



# LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

## NEWSLETTER 6 - 23 JULY 2016

**Dear Readers,**

Welcome to a new edition of our newsletter.

**1. Latest version of the draft of the new Myanmar Investment Law**

On 12 July 2016, DICA published the **latest version of the draft of the new Myanmar Investment Law**. The new law will, if enacted, **merge the present Foreign Investment Law and the Citizens Investment Law**. Foreign investors in **non-MIC businesses** may, according to the draft, be eligible to **lease land long-term and obtain tax exemptions**. Furthermore, they benefit from other advantages under the draft law (e.g. guarantee against confiscation, explicit right to repatriate profits) that are presently only available to MIC companies. Please find an analysis of the draft as well as an English translation inside the newsletter.

**2. Review of Yangon's high-rise building projects: Legal implications included in our land law seminar on 4 August**

The **review of Yangon's high-rise building projects** has caused **quite a stir**: Developers have been told to significantly alter the designs of projects and dismantle floors already built. For some developers, these requirements seem to be life-threatening. Against this background, we will **change the topics of our land law seminar on 4 August a bit** and include a section on (i) **zoning in Yangon**, (ii) **obtaining building permits** and (iii) **legal protection against unilateral measures by the government**. Please find an invitation to the seminar in this newsletter; there are still places left.

**3. MoC notification 56/2016 allowing trade in construction materials**

As there was interest from clients, we have in the meantime spoken with officials at the Ministry of Commerce concerning **notification 56/2016** which **allows foreigners to form joint ventures with locals in order to import and sell construction materials**. It appears that the Ministry is presently prepared to **allow**, to such joint ventures, the **import of building materials**. The **import of construction equipment may very well be allowed at a later stage**, but the Ministry wants to hold discussions first with the construction industry to determine what goods are actually needed.

**4. Will foreigners soon need work permits?**

The Myanmar Times reports (<http://tinyurl.com/htbueom>) that the Ministry of Labour is about to submit the **draft of a work permit law** to the Union Attorney General's Office for review. This



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law, if enacted, will require foreigners working in Myanmar to obtain work permits - a development which is maybe not so welcome and which requires monitoring.

### 5. **Deadline to submit quarterly performance report to the MIC**

The MIC wishes to make investors aware that businesses with an **MIC permit have to submit quarterly performance reports**; the deadline for the submission of the performance report for the first quarter of the 2016/17 financial year has been set for 27 July (<http://tinyurl.com/gl4chjq>). Section 42 Foreign Investment Law and section 32 Citizens Investment Law specify penalties for non-compliance.

### 6. **Tender for a temporary power plant**

We (somewhat belatedly) wish to draw your attention to this **tender** opened by Electric Power Generation Enterprise for a **temporary power plant with a capacity of 300 MW**: <http://tinyurl.com/hje5f94>.

We trust that you will find this newsletter useful and hope that you will enjoy reading it.

Sebastian Pawlita  
Managing Director

Nyein Chan Zaw  
Director

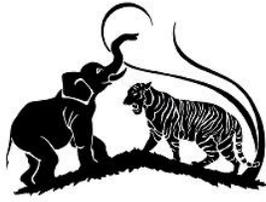


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### Press review (12 - 23 July 2016)

- Census religion data released: <http://tinyurl.com/h9vjw9u>
- Press coverage of the Yangon high-rise building projects review: <http://tinyurl.com/hkmv4ba>, <http://tinyurl.com/zs5gp4j>, <http://tinyurl.com/hs6vk3a>, <http://tinyurl.com/zuloavd>, <http://tinyurl.com/hdnv58z> (see also our seminar invitation)
- Thai firm to invest in Mawlamyine power plant: <http://tinyurl.com/gsvrmcb>
- New industrial policy to be submitted to parliament: <http://tinyurl.com/z76vpsx> (This sounds interesting. We may finally get an economic masterplan, albeit only for the manufacturing sector.)
- Department of Civil Aviation looking at switching to a space-based surveillance system to keep track of rising number of aircraft: <http://tinyurl.com/hul2t2e>
- Work on Thilawa “Zone B” to begin after rainy season: <http://tinyurl.com/hcyl3t>
- Suzuki to open Yangon factory in 2018: <http://tinyurl.com/jnpyh4g>
- Myanmar Insurance raises rate for third-party vehicle cover: <http://tinyurl.com/zfeq85t>
- France to fund study for 690 MW Rakhine State hydropower project: <http://tinyurl.com/zwdgyy2>
- Myanmar Railways to upgrade circle line with Japanese loan: <http://tinyurl.com/gktw5fu>
- So many different kinds of alcohol licenses - and they don't all allow you to serve draught beer: <http://tinyurl.com/jjbp5w4>, <http://tinyurl.com/hjy5twc>
- Yoma signs shareholder agreement for Landmark construction project: <http://tinyurl.com/zt6vcgb>



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## SEMINAR INVITATION:

### LAND LAW IN MYANMAR (AS AN ASIDE: STAMP DUTY)

Date and time	Thursday, 4 August 2016, 2:30pm - 4:00pm
Place	Sule Shangri-La, 223 Sule Pagoda Road, Yangon
Topics	<ul style="list-style-type: none"><li>▪ The different types of land and their uses</li><li>▪ How to register lease agreements</li><li>▪ How to use farmland for other purposes</li><li>▪ Frequent issues in land due diligences</li><li>▪ The Yangon high-rise building projects review: (i) zoning in Yangon, (ii) obtaining building permits and (iii) legal protection against unilateral measures by the government</li><li>▪ Stamp duty</li></ul>
Speakers	<ul style="list-style-type: none"><li>▪ Sebastian Pawlita</li><li>▪ U Nyein Chan Zaw</li></ul>
Language	English
Fee	The event is free of charge.
Registration	Please register by sending an e-mail to <a href="mailto:sebastian@lincolnmyanmar.com">sebastian@lincolnmyanmar.com</a> or <a href="mailto:nyeinchanzaw@lincolnmyanmar.com">nyeinchanzaw@lincolnmyanmar.com</a> , stating the name of your company and the names of the participants.



