

PROCEDURES RELATING TO THE UNION OF MYANMAR FOREIGN INVESTMENT LAW (1988)

The Government of the Union of Myanmar Notification No. 11/88
The 14th waning day of Tazaungmon, 1350 B.E

7 December 1988

In exercise of the powers conferred under section 3, of the Union of Myanmar Foreign Investment Law, the Government of the Union of Myanmar prescribes the following procedures:-

CHAPTER I TITLE AND DEFINITION

1. These procedures shall be called procedures relating to the Union of Myanmar Foreign Investment Law.
2. The expressions contained in these procedures shall have the same meaning as are assigned to them in the Union of Myanmar Foreign Investment Law. In addition, the following expressions shall have the meanings given hereunder:
 - (a) "Law" means the Union of Myanmar Foreign Investment Law;
 - (b) "Form" means the form attached to these procedures;
 - (c) "Member" means the Chairman or member of the Union of Myanmar Foreign Investment Commission.

CHAPTER II FORMATION OF THE COMMISSION

3. The Commission shall consist of the following persons:-
 - (a) Minister, Ministry of Planning and Finance (Chairman)
 - (b) Minister, Ministry of Trade (Member)
 - (c) Minister, Ministry of Industry No.(1) (Member)
 - (d) Minister, Ministry of Industry No.(2) (Member)
 - (e) Minister, Ministry of Energy (Member)
 - (f) Minister, Ministry of Agriculture and Forests (Member)

(g) Minister, Ministry of Transport and Communications (Member)

(h) Minister, Ministry of Mines (Member)

(i) Minister, Ministry of Construction (Member)

(j) Minister, Ministry of Livestock Breeding and Fisheries (Member)

(k) Minister, Ministry of Co-operative (Member).

4. The Secretary of the Commission shall be appointed and assigned duties by the Chairman of the Commission.

CHAPTER III ECONOMIC ACTIVITIES WHICH MAY BE CARRIED OUT

5. The Commission shall with the prior approval of the Government publish a list showing types of economic activities in which foreign investment may be made. In connection with this matter replies shall also be given when enquiries are made.

CHAPTER IV SUBMISSION OF PROPOSAL

6. A promoter shall state the following particulars in submitting a proposal:

(a) name of promoter, citizenship, address, place of business, place of incorporation, type of business;

(b) if investment is to be made by joint-venture, particulars mentioned in sub-clause (a) relating to the persons wishing to participate in the joint-venture;

(c) evidence in support of sub-clause (a) or sub-clause (b);

(d) commercial and financial references of the promoter or persons wishing to participate in the joint-venture;

(e) particulars relating to production or services enterprise in which investment is to be made;

(f) intended form of organization in which investment is to be made in the State;

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

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

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

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

(k) the intended term of investment, the period of construction:

(l) place or places in the State where investment is to be made;

(m) techniques and systems to be used in the production and sale;

(n) the type and quantum of energy to be used;

(o) the quantity and value of the main machineries, equipment, raw materials and similar materials required to be used during the period of construction;

(p) the type and area of land required;

(q) volume and value of annual production of the enterprise and volume and value of services;

(r) annual requirement of foreign exchange to carry on the business and the estimated amount of foreign exchange earnings;

(s) volume and value of goods to be sold locally and abroad annually;

(t) the number, category and tenure of personnel required locally and from abroad;

(u) economic justification.

7. An application containing the above particulars shall be made in the attached Form (1) and shall be signed in person by the promoter and submitted. In addition, draft contract shall also be submitted together with the said application.

8. If it is an economic enterprise in which foreign capital to the extent of one hundred per cent is brought to the State and invested, the promoter shall submit together with the application, draft contract to be executed with an organization determined by the Ministry concerned.

CHAPTER V
SCRUTINY OF PROPOSAL

9. The Commission shall scrutinize financial credibility in the following manner:-

- (a) in cases where necessary, to examine the audited annual final accounts of the person who will bring in foreign capital;
- (b) to require Myanmar Foreign Trade Bank to make enquiries through its foreign correspondent banks regarding the business standing of the person who will bring in foreign capital;
- (c) to call for supporting evidence and to scrutinize the same as to whether any citizen subscribing capital actually has sufficient capital or not.

10. The Commission shall scrutinize the following particulars with regard to the economic justification of enterprise in which investment is to be made:-

- (a) estimated annual net profit;
- (b) estimated annual foreign exchange earnings and requirements;
- (c) recoupment period;
- (d) prospects of new employment;
- (e) prospects of increased national income;
- (f) local and foreign market conditions;
- (g) requirement for local consumption;
- (h) prospects of foreign exchange savings.

11. The Commission may form technical bodies as may be necessary in order to scrutinize the appropriateness of technology.

12. The Commission shall scrutinize application containing the proposal and the draft contract after obtaining the opinion of departments or organizations concerned.

CHAPTER VI
ISSUE OF PERMIT

13. On approval of the proposal by the Commission, a permit in the attached Form (2) shall be issued.

CHAPTER VII
TERMINATION OF BUSINESS BEFORE THE EXPIRY OF ITS TERMS

14. On submission of a desire to terminate the business by mutual agreement before the expiry of the term of the contract, the Commission may, based upon the following particulars scrutinize as to whether or not it is correct and justified, and allow the termination:-

- (a) substantial and continuous losses in the enterprise;
- (b) breach of the terms of contract by one of the parties to the same;
- (c) occurrence of force majeure;
- (d) incapability of implementing the original aims and objects of the enterprise.

