

Ministry of National Planning and Economic Development Notification No. 11/2013: Foreign Investment Rules

Note 3 July 2013: There appear to have been amendments to the Foreign Investment Rules. The version published on the homepage of the Directorate of Investment and Company Registration (DICA) differs in some places from the originally published version. These differences are highlighted in blue in the translation.



POLASTRI **WINT** & PARTNERS
LEGAL & TAX ADVISORS

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THE GOVERNMENT OF THE REPUBLIC OF THE UNION OF MYANMAR

The Ministry of National Planning and Economic Development

Notification No. 11/2013

The 5th Waning day of Pyathoe, 1374 B.E.

31 January 2013

In exercise of the powers conferred to it under section 56 (A) of the Foreign Investment Law, with the approval of the Government of the Union, issues the following rules:

Chapter 1

Title and Definition

1. These rules shall be called the **Foreign Investment Rules**.
2. The expressions contained in these rules shall have the same meanings as are assigned to them in the Foreign Investment Law. In addition, the following expressions shall have the meaning given hereunder:-
 - (a) **Ministry** means the Ministry of National Planning and Economic Development;
 - (b) **Commission Office** means the Directorate of Investment and Company Administration which carries out the functions of the Myanmar Investment Commission;
 - (c) **Director General** means the Director General of the Directorate of Investment and Company Administration;
 - (d) **Form** means the respective form attached to these Rules;
 - (e) **Schedule** means the respective schedule attached to these Rules;
 - (f) **BOT** means to build, operate and transfer the business to the respective body after the contract term has ended.
 - (g) **BTO** means to build the business, transfer it after building is completed, and operate it.
 - (h) **Fixed Assets** means the land, buildings, vehicles and other assets used in the business. The expression also includes shares, promissory notes and similar instruments.



Chapter 2

Scope of application

3. The Commission shall stipulate the applicable economic activities [translator's note: i.e. the economic activities which fall within the scope of the Foreign Investment Law] through notifications on the basis of the following criteria:
 - (a) businesses which will create employment opportunities
 - (b) businesses which will add value to products
 - (c) businesses involving large amounts of capital
 - (d) business using high technology
 - (e) businesses that are able to offer goods or services to citizens for a low price, thus enlarging local consumption by citizens
 - (f) businesses improving the living standard of citizens
 - (g) businesses helping small and medium-sized businesses operated by citizens to increase their capital and gain technology
4. The Commission shall define the business activities which are restricted or prohibited; the business activities which are only allowed if carried out as a joint venture with a citizen; and the business activities which are allowed, but subject to specific, prescribed conditions, and submit [these lists] to the Union Government for approval.
5. The Commission shall, with the prior approval of the Union Government, issue notifications defining the business activities which are restricted or prohibited; the business activities which are only allowed if carried out in a joint venture with a local citizen; and the business activities which are allowed, but subject to specific, prescribed conditions.
6. The Commission may, in order to foster the interest of the Union and its citizens and with the prior approval of the Union Government, make amendments to the notifications mentioned in the previous section from time to time.
7. Production and services businesses which are reserved to citizens [translator's note: literally: "which can be carried out by citizens"] are set forth in **Schedule 1**.
8. Agriculture and short-term and long-term farming businesses are reserved to citizens [translator's note: literally: "which can be carried out by citizens"] are set forth in **Schedule 2**.
9. Animal husbandry businesses which are reserved to citizens [translator's note: literally: "which can be carried out by citizens"] are set forth in **Schedule 3**.
10. Fishery businesses in Myanmar maritime waters which are reserved to citizens [translator's note: literally: "which can be carried out by citizens"] are set forth in **Schedule 4**.



11. The Ministry may, with the approval of the Union Government, from time to time amend the list of businesses issued according to Rules 7, 8, 9 and 10.
12. The Commission may, with the approval of the Union Government, designate economic zones within 10 miles from the borderline connecting the Union territory and other countries for manufacturing and services (such as industrial zones), agriculture and animal husbandry, tourism, trading.
13. In order to create an economic zone described in Rule 12, the Commission shall submit its own proposal, the proposal of a regional or state government or the executive body of a self-administered division or zone, or the proposal of a [private] investor or promoter (which must have obtained the backing of the respective regional or state government or the executive body of a self-administered division or zone) to the Union Government for approval.
14. If the foreign Investor proposes to carry out restricted or prohibited business activities, the Commission shall, in order to protect the interest of the Union and its citizens, especially the interests of its indigenous nations, scrutinize the proposal on the basis of the following criteria:
 - (a) the opinion of the local residents and social communities on the proposed investment;
 - (b) the opinion of the regional administrative bodies on the proposed investment;
 - (c) depending on the location of the investment, the opinion of the Nay Pyi Taw Council or relevant government of the region or state.
15. The Commission shall submit the proposal, which must be in compliance with the requirements stipulated in Rule 14, to the Union Government for approval.
16. The Commission shall issue an investment permit to the promoter or investor after having obtained the approval of the Union Government.

Chapter 3

Forms of Investment

17. The investment may be carried out through any of the following forms:
 - (a) With the exception of businesses that are covered by notifications issued under Rule 5, foreign Investors may own the entire business;
 - (b) If a foreigner forms a joint venture with a citizen or Government department or organization, the capital share ratio shall be fixed by the joint venture contract and in accordance with the shareholders agreement;
 - (c) in any other form agreed by mutual contract between a private investor and a state entity such as a BOT or BTO contract.



