter VI

Processing upon the Proposal

43. The Commission Office shall request when the Commission has accepted the proposal, the recommendations from the Nay Pyi Taw Council or relevant Region or State Government upon the investment proposal whether the proposal is acceptable or not and recommendation upon the measures to protect or minimize the environmental and social impacts from the Ministry of Environmental Conservation and Forestry.

44. The Nay Pyi Taw Council or Region/State Government shall reply the recommendation letter signed by Chairman of the Nay Pyi Taw Council or Chief Minister of the relevant Region/State Government or a responsible person on behalf of Chief Minister whether the investment proposal is acceptable or not based on the necessary scrutiny, to the Commission by within seven days from the date of request letter was received.

45. The Ministry of Environmental Conservation and Forestry shall reply the recommendation letter by scrutinizing the measures for protection or minimization of environmental and social impacts, signed by Union Minister or responsible personnel on behalf of the Union Minister by any speedy communication means within seven days from the date of request letter was received.

46. The relevant Ministries shall reply, their recommendations within seven days from the date of request letter was received, to the Commission when the Commission has requested the recommendations or advisory remarks on the investment proposal in accordance with the nature of business or requirement. The relevant Ministry shall form the Investment Assessment Response Team headed by Director or same rank with the Director as a minimum level to reply the request. The relevant Ministry shall instruct the adopted investment policies with regard to the specific area to the said team. The information of the Investment Assessment Response Team and every change of the member shall be informed to the Commission. The team, on behalf of the relevant Ministry, shall attend the meeting conducted by Commission or Commission Office when it is invited from time to time.

47. The Commission Office shall submit the proposal to the upcoming nearest Commission meeting when the relevant recommendations and assessments are received.

Chapter VII

Scrutinizing of Proposal

48. The Commission shall carry out the investment proposals as follows:

- (a) scrutinizing as to whether or not the proposal complies with the basic principles stated in Chapter IV of the Foreign Investment Law;
- (b) requesting and scrutinizing the following facts for the financial credibility;
 - (i) Bank Statement;
 - (ii) latest audit report of the company;

- (iii) performance report of the company;
- (c) scrutinizing the economic justification based on the following facts:
 - (i) estimated annual net profit;
 - (ii) estimated annual income and expenditure in terms of foreign currency;
 - (iii) investment recoupment period;
 - (iv) new employment opportunities;
 - (v) contribution to national income and tax generation;
 - (vi) market access for domestic and export;
 - (vii) local consumption requirement;
- (d) assigning technicians and experts for the assessment of appropriateness for relevant industrial technology, innovation and transfer of technology;
- (e) scrutinizing the recommendation on the measures for conservation and protection of impacts to environmental and social aspects by the Department of Environmental Conservation;
- (f) scrutinizing for accountability to the Union and citizens and emphasizing on the socio-economic benefits;
- (g) scrutinizing the proposal whether it is abided in accordance with the provisions of the existing laws;

Chapter VIII

Issuing Permit

49. The Commission shall scrutinize the proposal and if it is accepted, the **Permit Form (2)** shall be issued within 90 days from the date of receipt. The copies of the Permit shall be sent to the relevant Union Ministries.

Chapter IX

Procedure after the Approval

50. The investor or promoter shall, after receiving the permit from the Commission, complete the construction process within the period of construction or extended period if so. The completion of the construction shall be informed to the Commission within 30 days soon after it was completed.

51. The investor shall commence the production or services after the completion of the construction period.

52. The **Report Form (3)** of its own business shall be submitted to the Commission once in every three months by mail or by any other means of communication system during the permitted operation period of the investment business.

53. The promoter or investor shall inform immediately to the relevant Head of Township Administration Department and the Commission within 24 hours by any possible way of communications in case of facing any condition as per Rule 124 during the business operation.

54. If the business of the promoter or investor is necessary to obtain the license or permit from the relevant Union Ministries, Government Departments and Organizations according to the nature of investment business or other requirements; or necessary to register, it shall be continued to carry out in accord with the stipulations.

