

## DOING BUSINESS IN MYANMAR

## CHAPTER (4)

### DOING BUSINESS IN MYANMAR

#### 4.1 BUSINESS OPERATION IN MYANMAR

##### 4.1.1 ***Registration of business Organization***

Business Operation in Myanmar can be carried out through one of the following business organizations:

1. Partnerships;
2. Companies limited by shares. i.e. joint venture companies; local companies; foreign companies;
3. Branch or Representative office of a foreign company;
4. Associations not for profit;

##### (1) Partnerships

A group of individuals may enter into partnerships in order to carry on a business. The partnership's rights and obligation are based on the agreements between the partners and the Partnership Act of 1932. In accordance with the Act, the number of partners is limited to twenty. A partnership firm may be registered, but registration is not compulsory.

All partnerships formed in Myanmar are of unlimited type. Since no provision is made for the period of time, the partnership will be dissolved when all partners are willing to do so.

##### (2) Companies Limited by Shares

A company limited by shares is required to register. For foreign enterprises, the most normal method of doing business in Myanmar is through a limited company. Such a company could be a foreign company registered in Myanmar or by means of a branch office or representative office formed outside Myanmar. If one share is owned by a foreign partner, the company shall come under the definition of a foreign company, and shall apply and obtain Permit and Registration.

There are two main types of company: a private limited liability company and a public limited liability company:

- In a private limited Liability company, the transfer of shares is restricted and the number of shareholders is limited to minimum two and maximum fifty;
- In a public limited liability company, the number of shareholders must be at least seven;
- Under section 27A of the Myanmar Companies Act, a foreign company, whether a hundred percent owned or a joint-venture and a branch/representative office, is required to obtain Permit and Registration;
- A Joint-Venture with the State equity formed under Special Company Act 1950 is exempted from obtaining a Registration;
- The company, after registration, must apply for a Certificate of Commencement of Business to enable start the business operation;
- The governing law for the limited companies is the Myanmar Companies Act 1914. A company with share contribution of the State shall be registered under the Special Company Act 1950 and the Myanmar Companies Act 1914;
- There is generally no minimum share capital requirement. However, minimum requirements do exist for banking and insurance companies and foreign companies and branches of all business. For foreign companies and branches, the minimum capital to be brought in is as follows;
  - (i) Industrial, Hotel and Construction company - US \$. 150,000;
  - (ii) Services, Travels and Tours company, Bank Representative office and Insurance Representative office - US \$. 50,000;



#### **4.1.2 Required Documents for Registration**

The application for Permit is to be accompanied by the following documents:

- (1) Form A of the Myanmar Companies Regulation 1957;
- (2) Memorandum and Articles of Association (Copy);
- (3) Duly completed questionnaire form;
- (4) Intended activities to be performed;
- (5) Estimated expenditures to be incurred in Myanmar for the first year operations;
- (6) Financial credibility of the company/individual;
- (7) Board of Directors' resolution, if the subscriber is a company;
- (8) A copy of Permit & Decision of the Myanmar Investment Commission for the Manufacturing, Hotel & Construction businesses.;
- (9) Undertaking (Statement that a shareholder/director is a member/director at other company or not);
- (10) Undertaking not to do Trading Activities;
- (11) Passport copy or NRC copy of each shareholder and director;

In the case of a foreign branch/representative office, the following shall be furnished in addition to the above mentioned documents:

- (1) Instead of the companies Memorandum and Articles of Association, a copy of the Head Office's Memorandum and Articles of Association or of the Charter, Statute or other instruments constituting or defining the constitution of the company, duly notarized and consularized by the Myanmar Embassy concerned in the country where the company is incorporated;
- (2) The Annual Report for the last two financial years (or) if it is the copies of the Head Office Balance Sheet and Profit and Loss accounts for the last two financial years, it is to be notarized and consularized by the Myanmar Embassy concerned in the country where the company is incorporated;
- (3) Where the original Memorandum and Articles of Association and other relevant documents are not in English language, authentication of the translation into English;



The application for Registration is to be accompanied by the following documents:

- (1) Two sets of Memorandum and Articles of Association duly stamped and printed both in Myanmar and English;
- (2) Declaration of registration;
- (3) Declaration of legal and official version of the documents;
- (4) Declaration of the situation of registered office;
- (5) Translation certificate by a competent translator;
- (6) List of Directors;
- (7) List of person(s) authorized to accept services of process and notice in Myanmar on behalf of the company (i.e. for a branch office of a foreign company.);
- (8) A copy of Permit & Decision of the Myanmar Investment Commission for the Manufacturing, Hotel & Construction businesses;
- (9) Passport copy or NRC copy of each shareholder and director;
- (10) Undertaking not to do Trading Activities;

For a Public company, the following additional documents shall be submitted before commencing the business:

- (1) List of person to act as directors;
- (2) List of persons who have consented to act as directors;
- (3) Agreement to take qualification shares;

#### **4.1.3 *Legislative Requirements for Companies***

The legal requirements for the companies to comply under the Myanmar Companies Act 1914 are as follows:-

(i) **Name:**

The name of the company shall be painted or affixed on the outside of its registered office and every place of business. It must also be engraved in legible characters on its seal and mentioned in all letterheads, notices, advertisements and other official publications, etc.;

(ii) **Registered Office:**

Every company must have a registered office in Myanmar to which all communications and notices may be addressed. A notice of situation of the initial registered office must be furnished to the

