The Foreign Investment Law

(The Pyidaungsu Hluttaw Law No. 21 / 2012)

The 3rd Waning of Thadingyut, 1374 M.E.

(2nd November, 2012)

The Pyidaungsu Hluttaw hereby enacts this Law.

Chapter I
Title and Definition

1. This Law shall be called **the Foreign Investment Law.**

2. The following expressions contained in this Law shall have the meanings given hereunder:

(a) **Union** means the Republic of the Union of Myanmar;

(b) **Commission** means the Myanmar Investment Commission formed under this Law;

(c) **Union Government** means the Union Government of the Republic of the Union of Myanmar;

(d) **Citizen** includes an associate citizen or a naturalized citizen. In this expression, the economic organization formed with only citizens shall also be included according to this Law;

(e) **Foreigner** means a person who is not a citizen. In this expression, the economic organization formed with foreigners shall also be included according to this Law;

(f) **Promoter** means any citizen or any foreigner submitting a proposal relating to an investment to the Commission;

(g) **Proposal** means the stipulated application submitted by a promoter to the Commission for approval of an intended investment accompanied by draft contract, financial documents and company documents;

(h) **Permit** means the order in which the approval of the Commission relating to the proposal is expressed;

(i) **Foreign capital** includes the followings which are invested in the business by any foreigner under the permit:

(i) foreign currency;

(ii) property actually required for the business and which is not available within the Union such as machinery, equipment, machinery components, spare parts and instruments;

(iii) rights which can be evaluated the intellectual property such as licence, patent, industrial design, trademark, copyright;

(iv) technical know-how;

(v) re-investment out of benefits accrued to the business from the above or out of share of profits;

(j) **Investor** means a person or an economic organization invested under the permit;

(k) **Bank** means any bank permitted by the Union Government within the Union;

(l) **Investment** means various kinds of property supervised by the investor within the Union's territory in accord with this Law. In this expression, the followings shall be included:

(i) right to be mortgaged and right to mortgage in accord with law on the rights relating to the moveable property, immoveable property and other property;

(ii) shares, stocks and debentures of a company;

(iii) financial rights or activities under a contract as a value relating to the finance;

(iv) intellectual property rights in accord with the existing laws;

(v) functional rights granted by the relevant law or contract including the rights of exploration and extraction of natural resources;

(m) **Person entitled to lease land or person entitled to use land** means the person who is entitled to lease land or the person who is entitled to use land until the stipulated period by paying stipulated rental for such land to the Union.

Chapter II

Applicable Business

3. This Law shall apply to business stipulated by the Commission, by notification, with the prior approval of the Union Government.

4. The following investments shall be stipulated as the restricted or prohibited business:

(a) business which can affect the traditional culture and customs of the national races within the Union;

(b) business which can affect the public health;

(c) business which can cause damage to the natural environment and ecosystem;

(d) business which can bring the hazardous or poisonous wastes into the Union;

(e) the factories which produce or the business which use hazardous chemicals under international agreements;

(f) manufacturing business and services which can be carried out by the citizens by issuing rules;

(g) business which can bring and technologies, medicines, instruments which is testing in abroad or not obtaining the approval to use;

(h) business of farming agriculture, and short term and long term agriculture which can be carried out by citizens by issuing rules ;

(i) business of breeding which can be carried out by citizens by issuing rules;

(j) business of the Myanmar Marine Fisheries which can be carried out by citizens by issuing rules;

(k) business of foreign investment to be carried out within 10 miles from borderline connecting the Union territory and other countries except the areas stipulated as economic zone with the permission of the Union Government.

5. The Commission may allow the restricted or prohibited investments under section 4 for the interest of the Union and citizen especially the native people with the approval of the Union Government.

6. The Commission shall, the foreign investment business which can cause great effect on the conditions of security, economic, environment and social interest of the Union and citizens, submit to the Pyidaungsu Hluttaw through the Union Government.

Chapter III
Aim

7. Aimed at the people to enjoy sufficiently and to enable the surplus to export after exploiting abundant resources of the country; causing to open up of more employments for the people as the business develop and expand; causing to develop human resources; causing to develop infrastructures such as banking and financial business, high grade main roads, highway roads connected one country to another, national electric and energy production business, high technology including modern information technology; causing to develop respective area of studies in the entire country including communication networks, transport business such as rail, ship, aircraft which meet the international standard; causing the citizens to carry out together with other countries; causing to rise economic enterprises and investment business in accord with the international norms.

