

IMPORTANT NOTICE: THIS IS A DISCUSSION DRAFT ONLY AND SUBJECT TO GOVERNMENT REVIEW AND APPROVAL RELEASED FOR INFORMATION PURPOSES ONLY. THE COMMISSION RESERVES THE RIGHT TO MAKE ANY CHANGE TO THE DRAFT IT SEES FIT AND NO RELIANCE SHOULD BE PLACED ON IT. THIS TRANCHE CONTAINS RULES PRIMARILY RELATING TO THE ASSESSMENT OF PERMIT AND ENDORSEMENT APPLICATIONS AND OTHER FILINGS. DRAFTS OF ADDITIONAL TRANCHES OF THE RULES WILL BE RELEASED FOR REVIEW SHORTLY.

GOVERNMENT OF THE REPUBLIC OF THE UNION OF MYANMAR MINISTRY OF PLANNING AND FINANCE NOTIFICATION NO. [•] /2017

**THE [•]TH WANING DAY OF [•], [•] ME
([•], 2017)**

In exercise of the power conferred under section 100 of the Republic of the Union of Myanmar Investment Law (Law No. 40 of Pyidaungsu Hluttaw, 2016), the Ministry of Planning and Finance has prescribed these Rules with the approval of Union Government:

Rules	Comments
Chapter I	
Title and Interpretation of these Rules	
1. These Rules shall be called the Myanmar Investment Rules.	
2. Save as expressly provided in these Rules, terms defined in the Myanmar Investment Law have the same meaning when used in these Rules. In addition, the following definitions apply:	[Note: definitions will be added as successive tranches of the draft rules are released]
<i>Application</i> means any of a Proposal, Endorsement, Tax Incentive, Land Rights Incentive or Investment Screening application;	
<i>Approval</i> means any of the Permit, Endorsement, Tax Incentive and Land Rights Incentive approvals;	

	Rules	Comments
	<i>Associate</i> has the meaning given in the Myanmar Companies Law [●];	[Note: MCL based definitions to be updated if new MCL is not passed by the date of implementation of these Rules. Refer to latest draft MCL on DICA website for explanation of definitions]
	<i>Authority</i> means any Union, state, regional or local government or governmental, administrative, fiscal, judicial or government owned body, Ministry, department, commission, committee, agency or enterprise;	
	<i>EIA Type Project</i> has the meaning given in the Environmental Impact Assessment Procedure made under Notification 616/215 pursuant to the Environmental Conservation Law, or any replacement or similar law;	
	<i>Environmental Conservation Law</i> means the Environmental Conservation Law 9/2012 or any replacement law;	
	<i>Foreign Company</i> has the meaning given in the Myanmar Companies Law [●];	
	<i>HS Codes</i> means the Harmonized System or Harmonized Tariff Schedule developed by the World Customs Organization, as in use by the Union customs authorities from time to time;	
	<i>Holding Company</i> has the meaning given in the Myanmar Companies Law [●];	
	<i>Investment Screening application</i> means an application made under rule [●];	
	<i>ISIC</i> means International Standard Industrial Classification of All Economic Activities developed by the United Nations Statistics Division and as revised from time to time;	
	<i>Land Rights Incentive</i> means a right to obtain a long-term lease of land or buildings under section 50 of	

Rules	Comments
the Law;	
<i>Law</i> means the Myanmar Investment Law (40/2016);	
<i>Myanmar Company</i> means a company incorporated in Myanmar and registered under the Myanmar Companies Law [●] which is not a Foreign Company;	
<i>Promoted Sectors</i> means the sectors set out in the notification issued by the Commission in accordance with section 43 of the Law from time to time, including a list of promoted business activities;	
<i>Proposal Assessment Team</i> means the assessment working group established under rule 67;	
<i>Small Company</i> has the meaning given in the Myanmar Companies Law [●];	
<i>State or Regional Committee</i> means a State or Regional Investment Committee established with the approval of the Commission for the purpose of considering an Application and granting an Approval under these rules [●];	
<i>State or Regional Committee Office</i> means the state or regional office of the Directorate of Investment and Company Administration which is responsible for carrying out the administrative activities of the relevant State or Regional Committee;	
<i>Submission</i> means any Application, notification, document or other information required to be submitted by or on behalf of an Investor to the Commission or other Authority under this Law;	
<i>Subsidiary</i> has the meaning given in the Myanmar Companies Law [●];	
<i>Tax Incentive</i> means an exemption or relief from certain taxes under sections 75, 77 and/or 78 of the	