55. The promoter or investor shall:

- (a) abide by the Environmental Conservation Law for the environmental conservation activities with regard to the business;
- (b) implement the business to be responsible investment causing beneficiary and accountability for the Union and citizens;
- (c) cooperate with the responsible personnel for the inspection to the business from time to time or according to necessity;
- (d) carry out seriously according to the standards adopted by the relevant Union Ministries for the construction of factory, workshop, building and other business activities and to be in line with the business performances;
- (e) provide safety work environment and health programme in the work site;
- (f) abide by the regulations, procedures and standards adopted by the relevant Union Ministries for the transportation, storage and usage of hazardous and toxic materials and other similar materials;
- (g) carry out the products produced from the investment business according to the quality or standards with the view not to harm the consumers;

56. The Commission, in accordance with the Notifications, Orders, Directives, Procedures, may allow amendment for the following applications within fifteen days:

- (a) application for the expansion of original proposed investment business or increasing of investment capital by getting permission of the Commission;
- (b) application to the Commission to obtain all the eligible exemptions and reliefs entitled to the investor by scrutinizing and making amendment;
- (c) application to the Commission for getting benefits according to the existing laws or taking action for the grievances;

57. The Permit issued for the mineral exploration shall not be related with the any business of feasibility study or extraction. The investor shall obtain the permission from the Commission through the Ministry of Mines after completion of the mineral exploration to continue the feasibility study and extraction of the minerals.

Chapter X

Stipulation of Construction Period

58. The investor shall carry out to complete the construction works within the stipulated construction period from the date of issuing permit after receiving the permit issued by the Commission.

59. The investor shall, if the construction activities are not completed within the stipulated construction period due to various causes, request for extension of the construction period at least 60

days in advance before the expiry date of stipulated construction period to the Commission with the explanation for the delay.

60. The Commission may, if the investor requests for extension of construction period, after necessary inspections, approve the extension of construction period not longer than 50 percent of the original construction period upon request of the investor based on the inspection of reasonable circumstances for extension.

61. The extension for the construction period shall not be allowed more than twice except the conditions of force majeure such as natural disasters, instabilities, riots, and strikes, a State of emergency, armed opposition, rebellion, and outbreak of wars.

62. The construction period shall be stipulated according to the terms and conditions of the contract by the permission of the Commission for the surveying and feasibility study of exploration, extraction, upgrading and operation for the production of commercial scale of the oil, gas and minerals.

63. The Commission shall withdraw the permit issued to the investor if the construction process is not completed within the original permitted construction period or extended construction period. There is no liability for the reimbursement of remedy, compensation or any other rights or financial terms to the investor due to withdrawal of the permit.

Chapter XI

Lease, Mortgage, Transfer of Share and Transfer of Business

64. The investor shall carry out only obtaining the permission after applying to the Commission Office within the permitted term for the permitted leased land and building without any changes of the type of business with the permission from the person who has the right to use the land or right to lease the land with the **Lease Form (4)** for sub-lease or **Mortgage Form (5)** for mortgage. If the type of land is vacant, fallow or virgin land the permission from the Union Government shall be attached and submitted.

65. The Commission Office shall scrutinize the following facts when receiving the application by the stipulated forms under the Rule 64:

- (a) the reason for lease or mortgage is true or not;
- (b) lease or mortgage without prejudice to the interests of the Union and the citizens;
- (c) capacity of the transferee to continue and accomplish the business successfully;

66. The Commission Office may accept or refuse by the findings of the scrutiny in accordance with the decision of the Commission after submitting the nearest Commission meeting.

67. If desirous to sell all shares completely to any foreigner or citizen shall be applied to the Commission Office after completing the **Share Transfer Form (6)**. In applying so, the person who sells of shares shall attach the recommendation letter of the Head of the relevant Tax and Revenue office by stating clearance according to the scrutinizing to the share transfer application. The permission of the Union Government shall be attached if the investment business made on the vacant, fallow and virgin land.

68. The Commission Office shall scrutinize the following particulars when the application with stipulated form under Rule 67 is received:

- (a) the reason for transfer of all shares is true or not;
- (b) transfer of all shares without prejudice to the interests of the Union and the citizens;
- (c) capacity of the transferee to continue and accomplish the business successfully;

69. The Commission Office may submit to the nearest Commission meeting that the transfer of all shares should be permitted under scrutiny if it is deemed to allow or refuse in accordance with the decision of the Commission.

70. The person who sells all shares shall return the permit to the Commission Office.

71. If the share transferee is a foreigner, may apply the right of establishment or registration as foreign company to the Directorate of Investment and Company Administration in accord with the existing Company Act or if the share transferer agrees, may continue to use the name of the existing company.

