

THE UNION OF MYANMAR FOREIGN INVESTMENT LAW (1988)

STATEMENT ON FOREIGN INVESTMENT LAW OF MYANMAR

The Government of the Union of Myanmar has been striving hard to promote all round development of national economy to improve provisions of food, clothing and shelter for the people so as to ameliorate their living standards. In this connection steps have been taken to ensure mass participation with maximum utilization of the faculties of people and induce foreign investment on the basis of equality and mutual benefit.

The Government has also envisaged such policy objectives as exploitation of abundant resources of the country with a view to catering to the needs of the nation in the first instance; exporting whatever surplus available; creation of new employment as the economic activities expand so that especially young people would have great job opportunities and privileges of learning on job training as well as technical training both inland and abroad; economic and social development of various regions of the State along with expansion and improvement of transport and communications.

Foreign investors who invest and operate on equitable principles would be given the right to enjoy appropriate economic benefits, to repatriate them, and to take their legitimate assets back home on closing of their business. They would also be given proper guarantee by the Government against nationalization of their business in operation. All these rights and privileges would be granted in the interest of the Union of Myanmar and its people.

At present, enquiries are being made by foreign companies and persons wishing to make investments in the State in a reasonable manner. Similarly, enquiries and contacts are also being made by citizens. It is desirable that a Commission of a high calibre be formed so as to scrutinize the proposals and to co-ordinate all matters concerning enterprises which may be permitted.

As it is necessary to make legal provisions for the above-mentioned matter, the State Law and Order Restoration Council has enacted the Foreign Investment Law.

THE UNION OF MYANMAR FOREIGN INVESTMENT LAW

The State Law and Order Restoration Council Law No. 10/88
The 7th waning day of Tazaungmon 1350 B.E

30 November 1988

The State Law and Order Restoration Council hereby enacts the following Law:-

CHAPTER I TITLE AND DEFINITION

1. This Law shall be called the Union of Myanmar Foreign Investment Law.
2. The following expressions contained in this Law shall have the meanings given hereunder:
 - (a) “Commission” means the Union of Myanmar Foreign Investment Commission;
 - (b) “Government” means the Government of the Union of Myanmar;
 - (c) “Citizen” includes an associate citizen or a naturalized citizen. The said expression also includes an economic organization formed with local investment only;
 - (d) “Foreigner” means a person who is not a citizen. The said expression also includes an economic organization formed with foreign investment only;
 - (e) “Promoter” means any citizen or any foreigner submitting an investment proposal to the Commission;
 - (f) “Proposal” means the prescribed application submitted by a promoter to the Commission for approval of an intended investment and the accompanying draft contract;
 - (g) “Permit” means the order in which the approval of the Commission of a proposal is expressed;
 - (h) “Foreign Capital” includes the following which are invested in an economic enterprise by any foreigner under a permit:
 - foreign currency; property actually required for the enterprise and which is not available within the State such as machinery equipment, machinery components, spare parts and instruments;
 - rights which can be evaluated such as licences, trade marks and patent rights;
 - technical know-how;

- re-investment out of benefits accrued to the enterprise from the above or out of share of profits;

(i) "Investor" means a person or an economic organization making an investment under a permit;

(j) "Bank" means any bank of the State.

CHAPTER II APPLICABLE ECONOMIC ACTIVITIES

3. This Law applies to economic activities prescribed by the Commission from time to time with the prior approval of the Government.

CHAPTER III BASIC PRINCIPLES

4. Foreign investments shall be made in accordance with the following basic principles:

(a) promotion and expansion of exports;

(b) exploitation of natural resources which require heavy investment;

(c) acquisition of high technology;

(d) supporting and assisting production and services involving large capital;

(e) opening up of more employment opportunities;

(f) development of works which would save energy consumption;

(g) regional development.

CHAPTER IV FORM OF ORGANIZATION

5. Foreign investment may be made in any of the following forms:--

(a) investment made by a foreigner to the extent of one hundred per cent foreign capital;

(b) joint-venture made between a foreigner and a citizen.