Chapter IV
Basic Principles

8. The investment shall be allowed based on the following principles:

(a) supporting the main objectives of the national economic development project, business which cannot be affordable by the Union and citizens and business of incomplete finance and technology;

(b) development of employment opportunities;

(c) promotion and expansion of exports;

(d) production of import substituted goods;

(e) production of products which require mass investment;

(f) acquisition of high technology and development of manufacturing business by high technology;

(g) supporting the business of production and services involving large capital;

(h) bringing out of business which would save energy consumption;

(i) regional development;

(j) exploration and extraction of new energy and the emergence of renewable energy sources such as bio-basic new energy;

(k) development of modern industry;

(l) protection and conservation of environment;

(m) causing to support for enabling to exchange the information and technology;

(n) not affecting the sovereign power and the public security;

(o) development of knowledge and skill of citizens;

(p) development of bank and banking in accord with the international standard;

(q) appearing the required modern services for the Union and citizens;

(r) causing to be sufficient the local use of the Union energy and resources in the short and long term.

Chapter V
Form of Investment

9. The investment may be carried out in any of the following forms:

(a) carrying out an investment by a foreigner with one hundred per cent foreign capital on the business permitted by the Commission;

(b) carrying out a joint venture between a foreigner and a citizen or the relevant Government department and organization;

(c) carrying out by any system contained in the contract which approved by both parties.

10. (a) In forming the form of investment under section 9:

(i) shall be formed as company in accord with the existing law;

(ii) if it is formed as a joint-venture under sub-section (b) of section 9, the ratio of foreign capital and citizen capital may be prescribed in accord with the approval of both foreigner and citizen who has made joint-venture;

(iii) in investing by the foreigner, the Commission shall, the minimum amount of investment according to the sector, prescribe with the approval of the Union Government depending on the nature of business;

(iv) the foreigner may, if a joint-venture is carried out with citizen in prohibited and restricted business, propose the ratio of foreign capital as prescribed by the rule;

(b) In carrying out the form of investment business under sub-section(a), liquidating before the expiry of the term of the contract as it has obtained the right to terminate or liquidating on the conclusion of the business shall be complied with and exercised in accord with existing laws of the Union.

Chapter VI
Formation of the Commission

11. (a) The Union Government shall:

(i) in respect of investment business, form the Myanmar Investment Commission with a suitable person from the Union level as Chairman, the experts and suitable persons from the relevant Union Ministry, Government departments, Government organizations and non- Government organizations as members for enabling to carry out the functions and duties contained in this Law;

(ii) in forming the Commission, stipulate and assign duty to the Vice-Chairman, the Secretary and the Joint-Secretary out of the members;

(b) members of Commission who are not civil service personnel shall have the right to enjoy salary, allowance and recompense allowed by the Ministry of National Planning and Economic Development.

Chapter VII

Duties and Powers of the Commission

12. The duties of the Commission are as follows:

(a) taking into consideration on the facts such as financial credibility, economic justification of the business, appropriateness of technology and protection and conservation of environment in scrutinizing the proposals of investment whether or not the proposal is in conformity with the principles of Chapter 4 of this Law;

(b) taking prompt action as necessary if the investors complain that they do not enjoy the rights fully which are entitled under the law;

(c) scrutinizing whether or not the proposals are contrary to the provisions of the existing laws;

(d) submitting performances to the sixth-monthly meeting of the Pyidaungsu Hluttaw through the Union Government;

(e) submitting advice to the Union Government, from time to time, to facilitate and promote local and foreign investments;

(f) prescribing the category of investment, value amount of investment and term of business with the prior permission of the Union Government and altering thereof;

(g) coordinating with the relevant Region or State Government in respect of foreign investments which are entitled to carry out for economic development of the Region or State with the approval of the Union Government;

(h) administering to know immediately and to take action by the Commission if it is found that the natural resources or antique object which is not contained in the original contract and it is not applied with

the allowed business above and under the land which has the right to use;

(i) scrutinizing whether or not the investment business is abided by in accord with this Law, rules, regulations, bye-laws, procedures, orders, notifications and directives made under this Law, the matters contained in the contract by the investor; if it is not abided by, causing to abide by it and taking action against the business in accord with the law;

(j) prescribing the investment business which is not required to grant exemption and relief from tax;

(k) performing duties as are assigned by the Union Government from time to time.