DICA when filing the incorporation documents. If the address is subsequently changed, notice must be given to the DICA within 28 days of the change;

(iii) **Directors:**

Every private company is required to have at least 2 directors. A public company must have a minimum of 7 directors. An undischarged insolvent is not eligible to be a director. A return of particulars of Directors, Managers and Managing Agents and of any changes therein must be lodged with the DICA within 14 days of the appointment or changes;

(iv) **Allotment of Shares:**

Every company will have to give notice to the DICA of any allotment of shares within one month of the date of allotment;

(v) **Annual General Meeting:**

Every company must hold an annual general meeting once in every calendar year to lay its audited documents before its shareholders. A newly incorporated company is required to hold its first annual general meeting within 18 months of incorporation. Subsequent annual general meetings must be held once in every calendar year and not more than 15 months after the last general meeting. The interval between the date of the financial year on which the audited accounts are made up and the date of the annual general meeting must be not more than 9 months;

Every company must file an Annual Return within 21 days after its annual general meeting. The annual audited accounts are required to be filed with the Annual Return;

(vi) **Extraordinary and Special Resolutions:**

Every company is required to lodge a copy of every extraordinary and special resolution with the DICA within 15 days from the date of passing thereof;

(vii) **Statements, Books and Accounts:**

Every company must maintain proper books of accounts which are required to be kept at the registered office of the company;

(viii) **Consequences of Non-compliance:**

There are penalties for the company and its officers for any non-compliance with the law;

**"QUESTIONNAIRE"**  
**(Foreign Company incorporated in Myanmar)**

For assessment of Application for Issue / Renewal of " Permit to Trade " under Section 27A of the Myanmar Companies Act and the Myanmar Companies Regulation, 1957.

- | Seq | Particulars   | Committee's Assessment |           | Remarks |
|-----|---|------------------------|-----------|---------|
|     |   | Complete               | Deficient |         |
|     | <b>MMK (Million)</b>  |                        |           |         |
| 1.0 | <b>FINANCIAL POSITION</b><br>(In the case of a Company carrying on business)  |                        |           |         |
| 1.1 | <b>Capital</b>  |                        |           |         |
|     | (i) Authorized .....  |                        |           |         |
|     | Issued and Paid up Capital  |                        |           |         |
|     | (ii) .....<br>Shareholder's Equity/Capital  |                        |           |         |
|     | (iii) .....<br>Issued and Paid-up .....   |                        |           |         |
|     | .....<br>Reserves and Retained Earnings   |                        |           |         |
|     | .....<br>Total Equity .....   |                        |           |         |
| 1.2 | Q. (i) Is the Issued and Paid-up Capital strong?<br><br>A. ....<br><br>Q. (ii) Is the shareholder's Equity strong?<br>A. ....<br><br>Change in Financial Position<br>Increase/(Decrease) in Working Capital.<br><br>Q. Is the Working Capital Improving?<br>A. .... |                        |           |         |



1.3	<p>Trend in Income / Expenditure , etc.</p> <p>Gross Income .....</p> <p>Operation Expenditure .....</p> <p>Gross Profit .....</p> <p>Other Income .....</p> <p>Administration .....</p> <p>Non-operation Expenses .....</p> <p>Taxation .....</p> <p>Net Profit After Tax .....</p>			
2.0	<p><b>PRESENTATION OF FINANCIAL STATEMENTS</b>  (Based on statement filed in accordance with  Myanmar Companies Act.)  (In the case of a Company carrying on  business)</p> <p>2.1 Q. Are the statements audited by a qualified  accountant, and by whom?  A. ....</p> <p>2.2 Q. Are books maintained in accordance with  Section 130 of  the Myanmar Companies Act and certified  by the auditor?  A .....</p> <p>2.3 Q. If a holding Company, does Balance Sheet  include particulars as to the subsidiary  company, as required under Section 132 A?  A. ....</p> <p>3.0 <b>BASIS OF ACCOUNTING</b>  ( In the case of a Company carrying on  business)</p> <p>3.1 Q. Are any sales into Myanmar contracted by  the Foreign  Parent Company on behalf of the Company?  A .....</p> <p>3.2 Q. Are all such sales invoiced by the Company,  or by the Foreign Parent Company?  A. ....</p> <p>3.3 Q. How is the Company remunerated by the  Parent  Company on sale contracted by them (3.1):  (i) Management Fees? Or  (ii) Administration Fees? Or  (iii) Supervision Fees? Or  (iv) Commission?  A .....</p>			

3.4	Q. Are the above fees due physically remitted to Myanmar? A. ....			
3.5	Q. In case the Parent Company is due by the Local Company for supervision, management, etc, how are they paid or adjusted? A. ....			
4.0	<b>TAXATION</b> (As issued renewal of " Permit " is dependent in compliance with the Myanmar Tax Laws).			
4.1	Q. When was the Company last assessed and taxed to Myanmar Income – tax? A. .... Q. If assessments have been pending, since which year? A. ....			
4.2	Q. Are there any exemptions from Income – tax? A. .... Note : Exemption of tax and duties on imported goods does not amount to exemption on Income – tax on the profits of the Company.			