18. When applying for the approval of an investment proposal and for incorporation or registration of a foreign company [translator's note: "foreign company" means the investment vehicle to be incorporated in Myanmar], these applications shall be filed at the same time with the Directorate of Investment and Company Administration Directorate of Investment and Company Administration (DICA).
19. Upon issuance of the investment permit by the Commission, DICA shall allow the concurrent incorporation and registration of the foreign company [translator's note: i.e. the investment vehicle]. To create a convenient atmosphere for investment activities, the Director General may issue a temporary incorporation or registration certificate if the promoter or investor applied for incorporation or registration in advance. However, a temporary incorporation or registration certificate shall not be construed as constituting a permit to invest.
20. If a foreigner forms a joint venture with a citizen to carry out a prohibited or restricted business, the capital ratio of the foreign capital shall not exceed 80% of the total investment. The Commission may, with the prior approval of the Union Government, amend this stipulation by issuing notifications.
21. If liquidation is allowed prior to the expiry of the contractual period, or if the project is to be liquidated after the end of the activities, approval from the Commission [to liquidate the project] shall be obtained in advance, and liquidation shall be done in accordance with the existing Companies Act.

Chapter 4

Formation of the Commission and Holding of Meetings

22. The Commission shall have **more than 9 members and** always an odd number of members.
23. The term of office of a Commission member shall not exceed three years. However, the Union Government may permit a Commission member to hold office for more than three years if the member's expertise is needed, or for other reasons.
24. If any of the members is unable to fulfill the full three years term, the term of office of the successor shall be the remainder of the former member's term.
25. The Commission shall meet at least twice a month.
26. The chairman of the Commission shall be the chairperson of the meeting. If the chairman is absent from the meeting, the vice-chairman shall be the chairperson and when both of them are absent, the secretary or one of the members shall be the chairperson.
27. The attendance of more than 50% of the members is required in order to hold a meeting.
28. Matters shall be decided by **a majority of more than 50% of** those members participating in the meeting, and their decision shall not be objected against, denied or altered, by members who were absent from the meeting.



29. The Commission, in carrying out its duties according to these Rules, shall act on the principles of transparency, responsibility, accountability and fair competition between the investors in order to enhance clarity. The Commission shall prevent monopolies.
30. The Commission, if necessary, may invite the relevant Union Minister or Deputy Minister, experts on the subject matter, and other persons whose presence is necessary.
31. The Commission shall allow the promoter or the investor and their assistants to attend, and explain their position in, the meeting.

Chapter 5

Application for a Permit

32. The investor or the promoter shall apply to the Commission for an investment permit on **Proposal Form (1)** which shall contain the following particulars:
 - a) Name of the investor or promoter; citizenship; address; place of business; business activities actually carried out in accordance with the relevant law; place of the administrative headquarter; place of incorporation; type of business;
 - b) in case of a joint venture, the particulars set out in sub-paragraph (a) are also to be provided with regard to the partner(s) involved;
 - c) documents backing up the information given in accordance with sub-paragraphs (a) and (b);
 - d) evidence of the commercial and financial standing of the investor, promoter or joint-venture partners;
 - e) details on the proposed production or services activities;
 - f) the duration of the investment; construction period;
 - g) the place in the Union where the investment is to be made;
 - h) technology for production and system of sales;
 - i) required type of energy which is intend to be used and its quantity;
 - j) the quantity and value of the most important machineries, equipment, raw materials and other similar materials that are required during construction;
 - k) required type and area of land;
 - l) estimated quantity and value of the annual production or services to be provided;
 - m) estimated annual requirement for, and revenue in, foreign currency;
 - n) annual estimated quantity, value of the goods that will be sold locally or abroad;
 - o) economic viability of the project;



- p) prevention and precaution plan to mitigate harmful effects on the environment and the society in accordance with the relevant existing laws;
 - q) type of organization [translator's note: this means the investment vehicle] in the Union;
 - r) if the investment is carried out through a partnership, the partnership agreement, ratio of capital to be contributed, profit sharing, liabilities and rights of the partners;
 - s) if the investment is carried out through a limited company, the draft contract [translator's note: "draft contract" - most likely this refers to the shareholders' agreement], draft memorandum of association and articles of association, authorized capital of the company, types of shares, number of shares to be subscribed by the shareholders;
 - t) name, citizenship, address and position of the executives of the investment vehicle;
 - u) total capital amount of the investment vehicle, the ratio of the capital to be contributed locally and from abroad, the total amount of brought-in capital [translator's note: brought-in capital = foreign capital brought into Myanmar], the value of each type of brought-in capital and the time-frame for its contribution;
 - v) [undertaking to follow the terms of the contract.](#)
33. [The investor or promoter] shall submit the draft land lease agreement to be executed with a citizen or a Government department or organization, and a draft joint venture agreement or mutual contract together with the proposal.
34. If the Commission deems the project to be a large investment project which have to undergo environmental impact assessment under the Ministry of Environmental Conservation and Forestry, the assessment on the project's environmental and social impact shall be attached to the proposal.
35. A proposal is to be submitted to the Commission through the relevant Ministry if it involves natural resources which are governed by the State-owned Enterprises Law.
36. In other cases than those referred to in section 35, the proposal may be submitted to the Commission directly by the investor or the promoter.
37. When receiving the proposal, the Commission shall scrutinize and accept if all required information are provided. Otherwise, the Commission shall explain the requirements to the investor or the promoter and the proposal shall have to be submitted again after required amendments have been made.
38. In order to scrutinize proposals containing all required information, the Commission shall form a Proposal Scrutinizing Committee in which high ranking officers from the following departments shall participate:
- a) Directorate of Investment and Company Administration
 - b) Custom Department
 - c) Inland Revenue Department



- d) Directorate of Labour
 - e) Concerned department from the Ministry of Electrical Power
 - f) Urban and Housing Development Department
 - g) Industrial Supervision and Inspection Department
 - h) Directorate of Trade
 - i) Department of Scrutinizing Plans and Development Reporting
 - j) Department of Environmental Conservation
39. When performing initial scrutiny, [the Proposal Scrutinizing Committee] shall, if necessary, invite experts from relevant Government departments and organizations according to the nature of the proposed business.
40. The Director General shall chair the Proposal Scrutinizing Committee.
41. The Committee shall hold meetings once a week to scrutinize proposals received before the meeting, and then submit [proposals that have successfully passed initial scrutinizing] to the Commission for further consideration. The investor or the promoter shall receive a reply by post or other communication methods to inform them whether the proposal has been accepted or rejected (reasons for rejecting a proposal must be given).
42. The Committee shall allow the investor or the promoter or an authorized person to attend the meeting of the Proposal Scrutinizing Committee.