13. The powers of the Commission are as follows:

(a) accepting the proposal which is considered beneficial to the interests of the Union and which is not contrary to any existing law after necessary scrutinizing ;

(b) issuing permit to the promoter or the investor if the proposal is accepted;

(c) allowing or refusing the extension or amendment of the term of the permit or the agreement if it is applied by those concerned after scrutinizing in accord with the stipulations;

(d) requesting to submit necessary evidence or facts from the promoter or the investor;

(e) passing any necessary order to the extent of the suspension of business if the sufficient evidence has appeared that the investor does not abide by and carry out in accord with the proposal submitted to the Commission to obtain the permit, the instruments and evidence attached to it or the terms and conditions contained in the permit;

(f) allowing or refusing the bank which is proposed by the promoter or the investor to carry out financial matters.

14. The Commission may, in carrying out their duties, form committees and bodies as may be necessary.

15. The reports on the performance of the Commission shall be submitted at the meeting of the Union Government from time to time.

16. Conditions on the completion and improvement of the business permitted by the Commission shall be reported to the third-monthly meeting of the Union Government.

Chapter VIII
Duties and Rights of the Investor

17. The duties of the investor are as follows:

(a) abiding by the existing laws of the Republic of the Union of Myanmar;

(b) carrying out the business by forming a company under the existing laws of Myanmar by the investor;

(c) abiding by the provisions of this Law, terms and conditions contained in the rules, procedures, notifications, orders, directives and permits issued under this Law;

(d) using the land which he is entitled to lease or use in accord with the terms and conditions stipulated by the Commission and those contained in the agreement;

(e) carrying out to sub-lease and mortgage the land and buildings 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 Commission;

(f) making no alteration of topography or elevation of the land obviously on which he is entitled to lease or use without the approval of the Commission;

(g) informing immediately to the 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 he is entitled to lease or use, continuing to carry out business on such land if the 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) carrying 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, registering 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, registering the transfer of share in accord with the existing law only after obtaining the prior approval of the Commission;

(k) carrying 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 in accord with the contract.

18. The rights of the investor are as follows:

(a) entitled to sell, exchange, or transfer by other means of assets with the approval of the Commission in accord with existing laws;

(b) in case of a foreign company, selling all or some of its shares absolutely to any foreigner/any citizen or any foreign company/any citizen company;

(c) carrying out the expansion of investment business or increasing of foreign capital contained in the original proposal by obtaining the approval of the Commission;

(d) submitting to the Commission to re-scrutinize and amend in order to obtain the rights which he is entitled to enjoy fully in accord with the existing law;

(e) applying to the Commission for obtaining benefits and for taking action in respect of the grievance in accord with the existing law;

(f) applying to the 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 the investment business carried out under the permit;

(g) being entitled to enjoy the period stipulated by the Commission with the approval of the Union Government, more than the periods of tax exemption and tax relief contained in Chapter (XII), for the investors who invest in foreign investment in the regions which are less developed and difficult to access for the development purpose in the entire Nation.

Chapter IX
Application for Permit

19. An investor or a promoter shall, if it is desirous to make foreign investment, submit a proposal to obtain a permit to the Commission in accord with the stipulations.

20. The Commission:

(a) may accept or refuse the proposal within 15 days after making necessary scrutiny if the proposal submitted under section 19 is obtained;

(b) shall allow or refuse the proposal within 90 days to the person who submit the proposal if the proposal is accepted.

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

22. The Commission may, if it is applied by those concerned, allow the extending, reducing or amending of the term or agreement contained in the contract as appropriate in accord with this Law.

Chapter X
Insurance

23. The investor shall insure the stipulated types of insurance with any insurance business allowed to carry out within the Union.

Chapter XI
Appointment of Staff and Workers

24. The investor shall:

(a) in appointing skilled citizen workers, technicians and staff for skilled business, citizens shall have been appointed at least 25 percent 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. Provided that the Commission may increase the suitable time limit for business based on knowledge;

(b) to be able to appoint under sub-section (a), arrange to provide practising and training to citizen staff for improvement of the working skills;

(c) appoint only citizens for the works which do not require skill;

(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 worker 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 foreigner staff as the allocation of expert level.