Seq	Particulars	Committee's assessment		Remarks
		Complete	Deficient	
5.0	<b>EXCHANGE CONTROL REGULATIONS</b> ( As issue / renewal of " Permit " is dependent in compliance with these Regulations. )			
5.1	Issued and Paid – up Capital Q. What is the Issued and Paid – up Capital previously approved by CSC? A. .... Q. Has the capitalization of reserves and retained earnings (profits ) been approved? If so, the amount. A. .... Q. Has capital determined by the CSC brought into Myanmar? A. .... Q. If not brought in, why not? A. .... Q. If there is an inter-company account with the Parent Company, what is the amount due from the Parent Company, and the ratio to Paid-up Capital? A. ....			

6.0	<b>RENEWAL OF " PERMIT TO TRADE"</b>			
6.1	Q. Have the Issued and Paid-up Capital been brought into Myanmar? A. ....			
6.2	Q. Have new issue and calls on shares been made during the current year? Give details. A. ....			
6.3	Q. Need the Authorized Capital be increased due to the company's activities or expansion? A. ....			
6.4	Q. What is the total outside indebtedness of the Company. (i) to local creditors? (ii) to overseas creditors? A. ....			
6.5	Q. What is the Local Debt / Equity Ratio? A. .... Q. Is the Company still insolvent financial position? If not, the extent of insolvency. A. ....			
7.0	<b>MYANMAR COMPANIES ACT.</b>			
7.1	Q. Is the Application Form A for "Permit to Trade" Complete? (i) as to details to be furnished? (ii) as to attachments required? A. ....			
7.2	Q. In the case of renewal application has compliance, been made of: (i) annual requirements under the Myanmar Companies Act? (ii) reporting of any changes within the prescribed time? A. ....			
7.3	Q. Have conditions set out in the "Permit to Trade" been complied with fully? A. ....			
7.4	Q. Are there any changes in Memorandum and Articles of Association and the Company's activities which are considered to warrant any changes to the conditions for which the "Permit" has been originally issued? A. ....			

Signature - .....

Name - .....

Title - .....

Address - .....

On behalf of - .....



#### 4.1.5 *The Schedule FORM A*

### THE SCHEDULE FORM A

Note: This application is to be accompanied by:-

- (i) A copy of the Company's Memorandum and Articles of Association or of the charter, statutes or other instruments constituting or defining the constitution of the Company;
- (ii) Copies of the Company's Balance Sheets and Profit and Loss Accounts for the last two years preceding the application;

Application by a Foreign Company or Company carrying international trade for issue of a permit under Section 27A of the Act.

(1) Name of Company	:	
(2) Country of incorporation of Company	:	
(3) (a) Names, Addresses the Nationality of shareholders in case of Companies incorporated in the Republic of the Union of Myanmar. Number of citizen and / or, non-citizen shareholders together with the number of shares held by them separately in the case of Companies incorporated outside the Republic of the Union of Myanmar.	:	
(4) (a) Location of the Company's Head Office (b) Location of the Company's Principal office in the Republic of the Union of Myanmar.	:	
(5) The objects for which the Company is formed (field of business)	:	
(6) (a) The amount of capital and the number of shares into which the capital is divided. If more than one class of share is authorized, the description (b) of each class and rights and privileges pertaining to each. The amount of capital brought or to be brought into the Republic of the Union of Myanmar. (c) Whether there is any discrimination among different classes of shareholders with regard to number of votes one may cast. (d) Whether there is any discrimination among different classes of shareholders with regard to number of votes one may cast.	:	
(7) (a) The maximum amount of indebtedness, if any, which may be incurred by the Company; and (b) The prohibition against the contracting of debts in excess of that amount.	:	

(8) The period for which Permit is applied for	:	
(9) The officers who are to conduct the affairs of the Company duties of each, and the authority of the Board of Directors to fill the position above named.	:	
(10)The number of Directors, the manner of their appointments and their powers.	:	
(11)The names, addresses and nationality of the Directors for the current year.	:	
(12)The names, addresses and nationality of the promoters	:	
(13)Statement of compliance with legal requirements for initial capital including the amount to be paid in before commencement of the business.	:	

## 4.2 HIGHLIGHTS OF FOREIGN INVESTMENT LAW

### 4.2.1 ***Form of Investment***

According to the Foreign Investment Law, foreign investment in Myanmar can be carried out either form of followings:

- i. 100 percent foreign capital contributed by the foreigner except for the businesses prescribed with the Notification issued by the Myanmar Investment Commission;
- ii. joint venture with the agreed foreign capital ratio and national capital ratio by the Joint Venture Agreement which is concluded between the foreigner and citizen or the government departments and organizations;
- iii. various forms of cooperation system between government and private including BOT system , BTO system and any other form according to the Joint Venture Agreement;

#### 4.2.2 ***Duties and Rights of the Investors***

Investor shall have the following duties:

- (a) to abide by the existing Laws of the Republic of the Union of Myanmar;
- (b) to perform the business activities by incorporating a company under the existing Laws of the Republic of the Union of Myanmar;
- (c) to abide by the provisions of the Foreign Investment Law, terms and conditions contained in the rules, procedures, notifications, orders, directives and permits issued under the Foreign Investment Law;
- (d) to utilize the land which the investor is entitled to lease or use according to the terms and conditions stipulated by the Myanmar Investment Commission and those contained in the agreement;
- (e) to carry out to sub-lease and mortgage the land and building which are allowed to carry out business under the permit, transfer the shares and the business to any other person for such investment business within the term of the business only with the approval of the Myanmar Investment Commission;
- (f) to make no alteration of topography or elevation of the land obviously on which the investor is entitled to lease or use without the approval of the Myanmar Investment Commission;
- (g) to inform immediately to the Myanmar Investment Commission if natural mineral resources or antique objects and treasure trove which are not related to the permitted business and not included in the original contract are found above and under the land on which the investor is entitled to lease or use, continuing to carry out business on such land if the Myanmar Investment Commission allows, and transferring and carrying out to the substituted place which is selected and submitted by the investor if the permission of continuing to carry out is not obtained;
- (h) to carry out not to cause environmental pollution or damage in accord with existing laws in respect of investment business;