6. (a) In forming under section 5:-

(i) a sole proprietorship, a partnership and a limited company may be formed;

(ii) if a joint-venture is formed the foreign capital shall be at least 35 per cent of the total capital.

(b) In forming as mentioned above, in carrying out the business and in liquidation on the termination of business, other existing laws of the State shall be complied with.

CHAPTER V FORMATION OF THE COMMISSION

7. The Government shall form the Commission.

CHAPTER VI DUTIES AND POWERS OF THE COMMISSION

8. 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.

9. The Commission shall in scrutinizing a proposal take into consideration facts such as financial credibility, economic justification of the business enterprise and appropriateness of technology.

10. The Commission shall issue a permit to a promoter on a proposal being accepted.

11. In case an extension, relaxation or amendment of the term of the permit or the agreement is submitted by those concerned, the Commission may show thereof as it may deem appropriate.

12. 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.

13. The Commission may, at any time require a promoter or an investor to furnish such evidence or facts as the Commission may deem necessary.

14. The Commission may, for the purpose of carrying out the provisions of this Law form such committees and bodies as may be necessary.

15. The Commission may prescribe the bank which shall transact financial matters under this Law.

16. The Commission shall, from time to time report its performance to the Government. It shall also recommend to the Government measures necessary to facilitate and promote foreign investments.

CHAPTER VII CONTRACTS

17. In forming an economic enterprise under a permit, contracts shall be executed as may be necessary.

18. The Commission may, upon application by those concerned allow the extension, relaxation or amendment of the term of a contract or agreement as may be appropriate.

CHAPTER VIII INSURANCE

19. All economic organization formed under a permit shall effect insurance with the Myanmar Insurance Corporation in respect of the prescribed types of insurance.

CHAPTER IX APPOINTMENT OF PERSONNEL

20. In appointing personnel in an economic organization formed under a permit, preference shall be given to citizens, provided that the Commission may, if necessary, allow the appointment of experts and technicians from abroad.

CHAPTER X EXEMPTIONS AND RELIEFS

21. 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) in respect of any enterprise for the production of goods or services, exemption from income-tax for a period extending to 3 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 Commission to the extent of the original value for the purpose of income-tax assessment;

(d) if the goods produced by any enterprise are exported, relief from income-tax up to 50 percent on the profits accrued from the said export;

(e) right of an investor to pay income-tax payable to the State on behalf of foreigners who have come from abroad and are employed in the enterprise and the right to deduct such payment from the assessable income;

(f) right to pay income-tax on the income of the above-mentioned foreigners at the rates applicable to the citizens residing within the country;

(g) 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;

(h) 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;

(i) 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;

(j) 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.

CHAPTER XI GUARANTEES

22. The Government guarantees that an economic enterprise formed under a permit shall not be nationalized during the term of the contract or during an extended term, if so extended.

23. On the expiry of the term of the contract, the Government guarantees an investor of foreign capital, the rights he is entitled to, in the foreign currency in which such investment was made.

CHAPTER XII FOREIGN CAPITAL

24. The Commission shall evaluate the foreign capital in terms of kyat in the manner 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.

25. 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 XIII RIGHT TO TRANSFER FOREIGN CURRENCY

26. 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 XIV MATTERS RELATING TO FOREIGN CURRENCY

27. An economic organization formed under a permit shall open in the bank prescribed by the Commission, 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.

28. Foreigners serving in any such economic organization shall open a foreign currency account and a kyat account in any bank prescribed by the Commission.

CHAPTER XV GENERAL PROVISIONS

29. The Commission shall hold meetings in the manner prescribed.

30. The decisions of the Commission made under the powers conferred by this Law shall be final and conclusive.

31. No suit, prosecution or other proceeding shall lie against any member of the Commission or committee or body or any public servant for any act done in good faith under this Law.

32. For the purpose of carrying out the provisions of this Law the Government may prescribe such procedures as may be necessary, and the Commission may issue such orders and directives as may be necessary.

(Sd) Saw Maung

General

Chairman

The State Law and Order Restoration Council