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## The draft of the new Myanmar Investment Law

On 12 July 2016, DICA published the latest version of the draft of the new Myanmar Investment Law (text in Myanmar: <http://tinyurl.com/zmory5z>; English translation below). The new law, if enacted, will combine the present Foreign Investment Law and the Citizens Investment Law. However, with regard to market access and incentives, the draft contains advantages of domestic investors over foreign investors.

### 1. Domestic investor and foreign investor

A domestic investor is defined as a citizen investing in the country. The term “citizen” includes business entities established only by citizens. This is at odds with the draft of the new Companies Law (the latest version can be found here: <http://tinyurl.com/jm4vu9x>) according to which companies with a foreign shareholding not exceeding a “prescribed ownership amount” are treated as a local company.

A foreign investor is a person who is not a citizen.

### 2. Two routes to invest

As is also the case now, the draft law provides for two routes to invest in the country: (i) with permission from the Myanmar Investment Commission (“MIC permission”) and (ii) without it.

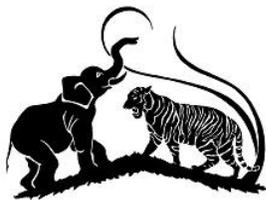
MIC permission is required for businesses that (i) are important for the State’s strategy, (ii) require a high amount of capital, (iii) have a high impact on the natural environment and residents, or (iv) are classified by the Government as requiring MIC permission. Further details will be provided in implementing rules. It should be noted that the requirement to obtain MIC permission applies to both foreign and domestic investors.

Other businesses do not require MIC permission. Differently from now, however, the draft provides that foreign investors in non-MIC businesses may be eligible to lease land long-term and obtain tax exemptions. Furthermore, they benefit from other advantages under the draft law (e.g. guarantee against confiscation, explicit right to repatriate profits) that are presently only available to MIC companies.

### 3. Approval application

Foreigners wishing to invest in businesses for which no MIC is required may file an application to obtain MIC approval for the long-term lease of land (50+10+10 years) and/or obtaining tax exemptions.

### 4. Market access restrictions



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The draft provides for the following market access restrictions:

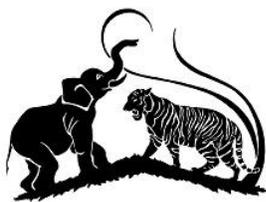
- (a) Certain businesses which are deemed to be harmful are prohibited to domestic and foreign investors alike.
- (b) Concerning state monopolies, the draft only states that access is “restricted” without differentiating between domestic and foreign investors. One would expect, however, that - as is the case already now - access may be possible on a case-by-case basis.
- (c) Businesses which a foreign investor is not allowed to engage in, or only allowed to engage in if he forms a joint venture with a citizen.
- (d) Businesses which require approval of the relevant ministries. The draft does not distinguish between local and foreign investors in this regard.

The MIC shall, with the approval of the Cabinet, issue a notification which shows the restricted businesses (b)-(d).

### **5. Tax incentives**

The draft provides for the following tax incentives:

- (a) For investments in sectors listed in a notification issued by the MIC in order to promote investment: Exemption from corporate income tax for seven, five or three years depending on whether the investment takes place in an underdeveloped, reasonably developed or well-developed region or state.
- (b) Exemption from customs duties and other domestic taxes on the import of machines, equipment and other specified items required during the construction period of a new business, or during the expansion period of an existing business that obtained permission from the MIC to increase the investment amount.
- (c) Exemption from customs duties and other domestic taxes on the import of raw materials and partially manufactured goods by an export-oriented business if these items are used in the production of goods for export.
- (d) Exemption from corporate income tax on profits reinvested within one year.
- (e) Accelerated depreciation (although this would often not work as an incentive).



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- (f) Right to deduct R&D expenses from the corporate income tax base if R&D is done in the interest of the State (although these expenses would be deductible under the ordinary tax laws anyway).
- (g) Better incentives may be granted to citizen-owned businesses.

### 6. Labour matters

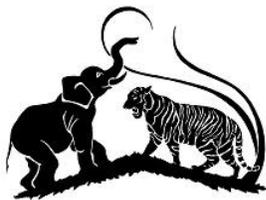
Unlike the present Foreign Investment Law, the draft contains no requirement as to the hiring of a specified percentage of skilled employees. However, investors (both domestic and foreign) are obliged to implement skill development programmes.

### 7. Dispute resolution

The draft obliges the MIC to implement a mechanism by which disputes can be resolved before reaching the official dispute resolution stage.

Investors are free to agree on a dispute resolution method of their choice.

*Please contact Sebastian Pawlita ([sebastian@lincolnmyanmar.com](mailto:sebastian@lincolnmyanmar.com)) or Nyein Chan Zaw ([nyeinchanzaw@lincolnmyanmar.com](mailto:nyeinchanzaw@lincolnmyanmar.com)) if you have any questions on this topic.*



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## English translation of the 6 July 2016 version of the draft of the Myanmar Investment Law (published on 12 July 2016 on DICA's homepage)

*CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED*

*YOU MAY QUOTE FROM THE TRANSLATION IF YOU CREDIT OUR FIRM AND INCLUDE A LINK TO THIS FILE NEXT TO THE QUOTE.*

### **Myanmar Investment Law (Draft)**

(2016, Pyidaungsu Hluttaw Law No. )

1378, ---- , ----

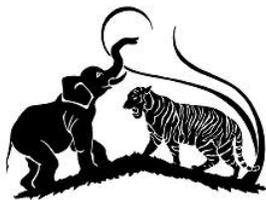
(2016, ----, ---- )

The Pyidaungsu Hluttaw hereby enacts this law.

### **Chapter (I)**

#### **Title and definitions**

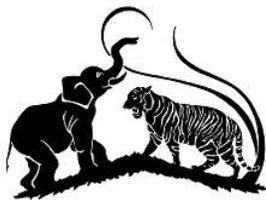
1. This law shall be called the **Myanmar Investment Law**.
2. The following expressions contained in this law shall have the meanings given hereunder -
  - (a) **"State"** means the Republic of the Union of Myanmar.
  - (b) **"President"** means the President of the Republic of the Union of Myanmar.
  - (c) **"Cabinet"** means the Government of the Republic of the Union of Myanmar.
  - (d) **"Ministry"** means the Ministry of Planning and Finance, the Union Government.
  - (e) **"Commission"** means the Myanmar Investment Commission organized by this law.
  - (f) **"Member"** means any member including the chairperson and the vice chairperson of the Myanmar Investment Commission.
  - (g) **"Commission Office"** means the Directorate of Investment and Company Administration which will do the office work of the Myanmar Investment Commission.
  - (h) **"Secretary"** means the secretary of the Myanmar Investment Commission who is charged with the performance of the duties of the Commission.