- (i) in case of a foreign company, if all of the shares are absolutely sold and transferred to any foreigner or any citizen, to register the transfer of share in accord with the existing law only after returning the permit with the prior permission of the Commission;
- (j) in case of a foreign company, if some of its shares are absolutely sold and transferred to any foreigner or any citizen, to register the transfer of share in accord with the existing law only after obtaining the prior approval of the Commission;
- (k) to carry out the systematic transfer of high technology relating to the business which are carried out by the investor to the relevant enterprises, departments or organizations according to the respective contract;

Rights of an Investor are as follows:

- (a) entitle to sell, exchange or transfer by any other means of assets with the approval of the Myanmar Investment Commission according to the existing laws;
- (b) allow to sell all or some of its shares absolutely to any foreigner/any citizen or any foreign company/any citizen company;
- (c) expansion of investment business or increasing of foreign capital contained in the original proposal by obtaining the approval of the Myanmar Investment Commission;
- (d) allow to re-scrutinize and amend in order to obtain the rights which the investor is entitled to enjoy fully in accord with the existing law by submitting to the Myanmar Investment Commission;
- (e) right for benefits and for taking action in respect of the grievance in accord with the existing laws by applying to the Myanmar Investment Commission;
- (f) right for applying to the Myanmar Investment Commission to obtain more benefits for the invention of new technologies, the enhancement of product quality, the increase in production of goods and the reduction of environmental pollution in investment business carried out under the permit;

- (g) entitle to enjoy the more tax exemption and tax relief period than the stipulated period by the Law if the foreign investment is made in the regions which are less developed and difficult to access;

#### **4.2.3 *Application for Investment Proposal***

To order to get Investment Permit, an investor or a promoter shall submit a proposal to the Myanmar Investment Commission (MIC).

Upon receive of the investment proposal, Myanmar Investment Commission:-

- (a) may accept or refuse the proposal within 15 days after making necessary scrutinizing process;
- (b) shall allow or refuse the proposal within 90 days to the person who submit the proposal;

If the investor or the promoter obtains the permit issued by MIC, an investment shall be established after concluding necessary contract with the relevant Government department and organization or person and organization.

MIC may allow the extending, reducing or amending of the term or agreement contained in the contract as appropriate according to the Foreign Investment Law.

#### **4.2.4 *Recruitment and Appointment of Staffs and Workers***

The investor shall:

- (a) appoint citizen for at least 25 percent for skilled citizen workers, technicians and staff for skilled jobs within the first two-year, at least 50 percent within the second two-year and at least 75 percent within the third two-year from the year of commencement of the business;
- (b) arrange to provide practicing and training to citizen staff for improvement of the working skills;
- (c) appoint only citizens for the works which do not require skills;



- (d) carry out the recruitment of workers from the Labour Exchange Office or local labour exchange agencies or by the arrangement of the investor;
- (e) appoint skilled citizen workers, technicians and staff by signing an employment agreement between employer and workers in accord with the existing labour laws and rules;
- (f) administer the rights of causing not to differ the level of wages in appointing the Myanmar citizen staff like the foreign staff as the allocation of expert level.

The investor shall submit and apply for the work permit and the local residence permit issued by the Union for the foreigners who work at the investment business.

The investor shall:

- (a) conclude an employment agreement for appointing staff and workers according to the existing laws;
- (b) carry out to enjoy the rights contained in the existing labour laws and rules including minimum wages and salary, leaves, holiday, overtime fee, damages, workman's compensation, social welfare and other insurance relating to workers in stipulating the rights and duties of employers and workers or the occupational terms and conditions contained in the employment agreement;
- (c) settle the disputes arisen among employers, among workers, between employers and workers and technicians or staff as per relevant existing laws;

#### **4.2.5 Exemptions and Reliefs**

The investors are allowed following exemptions and reliefs under the Foreign Investment Law:

- (a) income tax exemption for a period of five consecutive years including the year of commencement on commercial scale to any business for the production of goods or services, moreover, in case where it is beneficial to the Union, income tax exemption or relief for suitable period depending upon the success of the business in which investment is made;



- (b) income tax exemption or relief on profits of the business which is maintained for re-investment in a reserve fund and re-invested within 1 year after the reserve is made;
- (c) right to deduct depreciation from the profit, in respect of machinery, equipment, building or other capital assets used in the business for the purpose of income tax assessment;
- (d) relief from income tax up to 50 percent on the profits accrued from the exported goods produced by any manufacturing business;
- (e) right to pay income tax on the income of foreigner employees at the rates applicable to the citizens residing within the country;
- (f) right to deduct expenses from the assessable income, such expenses incurred in respect of research and development relating to the business which are actually required and are carried out within the country;
- (g) right to carry forward and set-off the loss up to 3 consecutive years from the year the loss is actually sustained within 2 years following the enjoyment of exemption or relief from income tax for each business;
- (h) exemption or relief from custom 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 of business;
- (i) exemption or relief from customs duty or other internal taxes or both on raw materials imported for production for the first three-year after the completion of construction of business;
- (j) if the volume of investment is increased with the approval of the Myanmar Investment Commission and the original investment business is expanded during the permitted period, exemption or relief from custom 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 in the business expanded;

- (k) exemption or relief from commercial tax on the goods produced for export;

#### **4.2.6 Guarantees**

The Government of the Republic of the Union of Myanmar guarantees that a business formed under the investment permit shall not be nationalized within the term of the contract or the extended term.