Chapter 6

Further Steps with Regard to the Proposal

43. If the Commission accepts the proposal [translator's note: this probably refers to the proposals which contain all required information and have successfully passed initial scrutiny by the Proposal Scrutinizing Committee], the Commission must, depending on the location of the project, inquire with the Nay Pyi Taw Council or the relevant regional or state government whether the proposal is acceptable, and with the Ministry of Environmental Conservation and Forestry whether proposed measures to avoid or mitigate an impact on the environment or society are sufficient.
44. Nay Pyi Taw Council or the relevant regional or state government must, upon scrutiny, inform the Commission through the Chairman of Nay Pyi Taw Council or the relevant prime minister (or a delegated person) within 7 days whether the proposal is acceptable.
45. The Ministry of Environmental Conservation and Forestry must, upon scrutiny, inform the Commission through the Union Minister (or a delegated person) within 7 days whether the proposed measures to avoid or mitigate an impact on the environment or society are sufficient.



46. If the Commission, due to the nature of the proposed business, requests the opinion of [other] Union Ministries, these Ministries must reply within 7 days. In all Ministries, an Investment Scrutinizing Team must be formed, headed by a director or officer of equivalent rank. The respective Ministry must lay down its policies to guide the Investment Scrutinizing Team when reviewing the proposal. The workload of the Team and changes of the Team members have to be reported to the Commission. The Team represents the Ministry if invited to attend a meeting of the Commission.
47. After having received the comments [from the entities involved according to Rules 44-47] and reviewed them, the Commission must present the proposal to the nearest meeting of the Commission.

Chapter 7

Scrutiny of Proposal

48. The Commission shall scrutinize the investment proposal under the following criteria:
- a) whether it complies with the basic principles of Section 4 of the Foreign Investment Law;
 - b) in order to review the financial reliability [of the investor], [the Commission shall] check the following references:
 - 1) bank statements;
 - 2) final audited report of the company of the most recent year;
 - 3) business report of the company;
 - c) [the Commission shall] review the economic viability of the project on the basis of
 - 1) The estimated annual net profit;
 - 2) the estimated annual foreign exchange to be received and to be used;
 - 3) the recoupment period;
 - 4) prospects of new employment opportunities;
 - 5) prospects to increase the national income;
 - 6) market situation locally and abroad;
 - 7) local consumption needs;
 - d) [the Commission shall] assign experts from the Department of Environmental Conservation to scrutinize whether the appropriate industrial technology is used or not;
 - e) [the Commission shall] review the opinion of the Environmental Department regarding the plans for prevention of, and precaution against, harmful effects on the environment and on society;



- f) [the Commission shall] scrutinize the investment as to whether the investor accepts to be accountable for its consequences and whether it has a positive social and economic impact on the Union and its citizens;
- g) [the Commission shall] scrutinize the proposal whether it is in conformity with existing laws.

Chapter 8

Issuance of the Permit

- 49. If the Commission, after having scrutinized it, approves the proposal, a permit (Form 2) shall be issued within 90 days after the receipt of the proposal. A copy of the permit shall be sent to the relevant Union Ministries.

Chapter 9

Procedure after the Issuance of the Permit

- 50. After having obtained the permit from the Commission, the promoter or investor carry out construction during the prescribed period (including extensions, if extensions were granted). Within 30 days after the completion of construction, the investor or promoter shall inform the Commission accordingly.
- 51. The investor shall commence production or the provision of services after the construction period is over.
- 52. During the investment process, the promoter or investor shall submit **Progress Report Form (3)** to the Commission every 3 months by post or other forms of communication.
- 53. During the investment process, the investor shall inform the Commission within 24 hours if any of the situations stipulated Rule 124 occur.
- 54. The promoter or investor shall obtain relevant licenses, permits or registrations from the relevant Union Ministry, the Government departments or organizations.
- 55. The promoter or investor shall:
 - a) protect the environment in accordance with the Law of Environmental Conservation;
 - b) shall be socially responsible and respect the interests of the Union and citizen;
 - c) with regard to regular inspections or inspections that are carried out when necessary, shall allow these inspections and coordinate with authorized persons so that the inspections can be carried out;
 - d) shall observe standards issued by the relevant Union Ministry;
 - e) shall implement safety and health protection measures;



- f) shall observe standards issued by the relevant Union Ministry concerning the transport, storage and use of dangerous, toxic or similar materials;
 - g) shall not harm consumers by products that are not in conformity with quality requirements and standards.
56. The Commission may, in accordance with applicable notifications, orders, directives and procedures, decide on the following applications within 15 days:
- a) application for the expansion if the originally proposed investment business, or for the increase of the investment capital,
 - b) application for all available exemptions and reliefs;
 - c) application for benefits according to the existing laws, or for actions against grievances.
57. A permit to explore for minerals does not encompass survey or production. The investor shall apply for a survey and production permit to the Commission through the Ministry of Mines after the exploration has been completed.

Chapter 10

Term of the Construction Period

58. After having obtained the permit, the investor shall finish construction within the construction period stated in the permit, starting from the date of the issuance of the permit.
59. If the investor is unable to finish construction within the term, the investor shall apply to the Commission for an extension 60 days prior to the end of the term, and explain the reasons for the delay.
60. After scrutinizing the application for extension and, if the Commission is of the opinion that the delay occurred for understandable reasons, the Commission may extend the construction period by a period of time that may not be longer than 50% of the original term.
61. Only two extensions may be granted, save for delays that occurred due to acts of God such as natural disasters, an unstable [security] situation, riots, demonstrations, emergencies, armed resistance, insurgencies, wars.
62. The construction period in the business of oil, gas and mining shall be in accordance with the terms and conditions of the contract approved by the commission.
63. The Commission shall cancel the permit issued to the investor if the construction process cannot be finished within the construction period or extended period. In this regard, the investor shall not be compensated or indemnified.