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- (i) **“Proposal”** means the application which is submitted together with *[the description of the]* investment project, contract (draft), financial documents, and documents of the company for the proposed investment by the investor in order to obtain the permission of the Commission for the businesses described in Section (35).
- (j) **“Permission”** means an order showing the consent of the Commission regarding the investment proposal submitted by the investor.
- (k) **“Approval application”** means an application submitted together with the necessary documents in the designated form in order to obtain the approval of the Commission for receiving the benefits of having the right to use land according to chapter (12), and exemptions and reliefs according to sections 76, 78 and 79 of chapter (18).
- (l) **“Approval”** means an order showing the approval of the Commission regarding the approval application submitted by the investor.
- (m) **“Citizen”** includes an associate citizen and a naturalized citizen. This term includes a business entity established only by citizens.
- (n) **“Domestic investor”** means a citizen who invests in the country. This term includes a Myanmar company, branches, and other business entities established and registered in accordance with the Myanmar Companies Act.
- (o) **“Foreign investor”** means a person who is not a citizen. This term includes a foreign company, branches, and other business entities established and registered in accordance with the Myanmar Companies Act and business entities formed according to the laws enacted by a foreign country.
- (p) **“Investor”** means a domestic investor or foreign investor or business entity formed and registered according to the relevant laws who/that are engaging in direct investment within the borders of the State according to this law.
- (q) **“Investment”** means any assets owned or managed by an investor in accordance with this law.
- (r) **“Direct investment”** means an investment where the investor investing in the State according to the law has the right to control or influence, and manage, the assets invested in the business.
- (s) **“Foreign investment”** means a direct investment within the State by a foreign investor.



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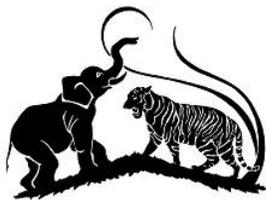
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- (t) **“Business entity”** means -
- (1) Entities legally organized according to the law enacted by the State including company, trust, partnership, sole proprietorship, joint venture, and other business organizations or associations.
  - (2) A branch office of business entities formed in accordance with the laws in force.
- (u) **“Freely usable currency”** means the currency of a member country of the International Monetary Fund (IMF) which is eligible to be traded in monetary markets and to be transferred in international payments defined in clause 30 (f) of the Agreement of the International Monetary Fund (IMF).
- (v) **“Exemptions and reliefs”** means the custom duties and other domestic taxes from which the Commission may grant exemptions and reliefs upon the application of the investor for approved or permitted businesses according to the provisions of this law.
- (w) **“Measures”** means the laws, rules, regulations, procedures, decisions and administrative measures or practices enacted or implemented by either government departments, government organizations or non-government organizations to which authority has been conferred.

### Chapter (II)

#### Objectives

3. The objectives of this law are as follows -
- (a) To develop investments without affecting the nature and social environment for the benefit of the State and citizens;
  - (b) to protect investors and their investments;
  - (c) to increase job opportunities for citizens;
  - (d) to develop human resources;
  - (e) to develop production, service and trading sectors with high productivity;
  - (f) to develop the technology and industry sector;
  - (g) to develop every educational sector, to cause development in the entire country including infrastructure;



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- (h) to enable citizens to work together with the international community;
- (i) to create businesses and investments which conform to international standards.

### Chapter (III)

#### Scope of application of the law

- 4. This law shall apply to all direct investments which are being carried on on the day of the enactment of this law or which will be made and carried on after the enactment of this law within the borders of the State. However, this law shall not apply to existing investment disputes occurring, or operations stopped, before this law comes into force.
- 5. This law shall apply to any existing measures taken or maintained by government departments or government organizations. However, this law shall not apply if the measure is taken according to chapters (21) or (22) of this law.

### Chapter (IV)

#### Formation of the Commission

- 6. The Commission shall be organized as follows -
  - (a) A chairperson nominated by the President and appointed by the Cabinet,
  - (b) a vice chairperson appointed by the Cabinet,
  - (c) members from the personnel of the relevant ministry *[singular in the original]*, government department, government organizations, professionals from the private sector, experts, and persons of honour and repute.
  - (d) a secretary who is the head of the Commission Office.
- 7. The Cabinet shall organize the Myanmar Investment Commission with a minimum of nine members or more in odd numbers including the secretary according to section (6).
- 8. Commission members who are not civil servants shall be offered appropriate remuneration and *[reimbursement of]* expenses.
- 9. The tenure of the MIC members excluding the secretary is equivalent with that of the elected Government. As the secretary is a civil servant, he or she shall act in compliance with the Civil Service Law.



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10. No Commission member shall have more than two continuous tenures.
11. The head of the Commission Office shall act as the secretary of the Commission and also perform the other duties given *[to him or her]* by the Commission.
12. The chairperson of the Commission may specify a separate task *[literally: "duty"]* for an office employee in writing, and the appointed person shall only perform the specified task. The appointment notice may be revoked anytime by a written order.

### Chapter (5)

#### Resignation, termination and appointment to vacancies at the Commission

13. If the chairperson of the Commission wishes to resign out of his or her own desire, he or she can resign by submitting a written resignation notice to the Union Government with the approval of the President.
14. Any of the Commission members except the chairperson wishing to resign out of his or her own desire can do so by submitting, through the chairperson, a written resignation notice to the Union Government with the approval of the President.
15. The Cabinet shall terminate the duty of any of Commission member in the following circumstances:
  - (a) Inability to perform the assigned duty due to a severe health problem found and checked by a board of doctors formed according to the law;
  - (b) being sentenced to a prison term by a court due to a conviction for a crime;
  - (c) being declared insolvent by a court;
  - (d) inability to perform the assigned duties satisfactorily.
16. The Cabinet -
  - (a) If the position of a Commission member is vacant because of resignation, termination, death or any other reason, the Cabinet shall appoint a new member according to the provisions and procedures of this law.
  - (b) If the position of the chairperson is vacant at the Commission, the Cabinet shall, for the time being, appoint, as temporary chairperson, the vice chairperson or a person from the Commission who can be assumed to be able to perform the chairperson's duties.



