

This is the unofficial English translation of the new Myanmar Foreign Investment Law signed by President Thein Sein on Friday November 2, 2012.

(Translated by Eleven Media Group)

Foreign Investment Law

2012 Union Parliament Law No XXI

DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia



ASIA BRIEFING

Union Parliament (Union Assembly) has enacted this law.

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Chapter I

Title and Definition

1. This law is called the Foreign Investment Law.

2. The following terms mentioned in this law must be interpreted as stated below.

- (a) The State means the Republic of the Union of Myanmar.
- (b) The Commission means the Myanmar Investment Commission formed under this law.
- (c) The Union Government means the Union Government of the Republic of the Union of Myanmar.
- (d) The Citizen includes guest citizen or person recognized as citizen. The term used for this law includes the economic organization established with the citizen.
- (e) The Foreigner means the person that is not the citizen. The term used for this law includes the economic organization established with the foreigners.
- (f) The Initiator means the person either the citizen or the foreigner who proposes in connection with the foreign investment with the Commission.
- (g) The proposal means the documents regarding the proposal submitted by the Initiator to the Commission in acquiring the permission for the investment, the prescribed application form submitted with the draft contract, documentary evidences for the financial status and the documents in connection with the company.
- (h) The Permission means the approval and order of the Commission in connection with the investment proposal.
- (i) The Foreign Capital Investment means the following outlay made by the foreigner in line with the order for the assets.
 - (1) Foreign currency
 - (2) The actual requirement for the functioning of the business such as the machinery, equipment, machinery parts, spare parts and apparatus that are not available in the country.
 - (3) License, invention property right, technical design, trade logo, copy rights and intellectual property rights, along with the right for evaluation.
 - (4) Technical knowhow and skills.
 - (5) The above mentioned points may have already increased the assets in the business or the profit and shares that are likely to re-invest in the business.
- (j) The Investor means the person who invests in accordance with the official order or the economic organization.
- (k) The Bank means a bank inside the country functioning with the approval and permission of the Union Government.
- (l) The Investment means various kinds of property and assets owned by the investor in accordance with this law in the jurisdiction of the country. In this term of reference, the following are also included.
 - (1) The moveable property, the immoveable property and other rights of ownership that are possible to put up as mortgages or accept other property as collateral security.
 - (2) Stocks and shares of the company and the documents of debentures stating the guarantee of payment to the holders.
 - (3) The contract/covenant mentioning the amount on financial matters and the monetary rights or the activities thereof.
 - (4) Intellectual property right in accordance with the existing laws.
 - (5) The relevant business rights entrusted in accordance with the covenant or relevant laws in connection with the exploration and extraction of natural resources.
- (m) The person permitted to hire land or the person permitted to use land means the person who is permitted to hire land or the person who is permitted to use land for a stipulated period after paying the land rent to the State.

Chapter II

Relevant Businesses

3. This Law is relevant with the businesses being announced by the Commission with the official notification receiving the prior approval of the Union Government.

4. The following investment is termed as restricted business or barred business in the country.

- (a) The businesses those are detrimental and negative to the customary cultures and tradition of the national races in the country.
- (b) The businesses those are harmful to the health of the people.
- (c) The businesses those are detrimental to the environment and the ecological system.
- (d) Industries harmful to the community or are toxic.
- (e) Industries using or producing chemicals that is considered as dangerous by international norms.
- (f) Productions and services that by law are reserved for the local businesses.
- (g) Industries using technologies, medicines or utilities in trial stage, or the international norms have not approved as safe to use.
- (h) Long-term or short-term plantations that by law are reserved only for the citizens.
- (i) Animal husbandries that by law are reserved only for the citizens.
- (j) Salt-water fisheries that by law are reserved for the citizens.
- (k) Any investment projects within 10 miles from the country's border except from the business zones permitted by the government.

5. If an investment has profit for the country or citizens, especially the ethnic people, they can be permitted by the Commission with the approval from the Union Government.

6. The Commission has to submit the investments affecting the security, businesses, environmental and social lives of the country to the Union Assembly via the Union Government.

Chapter III

Intention

7. It is intended to provide the resources to the citizens and use the surplus in exporting; establishing working opportunities for the citizens; improving human resources; establishing infrastructures such as banks and currency exchanges, roads and highways; producing electrical energy; improving technologies; building communication networks; developing transportation networks including railway, shipping and airline; improving the country's education system; enabling the citizens to compete in the international community; and ensuring standard businesses and foreign investments.