Chapter 11

Subleasing, Mortgaging, Share Transfer, Transfer of the Business

64. If the investor, during the permitted investment period, wishes to sublease, or mortgage, land and buildings used in the investment (this must not result in changing the nature of the business), the investor shall, with the prior consent of the person who has the right to use land or to lease land, apply to the Commission, on **Sublease Form (4)** or **Mortgage Form (5)**, for permission to do so. If the land type is vacant land, fallow land or waste land, the approval from the Union Government shall be attached to the application.
65. The Commission shall scrutinize the application according to the following criteria:
- a) whether the reasons advanced by the investor for wishing to sublease or mortgage the land/buildings are genuine;
 - b) whether the sublease or the mortgage can affect the interests of the Union or its citizens;
 - c) whether the sublessee or the mortgagee has the capacity to carry out the business successfully.
66. If, after scrutiny, the Commission is of the opinion that subleasing or mortgaging the land/buildings should be allowed, the Commission shall submit the application to its nearest meeting which may approve or reject the application.
67. If all of the shares [of the investment vehicle] are going to be sold to a foreigner or a citizen, the investor shall apply to the Commission for approval using the **Share Transfer by Sale Form (6)**; a tax clearance recommendation letter issued by the revenue office shall be attached to the application. If the business uses vacant land, fallow land or waste land, the approval from the Union Government shall be attached to the application.
68. The Commission shall scrutinize the application according to the following criteria:
- a) whether the reasons advanced by the investor for wishing to sell the shares are genuine;
 - b) whether the sale can affect the interests of the Union or its citizens;
 - c) whether the purchaser can carry out the business successfully.
69. If, after scrutiny, the Commission is of the opinion that the share sale should be allowed, the Commission shall submit the application to its nearest meeting which may approve or reject the application.
70. The seller shall return the investment permit to the Commission if the Commission has granted approval of the share sale.
71. If the purchaser is a foreigner, the purchaser shall apply for company incorporation and registration as a foreign company [translator's note: "foreign company" is a legal term and means in this case "foreign-invested company"] to DICA. If the seller agrees, the name of the company may remain the same.



72. If the purchaser is a citizen, the purchaser shall apply to the Commission for a permit in accordance with the Citizen Investment Law and then apply for registration to DICA as a citizen company after having obtained the permit from the Commission.
73. If exemptions or reliefs were granted according to Chapter 12, Section 27 of the Foreign Investment Law and the exemption or relief period has not expired yet, the purchaser may enjoy the exemptions or reliefs during the remaining period. Otherwise, the purchaser may not claim exemptions or reliefs on the grounds that the purchaser obtained a new investment permit.
74. If some of the shares [of the investment vehicle] are going to be sold to a foreigner or a citizen, the investor shall apply to the Commission for approval using the **Share Transfer by Sale Form (7)**; a tax clearance recommendation letter issued by the revenue office shall be attached to the application. If the business uses vacant land, fallow land or waste land, the approval from the Union Government shall be attached to the application.
75. The Commission shall scrutinize the application according to the following criteria:
- a) whether the reasons advanced by the investor for wishing to sell the shares are genuine;
 - b) whether the sale can affect the interests of the Union or its citizens;
 - c) whether the purchaser can carry out the business successfully.
76. If, after scrutiny, the Commission is of the opinion that the share sale should be allowed, the Commission shall submit the application to its next meeting which may approve or reject the application.
77. After having obtained approval from the Commission, the parties shall apply to DICA for the registration [of the share transfer], the approval granted by the Commission shall be attached to the application.
78. When scrutinizing applications under rules 65, 68 and 75, the Commission may, if necessary, set up a scrutinizing committee composed of experts from relevant Government departments and organizations.

Chapter 12

Insurance

79. A business which has obtained an investment permit shall take out the following types of insurances with any insurance company allowed to operate within the Union:
- a) Machinery insurance;
 - b) fire insurance;
 - c) marine insurance;
 - d) personal accident insurance;



- e) natural disaster insurance;
 - f) life insurance.
80. Besides the insurances mentioned in rule 79 and depending on the type of business, other insurances shall be taken out in accordance with existing laws, regulations and procedures.

Chapter 13

Appointment of Staff and Workers

81. When the investor submits the proposal, the required number of skilled workers, technicians and [skilled] staff and of unskilled workers shall be stated.
82. When the business commences commercial operation, skilled citizen workers, technicians and staff shall be appointed in accordance with section 24 of chapter 11 of the Foreign Investment Law. The wages shall not be less than the minimum wages prescribed in the relevant laws, rules, regulation, by-laws, procedures, orders, notifications and directives.
83. The Commission shall issue notifications to clarify the requirement to hire citizens. *[Translator's note: This is a very loose translation as the meaning of the original is not clear.]*
84. When hiring staff workers, the investor must comply with existing labour laws.
85. After appointing citizen or foreign staff or workers, the investor shall enter into an employment contract in accordance with the terms and conditions prescribed by the Ministry of Labour, Employment and Social Security.
86. The investor shall annually, before 31 January, report its plan to train citizen staff in order to improve their skills.
87. The investor shall apply for a work permit (on **Work Permit Form (8)**) to the Ministry of Labour, Employment and Social Security for foreign staff working at the business; a recommendation letter from the Commission is required. The investor shall furthermore apply for a stay permit on **Stay Permit Form (9)**.
88. When the Commission Office receives the application under rule 87, it shall be scrutinized by the relevant officer of the Departmental Coordination Committee under the Commission Office, and then the Committee shall issue the permit [translator's note: "permit" probably means the stay permit].
89. In compliance with the Social Security Law, the investor shall register all workers of the business, irrespective from whether they receive their salary in Myanmar kyats or in a foreign currency, with the Social Security Board so that they can enjoy social security benefits.
90. The investor shall register the business with the Social Security Board within 15 days from the date of commencing business and submit evidence of registration to the Commission.