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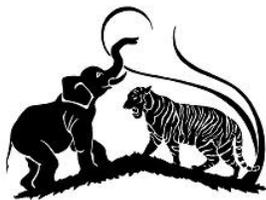
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17. Members of the Commission shall, except in cases of termination or resignation, carry on their relevant duties until the appointment of a new member.
18. The tenure of a chairperson, vice chairperson or members appointed as replacement according to section 16 is only equivalent to the remaining tenure of his or her predecessor, regardless of section 9.
19. The secretary is responsible to perform the daily duties of the Commission and the administrative and management work of the Commission.
20. Any member of the Commission shall notify the Commission if any submitted proposal has direct or indirect benefits for him or her. This notice shall be recorded in the meeting minutes of the Commission and the respective member shall not be involved in the decision-making, discussion and measures of the Commission with regard to this proposal.
21. Any member of the Commission shall notify the Commission if any submitted approval application has direct or indirect benefits for him or her. This notice shall be recorded in the meeting minutes of the Commission and the relevant member shall not be involved in the decision-making, discussion and measures of the Commission with regard to this application.

### **Chapter (6)**

#### **The duties and powers of the Commission**

22. The Commission can exercise its powers and rights freely according to the provisions of this law.
23. The duties of the Commission are as follows:
  - (a) Promoting investment businesses in the country;
  - (b) acting as main responsible office for coordinating with investors and potential investors in the State;
  - (c) assisting in the smooth and easy flow of investors and their investments;
  - (d) making suggestions on investment policies when Union ministries or regional and state governments implement economic goals for the development of responsible businesses and their implementation;
  - (e) issuing and announcing guiding policies and suggestions for employees of the Commission Office;



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- (f) regularly reporting the performance of the Commission to the Cabinet and the President;
  - (g) annually reporting of the completion and progress of businesses permitted by the Commission to the Parliament through the Cabinet;
  - (h) Allotting and approving rights in coordination with state and regional governments for some investment businesses for the economic development of states and regions which have to be approved by the Union government according to the business types or natural resources or job opportunities;
  - (i) making suggestions to the Cabinet for the facilitation and encouragement of domestic and foreign investments;
  - (j) taking action according to the regulations and procedures if the investor is found out to keep, convert or destroy, without notice, natural resources or antiques;
  - (k) monitoring the investment businesses as to whether the investor is doing business in compliance with the rule, regulation, procedure, order, notifications, directives and the conditions of the contract; ensuring compliance if the investor is found to be non-complying; and taking action against non-complying businesses according to the law;
  - (l) reconsidering exemptions, reliefs and restricted types of investment businesses and reporting thereon to the Cabinet;
  - (m) performing duties given by the Cabinet from time to time.
24. In order to perform the duties of this law, the powers of the Commission are as follows:
- (a) Issuing the required notifications regarding the types of businesses where investment is prohibited;
  - (b) fixing the types of investment businesses which are important for the State's strategy, or *[require a]* high amount of capital, or affect the natural environment and residents;
  - (c) issuing permission if the submitted proposal is deemed to have benefits for the State and to be in conformity with the laws in force, or rejecting non-compliant proposals;
  - (d) after examination, issuing approval if the submitted application is complete and in conformity with the laws in force;



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- (e) approving or rejecting the application if the investor has applied for the extension or amendment of a permission or approval;
  - (f) obtaining, from the investor, necessary documents and facts related to the investment;
  - (g) taking action if the documents submitted to the Commission for obtaining permission or approval are not genuine, or if there is failure to follow the terms and conditions of the permission or approval according to the law;
  - (h) if the investor has made a submission to obtain benefits of exemptions and reliefs according to the provisions of this law, granting, after examination, *[the exemptions and reliefs]*;
  - (i) designating the types of businesses which do not qualify for the benefit of an exemption and/or relief;
  - (j) obtaining information and assistance from the relevant ministries and government entities or other organizations in order to perform the duties of the Commission;
  - (k) making plans in order to implement the provisions of this law successfully;
  - (l) allotting the powers and rights to the regional/state governments with the consent of the Union Government for the economic development of regions and states;
  - (m) examining and approving the construction period or preparation period according to the types of investment business;
  - (n) examining and approving the temporary import of machines and materials in compliance with the procedures of the customs department;
  - (o) training with the coordination of foreign or local experts or organizations and sending employees of the Commission Office to foreign or local programmes to improve their skills;
  - (p) in implementing this law effectively: Establishing and managing a system to examine, find the reason for, respond to, investigate and resolve damages caused by disputes before the dispute reaches the dispute resolution stage.
25. The Commission Office may fix and collect service fees including *[fees for]* registration and other general service fees.



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26. The Commission may freely form committees and small teams [*literal translation*] in order to perform its duties.
27. The Commission may, if necessary and with the consent of the Cabinet, open branch offices in the State or abroad to perform its duties.

### Chapter (7)

#### Holding meetings

28. Meetings shall be held as follows:
  - (a) At least twice per month based on the receipt of proposals,
  - (b) Holding special meetings if necessary.
29. The chairperson of the Commission shall chair the meetings. The vice chairperson shall chair the meeting if the chairperson is not able to attend.
30. The meeting shall be valid if more than half of the total number of members including the chairperson or vice-chairperson are present.
31. The Commission shall make its resolutions with the consent of more than half of the total number of members. The absentees shall not be able to object against, or reject, or propose to amend, the resolutions of the meeting.
32. The Commission may, if necessary, invite experts from the relevant departments and other organizations to discuss at, and attend, the meetings.
33. The Commission shall allow investors and their representatives to attend relevant meetings for explanation and discussion.
34. The Commission shall, at the nearest regular meeting of the Commission, obtain approval for special measures of the Commission.

### Chapter (8)

#### Submission of proposals

35. The businesses specified in the rule as being important for the State's strategy, or as requiring a high amount of capital, or as having a high impact on the natural environment and residents, and businesses where the Government this prescribes, shall submit a proposal to the Commission and invest after having obtained permission.



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36. The investor shall submit a proposal to the Commission for obtaining permission according to section (35).