Government also guarantees not to suspend any investment business carried out under the investment permit issued by the Myanmar Investment Commission before the expiry of the permitted term without any sufficient cause.

On the expiry of the term of the contract, the Government guarantees the investor invested in foreign capital to disburse his rights in the category of foreign currency in which such investment was made.

#### **4.2.7 Right to use Land**

The investors are allowed to lease or use land up to initial 50 years depending upon the category of the business, industry and the volume of investment.

The Myanmar Investment Commission may extend the period of consecutive 10 years and for further 10 years after the expiry of initial period to the investors if the investors desirous to continue their business after the expiry of the permitted terms.

The investment shall obtain the initial agreement from the person who is entitled to lease or use land for the investment business with the prior approval of the Government.

#### **4.2.8 Right to Transfer Foreign Currency**

The investor has the right to transfer the following foreign currency to overseas through the bank which has the right to carry out foreign banking within the country in the relevant foreign currency at the stipulated exchange rate:

- (a) foreign currency entitle to the person who has brought in foreign capital;
- (b) foreign currency permitted for withdrawal by the Myanmar Investment Commission to the person who has brought in foreign capital;
- (c) net profit after deducting all taxes and the relevant funds from the annual profit received by the person who has brought in foreign capital;
- (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 staff during performance of service in the country;

#### 4.2.9 ***Settlement of Disputes***

If any dispute arises in respect of the investment business:

- (a) dispute arisen between the disputed persons shall be settled amicably;
- (b) if such dispute cannot be settled amicably then followings shall be carried out:
  - (i) shall be complied and carried out in accordance with the existing laws of the Republic of the Union of Myanmar if the dispute settlement mechanism is not stipulated in the relevant agreement;
  - (ii) shall be complied and carried out according to the dispute settlement mechanism if it is stipulated in the relevant agreement;



### 4.3 FOREIGN INVESTMENT RULES

#### 4.3.1 ***Registration of Foreign Company Incorporation***

The registration of foreign company incorporation or registration for the investment shall be applied according to the existing Company Law to the Directorate of Investment and Company Administration - DICA when the application of investment proposal has been made.

The Directorate of Investment and Company Administration shall issue the registration of foreign company incorporation in parallel with the approval of the investment proposal issued with the acceptance by the Myanmar Investment Commission.

The Director General may issue the temporary registration permit if the promoter or investor has requested to issue in advance for the registration of foreign company incorporation with the reasonable description with the view to facilitate the foreign investment businesses smoothly and speedily. However, issuance of the temporary registration permit is not meant to the issuance of investment approval.

#### 4.3.2 ***Forming of Joint Venture***

The maximum foreign investment capital ratio shall not be exceeded 80 percent of the total investment amount if the foreigner has formed joint venture with the citizen to carry out prohibited or restricted businesses.

#### 4.3.3 ***Liquidation of the Business***

Liquidation of business before the expiry of contract term or after completion of the business activities shall obtain prior approval from the Myanmar Investment Commission and shall follow the liquidation process according to the Myanmar Company Act.

#### 4.3.4 ***Application for the Investment Permit***

The investor or the promoter shall submit the **Proposal Form (1)** (Annexure – 1) by filling the following particulars and signed by the promoter:

- (a) name of investor or promoter, citizenship, address, business location, actual operating business in accord with the relevant law, location of head office of effective management, location of incorporated business organization, type of business;
- (b) facts contained in clause (a) related to person desirous to join in the joint- venture if the investment is formed as joint-venture;
- (c) documents related to the clause (a) or (b);
- (d) business and financial documents of the investor, promoter or a person desirous to join in the joint-venture;
- (e) facts related to manufacturing or service business desirous to invest;
- (f) duration of investment and construction period;
- (g) location of investment business in the Union;
- (h) technical know-how to be used for the production and system of sales;
- (i) type and volume of energy consumption;
- (j) quantity and value of required main machinery, equipments, raw materials and similar materials to be used in business during the construction period;
- (k) required area and type of land;
- (l) estimated amount and value of the annual production or service to be carried out from the business;
- (m) annual required foreign currency expenditure for business and estimated foreign currency income;
- (n) estimated amount, value and period of annual sales of products in local and export;
- (o) condition of economic justification;

- (p) measures for conservation and prevention plan for the environmental and social impacts according to the provisions of the relevant existing law;
- (q) form of investment in the Union;
- (r) if desirous to form partnership, the draft contract, share ratio and amount of the shares to be contributed by the partners, ratio for allocation of profit and duties and responsibilities of the partners;
- (s) if desirous to form limited company, draft contract, draft memorandum of association and articles of association, authorized capital of the company, type of shares, amount of share to be contributed by the shareholders;
- (t) name, citizenship, address and designation of the directors for the investment organization;
- (u) total paid up capital of the investment organization, ratio of local and foreign capital contribution and total foreign capital brought in and brought in period into the Union;
- (v) undertaking to follow the terms of the contract;

Draft land lease agreement with citizen or government departments, organizations and draft joint venture agreement for the joint venture business shall be submitted together with the investment proposal.