91. An investor wishing to continue the investment shall bi-annually obtain a recommendation letter from the social security office in charge showing that there are no outstanding social security contributions and submit it to the Commission.
92. After the end of an employment contract, the investor shall submit a recommendation letter from the social security office in charge showing that there are no outstanding social security contributions; otherwise, the employee whose contract has ended cannot claim social security benefits.
93. Disputes arising between an employer or employer's organization and an employee or labour organization shall be settled according to the Settlement of Labour Disputes Law.
94. Entry and stay of foreigners in connection with the investment activities shall be in accordance with the existing immigration law, rules, procedures, orders, directives and regulations.

Chapter 14

Exemptions and Reliefs

95. The investor or the promoter shall have the right to apply to the Commission for one or more or all of the exemptions and reliefs stipulated in chapter 12, section 27, sub-sections (b) to (k) of the Myanmar Foreign Investment Law; the request shall be made on **Tax Exemption and Relief Form (10)**.
96. If the investor or promoter applies to the Commission under Rule 95 for exemptions and reliefs, the Commission shall scrutinize the application as required, request supporting evidence and documents from the investor or promoter and other relevant Government departments or organizations or other organizations.
97. Every business shall be required to start production or services within the following time frame:
 - (a) If the business is exporting goods to foreign countries, the issuance date of the first bill of lading, receipt of cargo loaded onto an aircraft, or other relevant trading documents proving export, must be within 180 days after the end of the construction period.
 - (b) If the business is selling goods within the country, the first revenue generated from such sale must occur within 90 days after the end of the construction period.
 - (c) If the business is providing services, the first services must be provided within 90 days after the end of the construction period.
98. The investor or promoter shall report the commencement date according to rule 97 to the Commission on **Report Form (11)**.
99. The Commission shall scrutinize the commencement date of business activities as reported by the investor and approve it if everything is correct. The Commission shall specify the types and time periods of the exemptions and reliefs granted, and inform the investor or promoter and the Government departments or organizations concerned accordingly.



100. The Commission shall issue notifications to issue available tax exemptions or reductions according to the types of business.

Chapter 15

Right to Use Land

101. In order for the investor to operate the business for which an investment permit was granted, the Commission may, with the prior approval of the Union Government, allow the (sub-) lease of land as specified below from any person who has the right to lease the land or use the land.
- (a) land administered by the Government;
 - (b) land owned by a Government department or organization;
 - (c) land owned by citizens.
102. Vacant land, fallow land and waste land may, in accordance with the Vacant Land, Fallow Land and Waste Land Management Law, be (sub-) leased by an investor wishing to develop it in order to use it for agriculture or animal husbandry on a commercial scale.
103. Depending on the type of business and the invested capital, the Commission may allow the (sub-) lease of the land, by the investor, from a person who is entitled to use or lease the land, for a term corresponding to the life time of the business, maximum 50 years initially.
104. Depending on the type of business and the invested capital, the Commission may extend the term according to rule 103 twice for a maximum of 10 years each if the investor wishes to continue the business and the person entitled to use or lease the land agrees to the extension.
105. If an investor engages in agriculture, animal husbandry or related activities, the investor has to apply to the Central Land Management Committee in order to (sub-) lease vacant land, fallow land, or waste land, and comply with the Vacant Land, Fallow Land and Waste Land Management Law. The initial (sub-) lease period depends on the investment amount and shall comply with said law; the maximum period shall be 30 years. After the expiry of the initial period, an extension may be granted depending on the provisions of the Vacant Land, Fallow Land And Waste Land Management Law.
106. In order to obtain proper technology and funds for investments, citizens having the right to lease or use vacant land, fallow land or waste land for agriculture or animal husbandry may enter into a joint venture with a foreign investor with an appropriate shareholding ratio.
107. A person who is entitled to lease or use vacant land, fallow land or waste land must pay a deposit for the lease fees or land-use fees according to the Vacant Land, Fallow Land and Waste Land Management Law.
- ~~104. A person who is entitled to lease or use vacant land, fallow land or waste land may sell, exchange or transfer the land only with the approval of the Union Government.~~



108. A foreign investor may, through a joint venture with a citizen, engage in contract farming of seasonal crops on land which the citizen is entitled to lease or use.
109. A foreign investor may, through a joint venture with a citizen which obliges the foreigner to contribute appropriate technical know-how and provides for an appropriate shareholding ratio for the citizen, engage in agriculture or animal husbandry on land which the citizen is entitled to lease or use.
110. In order to develop the whole country, the Commission may, with prior approval of the Union Government, prolong the periods stated in rules 103 and 104 by up to 10 years [translator's note: the exact scope (e.g.: maximum 60 initial years + 20 years first extension + 20 years second extension?) is not clear] if the project is in a less developed region or a region that is difficult to access.
111. The investor or the promoter must fill in **Land Lease Form (12)** in order to (sub-) lease the land to be used for the business. The form must be submitted together with an agreement with the person entitled to lease or use the land.
112. After having received the application in accordance with rule 111, the Commission must, depending on the location of the project, inquire with Nay Pyi Taw Council or the relevant regional or state government whether they agree with the application.
113. If the land to be used is owned or managed by a government department or organization, a letter, addressed to the Commission, from this department or organization stating their willingness to lease must be enclosed with the application.
114. After having obtained the investment permit from the Commission, the person entitled to lease or use the land and the investor shall sign the land (sub-) lease contract and send it to the Commission.
115. With regard to land that is owned by a government department or organization, the Commission may approve the rate [translator's note: i.e. rental fee] stipulated by the relevant Union Ministry, but may, if necessary, consult with the Union Government.
116. The investor must sign the land (sub-) lease contract providing for an annual rent with the person who is entitled to lease or use land; the rental fee must correspond to the market rate. The agreement as to the rental fee has to be submitted to the Commission [translator's note: this probably means that the Commission has to be notified whenever there is a change in the annual amount to be paid by the investor].
117. The rental fees have to be calculated for a 365 days period each, starting from the date of commencement of the (sub-) lease.
118. With regard to the lease of land owned by Government departments or organization, the respective department or organization shall request payment of a land-use premium from the investor.
119. If either of the following events arise, the Commission may terminate the (sub-) lease and request cessation of the business activities.