### Chapter (9)

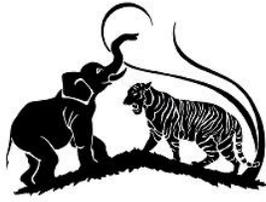
#### Submission of an approval application

37. The investor shall not be obliged to submit a proposal if his or her business is not covered by the provision of section (35). However, an approval application shall be submitted to the Commission for obtaining the right to use land according to chapter (12) and exemptions and reliefs according to sections 76, 78 and 79 of this law.
38. A permission, license or permit or other similar documents from the relevant departments shall be submitted as an attachment when applying for the approval.
39. The Commission may examine the application submitted according to section (42) and may accept it if it is complete, or request that it be resubmitted if it is incomplete, or reject it if the application is not in compliance with the laws and procedures in force.

### Chapter (12)

#### Defining investment businesses

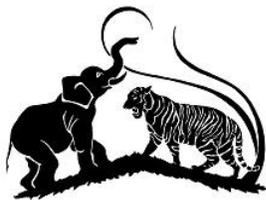
40. The following businesses shall be defined as investment:
- (a) Business entity;
  - (b) movable and immovable property and other property rights, cash, mortgages, liens or pledges, machinery, equipment, components, spare parts and instruments;
  - (c) shares of a company, stocks and debentures;
  - (d) intellectual property including technical know-how, patent, mechanical design and trademark ownership according to the laws in force;
  - (e) claims for money or performance according to a contract which has a financial value;
  - (f) agreements for profit sharing or rights from agreements including production, management, construction and turnkey agreements;
  - (g) other business rights accorded by a contract or relevant law, including the exploration and production of natural resources.



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41. The Commission shall fix the sectors where investment shall be developed, and the restricted types of investment businesses based on national policies and the implementation of investment regulations.
42. The operation of the following types of investment businesses is prohibited:
  - (a) Investment businesses which may result in the import of harmful or poisonous waste products into the country;
  - (b) investment businesses which may result in the import of technologies, pharmaceuticals, plant or animal species or apparatuses without permission to use or to grow or which are still in the research process unless the investment is destined for research and development;
  - (c) investment businesses with a harmful impact on cultures and customs of ethnicities of the State;
  - (d) investment businesses which cause danger to citizens;
  - (e) investment businesses which can destroy the natural environment and ecosystem;
  - (f) investment businesses which manufacture goods prohibited according to a law in force.
43. The operation of the following types of investment businesses is restricted:
  - (a) Investment businesses which may only be operated by the State;
  - (b) investment businesses which may not be operated by a foreign investor;
  - (c) investment businesses which may only be operated in a joint venture with a citizen or a private business entity owned by citizens;
  - (d) investment businesses which may be operated with the approvals of relevant ministries.
44. The Commission shall, for public information, issue, with the consent of the Cabinet, a notification which shows the restricted types of investment businesses according to section (43).
45. The Commission shall, with the consent of the Cabinet, announce it if the types of restricted investment businesses according to section (43) are deregulated [*literally: "less restricted"*], amended or revoked after reconsideration from time to time.
46. For reconsideration in accordance with section (45), the Commission shall discuss with the responsible persons from the private sector, government departments and government



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organizations so as not to violate international trade and investment agreements made by the Government.

47. The Commission shall inform, through the Cabinet, the Pyidaungsu Hluttaw about large investments having a high impact on security, the economic situation, the natural environment and the social interest of the State and citizens.

### Chapter (11)

#### Relations with investors

48. In the relation with investors, the Cabinet shall act as follows:
- (a) Foreign investors and the expansion, management, operation and sale or other direct investment plans of their foreign investments according to the provisions of this law shall not be treated less favourably than Myanmar citizen investors unless otherwise prescribed in another law, rule or notification.
  - (b) In like circumstances, foreign investors of a country shall not, with respect to the establishment of the business, obtaining permission, expansion, management, operation and sale or other direct investment plans of their foreign investments, be treated less favourably than the foreign investors of another country.
  - (c) The provision in sub-section (b) shall not apply to rights, preferences or privileges given to foreign investors because of the following:
    - (1) any customs union, free trade zone, economic union and any international agreement resulting in such customs union, free trade zone, economic union;
    - (2) International agreements, preference of investors and their investments due to international, bilateral or regional agreements, agreements or plans [*i.e. policies*] made among countries in the region, complete or partial plans [*i.e. policies*] related to preference and/or tax matters of investors and their investments according to international agreements and plans [*i.e. policies*].
49. The Cabinet guarantees to treat all investors equally with regard to the following matters:
- (a) Right to obtain information on decisions or measures which can cause huge damages to investors and their direct investments;



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- (b) Right to act and to appeal, in accordance with the law, against an amendment of terms and conditions or other similar measures of the Government with regard to a license, permission or approval.

50. The provisions in this chapter shall not affect the provision of section (77).

### **Chapter (12)**

#### **Right to use land**

- 51. (a) An investor who has obtained permission or approval according to this law can, in order to carry out the investment, enter into a long-term lease of land, with terms and conditions, with a private landowner or, if the land is owned by the State, with the relevant departments or organizations. A citizen investor can invest on his or her own land in accordance with the laws in force.
- (b) A foreign investor can initially enter into a land lease of 50 years (starting from the date of obtaining the permission from, or approval of, the Commission) with a private landowner or government organizations.
- (c) The term of the lease can, with the consent of the Commission, be increased by 10 consecutive years if the term of the lease according to sub-section (b) has expired, and by additional 10 years thereafter.
- (d) The investor shall register the land lease agreement with the Registration of Deeds Office according to the Registration Act.
- (e) The Union Government may provide better land use or land lease terms and conditions to citizen investors.
- (f) In order to develop the entire country, the Commission may allow investors to have land use rights or leases with a longer term if they invest in under-developed or remote areas.

### **Chapter (13)**

#### **Hiring of employees and workers**

- 52. The investor -
  - (a) May employ any citizen having the required skills for superior management, technology, or expert or advisory positions according to the relevant laws.