The feasibility study report of the environmental effect and social damages for the capital intensive investment projects and businesses which needs to check the environmental effect designated by the Ministry of Environmental Conservation and Forestry shall be attached together with the investment proposal.

Natural resources based investment businesses and investment under the State Economic Enterprises Law, shall be submitted the investment proposal through the concern Union Ministry. Other investment proposals shall submit directly to the Myanmar Investment Commission office by the investor or promoter.



#### 4.3.5 ***The Investment Proposal Assessment Team***

The Investment Proposal Assessment Team is formed with the following departments and organization whereas the Director General of the Directorate of Investment and Company Administration is headed by:

- (a) Directorate of Investment and Company Administration, Ministry of National Planning and Economic Development;
- (b) Customs Department, Ministry of Finance and Revenue;
- (c) Internal Revenue Department, Ministry of Finance and Revenue;
- (d) Department of Labour, Ministry of Labour, Employment and Social Security;
- (e) Relevant department under the Ministry of Electric Power;
- (f) Department of Human Settlement and Housing Development, Ministry of Construction;
- (g) Directorate of Industrial Supervision and Inspection, Ministry of Industry;
- (h) Directorate of Trade, Ministry of Commerce;
- (i) Project Appraisal & Progress Reporting Department, Ministry of National Planning and Economic Development;
- (j) Department of Environmental Conservation, Ministry of Forestry and Environment Conservation;

The Investment Proposal Assessment Team has invited the investor or promoter or the authorized person on behalf of the investor to attend the meeting. The meeting is held once a week to make assessment on the proposal. The acceptable proposal is submitted to the Myanmar Investment Commission.

#### 4.3.6 ***Processing Process of Investment Proposal***

The MIC Office has requested the recommendations to the Nay Pyi Taw Council or relevant region or state government upon the investment proposal or recommendation from the Ministry of Forestry and Environmental Conservation upon the arrangements for minimum environmental and social impacts when the MIC office has accepted the proposal.

The Nay Pyi Taw Council or region/state government replies the recommendation by the letter signed by Chairman of the Nay Pyi Taw Council or Chief Minister of the region/state government or a responsible person on behalf of Chief Minister where stated as acceptable or not acceptable based on the scrutinization, to the MIC Office within (7) days from the date of request letter was received.

The Ministry of Forestry and Environmental Conservation replies the recommendation based on findings of scrutinization for the arrangements with the view to protect or minimize the negative impact to environment and social, signed by Union Minister or responsible personnel on behalf of the Union Minister within (7) days from the date of request letter was received.

The request letters for the recommendations or advisory remarks on the investment proposal in accordance with the nature of business or requirement are sent to the relevant Ministries and organizations by the MIC Office. The concerned Ministries have to reply their recommendations within (7) days to the MIC Office from the date of request letter was received.

The Ministries have formed the Investment Assessment Response Team within the Ministries which are headed by Director or same rank with the Director as a minimum level to reply the request. The information about the Investment Assessment Response Team from each and every Ministry and any changes of the member need to be informed to the Myanmar Investment Commission. The team is invited from time to time to attend the meeting conducted by MIC or MIC Office and need to attend on behalf of the relevant Ministry. The list of the team members with their contacts are mentioned in the Annexure (14).



The MIC Office has submitted the investment proposal to the nearest MIC meeting as soon as the recommendations and assessments are received from the relevant departments and Ministries.

#### **4.3.7 Assessment Factors**

The Myanmar Investment Commission has done assessment on the investment proposal based on the following factors:

- (a) whether the proposal is compatible with the policies adopted by the Foreign Investment Law;
- (b) assessment of the financially trust worthiness based on the following information;
  - (i) Bank Statement;
  - (ii) latest audit report of the company;
  - (iii) business development report of the company;
- (c) condition of economic justification based on the following information:
  - (i) estimated annual net profit;
  - (ii) estimated annual income and expenditure in terms of foreign currency;
  - (iii) investment recoupment period;
  - (iv) new employment opportunity;
  - (v) enhancement of national income;
  - (vi) local and export market accessment;
  - (vii) the requirement of local consumption;
- (d) assignment of technicians and experts for the assessment of industrial technology whether it is applicable or not;
- (e) assessment on the recommendation from the Department of Environmental Conservation on the arrangements on protection from negative effects of environmental and social aspects;
- (f) assessment on whether the investment is taking responsibilities for State and citizens and emphasize on the beneficial for socio-economic factors;
- (g) conformity assessment to be inline with the rules and regulations under the existing laws;



#### 4.3.8 ***Issuance of Permit***

The Myanmar Investment Commission has issued the **Permit Form (2)** (Annexure – 2) when the investment proposal is approved. The copies of the Permit are sent to the relevant Union Ministries from the MIC office.

#### 4.3.9 ***Procedure after the MIC Approval***

The investor or promoter shall complete the construction within the approved construction period or approved extended period. The investor has to inform and request for extension of the construction period to the Myanmar Investment Commission 60 days ahead of the expiry date of approved construction period with the explanation for the delay if the delayed construction activities and cannot complete within the approved period of time.