Chapter IV

Basic Principles

8. Investments will be allowed according to the following principles:

- a. Providing financial and technological supports in order to fulfill the goals of the national development projects.
- b. Establishing working opportunities for the citizens.
- c. Improving the export industries.
- d. Producing basic products in order to reduce importation.
- e. Producing goods required a considerable amount of investment.
- f. Improving production by providing high technologies.
- g. Supporting productions and services that require a huge amount of investment.
- h. Developing low-energy consuming industries.
- i. Improving local areas.
- j. Finding new sources of energy and utilizing recyclable energy.
- k. Improving modern industries.
- l. Protecting the environment.
- m. Enabling sharing of information and technology.
- n. Ensuring the stability and security of the country and citizens
- o. Improving the knowledge and skills of the citizens.
- p. Developing the bank and other financial services according to the international norms.
- q. Establishing services essential to the citizens.
- r. Ensuring the sufficiency of energy and resources for the country for both short-term and long-term.

Chapter V

Investment Form

9. Investment could be made in the following types and patterns:

- (a) Foreign investors investing the full percentage in a business per the Commission's instruction.
- (b) Cooperating with citizens or government departments or other organizations.
- (c) Working along with a charter agreed by all participating parties.

10. (a) In forming under section 9:

- (i) The organization must be formed in accordance with the existing law.
 - (ii) If a joint-venture is formed, the ratio of foreign capital and local capital can be decided as mutually agreed by both sides.
 - (iii) The Commission must decide the minimum amount of foreign capital in an investment depending on business sector with the approval of the Union Government.
 - (iv) Foreign investors can submit the ratio of foreign capital - as prescribed by bylaws - in the prohibited or restricted businesses.
- (b) In forming, as mentioned above, in carrying out the business and in liquidation on the termination of the business, other existing laws of the State will be accordingly applied.

Chapter VI

Formation of the Commission

11. (a) The Union Government is responsible for:

- (i) Forming the Myanmar Investment Commission with an appropriate Union level official as the chairperson of the Commission; and the experts from relevant government ministries, departments and governmental and non-governmental organizations, and other suitable persons as the members of the Commission.
 - (ii) Selecting vice-chairperson, secretary and joint-secretary out of the members in the Commission.
- (b) The members of the Commission who are not civil servants can enjoy the salaries and allowances agreed by the Ministry of National Planning and Economic Development.

Chapter VII

Duties and Powers of the Commission

12. The duties of the Commission are as follows:

- (a) The Commission shall, in scrutinizing a proposal, take into consideration facts such as whether the proposal accords with the basic principles of Chapter 4 in this law, financial credibility, and economic justification of the business enterprise, appropriateness of technology, and conservation and protective measures of environment.
- (b) The Commission shall take necessary and prompt action in respect of complaints made by investors on failure to receive fully, benefits entitled to under this Law.
- (c) The Commission shall scrutinize the proposals as to whether they are contrary to the existing laws.
- (d) The Commission shall report its performance every six months to the Union Assembly through the Union Government.
- (e) It shall also recommend to the Union Government measures necessary to facilitate and promote local and foreign investments.
- (f) With the prior agreement of the Union Government, the Commission shall decide and change the type of investment, the amount of investment and the terms of investment.
- (g) The Commission shall discuss with region or state governments about foreign investments which were approved by the Union Government for the economic developments in the regions and states.
- (h) The Commission is responsible to know and take some measures on the discovery of natural resources and antiques which are not included in the original contract, apart from permitted investments on the ground and under the ground.
- (i) The Commission shall scrutinize whether the investors follow the Foreign Investment Law, its generic laws, rules, regulations, orders, directives and facts in the contract of investments. If they do not follow them, the Commission shall take necessary legal actions.
- (j) The Commission shall decide on the types of investment which do not require tax exemption and tax reduction.
- (k) The Commission shall carry out the duties occasionally as assigned by the Union Government.

13. The powers of the Commission are as follow:

- (a) The Commission may accept any proposal which in its opinion will promote the interests of the State and which is without prejudice to any existing law.
- (b) The Commission shall issue a permit to a promoter on a proposal being accepted.
- (c) In case an extension, relaxation or amendment of the terms of the permit or the agreement is submitted by those concerned, the Commission shall permit or refuse the permits after scrutinizing them in accordance with rules and regulations.
- (d) The Commission may ask for evidence or facts from a promoter or an investor, at any time required as the Commission may deem necessary.
- (e) Issuing a certain order to suspend the business, if firm evidence is found that an investor fails to follow the proposal it has submitted to the Commission for approval and the conditions of other related documents or the rules prescribed in the permit.
- (f) Permitting or rejecting the bank proposed by a promoter or an investor.