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- (b) Shall arrange skill development programmes in order to employ citizens in superior management, technology, expert or advisory positions.
- (c) Shall employ only citizens for positions without skill requirement.
- (d) Shall sign an employment contract between the employer and employee when hiring citizen or foreign workers, experts and employees in accordance with the labour law and rules.
- (e) When fixing the rights and duties of the employer and the employee in the employment contract or the work rules, *[the employer]* shall fulfill the rights contained in the labour law and rules including minimum wages, leave, off days, overtime payment, damages, compensation, social security and other insurance contributions.
- (f) Shall resolve disputes between employers, or between employees, or between employer and employee, or between workers and experts, or between workers and employees according to the relevant laws.

### Chapter (14)

#### Confiscation of an investment by the Government

53. The Cabinet guarantees that an investment will not be confiscated, nationalized, subject to measures that amount to indirect confiscation, or terminated, unless such measure is taken under the following conditions:
- (a) Required for the public interest;
  - (b) Done equally without any discrimination;
  - (c) Done according to the laws; and
  - (d) Swift payment of fair and sufficient compensation for the confiscated assets.
54. The fair and sufficient compensation shall be fixed based on the market price at the time of confiscation and be equivalent with the value of the confiscated investment. Nevertheless, the compensation shall be fixed to achieve a fair balance of the interests of citizens and of the investor, taking into consideration the situation of the investor before and after the confiscation, the reason for the confiscation, the fair market value of the investment, the objective of the confiscation, profits gained by the investor during the term of the investment, and the period of investment.



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55. The provisions of this chapter shall not apply to non-discriminatory measures for balancing the economy or aimed at social interests taken by the Cabinet according to its judiciary power included in the provisions of chapters (21) and (22).
56. The Cabinet shall review and consider the following factors if an investor complains about a measure according to section (53) as non-complying with the provisions of this section, alleging indirect confiscation -
- (a) Intentional measure in order to cause severe damage to the economic value of the investment;
  - (b) violation of a written agreement, written guaranties, a written license or other official documents between the Government and the investor *[or given by the Government]*;
  - (c) whether the measures of the Cabinet included in the objective stated in section 53 (a) are beneficial to the interest of citizens.

### Chapter (15)

#### Transfer of funds

57. Foreign investors may transfer the following types of funds to *[a destination]* abroad:
- (a) Capital fixed in accordance with the Central Bank provisions on capital accounts;
  - (b) Profits, capital gains, dividends, commission fees, royalties, license fees, technical assistance and management fees, profit from shares, and other current income in connection with any investment under this law;
  - (c) Profits gained from the complete or partial sale or liquidation of an investment or business;
  - (d) Money payable under a contract including a loan agreement;
  - (e) Payments resulting from the resolution of an investment dispute;
  - (f) Payments gained as compensation for the confiscation or nationalization of an investment or asset or other types of compensation;
  - (g) Salaries and income of foreign professionals in the State who are employed in accordance with the laws.



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58. The transaction and payment of loans shall be done according to the financial regulations of the Central Bank.
59. Myanmar citizen investors may transfer, without any delay [*literal translation*], money to [*a destination*] abroad for the following types of reasons:
  - (a) Commission fees, license fees, fees for technical assistance or management, and interest payable to any foreign entity concerning any investment under this law,
  - (b) Money payable under a contract including a loan agreement and other types of compensations under an insurance,
  - (c) Money payable by a Myanmar citizen investor according to a judgment or arbitral award or any other types of [*a decision as the result of a*] dispute resolution,
60. All money transfers shall be done [*only*] after the payment of the payable taxes based on the transferred amount according to the relevant tax laws.
61. Foreign experts who are working with official permission may transfer money [*to a destination*] abroad, without any deductions, through any bank licensed to deal with foreign currency after the tax liabilities concerning the transferred amount according to the Income Tax Law have been paid in full.
62. With regard to the money transfers specified in section (57), foreign investors may transfer money which is in a capital account [*literally: "high amount account"*] or current account [*literally: "normal account"*] under the Foreign Exchange Management Law through any bank licensed to deal with foreign currency by [*converting the amount to*] freely useable currency at the market price.
63. The Cabinet may prevent or suspend a money transfer in a foreign currency in the following situations:
  - (a) Bankruptcy, insolvency, or the protection of the rights of creditors,
  - (b) Transfer, as clean money, of illegal money gained from committing offences or crimes or from other illegal ways,
  - (c) A situation where it is necessary to obtain approval according to the law, or a situation which requires assistance to the financial authorities, with regard to financial reports or transaction records,
  - (d) Compliance with the orders or judgments in judicial or administrative proceedings,



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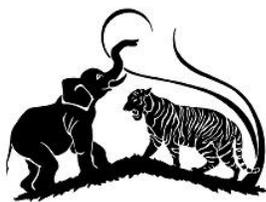
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- (e) Tax matters,
  - (f) Social security, plans for the retirement of government officials [*i.e. pension systems*] and compulsory saving plans,
  - (g) A situation where workers lose their rights.
64. The Cabinet shall allow investors to transfer, in order to invest in the State in accordance with the relevant laws, the necessary capital, expenses and foreign loans from abroad.
65. The Cabinet shall, when foreign countries are facing financially difficult times, fix limits on, or suspend, payments or transfers of money related with investments in accordance with the provisions of the Foreign Exchange Management Law 2012 and other international obligations of the State.

### Chapter (16)

#### Obligations of investors

66. The investor -
- (a) Shall respect the custom, tradition and culture of the ethnicities in the State;
  - (b) shall form or register a company, partnership or business in sole proprietorship, to make the investment according to the laws in force;
  - (c) shall abide by the terms and conditions of issued licenses, approvals and permissions for the business, and abide by Myanmar laws, the rules, procedures, notifications, orders and directives made under this law, terms and conditions in an agreement and tax obligations;
  - (d) shall, if necessary, obtain a license, permission or registration from the relevant Union ministries, government departments and organizations according to the nature of the business or for other reasons;
  - (e) shall immediately inform the Commission if natural resources, antiques or treasure troves which are not included in the original agreement and not related with the permitted investment, are found above or under the land which the investor leases or is entitled to use; shall resume the business on this land if the Commission allows it or move, after obtaining permission, to another land proposed by the investor;