The Myanmar Investment Commission may approve the extension of construction period not more than 50 percent of the original period upon request of the investor by conducting the required investigations and only found the reasonable circumstances for extension.

The extension for the construction period is not allowed more than twice except for the conditions of force majeure such as natural disasters, instabilities, riots, protests, emergency of State condition, insurgency, rebel's actions, wars, etc.

The Myanmar Investment Commission will withdraw the investment permit issued to the investor if the originally permitted construction period or extended period is expired without completion of the construction works. Under this situation there is no liability for the reimbursement of remedy, compensation or any other rights or financial terms to the investors by withdrawal of the investment permit.

The completion of the construction shall be informed to the Commission within 30 days soon after the completion of the construction. The investor shall start the production or service businesses as per proposed investment project soon after the completion of construction period.

The **Business Report Form (3)** (Annexure – 3) shall be submitted to the MIC once every three months by mail or by any other means of communications system during the permitted period of the investment business.

The investor or promoter need to apply license or permit or registration from the relevant Ministries, government departments in accordance with the requirements if it is required for the nature of the investment business.

The following duties and responsibilities shall be undertaken by the investor:

- (a) to follow the Environmental Conservation Law for the environmental conservation activities of the business;
- (b) to perform the business by taking responsibility for the benefit of the Union and citizens;
- (c) to cooperate with the responsible personnel for the inspection from time to time or in accordance with the requirement;
- (d) to follow the standards adopted by the relevant Ministries for the construction of factory, workshop, building and other business activities and to be in line with the business performances;
- (e) to perform safety work environment and health programme;
- (f) to follow the rules, regulations, standards for the transportation, storage and usage of hazardous and toxic materials and other similar materials;
- (g) to produce the products according to the quality or standards with the view not to harm to the customers;

#### **4.3.10 *Transfer of Share, Transfer of Business, Leasing and Mortgaging of the Investment Business***

The investor shall apply and obtain permission before the sub-leasing of the permitted leased land and/or building without any changes of the investment business permitted to the person who has the right to use the land or right to lease the land by submitting the **Lease Form (4)** (Annexure – 4) or **Mortgage Form (5)** (Annexure – 5) for mortgaging. The permit from Union



Government shall attach to the application if the type of land is vacant, fallow, and virgin land.

Transfer of all shares to anyone of either foreigner or citizen shall be applied with the **Share Transfer Form (6)** (Annexure – 6) to the Commission Office. The permission of the Union Government shall be attached to the application if the investment made on the vacant, fallow and virgin land.

The registration of foreign company incorporation shall be applied to the Directorate of Investment and Company Administration – DICA according to the Myanmar Company Act if the shares transferee is a foreigner or name of the existing company may use upon the agreement of the share transferer.

The Permit shall be applied to the Myanmar Investment Commission according to the Myanmar Citizen Investment Law if the transferee is a citizen. After getting approval from the Myanmar Investment Commission the registration of Myanmar Citizen Company shall be applied at the Directorate of Investment and Company Administration – DICA according to the Myanmar Company Act.

The new shareholder of the business is allowed to enjoy the exemptions and reliefs permitted by the Foreign Investment Law only for the rest of the allowed period of term. Such exemptions and reliefs shall not be allowed under the new Permit if the stipulated period is over due.

The application with **Share Transfer Form (7)** (Annexure – 7) shall be submitted to the Myanmar Investment Commission if part of the shares are transferred to either foreigner or citizen. The registration shall be made together with the Permit of the Myanmar Investment Commission to the Directorate of Investment and Company Administration – DICA for the transfer of share according to the Myanmar Company Act.

#### **4.3.11 Requirements for Labour Recruitment**

The investor shall conclude the employment agreement within 30 days after the recruitment of Myanmar citizen or foreigner staff and labours as per instructions of Ministry of Labour, Employment and Social Security.



The investor has to submit the annual plan to the Commission before 31<sup>st</sup> January annually for the implementation of practising and trainings given to the Myanmar citizen staff with the view to enhance their skill.

The investor has to apply the certificate of work permit with the **Work Permit Form (8)** (Annexure – 8) for the foreign employees and labours working in the permitted investment business which is permitted by the Myanmar Investment Commission to the Ministry of Labour, Employment and Social Security under the Labour Law together with the recommendation from the Myanmar Investment Commission. The Certificate of stay permit shall be applied with the **Stay Permit Form (9)** (Annexure – 9) to the MIC Office.

The investor shall register at the Social Security Board to contribute either in Myanmar Kyat or foreign currency to the relevant departments and related departments according to the Social Security Law to receive the benefits by the employees as per social security scheme. The investor shall register to the relevant Social Security Board within 15 days after the commencement of the business and the copy of registration card issued by the Social Security Board shall be submitted to the MIC Office.

The recommendation for the full payment of social security fees issued by the Social Security Board shall submit to the MIC Office once every six months. The recommendation for the clearance of social security fees payment issued from the relevant Social Security Board shall also be submitted when the contract term of the investment business has expired and to withdraw all the receivables.

#### **4.3.12 *Clarification of the Terms under the Foreign Investment Law***

The investor or the promoter has the right to receive the one or more or all of the exemptions and reliefs stated in the Foreign Investment Law by applying with the **Form (10)** (Annexure – 10) to the Myanmar Investment Commission.