Rules		Comments
	Law;	
	<i>Working Days</i> means any day (other than a Saturday, Sunday or a public holiday) when the Commission Office is open;	
3.	A reference in these Rules to a section of a law is a reference to that section of the Law and a reference to a rule is to one of these Rules.	
4.	Any reference in the Law or these Rules to land shall be read to include any body of water or any airspace located within territory of the Union.	
5.	Any reference in the Law or these Rules to a Foreign Investor or related expression includes a Foreign Company.	
6.	Any reference in the Law or these Rules to a Myanmar Citizen Investor or related expression includes a Myanmar Company.	
7.	Any reference in the Law or these Rules to a monetary amount expressed in United States Dollars or \$ shall include the Myanmar Kyat equivalent of such amount at the official exchange rate prevailing at the relevant time.	
8.	In the exercise of its powers under section 100 of the Law the Commission may update any monetary amount or other quantitative measure expressed in these Rules.	
Types of Investment		
<i>Investments where a Permit is required</i>		

Rules		Comments
9.	An Investor must submit a Proposal to the Commission and may only invest after receiving a Permit if the proposed Investment meets any of the criteria in section 36 of the Law, including as clarified below.	An Investment may meet more than one criteria.
10.	The Investor must comply with all conditions of the Permit and other applicable laws when proceeding with its Investment.	
11.	<p>For the purpose of section 36(a) of the Law, an Investment is taken to be strategic to the Union if:</p> <ul style="list-style-type: none"> (a) it is made in the communications, technology, transport infrastructure, energy infrastructure, urban development infrastructure, extractive/natural resources, agricultural, urban land or media sectors [and has an expected Investment value exceeding \$[20] million]; (b) it is made pursuant to the grant of a concession, agreement or similar authorisation by an Authority [and has an expected Investment value exceeding \$[20] million]; (c) it is made in a border region or conflict affected area [and has an expected Investment value exceeding \$[10] million]; (d) it will be conducted across the national border [and has an expected Investment value exceeding \$[20] million]; (e) it is made for primarily agriculture related purposes and includes rights to occupy or use more than [1000] acres of land; or (f) it is made for primarily non-agricultural related purposes and includes rights to occupy or use more than [100] acres of land. 	<p>In relation to rule 11(b), the Commission will have regard to the decision of the relevant Authority in relation to the Investment where the grant, agreement or approval was made following a transparent and competitive procurement process</p> <p>In relation to rule 11(d), the Investment will not be considered to be conducted across the border if the only cross border activity is to distribute goods and there is no material physical infrastructure used by the Investor or an Associate in relation to the Investment outside the one country.</p>
12.	For the purpose of section 36(b) of the Law, an Investment is taken to be capital intensive if the expected investment value exceeds \$[100 million].	

Rules	Comments
<p>13. For the purpose of section 36(c) of the Law, an Investment is taken to have a large potential impact on the environment and the local community if:</p> <ul style="list-style-type: none"> (a) it has been or is likely to be classified as [an EIA Type Project]; (b) the project is located under a designated protected area or biodiversity area under the Environmental Conservation Law; or (c) it includes rights to occupy or use land which: <ul style="list-style-type: none"> a. has been or is likely to be acquired through expropriation, compulsory acquisition procedure or by agreement in advance of such expropriation or compulsory acquisition procedure in accordance with the laws of the Union and will either cause the relocation of at least [100] individuals permanently residing on such land or comprise an area of more than [100] acres; b. comprises an area of more than [100] acres and would be likely to cause involuntary restrictions on land use and access to natural resources to any person having a legal right to such land use or access; c. comprises an area of more than [100] acres and which is the subject of a pre-existing bona fide claim or dispute by a person regarding rights to occupy or use such land in a way which would conflict with the proposed Investment; or d. would otherwise adversely impact the legal right of at least [100] individuals occupying such land to continue to occupy such land. 	
<p>14. Subject to rule 14, for the purpose of section 36(d) of the Law, an Investment is taken to use state-owned land and buildings if an Authority has the land, building or relevant land rights and is authorised to transfer or deal in such land, building or rights in the capacity of an owner or occupier. It does not</p>	<p>For example, this rule does not cover the application of land grant or other administration process under the Farmland</p>