14. The Commission may, for the purpose of carrying out its tasks, form committees and bodies as maybe necessary.

15. The Commission from time to time shall report its performance to the Union Government's meetings.

16. The Commission shall submit quarterly reports on the transactions and progress of the enterprises it has permitted to the Union Government.

Chapter VIII

Duties and rights of the investor

17. The duties of the investor are as follow:

- (a) To respect the existing laws of the Republic of the Union of Myanmar
- (b) To establish and run businesses in accord with the existing laws of Myanmar
- (c) To respect the provisions of the above laws and, rules, procedures, notifications, orders, directives and regulations in the permit
- (d) To use the land that is leased out or permitted to be used in line with the rules and regulations adopted by the Commission and the provisions of the contract signed
- (e) Leasing or collateralizing the land and buildings approved under the permit, the transferring shares and handing over businesses to another person within the terms of the contract can be done only with the approval of the Commission
- (f) Not to conduct distinct physical changes in the land leased or permitted to be used without the approval of the Commission
- (g) If natural mineral resources, ancient objects or treasure not concerned with the provisions of the original contract are discovered on the surface or underground of the land leased or permitted to be used, the Commission shall be immediately informed about the discovery. If the Commission approves it, operation may continue on the land. If not approved, the investor shall replace the land with another chosen one.
- (h) In doing the investments, to act in accord with the existing laws so that the environmental pollution or degradation cannot be caused
- (i) If a foreign company sells all its shares completely to another foreigner or a citizen, to register the transfer of the shares in accord with the existing laws only after seeking prior approval of the Commission and returning the permit
- (j) If a foreign company sells some of its shares completely to another foreigner or a citizen, to register the transfer of the shares in accord with the existing laws only after seeking prior approval of the Commission
- (k) To systematically hand over high techniques and expertise to the enterprise, department or organization concerned as per the contract

18. The rights of the investor are as follows:

- (a) The right to sell and exchange the assets or transfer them in other ways in accord with the existing laws with the approval of the Commission
- (b) The right to transfer and sell all the shares or some completely to another foreigner/citizen or another foreign company/citizen-owned company, if it is a foreign company
- (c) The right to promote the proposed investment or foreign capital with the approval of the Commission
- (d) The right to apply to the Commission for review and amendments so as to fully enjoy the deserving rights in accord with the promulgated law
- (e) The right to apply to the Commission for getting benefits in accord with the promulgated law and taking action in response to any compensation
- (f) The right to apply to the Commission for getting more benefits for developing new technologies, promoting the quality of goods, improving production capacity and reducing pollution in running an enterprise under the permit
- (g) For the investors who invest in businesses in the regions with less economic development and poor transport and communication to facilitate the development of the entire nation, the right to enjoy an extended period of tax exemption and relief as prescribed in Chapter XII.

Chapter IX

Submission of Permit Proposal

19. The investor or promoter wishing to make the foreign investment shall send a proposal to the Commission in accord with the stipulations to obtain a permit.

20. The Commission shall:

- (a) Accept or reject the proposal within 15 days after making necessary scrutinization of the proposal that was submitted in accordance with article 19;
- (b) Issue or reject a permit to the applicant within 90 days if the proposal has been accepted;

21. After being granted a permit, the investor or promoter shall sign a necessary contract with respective government department, government organisation or person and organisation to establish an investment business.

22. The commission shall permit the extension, relaxation, or amendment of the term or the contract in accordance with this law in case it is submitted by those concerned.

Chapter X

Insurance

23. The investor shall effect the prescribed types of insurances in one of the insurance businesses allowed by the State.

Chapter XI

Appointment of employees and workers

24. The investor shall:

- (a) In appointing local workers, experts, and personnel for the areas that need special skill, at least 25 percent of local citizens must be employed for the initial two years from the day of starting operation, at least 50 percent in the subsequent two years, and at least 75 percent for the third period of two years. However, the Commission can adjust suitable time limit for knowledge-based businesses;
- (b) Train local workers to upgrade their skills in work implementation to appoint them in accordance with sub-section (a);
- (c) Appoint only local citizens for businesses where no special skill is demanded;
- (d) Carry out recruitment through employee recruitment center, local employment representatives, or the investor's own arrangements;
- (e) In appointing local workers, experts, and personnel, the appointing contract should be signed by both the employer and employee in accordance with the existing labour law and bylaws;
- (f) Ensure equal rights for local workers to avoid bias in salary levels in appointing local workers as well as foreign workers to have equal ratio at expert level.

