

## Legal framework of Foreign Investment in Myanmar

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### Abstract

Foreign investment is one of the main factors to improve trade in each and every country to boost its economy. Investment generates sustainable development, job opportunities and economic growth. Foreign investment presents significant opportunities and potential economic benefits. The Myanmar Investment Law was enacted in October 2016 and has substantially clarified and simplified the process for investment applications and offers a number of tax-breaks, incentive guarantees, rights and protection of business ventures. According to section 26(d) of the Constitution of the Union of Myanmar 2008, the government guarantees that investment will not be nationalized during the granted 20, 30, 50 years, if they are not going against the law. And also, according to section 52 of the Myanmar Investment Law 2016, the government does not nationalize any investment carried out in accordance with law. In Myanmar, a foreign investor has a permission to invest without submitting mechanism procedures to the respective government department and a right to register the investment business from the respective state.

### Introduction

Investment generates sustainable development, jobs opportunities and economic growth. Foreign investment is one of the main factors to improve trade for boosting economy in each and every country. In Myanmar, there are some barriers found in most of the Least Development Countries. And there are many favorable conditions to invest in Myanmar. Myanmar is open for business and it has opportunities offering to other countries. Myanmar is richly endowed with natural resources such as minerals, natural gas, fresh water and marine produce as well as having plentiful forests and vast quantities of untapped arable land. According to Myanmar Investment Law 2016, changing of the role of the Myanmar Investment commission, it requires the fewer investment proposals and a new endorsement process. The new Myanmar Investment Law 2016, makes the procedures easier for foreign and local investors. And also, Myanmar Investment Law offers the reduction of tax rates, guarantees, rights and protection of investors.

### Investment and Investor

Investment means any assets owned or controlled by the investor in accordance with the Myanmar Investment Law 2016. It shall also include investments stipulated under section 40<sup>1</sup>.

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Direct investment means an investment in which the investor has the right to control, influence or manage of such assets which are invested by the investor within the Union in accordance with the law<sup>2</sup>. Foreign Investment means any direct investment made by a foreign investor within the Union<sup>3</sup>. Investor means a Myanmar citizen investor or foreign investor who invests within the Union in accordance with law<sup>4</sup>. Foreign Investor means a person who invests within the Union and is not a citizen. It includes foreign companies, branch offices and other enterprises established in accordance with the Myanmar Companies Act and enterprises formed in accordance with the laws of any other countries<sup>5</sup>.

#### **Form of Investment**

Pursuant to the MIL 2016, certain economic activities are;-

- reserved for the state
- prohibited to foreign investment
- foreign investment in the form of joint ventures with a local partner
- foreign investment with the approval of a Government Ministry

Foreign investors must form a local company in order to be entitled to the benefits of the Myanmar Investment Law.

#### **Priority Investment Promotion Sectors**

The DICA is promoting investment in the following sectors;-

- Labor-intensive industries
- Agricultural-based industries
- Infrastructure projects

#### **Prohibited and Restricted Investment**

- The importation of hazardous or poisonous wastes into Myanmar;
- The technologies medicines, flora and fauna and/or instruments which are still being tested and/or not internationally approved, except for investment in research and development,
- Impacts upon the traditional culture and customs of Myanmar's ethnic groups;
- Investment in activities which poses a significant threat to the environment;
- The manufacturing of products prohibited by Myanmar Law<sup>6</sup>;

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<sup>1</sup> Section 2 (q) Myanmar Investment Law,2016

<sup>2</sup> Section 2 (r) Myanmar Investment Law,2016

<sup>3</sup> Section 2 (s) Myanmar Investment Law,2016

<sup>4</sup> Section 2 (p) Myanmar Investment Law,2016

<sup>5</sup> Section 2 (o) Myanmar Investment Law,2016

<sup>6</sup> Section 41 Myanmar Investment Law,2016

### Land Usage and Ownership

An investor has the right to obtain a long-term lease of land or building for an initial period of 50 years with an option to extend the lease by two periods of 10 years<sup>7</sup>.

The investor must be registration of the land lease contract at the office of Registry of Deed in accordance with the Myanmar Registration Act. The Myanmar Government may grant the land leases of Government owned land in accordance with favorable terms and conditions.

### Legal Protection

According to section 26 (d) of the Constitution of the Republic of Union of the Myanmar, the government guarantees that investments will not be nationalized during the granted 20, 30, 50 years . But, they are not contrary to the law<sup>8</sup>.

There will be arising out a state of emergency, the Union can close down business enterprises after giving adequate compensation for damages or losses. These are the guarantees and safeguards granted to investors.

According to section 52 of the Myanmar investment law 2016, gives the investor the right and protection such as national treatment and most favored nations, fair and equitable treatment, right to use land, investment guarantees and transfer of fund.

If the investors break the rules, he cannot be able to protect them and will have to take legal action against them.

It is necessary to safeguard investment. But there are four exceptions, where the government can terminate an investment and not protect it.

- (a) When it is an absolute necessity in the interest of the Union or its citizens;
- (b) When a member of an investment company is the contrary to the law;
- (c) When agreement between the investor and relevant ministries or entrepreneurs is being violated;
- (d) When the agreed parties goes against ethics, the environment and the public<sup>9</sup>.