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- (f) shall, without the permission of the Commission, not visibly change the nature, appearance or height of the land which the investor leases or is entitled to use;
- (g) shall operate the investment according to Myanmar laws, rules and procedures and international standards without causing damage, pollution or destruction to/of the natural environment, social environment, and cultural heritage;
- (h) business records, annual accounts and other necessary financial matters of a permitted investment shall be recorded according to international generally accepted accounting principles. Furthermore, business records, annual accounts and other necessary financial matters of an approved investment shall be recorded according to Myanmar generally accepted accounting principles;
- (i) shall liquidate the investment after paying compensation payable to workers in accordance with the relevant laws for violation of an employment contract, liquidation, sale or termination of the investment or reduction of the numbers of employees;
- (j) shall pay, according to the relevant law, procedures and directives, remuneration and salaries to the workers during the time of closure if the investment is temporarily suspended with proven reason [*i.e. for a reason accepted by the Government*];
- (k) shall pay appropriate compensation to the respective workers or their heirs for injury, loss of body parts, contraction of a disease or death because of the work.
- (l) shall instruct foreign experts and their families to respect Myanmar laws, orders and directives, cultures and traditions;
- (m) shall abide by labour laws;
- (n) shall be able to sue and be sued;
- (o) shall pay appropriate compensation for damages to the natural environment and social interest caused by deforestation and excavation of natural resources unrelated to the investment unless such acts are necessary to carry out the permitted or approved investment;
- (p) shall obtain prior permission or approval of the Commission before making an assessment if prior permission of the investment must be obtained according to the procedures of the Environmental Conservation Law and the environmental impact assessment [*translator's note: this is a literal translation; the sentence does not seem to make much sense in the original*]. In case of such types of investment, the investor shall



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inform the Commission of the progress of the required environmental and social impact assessments.

67. The Commission shall allow the resumption of the investment, suspend it, or give necessary instructions that the investor has to follow based on the assessment made according to section 66 (p).
68. The investors shall fulfill all obligations prescribed in section (66) from the date on which this law enters into force.
69. If the investment is terminated before the expiry of the permitted term, the investors shall repay, when selling, repatriating or managing *[the disposal of]* machines, materials, vehicles and other goods that were, with the permission of the Commission, imported with tax exemption and/or relief, an amount equivalent to the tax exemption and/or relief obtained.
70. The investor may only make and sign the necessary contracts with the relevant government department or organization and carry out the investment after having obtained the permission or approval of the Commission.
71. An extension or amendment of the contracts specified in section (70) requires the permission of the Commission.
72. In order to implement investments, the investor shall make, according to the relevant laws, assessments of health, damages to the cultural heritage, pollution of the natural environment and damages to the social environment based on the investment business types.
73. The Commission shall be notified of the sub-lease, mortgage or transfer of the permitted or approved investment during the period of operation.

### **Chapter (17)**

#### **Insurance**

74. The investor shall take out the types of insurances prescribed in the rule from any licensed insurance business within the State.

### **Chapter (18)**

#### **Exemptions and reliefs**

75. Upon application of the investor, the Commission may, after examination, grant exemption and/or relief in order to promote the development of the State and the equal development of



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- the regions and states by allowing the entry of investments in required sectors [*literal translation*].
76. Concerning the exemption from income tax, the Commission may issue a notification classifying regions and states with low development as zone (1), regions and states with reasonable development as zone (2) and regions and states with good development as zone (3), and the Cabinet shall exempt investments in those zones as follows -
- (a) Investors in zone (1) shall be exempted from income tax for 7 consecutive years including the year of the beginning of commercial operations, investors in zone (2) shall be exempted for 5 consecutive years including the year of the beginning of commercial operations, and investors in zone (3) shall be exempted for 3 consecutive years including the year of the beginning of commercial operations.
  - (b) The Commission may, if necessary, change and classify the zone categories from time to time, based on the development of the regions and states.
  - (c) An income tax exemption shall be granted only for the sectors which are listed in a notification issued by the Commission in order to promote investment.
77. Regardless of the provisions in chapter (11), the Cabinet may offer assistance, financial aid and skill development training to Myanmar citizen investors and small and mid-sized businesses owned by citizens. Furthermore, the Commission may grant special and better exemptions for the business location of citizen-owned businesses or business acts relating to types of businesses that are done by citizen-owned businesses.
78. If the investor submitted an application, the Commission may examine [*it*] and grant the following exemptions from customs duties and other domestic taxes -
- (a) Exemption or relief from customs duties and/or other domestic taxes on imported machines, equipment, accessories for machines, spare parts, and construction materials and tools not available in the country, if these items are truly required during the period of the establishment or construction of the investment business.
  - (b) Exemption or relief from customs duties and/or other domestic taxes on raw materials and partially manufactured goods that are to be turned into finished goods [*literally: "to be completed"*] for export if they are imported by exporting investment businesses.
  - (c) Right to obtain a refund, based on the amount of exported goods, of customs duties and/or other domestic taxes that were paid when importing raw materials or partially



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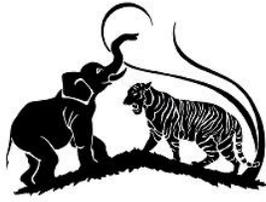
manufactured goods if these items are turned into finished goods [*literally: "completed"*] and then re-exported.

- (d) If, with the permission of the Commission, the permitted investment is expanded by increasing the investment amount: Exemption or relief from customs duties and/or other domestic taxes on imported machines, equipment, accessories for machines, spare parts, and construction materials and tools not available in the country, if these items are truly required for the expansion of the investment business.
79. Upon application by the investor, the Commission may examine [*the application*] as necessary and grant the following exemption and relief -
- (a) Exemption or relief from income tax on the profit if the profit from the permitted or approved investment business is reinvested during one year in the same investment business or another, similar type of investment business.
  - (b) For income tax purposes: Right to deduct depreciation from the profit calculated at a depreciation rate which is lower than the useful life of the machine, tool, building or other capital goods used in the investment business.
  - (c) Right to deduct, from the taxable income, expenses for research and development done in the State and required by the State.
80. Foreign investors shall pay income tax on their income at the income tax rate paid by citizens.
81. Except for the exemptions and reliefs provided for in sections (76), (78) and (79), other tax matters shall be done according to the relevant tax law.
82. The above exemptions and reliefs shall not apply to businesses in a special economic zone.