72. If the share transferee is a citizen, shall apply the Permit to the Commission in accord with the Myanmar Citizens Investment Law. After obtaining the permit of Commission, it shall be registered as Myanmar Citizen Company at the Directorate of Investment and Company Administration in accord with the existing Company Act.

73. In issuing the new Permit, the share transferee is entitled to continue to enjoy for the remaining of the allowed period of term if the original investor has remained to enjoy exemptions and reliefs stated under the Chapter XII of Foreign Investment Law, exemptions and reliefs under section 27. Such exemptions and reliefs shall not be enjoyed again for issuing the new Permit if the stipulated period is over.

74. If desirous to transfer completely some of the shares to any foreigner or citizen shall apply to the Commission after completing the **Share Transfer Form (7)**.

75. The Commission Office shall scrutinize the followings, when the application by stipulated form is received under Rule 74:

- (a) the reason of transfer of some of the shares is true or not;
- (b) transfer of some of the shares without prejudicing the interests of the Union and the citizens;
- (c) capacity of the transferee to continue and accomplish the business successfully;

76. The Commission Office may submit to the nearest Commission meeting if it is considered that the transfer of some of the shares should be permitted based on the scrutiny and allow continuing to carry out or refuse in accord with the decision of the Commission.

77. If the permission is obtained, along with the permit of the Commission, the transfer of shares shall be applied and registered at the Directorate of Investment and Company Administration in accord with the existing Company Act.

78. In performing the scrutiny of Rules 65, 68 and 75, the Commission Office has the right to form the Scrutiny Body as may be necessary by comprising the experts from relevant government departments and organizations by the permission of the Commission.

Chapter XII Insurance

79. The permitted enterprises shall insure the following types of insurance at any insurance enterprise which is entitled to carry out the insurance activities within the Union:

- (a) Machinery Insurance;
- (b) Fire Insurance;
- (c) Maritime Insurance;
- (d) Insurance for Disabling Accident;
- (e) Insurance for Natural Disaster;
- (f) Life Insurance;

80. Any other form of insurance under any existing laws, regulations and procedures according to the types of business including the types of insurance stipulated as per Rule 79 shall be insured.

Chapter XIII Employment of Staff and Labour

81. The investor, when submitting the proposal, the number of skilled labours, experts and staff to be employed for skillful jobs and number of unskilled labour, shall be identified.

82. The recruitment of citizen experts, skilled labours and staff shall be appointed for the skillful jobs as per section 24 of the Chapter XI of the Law when the business is operated in commercial scale. The wages and salary shall not be lower than the stipulated minimum wages and salary according to the relevant existing laws, rules, regulations, notifications, orders, directives and procedures.

83. The Commission shall issue Notification of the basic principles for the list of businesses which require to recruit for experts, technicians and staffs with citizens and the changes of time schedule for the business based on knowledge.

84. The investor shall follow the existing Labour Laws in recruiting the staff and labours.

85. The investor shall conclude the employment agreement within 30 days from the date of appointment of staff and labours for citizens and foreigners in accord with the instruction of Ministry of Labour, Employment and Social Security.

86. The investor shall submit the annual plan to the Commission Office before 31st January annually in respect of practicing and training for capacity development of the citizen staff.

87. The investor shall apply the certificate of work permits with the **Work Permit Form (8)** for the foreign staff and labours working in the permitted investment business with the recommendation of the Commission to the Ministry of Labour, Employment and Social Security according to the Foreign Labour Law. The certificate of stay permit shall be applied with the **Stay Permit Form (9)** to the Commission Office.

88. The Commission Office shall issue the permit when obtaining the application under Rule 87, scrutinize by the departmental cooperation working group formed with the representatives from relevant departments at the Commission Office.
89. The investor shall register at the Social Security Board to enjoy the rights allowed under the Social Security Law by all of the employees who are receiving either in Myanmar Kyat or foreign currency and working at the departments covers under the Social Security Law.
90. The investor shall register at the relevant Social Security Board within 15 days after the commencement of the business and it shall submit to the Commission Office attached with the copy of registration card issued by the Social Security Board.
91. The investor shall submit the recommendation for the full payment of fees to the Social Security Board issued by the relevant Social Security Office to the Commission Office for enabling to continue to carry out the investment, once every six months.
92. The investor shall submit with the attachment of recommendation from the relevant Social Security Board for the clearance of the full payment when the contract term has expired and before withdrawing all the receivables.
93. The dispute arising between the employer or group of employers and the employee or the group of employees shall be settled under the Settlement of Labour Dispute Law.
94. Regarding the right of entering and stay of foreigners who are relating to the investment shall be abided by the existing Immigration law, rules, regulations, notifications, orders, directives and procedures.