- (a) the person entitled to lease or use land reports to the Commission that the investor failed to pay the rental fee or breached other terms and conditions of the (sub-) lease contract and the Commission comes, after scrutiny, to the conclusions that these allegations are true;
- (b) the person entitled to lease or use land reports to the Commission that the investor breached existing laws governing the lease of land and the Commission comes, after scrutiny, to the conclusion that these allegations are true;
- (c) the investor breached an existing law and is blacklisted, or ordered to cease its business activities by a court or other competent body.

120. The investor shall-

- (a) report to the Commission at least 6 months in advance if [the investor] wishes to suspend the business activities due to the turnout being not as expected, loss, or for other reasons;
- (b) report to the Commission within 24 hours if, on vacant land, fallow land or waste land used by the investor for agriculture or animal husbandry or any other permitted business activity, mineral resources, archeological materials, ancient ruins or treasures are discovered;
- (c) comply with the terms and conditions of the land (sub-) lease agreement concluded with the person who is entitled to lease or use land, and transfer the land to this person within 7 days after the expiry of the agreement.
- (d) pay the full rent for the entire (sub-) lease period to the person entitled to lease or use land if the (sub-) lease is prematurely terminated according to rule 119, so as not to cause any damages to this person.

121. If the investor returns land to the person entitled to lease or use land, this person must inform the Commission of this fact within 7 days after the land has been returned.

122. The Commission shall not allow any business which is not covered by the investment proposal to be carried out on the (sub-) leased land.

123. The investor shall not be allowed to exploit natural resource above ground or underground unless the investor has obtained an investment permit for the exploitation of the respective natural resources.

124. The investor shall report to the Commission within 24 hours if, on land used by the investor's business, mineral resources, archeological materials, ancient ruins or treasures are discovered, unless the search for such objects is covered by the investment proposal and the (sub-) lease agreement. Upon receipt of this report, the Commission shall consult with the relevant Union Ministry and, depending on the region in which the business is located, with the Nay Pyi Taw Council or the respective regional or state government. If, with the approval of the respective Union Ministry, the Commission allows the investor to do so, the investor can continue the business on the existing plot; otherwise, the investor shall transfer the business to a different plot offered in substitution.



125. The investor may level or otherwise alter the surface of the (sub-) leased land only with the approval of the relevant Union Ministry and the person who is entitled to lease or use the land.
126. The Commission may terminate the (sub-) lease if the business pollutes the environment, or residents complain about environmental impacts, cultural impacts, noise or other disturbances and the Commission, after scrutiny, finds these allegations to be true.
127. An investor who has applied for a permit to engage in agriculture and crop production shall not engage in any other activities unless prior approval by the Union Government to do so has been obtained.
128. The following land is not allowed to be (sub-) leased to an investor, irrespective of the nature of the business:
- (a) Religious land;
 - (b) land designated by the competent Union Ministry as natural and cultural heritage site;
 - (c) land to which access is restricted for national defence and security reasons;
 - (d) land which is an object of litigation;
 - (e) land declared as “restricted” by competent authorities;
 - (f) Land on which buildings or places exist on which the business of the investor could have a negative impact (environmental or cultural impact, pollution, noise).
- ~~126. If it is necessary to vacate, clear or transfer houses, buildings, farms and gardens, fruit trees and other plants, the investor shall negotiate with the owners an adequate compensation, to be paid in local currency, and coordinate the clearance with the Nay Pyi Taw Council or the respective regional or state government. If the inhabitants object to the clearance, the investor shall not be allowed to carry out the business in this place.~~
129. The Investor shall use the land in accordance with the terms and conditions set by the Commission and the terms and conditions of the (sub-) lease agreement.
- ~~128. If the investor wants to sub lease or mortgage the land or transfer shares of the investment vehicle or transfer the business during the (sub-) lease term, the investor shall apply to the Commission for prior approval.~~
130. An application for a permit for investments involving urban development, construction of schools, hotels, hospitals, housing, factories or workshops, roads, bridges, communication and transportation infrastructure shall only be submitted to the Commission if such projects are in compliance with urban development plans of the Nay Pyi Taw Council, respective regional or state governments, municipal committees, Government departments or organizations.
131. Terminating the original and switching to another business, or adding another business to the original business carried out on the land shall be subject to the prior approval of the Commission.



132. The Central Land Management Committee for Vacant Land, Fallow Land and Waste Land shall have the right to reclaim land from the investor if any of the following circumstances arise, provided that the investor shall only be required to give up an area that is necessary for the purposes of the Central Land Management Committee:
- (a) discovery of cultural heritage monuments;
 - ~~(b) land required for infrastructure or special projects in the interest of the Union;~~
 - (b) discovery of natural resources other than minerals for which the investor has a mining concession.
133. The Central Land Management Committee shall coordinate with the respective departments or organizations in order to determine an appropriate compensation amount to be paid to the investor who has to give up land according to rule 132. The compensation shall be based on the investment and expenses incurred so far; the Union Government must approve the amount.

