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The Republic of the Union of Myanmar

Myanmar Investment Commission

Order 1/2012

27 February 2012

The Myanmar Investment Commission, hereby enacts the following Order under section 5 and 32 of the Union of Myanmar Foreign Investment Law (State Law and Order Restoration Council, SLORC Law No. 10/88).

Chapter (1)

Title and expression

1. This Order shall be called Order relating to foreign investments carried out through a Myanmar citizen nominee.
2. The expressions contained in this Order shall have the meaning as are assigned to them in the Union of Myanmar Foreign Investment Law.

Chapter (2)

Change to Foreign Investment

3. The following investors shall have the right to change their business to a hundred percent foreign investment:
   (a) Foreign investors who use a citizen nominee to hold the entire capital assets, monies, liabilities and account receivables without the citizen nominee having made own contributions.
   (b) Foreign investors performing business activities without citizens having contributed directly or indirectly to the capital of the business.
   (c) A foreign investor carrying out a business through a citizen nominee who is neither married (in whatever form) to the investor nor the investor's [future] heir nor adopted by the investor.
4. Foreign investors performing a business in the guise of a citizen investment may propose to amend their permit in order to carry out the business activities in accordance with the Union of Myanmar Foreign Investment Law as follows:

(a) Regarding the invested business, he shall personally submit a letter addressed to the Commission, applying to be allowed to continue the business in accordance with the Union of Myanmar Foreign Investment Law.

(b) The following points shall be mentioned in the letter to be submitted according to subsection (a):

(i) Name, nationality, address of the foreigner who is to carry out the business.

(ii) Types of business activities carried out, location, permit issued by the Citizen Investment Commission, number, date, amount of investment.

(iii) Name, N.R.C no., address of existing citizen who is taking responsibility and citizen members of board of directors.

(iv) The latest issued annual report of business activities presently being carried out.

(v) Supporting documents regarding taxes paid for business activities presently being carried out.

(vi) Recommendation of the concerned embassy and copy of the passport of the foreigner.

(c) The proposal for the said foreign investment must be submitted within 90 days from the date of this order.

5. The Investment Commission shall scrutinize as follows, after having received the proposal to carry out the business as a foreign-invested business.

(a) To contact and scrutinize with the relevant ministries and embassies concerned whether the foreigner who continues to carry out the investment is blacklisted in the Union of Myanmar and in the country concerned or not.

(b) To scrutinize whether the business activities being carried out are allowable or not in accordance with the Union of Myanmar Foreign Investment Law.

(c) To scrutinize whether the taxes related to the business activities are settled completely or not.

(d) To scrutinize, with local inspections, whether the present business location is suitable from the point of view of the location, environment, type and nature of the work.

6. The Commission shall submit the findings to the nearest convened Commission's meeting after scrutinizing as per section 5. If the Commission agrees, the foreigner shall buy the business presently carried out under the Myanmar Citizen Investment Law with foreign currency from the citizen who is presently carrying out the business. After this, the Commission shall allow the business activities to be continued in accordance with the Union of Myanmar Foreign Investment Law.

7. In order to change the citizen investment to a foreign investment:

(a) Relating to the use of land, the investor or promoter shall comply with the Government of the Union of Myanmar Notification No.39/2011 dated 30 September 2011.

(b) Relating to foreign currency matters, the investor or promoter shall comply with the Government of the Union of Myanmar Notification No. 40/2011 dated 30 September 2011.

(c) In accordance with this Order, during the period in which the business is changed to a foreign-invested business, the foreign investor or promoter shall pay the original salaries and allowances to the business's staff and employees.

(d) The investor or promoter shall not dismiss citizen staff and employees [who were previously hired by the nominee] while continuing the business as a foreign-invested business after having received the approval from the Commission.

(e) The foreign investor or promoter who is performing a business in the guise of a citizen investment shall neither partly nor wholly sell the business to any citizen without having changed the business to a foreign-invested business in accordance with the Union of Myanmar Foreign Investment Law.