Chapter XIV

Exemptions and Reliefs

95. The investor or the promoter for enjoying the exemptions and reliefs prescribed in the section 27 (b) to (k) of Chapter XII of the Foreign Investment Law, has the right to apply with the tax exemption and relief **Form (10)** to the Commission to allow to enjoy any exemption or relief, in more or all.
96. The Commission may scrutinize and allow if necessary when the investor or promoter has applied the exemptions and reliefs under Rule 95. In scrutinizing as such, the required evidences and documents may be requested and scrutinized from the investor or promoter or relevant government department and organization or other relevant organization.
97. The commencement date of commercial operation of any manufacturing or service business is determined as follows:
- (a) the date specified on the documents used in Bill of Lading or Airway Bill or similar documents used in international trade for the export of manufacturing business, such date shall not exceed 180 days from the date of completion of the construction period;

- (b) the date of the income first-derived from the local sales of the manufacturing business, such date shall not exceed 90 days from the date of completion of the construction period;
- (c) the date which commence of service business, such date shall not exceed 90 days from the date of completion of the construction period;

98. The investor or promoter shall apply the commencement date of commercial operation with **Report Form (11)** for their manufacturing or service business to the Commission in accord with Rule 97.

99. The Commission may, in allowing for enjoying tax exemptions and reliefs, after scrutinizing based on the application submitted by the promoter or investor, specify and allow the commencement date of commercial operation. Type and enjoying period of tax exemption or relief shall be specified when allowing for enjoying as such. Such permission shall be informed to the promoter or investor and to the relevant Government departments and organizations.

100. The Commission shall issue the necessary notification for the permission of tax exemption or rate of concession according to the type of investment business.

Chapter XV

Right to Use Land

101. The Commission may allow the investor to lease the following types of land for the purpose to carry out any commercial business permitted by the Commission from the person having the right to lease the land or person having right to use the land with the prior approval of the Union Government:

- (a) Land which is entitled to manage by the government;
- (b) Land owned by the government department, government organization;
- (c) Private land owned by citizen;

102. The investor who is desirous to lease for conducting agricultural, livestock breeding business on commercial scale by using the vacant, fallow and virgin lands and work for economic development relating thereof may lease in accord with the Vacant, Fallow and Virgin Lands Management Law.

103. The Commission may allow the investor for the period of leasing the land or using the land up to initial 50 years from a person having the right to lease or use the land in accordance with the actual required period of the right to lease or period of the right to use the land based on the types of business and amount of investment.

104. The Commission may, if the investor desirous to continue to carry out after the expiry of the term of lease permitted to the investor under the section 31 of Foreign Investment Law and if it is approved by the person having the right to lease the land or the person having the right to use of land, allow to extend two consecutive terms by 10 years each based on investment amount and type of business.

105. The application shall submit to the Central Management Committee of Vacant, Fallow and Virgin Land according to the Vacant, Fallow and Virgin Lands Management Law for the investment of agricultural and livestock breeding business and other related business thereof. In doing so, it may allow initial leasing period of 30 years for the period of right to lease or period of right to use of the vacant, fallow and virgin land for the agricultural and livestock breeding business based on the investment amount as to the provisions of the said Law. For the business desirous to continue to carry out, after the expiry of the permitted term, may be allowed to extend based on the type of business and amount of investment in accord with the Vacant, Fallow and Virgin Lands Management Law.

106. The investor is allowed to form joint-venture with the citizen who has the right to conduct agricultural and livestock breeding in the vacant, fallow and virgin land by contributing suitable ratio of technology and investment capital.

107. The person having the right to lease or use the vacant, fallow and virgin land shall pay the premium prescribed in the Vacant, Fallow and Virgin Lands Management Law and Rules for permitted to lease or use vacant, fallow and virgin land.

108. The investor is only allowed to carry out the contract farming system on the farm land permitted to the citizens by forming joint-venture with the citizen investor who obtained the right to carry out to grow seasonal crops on mutual interest.

109. The investor is allowed to form Joint Venture with the citizen who has the right to conduct agricultural and livestock breeding in the vacant, fallow and virgin land by contributing technology and investment capital with mutually agreed joint venture terms with citizen.