Chapter 16

Foreign Capital

134. In order to engage in economic activities, the investor shall, in accordance with the permit of the Commission, open an account with a bank that is allowed to handle foreign currency within the Union and deposit in it the foreign currency stated in the investment proposal.
135. With the exception of capital defined in section 2, sub-section (i), clauses (ii)-(iv) of the Foreign Investment Law [translator's note: this refers to contributions in kind], the investor shall, depending on the investment proposal approved by the Commission, deposit the capital in full or in installments in the account opened according to rule 134.
- ~~135. The investor shall inform the Commission in advance of the amounts of foreign currency to be brought into the country annually or, as the case may be, of the amount of foreign currency to be brought into the country in a lump sum, and of the payment schedule.~~
- ~~136. After opening the bank account, the investor shall, within 7 days, submit to the Commission a copy of a bank statement [which proves the opening of the account] and information as to the address of bank, account number and the name of the person authorized to withdraw money from the account.~~
136. The investor has the right to transfer money from the investor's bank account for the following payments:
- (a) payments in foreign currency within the country;
 - (b) payments that are related to the permitted business activities.
137. The investor shall not withdraw or transfer money from the investor's foreign currency account for purposes that are unrelated to the business.



138. The investor shall remit the capital mentioned in the proposal from any bank located outside the country.
- ~~140. Foreign currency remitted under rule 139 shall originate from the investor's own bank account abroad.~~
- ~~141. The investor shall inform the Commission, within 7 days after the money has arrived on the bank account, of foreign currency remitted by the investor to the bank account; the bank statement shall be attached.~~
- ~~142. The investor shall submit in advance a schedule of further foreign currency contributions to the Commission if the Commission has approved an application by the investor to expand the business.~~
139. The investor shall amend the payment schedules sent to the Commission if the investment is reduced.
140. The investor shall hire an auditing firm registered in the Union to check the business annually. Audited documents shall be in the Myanmar or English language. If the documents are in a different language, a translation certified as correct by a notary shall be attached.
141. The investor shall submit the audit report to the Commission within 30 day after the auditing has been done according to rule 140.

Chapter 17

Transfer of Foreign Currency

142. The investor may transfer the following monies abroad through a bank prescribed by the Commission:
- a) Monies in a foreign currency attributable to a person who brought in foreign capital:
 - 1) the monies which the Commission allows to be refunded to the person who brought them in as foreign capital;
 - 2) the monies which the investor obtained as a compensation;
 - b) the following monies in a foreign currency which the Commission allows to be refunded [translator's note: "refunded" - literal translation] to the person who brought in foreign capital:
 - 1) The purchase price obtained by the foreign investor after transferring shares [in the investment vehicle] according to the existing laws;
 - 2) the monies to which the investor is entitled after liquidation [of the project];



- 3) the foreign exchange received upon the return of the permit to the Commission due to the expiry of its term;
 - 4) the amounts in foreign currency by which the investment was reduced;
 - c) the annual net profit attributable to the person who brought in capital, after deductions for all the funds related to taxes;
 - d) net salary or moneys received by foreign staff for work done in the country, after deductions for taxes and accommodation and living expenses.
143. The investor who wants to transfer foreign exchange abroad by extraordinary [translator's note: meaning of "extraordinary" unclear; maybe "not in the normal course of business"] shall use the **Permit to Transfer Form (13)** and submit it to the Commission together with the following documents:
- a) auditor's report with regard to the business;
 - b) bank balance statement.
144. After receiving the application according to rule 143, the Commission may allow the transfer of the amount stated in the application, or a lesser amount that the Commission determined to be correct after scrutinizing the application.
145. The investor may transfer kyats received by the business that the investor invested in to a kyat account held by a citizen or citizen-owned business, and then transfer back the equivalent amount in foreign exchange to the account of the investor from a foreign exchange account held by that citizen or citizen-owned business.
146. If the investor intends to re-invest profits into the business, the investor shall apply to the Commission for approval to do so.
147. Without the permission of the Commission, the investor shall not convert kyat to foreign exchange if the kyat amount resulted from the sale of a fixed asset.
148. Without the permission of the Commission, the investor shall not use kyats to purchase foreign currency in order to use this foreign currency as "foreign capital" to be brought in from abroad according to the investment proposal.
149. The investor shall not pay for expenditures in kyats if the kyat amount results from the sale of assets that were stated in the proposal [as forming part of the capital of the business].
150. The brought-in capital shall not be repatriated before the start of business operations.

Chapter 18

Matters Relating to Foreign Currency

151. The investor:



- a) may transfer foreign exchange abroad after conversion, at the official rate, of kyats into this foreign currency by a bank which is allowed to handle foreign exchange transactions.
 - b) shall, in order to finance the investor's business, open a foreign exchange account or kyat account at a bank which is authorized [to provide such accounts] in the country.
 - c) may exchange legally earned kyats into foreign currency at a bank authorized to do foreign currency transactions.
152. Foreigners working [as staff] in the foreign-invested business shall open a foreign exchange account or kyat account at a bank which is authorized [to provide such accounts] in the Union.

Chapter 19

Departmental Coordination Committee

153. In order to render the administration of foreign investment activities more efficient, the Commission shall, on the basis of section 14 Foreign Investment Law, form a Departmental Coordination Committee composed of senior officers from the following entities:
- a) Central Bank of Myanmar;
 - b) Relevant departments of the Ministry of Electric Power;
 - c) Directorate of Investment and Company Administration;
 - d) Customs Department;
 - e) Directorate of Trade;
 - f) Directorate of Labour;
 - g) Immigration and National Registration Department;
 - h) Industrial Supervision and Inspection Department;
 - i) Inland Revenue Department.
154. The deputy director general of the Directorate of Investment and Company Administration shall chair the Departmental Coordination Committee.
155. The office of the Departmental Coordination Committee shall be at the same location as the Directorate of Investment and Company Administration. Branch offices may be set up if necessary.
156. The relevant departments shall pass their decision-making power, including their power to sign documents, to the senior officer who is dispatched to the Departmental Coordination Commission. The relevant department shall reply without undue delay to enquiries made by the respective senior officer.



- 157. The Departmental Coordination Committee shall monitor businesses and report to the Commission the construction progress during the construction period, the date of commencement of commercial activities, and the overall business situation during the operational period.
- 158. The Departmental Coordination Committee shall work under the supervision of the Director General.