### Chapter (19)

#### Dispute resolution

83. In order to implement this law effectively, the Commission shall fix and manage a dispute resolution method that is able to resolve, before the stage of the official dispute resolution, an investment dispute, prevent the occurrence of disputes, and perform the necessary investigation.
84. Before litigating investment disputes between the investor and the State at a court or arbitration tribunal, the disputants shall make all appropriate attempts to resolve the dispute amicably.



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85. If investment disputes cannot be resolved amicably,
- (a) The dispute shall be resolved according to the laws of the State [*i.e. the laws of Myanmar*] at the competent court or arbitration tribunal unless prescribed otherwise in the relevant contract.
  - (b) If the dispute resolution method is prescribed in the relevant contract, the dispute shall be resolved according to these dispute resolution methods [*plural in the original*].

### Chapter (20)

#### Administrative penalties

86. The Commission -
- (a) An investor having violated the provisions of this law or of rules, procedures, a notification, an order or a directive issued under this law or the terms of the permission shall be subject to one or more than one of the following administrative penalties.
    - (1) Warning,
    - (2) Temporary suspension of exemptions and reliefs,
    - (3) Revocation of the permission,
    - (4) Putting on a blacklist of businesses which will never be issued any permission in the future.
  - (b) The Commission shall send a written notice to the investor regarding an administrative penalty before imposing an administrative penalty according to section (86) sub-section (a). The investor shall have the right to enquire by written notice regarding an administrative penalty imposed on him or her.
  - (c) When imposing an administrative penalty according to section (86) sub-section (a), the reason for the imposition of the penalty shall be stated together with the decision to impose the penalty.
87. An investor who is not satisfied with any decision by the Commission to impose a penalty according to section (86) may appeal to the Supreme Court, observing all requirements.
88. An investor having violated, or failed to abide by, the provisions of section (66), shall face action under this law and shall, if necessary, also be sued according to the relevant [*other*] laws.



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89. Action shall be taken against an investor if evidence is found that the proposal, tables, documentary evidence or financial or employment data submitted to the Commission or the relevant government department or organization were intentionally and dishonestly created to be wrong or incomplete.
90. An investor having violated, or failed to abide by, section (42) which specifies which businesses are prohibited shall face action under this law and, if necessary, also under other laws.

### Chapter (21)

#### General exemptions

91. No provision of this law shall be construed to prohibit the Government from adopting or maintaining the following fair measures for prudential reasons -
- (a) Protecting the moral of citizens or the public interest;
  - (b) protecting the life expectancy or health of humans, animals or plants;
  - (c) protecting investors, depositors, financial market participants, policyholders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution;
  - (d) maintaining the safety, soundness, integrity or financial responsibility of financial institutions;
  - (e) ensuring the integrity and stability of the State's financial system;
  - (f) ensuring fair and effective imposition and collection of direct taxes from the investor;
  - (g) protecting national heritage with artistic or historical value or value because it is ancient;
  - (h) if there is damage due to domestic production or consumption: Maintaining natural resources so that they are not affected.

### Chapter (22)

#### Security exemptions

92. (a) No provision of this law shall be construed to prohibit the Cabinet from taking required measures in order to protect its security interests.



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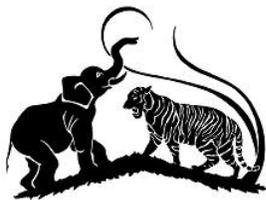
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- (b) No provision of this law shall prohibit any of the following measures by the Cabinet that are considered to be required to protect important security interests of the State.
  - (1) Direct or indirect measures to provide arms, ammunition, implements and devices to the military or other security units;
  - (2) required measures in international relations in a time of war or in other emergencies.

### Chapter (23)

#### Miscellaneous

- 93. If any provision of this law is different from any clause of an international convention or agreement approved and accepted by the State, such different provision shall comply [*“shall comply” - literal translation; probably means: shall be interpreted in such a way that it complies*] with the clause of the international convention or agreement.
- 94. Before the necessary rules and procedures are issued, the rules issued under the Foreign Investment Law (Pyidaungsu Hluttaw Law No. 21/2012) and the Myanmar Citizens Investment Law (Pyidaungsu Hluttaw Law No. 18/2013) may, if they are not contrary to this law, still be applied after this law has been enacted.
- 95. Investment permissions issued by the Commission based on the Foreign Investment Law (State Law and Order Restoration Council - SLORC - Law No. 10/1988), the Foreign Investment Law (Pyidaungsu Hluttaw Law No. 21/2012) or the Myanmar Citizens Investment Law (Pyidaungsu Hluttaw Law No. 18/2013) shall be valid until their term expires.
- 96. Irrespective of any other laws, cases covered by any provision of this law shall be handled according to this law.
- 97. No member of the Commission, of a committee or small team [*literal translation*], and no civil servant shall be sued or subject to actions under the Code of Civil Procedure or Code of Criminal Procedure if it is proven that he or she acted in good faith in accordance with the rights conferred by this law.
- 98. Members of the Commission serving under this law shall act without emotion in accordance with the Anti-Corruption Law.
- 99. Members of the Commission shall not use information received by them in other cases than in the implementation of the objectives of this law.



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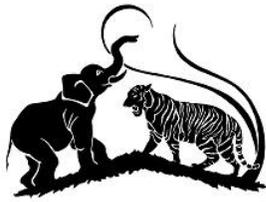
100. Decisions made by the Commission according the rights conferred by this law shall be final, except for appeals regarding administrative penalties according to section (87).
101. In order to implement the provisions of this law, the Ministry of Planning and Finance or any government organization shall pay for the expenses of the Commission according to the financial rules and regulations.
102. In implementing this law,
- (a) The Ministry may issue the necessary rules, regulations, by-law, procedure, order, notification and directives with the consent of the Cabinet.
  - (b) The Commission may issue order, notification, directives and procedures.
103. The Foreign Investment Law (Pyidaungsu Hluttaw Law No. 21/2012) and the Myanmar Citizens Investment Law (Pyi Daungsu Hluttaw Law No. 18/2013) are repealed by this law. In spite of the Foreign Investment Law being repealed, the commission established by that law shall perform its duties until the date of the transfer of the duties to the successor.

I hereby sign according to the constitution of the Republic of the Union of Myanmar.

Htin Kyaw

President

Republic of the Union of Myanmar



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