110. The Commission may, for the purpose of all round development of the country, with the prior permission of the Union Government, allow to enjoy extra land lease period for a maximum of 10 years than the land use term prescribed in Rules 103 and 104 for the persons who invest in the regions which are economically less developed and difficult to communicate.

111. The investor or promoter shall, in respect of land desired to be used for the purpose of carrying out any commercial business, apply to the Commission for obtaining the right to lease land by completing the **Land Lease Form (12)** and attached with documents of agreement by the person having the right to lease land or eligible to use of such land.

112. The Commission shall, if it is applied under Rule 111, request the opinion from Nay Pyi Taw Council, Regional Government or State Government depending upon the location of the operation whether to approve and permit in respect of the land desirous to be used by the applicant.

113. If the land desirous to use is owned or administered by the government department, government organization, the letter addressed to the Commission that the relevant government department, government organization agrees to lease, shall be attached.

114. In processing of land lease after obtaining the permit from the Commission, a person having the right to lease land or use land and the investor shall conclude the land lease agreement and send such agreement to the Commission.

115. The Commission may allow the land lease rates which are approved by the relevant Union Ministries with regard to land lease rate of the land owned by the government department, government organization and may submit to the Union Government, if necessary.

116. With the view to conclude the annual land lease agreement in accord with the land lease rate leased by the investor from the citizen having the right to lease land or use land and the current market price according to the lease period, shall be discussed and determined and submitted the agreed rate of land lease to the Commission.

117. In determination of land leasing rate, it shall base and calculate the rate to be paid for 365 days from the date of commencement of the lease for the lease period.

118. In leasing of Government department-owned land or Government organization-owned land, the relevant government department or government organization may demand for land use premium from the investor.

119. The Commission may, when any one of following conditions in respect of land lease has occurred, terminate the land lease and the business permitted:-

- (a) it is found the complaint is true that the investor fails to pay fees of land lease in accord with the term of contract or fails to comply with other terms of the contract upon the submission to the Commission by a person on having the right to lease land or use land after necessary inquiry;
- (b) it is found the complaint is true that the investor violates any existing law on the leased and upon the complaint to the Commission after necessary inquiry;
- (c) the investor is declared black list or, if the court or any organ of power decides to close the business invested and carrying out after it was adjudicated in accord with law due to violation of any existing law;

120. The investor shall:

- (a) If desirous to terminate the business, if it is not comply with the economic justification, loss or other reasons, shall submit to the Commission at least six months in advance.
- (b) If the investor finds out natural resources, antique, ancient monument or treasure trove in the vacant, fallow and virgin land for doing agriculture and livestock breeding businesses or other business which is permitted by the government, shall inform within 24 hours from the time of such finding to the Head of relevant township administration office and the Commission.
- (c) Re-transfer the land to a person having the right to lease or use the land within seven days from the date of liquidation by both parties after carrying out in accord with the terms and conditions of the contract concluded by him and a person having the right to lease land and after the completion of the lease.

- (d) If the business is terminated before the expiry of the term of lease agreement by any cause stated in Rule 119 or any other cause, it shall be paid the fees of lease as the terms prescribed in the original agreement so as not to aggrieve to a person having the right to lease land or use land.

121. The person having the right to lease land or use land shall inform the receipt of the land to the Commission within seven days from the date of receiving back the leased land.

122. The investor is not allowed to do other businesses which are not related to the originally permitted businesses on the leased land.

123. The investor must not extract resources above and under the ground of the land leased by the investor apart from the business permitted by the Commission.

124. If the investor finds natural resource or antique or ancient monument or treasure trove which are not included in the original agreement that is not relating to business permitted, above and underground of the land of which the investor has the right to lease or use shall inform promptly to the Head of the relevant administration office and the Commission within 24 hours from the time of such finding. The Commission may discuss with Union Ministry, Nay Pyi Taw Council or relevant Region or State government based on the location of the business, when it was informed. It may be continued to carry out on such land if the Commission has allowed with the agreement of relevant Union Ministry. If not permitted, it shall move to the place arranged in substitution and carry out.

125. The investor has the right to alter and use the topography or elevation 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 having the right to lease or use the land.

126. If it is scrutinized by the Commission that the investor carries out the business on the leased land which is not compatible with the original proposal, shall be terminated or not to continue the permit.

127. 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 to carry out the farms on which the citizen has obtained the right to carry out in accord with the existing laws.