25. Foreign workers working at the investment business formed under the permit shall apply for work permit and visa to the Commission.

26. The investor shall:

- (a) Draw the appointing agreement contracts in accordance with the stipulations in appointing employees and workers;
- (b) Ensure the rights from existing labour law and bylaws including basic salary, leaves, holidays and overtime pays, compensation, social security, and other insurances concerned with workers when specifying the rights and duties of the employer and workers and work rules on the appointing contract;
- (c) Settle disputes among employers, workers, employers and workers, workers and experts, or personnel in accordance with existing laws.

Chapter XII

Exemptions and Reliefs

27. The Commission shall, for the purpose of promoting foreign investments within the State, grant the investor exemption or relief from taxes mentioned in sub-section (a) out of the following exemptions or reliefs from taxes. In addition, the Commission may grant any or more than one or all of the remaining exemptions or reliefs from taxes:

- (a) With respect of any enterprise for the production of goods or services, exemption from income-tax for a period extending to 5 consecutive years, inclusive of the year of commencement of production of goods or services; in case where it is beneficial for the State, exemption or relief from income tax for a further reasonable period depending upon the success of the enterprise in which investment is made;
- (b) Exemption or relief from income-tax on profits of the business if they are maintained in a reserve fund and re-invested therein within 1 year after the reserve is made;
- (c) Right to accelerate depreciation in respect of machinery, equipment, building or other capital assets used in the business, at the rate fixed by the union government to the extent of the original value for the purpose of income-tax assessment;
- (d) Relief from income-tax up to 50 percent on the profits, if the goods are produced to export by any enterprise;
- (e) Right to pay income-tax on the income of a investor at the same rates applicable to the citizens residing within the country;
- (f) Right to deduct from the assessable income, such expenses incurred in respect of research and development relating to the enterprise which are actually required and are carried out within the State;
- (g) Right to carry forward and set-off up to 3 consecutive years from the year the loss is sustained in respect of such loss sustained within 2 years immediately following the enjoyment of exemption or relief from income tax as contained in sub-section (a), for each individual enterprise;
- (h) Exemption or relief from customs duty or other internal taxes or both on machinery, equipment, instruments, machinery components, spare parts and materials used in the business, which are imported as they are actually required for use during the period of construction;
- (i) Exemption or relief from customs duty or other internal taxes or both on such raw materials imported for the first 3 years' commercial production following the completion of construction.
- (j) Exemption or relief from the customs duty and other internal taxes or both on machinery equipments, machinery components, spare parts and materials used in business, which are imported as they are actually required to use during the period of business extension under the permission of the commission,
- (k) Exemption or relief from commercial tax, if the goods are produced to export by any enterprise.

Chapter XIII

Guarantees

28. The Union Government guarantees that a business formed under the permission shall not be nationalized during the term of the contract or during an extended term.

29. The Union Government guarantees that a business operating under the permission of commission shall not be forced to terminate the business with any reason.

30. On the expiry of the term of the contract, the Government guarantees an investor of foreign capital is entitled to the rights to withdraw the type of the foreign currency that was invested.

Chapter XIV

Land Usage

31. The commission shall allow the period of leasing or using land from the initial time to 50 years during when the land is actually required for business use based on the type and capital amount.

32. Under section 31, the commission shall allow 10 years' renewal of the business of the investor and another 10 years on the expiry if he or she is willing to continue the business.

33. With the purpose of the national economic development, the Commission shall acquire the initial agreement from an investor interested in lease or use of land before investing.

34. The Commission shall set the leasing price for the government's properties after prior of approval with the union government.

35. Investor shall be allowed to make a joint venture or cooperation in agriculture and livestock breeding that are only entitled to local national by signing a contract.

36. With the prior approval from the Union Government, the Commission can set the longer period for the leased land for the investor with the view to ensuring national development and for the regions which have poor economy and communications.

Chapter XV

Foreign Capital

37. The Commission shall evaluate the foreign capital in terms of bank prescribed, and register it in the name of the investor. In so registering, the types of the foreign capital and the type of the foreign currency evaluated shall be stated.

38. In the event of termination of business, the person who has brought in foreign capital may withdraw foreign capital which he is entitled to withdraw as prescribed by the Commission within the time stipulated.