The Myanmar Investment Commission may allow exemptions and reliefs based on the application submitted by the investor or promoter for the date of business commencement. Commission shall specify type and period of exemption or relief in the permit. The Commission has informed such permit to the investor or promoter and concerned departments and organizations for further necessary actions taken for exemptions and reliefs.

The date of commencement of the business for manufacturing or service business is designated as follows:

- (a) the date specify on the documents such as Bill of Lading or Airway Bill or similar documents used in international trade for the export of manufacturing business which is not later than 180 days after the term of construction period;
- (b) the date when receive the first income from the local sales of the manufacturing business and which does not exceed 90 days after the construction period;
- (c) the date when the service business is commenced and which does not exceed 90 days from the completion of the construction period;

The investor or promoter shall inform the business commencement date for either manufacturing or service business to the Myanmar Investment Commission with **Form (11)** (Annexure – 11).

#### 4.3.13 *Land Use Permit*

The Commission allows the investor to lease the following types of land for the permitted investment business from the person entitled to lease the land or person having right to use the land with the prior approval of the Union Government:

- (a) Land owned by the government;
- (b) Land owned by the government department, organization;
- (c) Private land owned by citizen;

The Myanmar Investment Commission allows to investors if they are desirous to lease the vacant, fallow and virgin lands for carrying out the agricultural and livestock breeding businesses on commercial scale in accordance with the permission of the Central Management Committee of the Vacant, Fallow and Virgin Land.

The investor are permitted to lease the land for the initial period of 50 years from a person entitled to lease the land or a person having the right to use the land based on the type of business and investment volume. If the investor is desirous to continue to carry out after the expiry of the term



permitted and if the agreement is obtained from the person entitled to lease land or the person having the right to use land, allow to extend two consecutive terms by 10 years each based on investment amount and type of business.

The application shall submit to the Central Management Committee of Vacant, Fallow and Virgin Land for the investment business of agricultural, livestock breeding and other related business according to the Vacant, Fallow and Virgin Land Management Law. It is allowed initial leasing period of 30 years for the Vacant, Fallow and Virgin land for the agricultural and livestock breeding business based on the investment value according to the prescribed law. If it is desirous to continue to do the business, the extension may be permitted based on the investment value by the Vacant, Fallow and Virgin Land Management Law.

The investor has to form joint-venture with the citizen who has the right to do agricultural and livestock breeding in the vacant, fallow and virgin land in terms of suitable ratio for capital and technological contribution. The person who entitle to lease or use the vacant, fallow and virgin land shall pay the land use premium in accordance with the Vacant, Fallow and Virgin Land Management Law.

If the person who entitle to lease or use the vacant, fallow and virgin land wants to sell, change or any other forms of the transfer of the land shall be allowed only by the permission of Union Government.

The investors are only allowed to carry out the contract farming system at the farms under joint-venture system with citizen investor for the plantation and production of farm crops and seasonal crops on mutual interest.

The investor or promoter shall apply to the Myanmar Investment Commission for getting the right to lease the land with **Land Lease Form (12)** (Annexure – 12) together with the draft land lease agreement and other necessary document from the person who has the right to lease land or eligible to use land. Only after getting the permit from the Myanmar Investment Commission, the land lease agreement shall be concluded between the person who is entitled to lease land or having right to use land and the investor and send to the Myanmar Investment Commission.



The land leasing rates are determined by the relevant Union Ministries with regard to the proposed leasing land owned by the government department, organization with the approval of the Myanmar Investment Commission. The land lease rate shall be concluded with the current market price by the lease agreement on yearly basis according to the lease period and need to submit the lease rate of the land to the Myanmar Investment Commission. In determining the land lease rate, the rate to be paid once for 365 days from the date of the beginning of the lease shall be basically calculated and leased.

The relevant government department or government organization has demanded the land lease premium from the investor in leasing of government department-owned land or government organization-owned land.

#### **4.3.14 *Foreign Capital***

The investor shall remit the investment capital at any bank in the country designated for foreign banking according to the permission of Myanmar Investment Commission. In this regard, investor needs to specify the total investment amount by planned investment period and targeted amount to be remitted according to the said period.

The investor shall inform name and address of bank, account number, name of authorised person together with the bank statement to the Myanmar Investment Commission soon after opening the bank account.

The investor shall assign the auditor who is designated by the government for the preparation of audit report of the business at every 365 days and submit the report to the Myanmar Investment Commission within 30 days from the date of auditing.

#### **4.3.15 *Right to Transfer***

The investor needs to apply to the Myanmar Investment Commission for the transfer of the foreign currency with **Transfer Form (13)** (Annexure – 13) together with the auditor's report on the investment business and bank statement. The transfer of investment capital is not allowed before the investment recoupment period and commencement of the commercially operated.

#### 4.3.16 ***Establishment of One Stop Service Centre***

The One Stop Service Centre is established with the cooperation of following departments headed by the Deputy Director General of the Directorate of Investment and Company Administration with the view to facilitate the investment activities:

- (1) Central Bank;
- (2) Relevant Department under the Union Ministry of Electric Power;
- (3) Directorate of Investment and Company Administration;
- (4) Customs Department;
- (5) Directorate of Trade;
- (6) Department of Labour;
- (7) Department of Immigration and National Registration;
- (8) Directorate of Industrial Supervision and Inspection;
- (9) Internal Revenue Department;