128. 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 regions, natural heritage region which are designated by the relevant Union Ministries;
- (c) lands restricted for State defense and security;
- (d) lands under litigation;
- (e) lands restricted by the State from time to time;

- (f) place or land where exists 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.

129. The investor shall use the land which he is entitled to lease or use in accord with the terms and conditions prescribed by the Commission and terms and conditions stated in the contract.

130. If the investment business includes urbanization, hotels, schools, hospitals, construction of residential buildings, building factories, roads and bridges, communications, building infrastructure, 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 departments, Government organization.

131. 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.

132. The Central Management Committee of the Vacant, Fallow and Virgin Land shall have the right to claim back the minimum area from the permitted Vacant, Fallow and Virgin Land if one of the following conditions occurs:

- (a) if the historic cultural resources are found at the permitted vacant, fallow and virgin land;
- (b) if the other mineral resources which are not included originally permitted vacant, fallow and virgin land for the exploration of minerals are found;

133. The Central Management Committee of the Vacant, Fallow and Virgin Land shall coordinate with the relevant government department, government organization to refund the compensation within the appropriate stipulated period after calculating the current value for the actual cost of investment of the person having the right to lease or use of the permitted vacant, fallow and virgin land for taken back under the Rules with the approval of the Union Government.

Chapter XVI

Foreign Capital

134. The investor shall open an account and deposit the foreign currency mentioned in the proposal in accord with the permit of the Commission for any economic business in any bank within the Union which has the right to operate in foreign currency.

135. In proposing to invest, except the appropriated money for the matter proposed for foreign capital assets to be imported into the Union under sub-section i (ii) of Section 2 of the Foreign Investment Law, the matters contained in sub-section i (iii) and (iv) of Section 2 of the Foreign Investment Law, the full foreign currency proposed for local investment or the amount of foreign currency to be invested and used if it is carried out step by step in period of years respectively shall be deposited by opening the account in accord with Rule 134.

136. The investor is entitled to transfer the foreign currency from his bank account for the following matters:

- (a) to be paid in foreign currency in the country;
- (b) for account transfer to the affiliated company business in the country, the citizen or the citizen-owned company business for the matters related to business which he has invested;

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

138. The investment capital prescribed in the proposal shall be transferred and remitted from any bank located outside the country.

139. The investor shall prepare amendment as may be necessary of the original projection of foreign currency which was approved by the Commission in respect of the reduction of the amount of the investment and the business and re-submit to the Commission.

140. The investor shall assign to any government recognized audit firm which is registered and carrying out business in the Union by performing regular auditing once in 365 days for each and every invested business. In this regard the audited accounts and documents shall be submitted either in Myanmar Language or English Language. If it is in other language it shall be attached the English version recognized by notary.

141. The investor shall submit the audit report to the Commission within 30 days from the date of receipt of the audit report after audited the account under Rule 140.

Chapter XVII

Right to Transfer the Foreign Currency

142. The investor may transfer the following foreign currency through the bank prescribed by the Commission with the relevant foreign currency to abroad:

- (a) the following foreign currency which should be entitled by the person who has brought in foreign capital;
 - (i) the foreign currency permitted to repatriate by the Commission to the person who has brought in the foreign capital;
 - (ii) the compensation received by the investor according to the relevant existing law;
- (b) the following foreign currency permitted to repatriate by the Commission to the person who has brought in the foreign capital-
 - (i) the share entitled to the foreign investor after transferring the share according to the relevant existing law;
 - (ii) the share allotment after the liquidation of the business;
 - (iii) the foreign currency entitle to the investor after the expiry and return of the permit issued by the Commission;

(iv) the equivalent amount of foreign currency due to the reduction of the investment;

(c) net profit after deducting the various taxes relating to relevant funds from the annual profits received by the person who has brought in the foreign capital;

(d) legitimate balance after paying the taxes due and after deducting living expenses for himself and his family in the manner prescribed, out of the salary and lawful income obtained by the foreign service personnel by performing service in the Union;

143. The investor shall, if desirous to transfer the foreign currency which is not payment for current transition, apply with the **Transfer Form (13)** addressed to the Commission attached with the following documents:-

(a) Audit report of the related investment business;

(b) Bank Statement;

144. According to Rule 143, the Commission may allow to transfer the foreign currency with the same amount as applied or lesser than such amount after scrutinizing for the application submitted by the investor.