Chapter (3)
Change to a Joint Venture

8. The following foreign investors or promoters shall have the right to change the business to a foreign-invested joint venture [with a local partner]:
   (a) A foreign investor or promoter carrying out a business through a citizen nominee who participates partly in the said business in terms of capital assets, monies, liabilities and account receivables.
   (b) A foreign investor or promoter carrying out business activities with a citizen who participates directly or indirectly in the capital of the said business.
   (c) A foreign Investor or promoter who carries out a business through a citizen nominee who is married (in whatever form) to, a [future] heir of, or adopted by the investor.
9. The foreign investor or promoter who is performing a business in the guise of a citizen investment may submit a proposal to carry out the business as a foreign-invested joint venture in accordance with the Union of Myanmar Foreign Investment Law as follows:
   (a) The foreign investor or promoter shall personally submit a letter addressed to the Commission , applying to be allowed to continue the business in accordance with the Union of Myanmar Foreign Investment Law.
   (b) The following points shall be mentioned in the submitted letter as per subsection (a);
      (i) Name, nationality and address of the foreigner who will do the joint venture with the citizen.
      (ii) The type of business activities carried out, location, citizen investment permit no., date, amount of invested capital.

(iii) Name, N.R.C No. address of citizen and members of board of directors who are taking responsibility to carry out the business.

(iv) The latest issued annual report of the business activities carried out.

(v) Supporting evidence for payment of all taxes related to the business.

(vi) The relevant embassy's recommendation and copy of the passport of the foreigner.

(vii) The invested amount and share ratio between the citizen and the foreigner.

(viii) Bank statement, issued within the last 6 months, showing a sufficient amount in Myanmar kyats or foreign currency.

(ix) If the citizen who is participating in the joint venture business and married to the foreigner investor or promoter in accordance with Myanmar Customary Law or any other way, the foreign investor shall submit the letter which is agreed and signed by foreigner, stating that he is going to contribute 50 percent of investment amount for the citizen.

(x) If the citizen who is participating in the joint venture business is a [future] heir of, or adopted by, the foreign investor, the foreign investor shall submit a letter which is signed and agreed by him stating that he shall contribute the citizen's investment ratio.

(c) The foreign investor or promoter shall submit the proposal within 90 days from the date of this order.

10. The Commission shall scrutinize after receiving proposal to carry out the business as a foreign-invested business as follows:
    (a) The Commission shall contact and scrutinize to the relevant ministries and embassy concerned whether the foreigner who is going to do the joint venture business is declared as a blacklisted person in Myanmar and relevant country or not.
    (b) The Commission shall contact and scrutinize the relevant ministries whether the foreign investor who shall do the joint venture business is proposed to be blacklisted or not.
    (c) The Commission shall scrutinize whether the business is allowable or not in accordance with the Union of Myanmar Foreign Investment Law.
    (d) The Commission shall scrutinize the business as to whether all the taxes levied have been completely paid or not.
    (e) The Commission shall scrutinize the citizen who is proposed to participate in the joint venture whether he is financially capable or not.
    (f) The Commission shall scrutinize, with local inspections, whether the present business location is suitable from the point of view of the location, environment, type and nature of the work.
11. Upon scrutinizing as per section 8, the Commission shall submit the findings to the nearest convened Commission meeting. If the Commission agrees, the foreign investor or promoter shall buy, with foreign currency, his share of the properties included in the business that is presently

being carried out under the Citizen Investment Law. And then, the Commission shall allow the said business activities to be continued accordance with the Union of Myanmar Foreign Investment Law.

12. In order to change the citizen investment to a foreign-invested joint venture:
    (a) Relating to the use of Land, the foreign investor or promoter shall carry out the business activities in accordance with Government of the Union of Myanmar Notification No. 39/2011, dated 30 September 2011.
    (b) Relating to foreign currency matters, the foreign investor shall carry out the business activities in accordance with Government of the Union of Myanmar Notification No. 40/2011 dated on 30 September 2011.
    (c) During the period in which the business is changed to a foreign-invested joint venture, the foreign investor or promoter shall pay the original salaries and allowances to the business's staff and employees.
    (d) After receiving the permit from the Commission to continue the business as a foreign-invested joint venture, the foreign investor shall not dismiss the formerly appointed citizen staff and employees.
    (e) The foreign investor or promoter who is doing a business in the guise of a citizen investment shall neither partly nor wholly sell his business activities to any citizen without having changed the business to a foreign-invested business in accordance with the Union of Myanmar Foreign Investment Law.

Chapter (4)

Miscellaneous

13. If the involvement of any fixed asset, currency, share of foreign investor is less than 35 percent of the total investment amount under any citizen investment, the Commission shall not allow the said investment to b changed into a foreign investment.
14. With regard to an investment which is not allowed to be changed into a foreign investment according to section 13, the citizen members of the board of directors shall buy the capital contributed by the foreign investor and then shall carry out the business as a 100 percent citizen investment.

By order,

(S.d) Soe Thein,

Chairman

Myanmar Investment Commission

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Date 27 February 2012

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