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

26. The investor shall:

(a) conclude an employment agreement in accord with the stipulations in appointing staff and workers;

(b) carry out to enjoy the rights contained in the existing labour laws and rules including minimum wages and salary, leave, 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 in accord with the relevant existing laws.

Chapter XII
Exemptions and Reliefs

27. The Commission shall, for the purpose of promoting foreign investments within the State, grant the investor the tax exemption or the relief contained in sub-section (a) out of the following tax exemptions or tax reliefs. In addition, one or more than one or all of the remaining tax exemptions or tax reliefs may be granted if it is applied:

(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 profit accrued from the business which are kept as a reserve fund for re-invested and if re-invested therein within one year;

(c) right to deduct depreciation from the profit, after computing as the rate of deducting depreciation stipulated by the Union, in respect of

machinery, equipment, building or other capital assets used in the business for the purpose of income-tax assessment;

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

(e) right to pay income tax on the income of foreigners at the rates applicable to the citizens residing within the Union;

(f) right to deduct expenses from the assessable income incurred for research and development business which are actually required and are carried out within the Union;

(g) right to carry and set-off the loss actually sustained within two consecutive years after the enjoyment of exemption or relief from income-tax as contained in sub-section (a) for each business up to three consecutive years from the year the loss is sustained;

(h) exemption or relief from customs duty or other internal taxes or both on machineries, equipments, 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 Commission and the original investment business is expanded during the permitted period, exemption or relief from customs duty or other internal taxes or both on machineries, equipments, instruments, machinery components, spare parts and materials used in the business which are imported as they are actually required to use in the business expanded as such;

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

Chapter XIII

Guarantees

28. The Union Government guarantees that a business formed under the permit shall not be nationalized within the term of contract or the extended term if such term is extended.

29. The Union Government guarantees not to suspend any investment business carried out under the permit of the Commission before the expiry of the permitted term without any sufficient cause.

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

Chapter XIV
Right to Use Land

31. The Commission may allow the investor the actually required period of the right to lease or use land up to initial 50 years depending upon the category of business, industry and the volume of investment.

32. The Commission may extend the period of consecutive 10 years and for further 10 years after the expiry of such period to the investor desirous of continuation of the business after the expiry of the term permitted under section 31, depending upon the volume of investment and category of business.

33. The Commission may, for the purpose of economic development of the Union, allow to make investment on such land by obtaining the initial agreement from the person who is entitled to lease or use land with the prior approval of the Union Government.

34. The Commission may, from time to time, stipulate in respect of rates of rent for the land owned by the Government department and organization with the prior approval of the Union Government.

35. The investor has the right to carry out, in performing the contract system of agricultural and breeding business in farms, only by joint-venture system with citizen investors which are allowed to carry out by the citizens.

36. The Commission may, for the purpose of the development of the entire Nation, stipulate longer than the period for the right to lease or use land contained in this Law, for enjoyment of the investors who has invested in the region where the economy is less developed and difficult to access with the approval of the Union Government.

Chapter XV
Foreign Capital

37. The foreign capital shall be registered with the name of the investor in the category of foreign currency accepted by the bank by the Commission. The category of foreign capital shall be mentioned in such registration.

38. In the event of termination of business, the person who has brought in foreign capital may withdraw foreign capital which he may withdraw as prescribed by the Commission within the stipulated time.

Chapter XVI
Right to Transfer Foreign Currency

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

(a) foreign currency entitled to by the person who has brought in foreign capital;

(b) foreign currency permitted for withdrawal by the Commission to the person who has brought in foreign capital;

(c) net 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 Union.

Chapter XVII

Matters on Foreign Currency

40. The investor shall:

(a) be transferable abroad through any bank within the Union which has the right to carry out foreign banking in the relevant foreign currency at the stipulated exchange rate;

(b) carry out financial matters relating to the business by opening a foreign account in the category of foreign currency accepted by the bank within the Union which has the right to carry out foreign banking or a kyat account.

41. The foreigners serving in any economic organization formed under the permit shall open a foreign account in the category of foreign currency accepted by the bank within the Union which has the right to carry out foreign banking or a kyat account.