145. The investor has the right for account transfer of local currency generated from the business to the Kyat currency account opened at the bank by a citizen or a citizen-owned business in the Union and right to transfer back the equivalent amount of foreign currency from the foreign currency bank account of citizen or citizen-owned business by submitting the sufficient documents.

146. The investor shall, if desirous to extend and invest the business without transferring the profits obtained from the business invested to abroad, submit to the Commission and obtain permission from the Commission.

147. The investor shall not be allowed to deposit in his account without the permission of the Commission by transferring to the foreign currency from Kyat which is received by selling of any assets invested with the permission of the Commission.

148. The investor shall not be allowed to purchase any foreign capital which is to be remitted from abroad according to the proposal by using Kyat within the Union without the permission of the Commission.

149. The investor shall not pay for expenses to be expended within the Union in terms of Kyat which is received by selling of any assets in the Union imported from abroad according to the proposal for the business invested by him.

150. The foreign capital shall not be entitled to transfer to abroad before the day of commencement of commercial operation of the investment business.

Chapter XVIII **Matters Relating to Foreign Currency**

151. The investor:-

- (a) is entitled to transfer currency in the relevant foreign currency through any bank which has the right to carry out foreign banking within the Union at the stipulated exchange rate by the Central Bank;
- (b) shall open foreign currency account and Kyat account at any bank which had the right to carry out foreign banking within the Union and carry out financial matters related to business.
- (c) is entitled to exchange any kind of foreign currency accepted by the bank which has the right to carry out foreign banking within the Union obtained in Kyat legally by himself.

152. The foreigners who have employed at investment business shall open foreign currency account and Kyat account at any bank which has the right to carry out foreign banking within the Union.

Chapter XIX Departmental Cooperation Team

153. The Commission shall form the Departmental Cooperation Team comprising the officials from the following departments causing to enhance foreign investment business, to facilitate, for enabling to make field inspection to the business operations and to provide one stop service in accord with section 14 of the Foreign Investment Law:

- (a) Central Bank of Myanmar;
- (b) Relevant Department from the Ministry of Electric Power;
- (c) Directorate of Investment and Company Administration;
- (d) Customs Department;
- (e) Directorate of Trade;
- (f) Department of Labour;
- (g) Department of Immigration and National Registration;
- (h) Directorate of Industrial Supervision and Inspection;
- (i) Internal Revenue Department;

154. The Deputy Director General of the Directorate of Investment and Company Administration shall take responsible as a leader of the Departmental Cooperation Team.

155. The office of the Departmental Cooperation Team shall be opened jointly at the Directorate of Investment and Company Administration office. The branch offices may be formed if necessary.

156. The officials assigned in the Departmental Cooperation Team shall be empowered the right to make decision including the right to sign by the relevant departments. If it arises the matters related to policy, the relevant department shall make a decision promptly upon the submission of the relevant official.

157. The Departmental Cooperation Team shall conduct field inspection and report to the Commission for the progress during the construction period of the permitted business for designation of commercially commencement date and conducting inspection of the implementation of the business.

158. The Departmental Cooperation Team shall serve under the supervision of Director General.

Chapter XX Administrative Penalties

159. The Commission shall inquire by forming investigation team, if it is inquired, inspected or any complaint, information accrued that the investor does not abide by any provisions contained in the Foreign Investment Law or in these Rules; or obtaining permit by submitting dishonestly the fault information the matters contained in the proposal or found guilty that breaching any regulations and by-law, procedures, notifications, orders, directives or any conditions contained in the permit issued by the Commission.

160. The investigation team shall be formed with the persons who are experts and have fair-minded from the relevant government departments, associations, organizations led by one of the members of the Commission. In forming the investigation team, it shall form with not less than 3 members including the Team leader.

161. The investigation team shall have the right to investigate and asking to the relevant government departments, associations, the persons from the organizations, other persons, for documentary evidence.

162. The investigation team shall submit the findings of inquiry to the Commission within 21 days commencing from the date of issuing order to form the team. The relevant penalty shall be suggested from the administrative penalties stated in section 42 of the Chapter XVIII of the Foreign Investment Law when submitting so.

163. The Commission shall discuss in respect of passing administrative penalty at the meeting. The investor under investigation shall also be allowed to participate and present at that meeting.

164. The effectiveness of the penalty shall be commenced on the date of final decision made by the Commission with regard to the administrative penalties.