Rules	Comments
include land use rights arising from the grant, alteration or other administration of land rights pursuant to a statutory land administration process within the responsibility of the Authority.	Act or Vacant, Fallow or Virgin Land Law (noting that these may still be covered by other rules in this chapter).
<p>15. The Investor is not required to apply for a Permit under section 36(d) of the Law if:</p> <ul style="list-style-type: none"> (a) the consideration or value of other payments to be made in respect of the acquisition and use of such land rights by the Investor is less than \$[5] million in aggregate and the Investor is leasing or licensing the land or building for a term of 5 years or less (including any option the Investor may have to an extension of such land rights); or (b) the Investor sub-leases or licences such state-owned land or buildings from a person who: <ul style="list-style-type: none"> a. has previously obtained the right to use the state-owned land or building from an Authority in accordance with the laws of the Union (including this Law); and b. is authorised to sub-lease or sub-lodge the state-owned land or buildings in accordance with the rights granted from the Authority; and <p>the land and buildings are to be used by the Investor in a manner permitted under the lease, agreement or other instrument by which the land rights were granted by the Authority to the person.</p> 	Rule 15(a) will apply where the Investor obtains rights to use multiple areas of state-owned land and buildings as part of the Investment - the aggregate consideration for all such rights issued by any Authority shall be used.
16. The duty to obtain a Permit under section 36 of the Law does not apply in respect of an Investment for which the Investor has obtained all required permits, licences and has satisfied all other requirements under the Laws of the Union to commence construction or operation of their Investment prior to these rules becoming effective, including a permit under the previous Foreign Investment Law (21/2012) or Myanmar Citizens Investment Law (18/2013).	

Rules		Comments
17.	Notwithstanding rule 16, if an Investor who has commenced construction or operation of their Investment prior to these rules coming into effect makes any changes to their Investment and any such changes considered separately from the original Investment would require the Investor to submit a Proposal, then the Investor shall submit a Proposal to obtain a Permit prior to making such changes to their Investment.	
18.	Any Investor who was not required to obtain a Permit when initially making their Investment who subsequently meets the requirements of section 36 due to a change in their Investment must submit a Proposal to obtain a Permit prior to making such changes.	
19.	Any reference in rules 11, 12, 13 and 15 to monetary amounts, land areas or numbers of affected individuals will be taken to mean an aggregate amount when looking at the Investment and the related business of the Investor and its Associates as whole.	
20.	Nothing in these rules limits the Commission from determining other forms of Investment which require the Investor to submit a Proposal and acquire a Permit, including under section 36(e), or from determining the circumstances in which a Proposal will be submitted to the Pyidaungsu Hluttaw for approval under section 46.	Subject to the special circumstances of a particular Investment, the Commission intends to publicise any other determinations of types of Investment to which section 36 and/or section 46 would apply.
<i>Prohibited Investments</i>		
21.	With the approval of the Government the Commission from time to time may issue notifications of Prohibited Investments under section 41 of the Law.	A separate notification specifying types of prohibited investments will be issued by the Commission.
22.	With limiting the application of any other law, an Investment activity which is not subject to a notification referred to in rule 21 will not be taken to be a Prohibited Investment under the Law.	

Rules		Comments
23.	No person may make an investment which is a Prohibited Investment.	
24.	For the purpose of section 41(a) of the Law, hazardous and poisonous waste means all substances listed or prohibited under the <i>Prevention from Danger of Chemical and Associated Materials Law</i> (28/2013), the <i>Environmental Conservation Law</i> (9/2012) or otherwise determined by the Ministry of Industry, Ministry of Natural Resources and Environmental Conservation or other competent Authority as prohibited from being imported, exported, stored, traded, manufactured or otherwise produced within the Union. The production or use of such substances in connection with an Investment is prohibited, subject to any express statutory exception or dispensation or approval of a competent Authority.	
25.	The purpose of sections 41(b), (c), (d), (e) and (f) of the Law is to ensure that Investments are conducted in accordance with the laws of the Union, including the <i>Environmental Conservation Law</i> , <i>Public Health Law</i> and <i>Consumer Protection Law</i> . These sections do not prevent an Investment to the extent it is carried out in accordance with the laws of the Union.	
26.	Without limiting any other power, the Commission: <ul style="list-style-type: none"> (a) may request information from any Investor whom it believes may be engaging in a Prohibited Investment or related activity; and (b) may order the suspension or cessation of any Investment if it believes that a Prohibited Investment has occurred. 	
<i>Restricted Investments</i>		
27.	With the approval of the Government the Commission from time to time may issue notifications of Restricted Investments under section 42 of the Law and amend these under section 44 of the Law.	A separate notification specifying types of restricted investments will be issued by the Commission.