Chapter 20

Administrative Penalties

- 159. The Commission shall form an Investigation Committee upon having been informed, or found out by other means, that the investor violated any of the provisions of the Foreign Investment Law or rules, etc., issued under this law, obtained the permit by including wrong information in the proposal, or violated the terms and conditions of the investment permit.
- 160. The Investigation Committee shall be chaired by a Commission member and composed of experts from relevant departments or organizations. The Investigation Committee shall have at least 3 members including the chairperson.
- 161. The Investigation Committee shall have the right to request, and examine, information and documentary evidence from relevant departments or organizations and individuals.
- 162. The Investigation Commission shall submit a report with its findings within 21 days starting from the date at which the order to form the Investigation Commission was issued. The report shall include a recommendation as to which administrative penalty according chapter 18, section 42 Foreign Investment Law should be applied.
- 163. The Commission shall deliberate in the meeting convened to discuss administrative penalties. The investor shall have the right to attend and explain its position.
- 164. An administrative penalty shall be enforceable from the date that the decision was confirmed by the Commission.

Chapter 21

Settlement of Disputes

- 165. If, in respect to the foreign-invested business, any dispute arises between the investor and citizens or the Government or a department of the Government, this dispute shall be settled amicably.
- 166. If such dispute cannot be settled under rule 165,
 - a) dispute settlement shall be done in accordance with the existing laws of the Union if the dispute settlement mechanism is not stipulated in the relevant agreement;



- b) dispute settlement shall be done in accordance with the dispute settlement mechanisms stipulated in the relevant agreement if the relevant agreement contains a dispute settlement clause.
167. The investor shall inform the Commission about the dispute's circumstances.
- ~~172. The investor shall inform the Commission as to which mechanisms according to rule 170 will be used to settle the dispute.~~
168. The investor, if necessary, may submit documents issued by the Commission as evidence when settling the dispute. If it is necessary to provide more documents from the Commission as evidence, the investor shall file an application with the Commission in order to obtain them.
169. If required, the investor shall apply to the Commission to allow its staff to appear as witness in court.

Chapter 22

Miscellaneous

170. An investor who is enjoying exemptions and reliefs from taxes under the (repealed) Union of Myanmar Foreign Investment Law shall be entitled to continue enjoying these benefits under Chapter 12 Foreign Investment Law.
171. An investor who enjoyed exemptions and reliefs from taxes under the (repealed) Union of Myanmar Foreign Investment Law shall not be entitled to enjoy these benefits again under Chapter 12 Foreign Investment Law if the exemption or relief period has expired in the meantime.
172. The Commission shall take actions in accordance with the law against an investor if there is sound evidence that the investor intentionally showed wrong figures or omitted information in documents such as financial or employment documents that were submitted together with the proposal.
173. An investor who obtained a permit under the (repealed) Union of Myanmar Foreign Investment Law shall file an application with the Commission if the investor wishes to carry out the business under the provisions of the Foreign Investment Law.
174. These rules do not cover non-profit production or services businesses.
175. These rules do not cover trading businesses.
- ~~181. The Ministry may, by notification, stipulate administrative fees to be paid by the promoter for the processing of the promoter's application by the Commission.~~
176. The Commission shall report to parliament through the Union government every 6 months.
177. The Commission shall, if an investment is having a negative impact on the Union and its citizens, report, through the Union government, to the closest session of parliament.
178. The Commission shall follow recommendations from parliamentary committees and commissions.



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179. The investor may contribute technology as investment capital, provided that such technology is valued according to the standards stipulated by the International Valuation Council.
180. Documents submitted to, and communication with, the Commission shall be in the Myanmar or the Myanmar and the English language; in case of inconsistencies, the Myanmar version shall prevail.

Union Minister
Ministry of National Planning and Economic Development



Schedule (1)

Production and Services Businesses Reserved to Citizens

(Refers to Rule 7)

Production Businesses

1. Administration and conservation of natural forests
2. Production of traditional medicines
3. Drilling of oil wells whose depth does not exceed 1,000 feet
4. Small and medium scale mining
5. Cultivation and production of traditional herbal plants
6. Wholesale trading of components and scrap-iron
7. Traditional food production
8. Production of religious items and wares
9. Production of traditional and cultural items and wares
10. Handicraft production

Services

1. Private specialist traditional hospitals
2. Trading of raw materials used for traditional medicines
3. Medical research and operation of laboratories for traditional medicine
4. Ambulance services
5. Care centres for the elderly
6. Catering on trains, freight forwarding using trains, cleaning of coaches, management of trains
7. Agency services
8. [Erection and operation of] power plants with less than 10 megawatts
9. Printing, publishing and distribution of periodicals in local languages spoken in Myanmar, including the Myanmar language



Schedule (2)

Agriculture, Short-Term and Long-Term Farming Businesses Reserved to Citizens

(Refers to Rule 8)

- ~~1. Small scale farming~~
- ~~2. Traditional farming (no use of modern machines and no processing of crops)~~
1. Designated agricultural business

Schedule (3)

Animal Husbandry Businesses Reserved to Citizens

(Refers to Rule 9)

- ~~1. Small scale animal husbandry~~
- ~~2. Traditional animal husbandry (no use of modern technology)~~
1. Designated animal husbandry business

Schedule (4)

Fishery Businesses in Myanmar Maritime Waters Reserved to Citizens

(Refers to Rule 10)

1. Offshore (deep sea) fishery in Myanmar waters
2. Fishery in large lakes, common fishery and inshore fishery

Contact:

POLASTRI WINT & PARTNERS LEGAL & TAX ADVISORS

*No. 52, Yaw Min Gyi Street, Royal Yaw Min Gyi Condo,
Unit No. 104, Dagon Township, Yangon
Myanmar*

E-Mail: info@paasia.net

Phone: +95 (0)9 420003004