Chapter XVIII
Administrative Penalties

42. The Commission may pass the following one or more administrative penalties against the investor who violates any of the provisions of this Law, rules, regulations, by-laws, procedures, notifications, orders, directives issued under this Law or terms and conditions contained in the permit:

(a) censure;

(b) temporary suspension of tax exemptions and reliefs;

(c) revoking the permit;

(d) inserting in the blacklist upon which no permit shall be granted in the future.

Chapter XIX
Settlement of Dispute

43. If any dispute arises in respect of the investment business:

(a) dispute arisen between persons of dispute shall be settled amicably;

(b) if such dispute cannot be settled under sub-section (a):

(i) it shall be complied and carried out in accord with the existing laws of the Union if the dispute settlement mechanism is not stipulated in the relevant agreement;

(ii) it shall be complied and carried out in accord with the dispute settlement mechanism if it is stipulated in the relevant agreement.

Chapter XX

Miscellaneous

44. The Commission may, after producing to fulfill the required energy for the Union and citizen by aiming to export the exceeding energy to abroad, scrutinize and allow if the investor submits the proposal to make investment under the production sharing system or enjoying the allocation on obtaining the profits between the Union Government or Government department and organization conferred power by the Union Government in accord with the law and the investor for feasibility study, exploration, survey and excavation and carrying out to reach the production level on commercial scale at the stipulated site within the stipulated period by using the investor's capital fully in the production such as petroleum and natural gas, mineral which require mass capital employing a joint venture with the Union or citizen in accord with this Law. If such investment business is commercially feasible, the profit shall be entitled to enjoy proportionately between the Union Government or Government department and organization conferred power by the Union Government in accord with law or citizen and the investor who works in joint-venture to cover the profit.

45. The investors under the Union of Myanmar Foreign Investment Law (The State Law and Order Restoration Council Law No. 10/1988) before the promulgation of this Law shall be deemed as investors stipulated under this Law.

46. If the credible evidence is appeared that the investor intentionally make false statement or conceal the accounts, instruments documents, financial documents, employment documents attached to the proposal prepared and submitted to the Commission, relevant Government department and organization, he shall be taken action under criminal proceeding.

47. Notwithstanding anything contained in any existing law, matters relating to any provision of this Law shall be carried out in accord with this Law.

48. The Commission shall hold meetings in accord with the stipulations.

49. The decision of the Commission made under the power conferred by this Law shall be final and conclusive.

50. No suit, criminal proceeding or other proceeding shall lie against any member of the Commission, committee or body or any civil service for any act done in good faith which has credible evidence in accord with the power conferred under this Law.

51. To enable to carry out the provisions of this Law, the Ministry of National Planning and Economic Development or any organization shall:

(a) take responsibility and carry out the office-works of the Commission;

(b) incur the expenditures of the Commission.

52. The investor who is carrying out by the permit of the Commission under the Union of Myanmar Foreign Investment Law (The State Law and Order Restoration Council Law No. 10/1988) which is to be repealed by this Law shall be entitled to carry out and enjoy continuously until the expiry of the term in accord with terms and conditions contained in the permit and the relevant agreement.

53. The commission shall, in permitting the foreign investment business under section 3 and section 5 if it affects the interest of the Union and citizen, submit to the nearest Pyidaungsu Hluttaw session through the Union Government as the important matters.

54. If any provision of this Law is contrary with any matter of the international treaty and agreement adopted by the Republic of the Union of Myanmar, the matters contained in the international treaty and agreement shall be abided by.

55. After prescribing this Law, within the period before prescribing the necessary rules and regulations, the rules and regulations issued under the Union of Myanmar Foreign Investment Law (The State Law and Order Restoration Council Law No. 10/1988) may be continued to exercise if it is not contrary with this Law.

56. In implementing the provisions of this Law:

(a) the Ministry of National Planning and Economic Development shall, with the approval of the Union Government, issue rules, regulations and bye–laws, procedures, orders, notifications and directives as may be necessary within 90 days from the adoption of this Law ;

(b) the Commission may issue orders, notifications and directives as may be necessary.

57. The Union of Myanmar Foreign Investment Law (The State Law and Order Restoration Council Law No. 10/1988) is hereby repealed by this Law.

I hereby sign under the Constitution of the Republic of the Union of Myanmar.

sd/ Thein Sein

President

Republic of the Union of Myanmar.