Chapter XVI

Right to Transfer Foreign Currency

39. The following shall be transferable abroad in the relevant foreign currency through the bank prescribed by the Commission at the prevailing official rate of exchange:

- (a) Foreign currency entitled to by the person who has brought in foreign capital;
- (b) Foreign currency permitted for withdrawal by the Commission to the person who has brought in foreign capital;
- (c) Net profits, after deducting from the annual profits received by the person who has brought in foreign capital, all taxes and the prescribed funds;
- (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 personnel during performance of service in the State.

Chapter XVII

Matters relating to foreign currency

40.

- (a) Investor can transfer money abroad according to a fixed exchange rate through a private bank permitted to provide foreign banking services.
- (b) Investor shall open a foreign currency account in the type of foreign currency accepted by the bank, and a kyat account and carry out all financial transactions relating to the business enterprise.

41. Foreigners serving in any such economic organization shall open a foreign currency account and a kyat account in any bank providing foreign banking services.

Chapter XVIII

Penalties in respect of management

42. Investor shall be awarded a penalty or all penalties to the following if laws, rules and regulations, notifications, orders and directives released by the Commission are broken.

- (a) Warning
- (b) Temporary suspension of tax exemption or relief
- (c) Revocation of the permit
- (d) Blacklist

Chapter XIX

Addressing Disputes

43. In case of any dispute on the investment,

- (a) The dispute must be addressed in a peaceful way among those involved.
- (b) If it is not in accord with Section Part A,

- (1) He or she has to obey the current rules and regulations if the respective contract does not mention the resolution of the dispute
- (2) If the respective contract does mention resolution of dispute, he or she has to agree with them.

Chapter XX

General Provisions

44. For the purpose of meeting the energy demands of the national and the people and exporting only the surplus, the Commission, in accord with the law, may approve the submission of the investor proposing to invest with a system of sharing benefits from a joint-venture business between the investor and the Union Government or the government department/organization whose right is entrusted by the government or sharing benefits on a proportionate basis for conducting feasibility, test exploration, survey, digging and commercial production in the designated block of a joint-venture business between the state or a citizen and the investor with only the full capital of that investor in large projects such as oil, natural gas and minerals. If that business is capable of manufacturing products on a commercial scale, the investor and the Union Government or the government department/organization whose right is entrusted by the government shall have the right to share benefits on a proportionate basis.

45. Before the new law is amended, according to Union of Myanmar Foreign Investment Law (State Peace and Development Council's Act 10/1988), the investors who invested with the SPDC's law shall assume as the investors in the new law.

46. The investors shall be sued if he or she submitted with wrong facts or exemption of the list of statistics, the proof of documentations and financial and appointment of staff to the Commission, respective departments and government organization.

47. The law is the final, in accord with the rules, whatever the case is concerned with other laws.

48. The Commission shall hold the meeting in the manners prescribed.

49. The decision of the Commission is final according to the law.

50. A Commission member, (or) a member of committee or sub-committee, (or) a government staff must not be charged or sued in accord with the civil law or criminally against his/her act which was done honestly without breaking the rights which are required by this law.

51. To realize the provisions prescribed in this law, Ministry of National Planning and Economic Development or an organization will be required to bear (a) office tasks and (b) expenditure of the Commission.

52. An investor doing business under a permit issued by the commission in accord with Union of Myanmar Foreign Investment Law (Law No. 10/1988 issued by State Law and Order Restoration Council) which will be abolished by this law, will have his/her own right to continue running his/her business until the deadline set according to the concerned agreement.

53. While allowing a foreign investment to do in the country in accord with the Section (3) and (5), the Commission will have to report to the Parliament (Pyidaungsu Hluttaw) if an investment is against the benefits of the Government and the citizens.

54. If any provision in this law is contrary to a provision prescribed in an international treaty agreed and accepted by the Republic of the Union of Myanmar, the international treaty provision is to be obeyed.

55. Before more bylaws and procedures required adding to the law are yet to be approved, the government can continue practicing the bylaws and procedures set by the Union of Myanmar Foreign Investment Law (Law No. 10/1988 issued by State Law and Order Restoration Council).

56. When implementing the provisions prescribed in this law:

(a) Ministry of National Planning and Economic Development shall issue any bylaw, rules and regulations, procedure, order, notification, and directive required in agreement with the union government within 90 days from the date when the law is enacted.

(b) The Commission shall issue any order, notification, and directive required.

57. The Union of Myanmar Foreign Investment Law (Law No. 10/1988 issued by State Law and Order Restoration Council) is abolished by this law.

(Signed by) Thein Sein
President
Republic of the Union of Myanmar

Contact

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