The safeguards granted to investors by the new Myanmar Investment Law 2016, as follows;-

It comes to the basic nature of foreign investments; there are already some general agreement between both parties, and also agreements worked out regionally. The host country is a duty to render assistance to foreign investors, and prescribe to the effectiveness of the law for the investor.

<sup>7</sup> Section 50 Myanmar Investment Law,2016

<sup>8</sup> Section 26 (d) of the Constitution of the Republic of the Union of the Myanmar,2008

<sup>9</sup> Section 55Myanmar Investment Law,2016

The government gives a guarantee that businesses which are permitted will not be nationalized, directly or indirectly forced to cease their operations during the period approved or extended to the running of the investments legally.

Even if businesses are nationalized because of a compulsory requirement for the interest of the people or the country, compensation has to be paid based on current value in the market.

### **Rights and Guarantees**

According to Myanmar Investment Law 2016, the rights and guarantees gives to the investors, are shown as follows:

- National treatment and Most Favored Nation
- Fair and equitable treatment
- Right to used land
- Right to employ expatriates
- Investment guarantee
- Transfer of funds

### **Guarantees**

According to section 52 of the Myanmar Investment Law 2016, there will be no expropriation of investment except under the following conditions.

- It is necessary for the public interest
- It is occurring of non-discriminatory manner
- It will be expropriation in accordance with due process of law
- It will be payment of prompt, fair and adequate compensation.

### Exemptions and Reliefs

The investment Commission may grant one or more tax exemptions or reliefs for the development of the Union<sup>10</sup>. The income tax exemptions designed the less developed regions as Zone(1), the moderate developed regions as Zone(2), and the developed regions as Zone(3) and may grant income tax exemptions to investment activities in Zone(1) for a period of 7 consecutive years including the year of commencement of commercial operation, investment activities in Zone(2) for a period of 5 consecutive years including the year of commencement of commercial operation and investment activities in Zone(3) for a period of 3 consecutive years including the year of commencement of commercial operation<sup>11</sup>.

### Guarantee against Nationalization

The Government guarantees that it is not to nationalize any investment carried out in accordance with the law. The Government guarantees that it does not take any measure of the expropriate or indirectly expropriate and it is likely to effect a result in the termination of an investment;

- (a) actually necessary for the interest of the Union or its citizens;
- (b) the non-discriminatory measurements;
- (c) measurement of the applicable of laws;
- (d) adequate payment of compensation<sup>12</sup>;

It may be paid the equivalent of the compensation to the prevailing market value at the time of expropriation of the investment<sup>13</sup>.

### Transfer of Shares

It allows to a foreign investor to transfer shares to another foreign investor or Myanmar citizens subject to MIC approval. There are criteria to approve a share transfer from MIC, as follows-

- There will be a valid reason for the transfer;
- The transfer will be in the best interest of the state;
- The transferee will be able to continue to carry on business<sup>14</sup>.

### Dispute Settlement Resolution

The MIC 2016, contains dispute resolution mechanisms. Dispute can settle with amicably and arbitration means. Disputes cannot be settled amicably, it is resolved in

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<sup>10</sup> Section 74 Myanmar Investment Law,2016

<sup>11</sup> Section 75(a) Myanmar Investment Law,2016

<sup>12</sup> Section 52 Myanmar Investment Law, 2016

<sup>13</sup> Section 53 Myanmar Investment Law, 2016

<sup>14</sup> Section 56 Myanmar Investment Law,2016

accordance with the dispute resolution provisions in the investment contract. If there is no resolution, it shall apply to resolve dispute with regarding Myanmar laws.

### **Findings**

In Myanmar, the lower labor costs were not enough to draw foreign investors' to attention Myanmar. It is lack of communication, such as highway, roads and bridge. And also, there is poor physical infrastructure and lack of skilled labor. In addition, it is undeveloped capital market. The foreign investor only has a right to lease the land, but in Vietnam, a foreign investor has a right to use land freely.

### **Conclusion**

The host country should to render assistance to foreign investors and prescribed to the effective law. According to Myanmar Investment Law 2016, the foreign investors are permitted to engage the business activities, the restriction that apply, application procedures, the use of land, the transfer of shares, foreign currency remittance, and taking security on land and buildings labor relations. The government gives a guarantee that the permitted business will not be nationalized, directly or indirectly forced to cease their operations during the period approved or extended in the contract. According to section 52 of the Myanmar Investment Law 2016, gives the investor to the rights and protection such as national treatment and most favored nations, fair and equitable treatment, right to used land, right to employ expatriates, investment guarantees and transfer of fund. According to section 26(d) of the Constitution of the Union of the Myanmar 2008, investments will not be nationalized during the granted 20, 30, 50 years. If there will be arise of the state of emergency, the Union can close down business enterprises after giving adequate compensation for damages or losses. It may grant the tax exemption for 3 to 7 years, such as under developed zone, moderately developed zone and adequately developed zone. And also, foreign investor can transfer shares to another foreign investor or Myanmar citizen with MIC approval. In addition, dispute can settle amicably and with arbitration means.

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