Chapter XXI Settlement of Dispute

165. If any dispute arises between the investor and any individual or government, any government department in respect of the investment business, dispute arisen shall be settled amicably.

166. If the dispute cannot settled according under Rule 165:

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

167. The investor shall, in expressing the factual basis, inform and submit to the Commission when dispute arises.

168. To resolve the dispute, the investor may file the documents issued by the Commission as evidence if necessary. It is entitled to apply to the Commission for other evidences related to the Commission, if necessary.

169. The investor shall submit and request the permission to the Commission, if the situation arises that any staff from the Commission Office is to appear before the court as witness.

Chapter XXII Miscellaneous

170. The investor has the right to continue to enjoy the exemptions and reliefs prescribed in the Chapter XII of the Foreign Investment Law if the investor is still enjoying exemptions and reliefs allowed under the Union of Myanmar Foreign Investment Law (State Law and Order Restoration Council Law No. 10/1988) which was superseded by the Foreign Investment Law.

171. The investor who has already been enjoyed the exemptions and relief contained in stipulated period under the Union of Myanmar Foreign Investment Law shall not entitle to enjoy the exemptions and reliefs stated at Chapter XII of the Foreign Investment Law.

172. The investor shall be taken criminal action if the evidence is found that the investor had intentionally made false statement or conceal the accounts, documentary instruments, and financial documents, employment documents attached to the proposal prepared and submitted to the Commission, relevant Government department and organization.

173. The investor who performing investment business according to the Permit issued by the Commission and formed under the Union of Myanmar Foreign Investment Law (State Law and Order Restoration Council Law No. 10/1988) shall apply to the Commission for the continuity to carry out and enjoying the benefits in accord with the conditions prescribed under the Foreign Investment Law.

174. The investments in business of manufacturing or services as non-profit, non-commercial purposes are not subject to these Rules.

175. Business operating solely for trade shall not subject to these Rules.

176. The Commission shall submit the report once every six months of its performances to the Pyidaungsu Hluttaw through the Union Government.

177. The Commission shall, if the investment is having negative impact to the benefit of the Union and its citizens, report to the nearest Pyidaungsu Hluttaw meeting through the Union Government.

178. The Commission shall apply and follow the relevant Hluttaw Committees and Commissions as consultative bodies when the advices are required during the performing of its duties.

179. The investor is allowed the business related technologies as a contribution of investment. The said technologies are valued by the international valuation standards stipulated by the International Valuation Standards Council.

180. The Myanmar Language or Myanmar and English Languages shall be used when the documents prepared and communications made for the investment and only based on the documents written by the Myanmar Language if the differences in interpretation arise between the two languages.

Union Minister
Ministry of National Planning and Economic Development

Schedule (1)
Manufacturing and Service Businesses which can carry out by the Citizens only
(Referring to the Rule 7)

Manufacturing Business

1. Administration and maintenance of natural forest;
2. Manufacturing the traditional medicines;
3. Extraction of crude oil manually up to 1000 feet depth;
4. Small and medium scale mineral production;
5. Production and plantation of traditional herbal plants;
6. Wholesale of semi-finished products and iron ores;
7. Production of traditional food;
8. Manufacturing the religious materials and equipments;
9. Manufacturing the traditional and cultural materials and equipments;
10. Manufacturing based on the handicraft;

Services Business

1. Private Traditional Hospitals;
2. Trading of traditional herbal raw materials;
3. Research and laboratory for Traditional medicines;
4. Ambulance transportation service;
5. Establishment of health care centres for the aged;
6. Restaurant contract, cargo transportation contract, cleaning and maintenance contract on the train;
7. Agency;
8. Generating electric power below 10 mega watt;
9. Publishing and distribution of Periodicals in language of ethnic people including Myanmar language;

Schedule (2)
Agricultural Business and Short - Term and Long - Term Plantion Business which can be done
by Citizens only
(Referring to the Rule 8)

1. Designated agricultural business;

Schedule (3)
Livestock Breeding Business which can be done by the Citizens only
(Referring to the Rule 9)

1. Designated livestock breeding business;

Schedule (4)
Fishing Business at the Myanmar's Territorial Waters which can be carried out by the Citizens
only
(Referring to the Rule 10)

1. Far distance fishing of sea fish, prawn and other water creatures at the Myanmar's territorial waters;
2. Fishing at the Ponds, lakes and other close distance fishing;