CHAPTER VIII
INSURANCE

15. An economic organization formed under a permit:-

(a) Shall effect the following types of insurance with the Myanmar Insurance Corporation:-

- (1) Machinery Insurance;
- (2) Fire Insurance;
- (3) Marine Insurance;
- (4) Personal Accident Insurance.

(b) May effect the following types of insurance, if so desired, with the Myanmar Insurance Corporation:

- (1) Contractors' All Risks Insurance;
- (2) Erection All Risks Insurance;
- (3) Electronic Equipment Insurance;
- (4) Other insurance accepted by the Myanmar Insurance Corporation.

16. In effecting insurance the details shall be worked out in consultation with the Myanmar Insurance Corporation.

CHAPTER IX
APPOINTMENT OF PERSONNEL

17. An economic organization formed under a permit shall allow its personnel to enjoy, at least, the workmen's rights contained in the existing laws of the State.

18. The Commission shall, in permitting the appointment of foreign experts and technicians, carry out the following:-

(a) prescribing the type, number and term of the required foreign experts and technicians according to the individual business organization;

(b) in cases where necessary, obtaining the opinion of the Ministry of Labour.

19. An economic organization formed under a permit shall have the right to fix the salary and wage rates of its local personnel and foreign experts and technicians, to determine the payment of such salary and wages in kyat or foreign currency after consultation, and to terminate the services of such personnel.

20. An economic organization formed under a permit shall make arrangements for local and foreign training so as to ensure its local personnel proficiency in their work and promotion to higher ranks of services.

CHAPTER X
EXEMPTIONS AND RELIEFS FROM TAXES

21. The Commission may, either by notifying on its own motion or on the application of the promoter or the investor, grant exemptions or reliefs from taxes. In so granting, the type of exemption or relief shall be specified. In necessary cases the period for such enjoyment shall be stipulated. Where rates of depreciation have been prescribed and allowed on capital goods, such rates shall also be specified.

22. The Commission on receiving the application may, after necessary scrutinization as to whether it is justified or not, grant such exemption or relief and period thereof, as may be appropriate. Such exemption or relief shall be intimated to the promoter or investor, and the departments and organizations concerned.

23. In allowing a deduction of expenses for research and development relating to the enterprise from the assessable income, the said allowance shall pertain only to those works of research and development which cannot be conducted by any department or organization of the State.

CHAPTER XI
EVALUATION AND REGISTRATION OF FOREIGN CAPITAL

24. In evaluating foreign capital in terms of kyat for the purpose of registration by the Commission the following shall be carried out:

(a) to cause to be brought in foreign currency in any type of foreign currency acceptable to the Myanmar Foreign Trade Bank, and to evaluate the same at the prevailing official rate of exchange;

(b) to cause the value of the types of foreign capital other than the foreign currency to be stated in any type of foreign currency acceptable to the Myanmar Foreign Trade Bank and to scrutinize whether the value of the respective foreign currency so stated is appropriate or not, and -to, evaluate such values so scrutinized at the prevailing official rate of exchange.

25. The Commission shall register the type of re-invested foreign capital in terms of kyat and in any type of foreign currency acceptable to the Myanmar Foreign Trade Bank.

CHAPTER XII
RIGHT TO TRANSFER FOREIGN CURRENCY

26. Foreign currency entitled to be transferred abroad under section 26 of the Law shall be transferred through the Myanmar Foreign Trade Bank.

27. In determining the net profits transferable abroad the following funds shall be deducted:-

(a) employees' bonus fund;

(b) contribution made by the employer to the employees' provident fund;

(c) employees' social and welfare fund;

(d) enterprise development fund;

(e) such other funds as are required to be reserved according to commercial practice.

28. In deducting the living expenses of the foreign personnel and of his family, the Myanmar Foreign Trade Bank shall scrutinize on the basis of the following:-

(a) cost of accommodation;

(b) cost of messing;

(c) salary and wages paid to menials such as domestic help, cook and driver;

(d) household, medical and other expenses.

CHAPTER XIII
MATTERS RELATING TO FOREIGN CURRENCY

29. An economic organization formed under a permit shall, for the purpose of carrying out financial transactions such as depositing, withdrawing and transferring foreign currency and kyat relating to the business, open a foreign currency account and a kyat account in the Myanmar Foreign Trade Bank.

30. Foreigners serving in any such economic organization shall open a foreign currency account and a kyat account in the Myanmar Foreign Trade Bank.

CHAPTER XIV
MEETINGS

31. The Commission shall hold meetings at least twice a month.

32. The Chairman of the Commission shall preside at the meetings. When the Chairman is unable to attend, any member assigned by him may preside at the meeting.

33. Two-thirds of the members present at a meeting shall constitute the quorum.

34. The Commission shall make decision by majority vote of the members present at the meeting.

35. The Commission may invite to the meeting such persons as are required.

By Order,
(Sd) Maung Ko
Secretary, The Government of the Union of Myanmar