Rules	Comments
28. Section 45 of the Law does not limit the matters which the Commission may discuss when considering an amendment to a notification referred to in rule 27, nor require any particular form of consultation.	
29. With limiting the application of any other law, an Investment activity which is not subject to a notification referred to in rule 27 will not be taken to be a Restricted Investment under the Law.	
30. Any person making an Investment which is a Restricted Investment must do so in accordance with the Law and other applicable laws, including as clarified below.	
31. For the purpose of section 42(a) of the Law, and subject to other applicable laws, in connection with such an Investment activity the Government may contract with an Investor, and the Investor's involvement in the Investment activity is permitted to that extent.	
32. Without limiting the application of the section, Investment activities specified under section 42(b) of the Law may be made by Myanmar Companies.	Note that under the new Myanmar Companies Law a Myanmar Company will be able to have a degree of foreign investment (expected to be up to 35%). Such a Myanmar Company would not be restricted from making investments covered by section 42(b).
33. For the purpose of section 42(c) of the Law, subject to any express exception in the relevant notification, the minimum direct shareholding or interest of a Myanmar Citizen Investor (or group of them) in the joint venture is 20%.	
34. Without limiting the application of section 42(c) or rule 30, the minimum direct shareholding or interest of a Myanmar Citizen Investor in the joint venture may be held by a Myanmar Company (or group of them).	When considering the maximum foreign ownership threshold in a joint venture only the direct ownership interest will be

Rules		Comments
		considered. An interest that a foreign investor may have in a Myanmar Company participant in the joint venture will therefore not be considered in determining the joint venture ownership ratios.
<i>Promoted Sector Investments</i>		
35.	<p>With the approval of the Government the Commission from time to time may issue notifications of:</p> <ul style="list-style-type: none"> (a) Promoted Sectors under section 43 of the Law and other Investment activities which may receive tax exemptions or relief; and (b) Places in the Union which are to be designated under section 75 of the Law as Zone 1, Zone 2 or Zone 3 depending on their level of development. 	Separate notifications specifying types of promoted investments and places in the different investment zones will be issued by the Commission.
36.	Without limiting any other power or rule, the Commission may prescribe minimum investment criteria to be satisfied before an Investment is eligible to receive a Tax Incentive and may prescribe a maximum value of Tax Incentives that may be granted to any Investment, Promoted Sector or generally in any period.	Minimum investment criteria could include any one or combination of factors such as the proposed Investment value, the anticipated level of job creation and the application of new or enhanced technology.
Investment Submissions		
<i>Submissions Generally</i>		
37.	An Investor shall make all Submissions to the Commission in accordance with the Law and these Rules.	

Rules		Comments
38.	<p>Every Submission must:</p> <ul style="list-style-type: none"> (a) be in writing; (b) be in Myanmar or English language; (c) where it is a Proposal, include a summary of the proposed Investment in English and Myanmar language; (d) be signed by an authorised representative of the Investor and each other applicant where relevant; (e) be completed on the prescribed form where applicable; (f) contain the information as specified by the Commission; (g) contain information which is true and complete in all respects and not misleading; (h) be lodged with the Commission Office or relevant State or Regional Committee Office; and (i) be lodged with the relevant Submission fee. 	The Commission may publish summary information about Proposals received (eg on its website)
39.	If an Investor has not yet been legally established, the party responsible for establishing the Investor may submit the Application on behalf of the Investor. The establishment of the Investor is a condition of being issued the Approval and will not alter any of the obligations of the Investor under the Law.	
40.	Without limiting any of its other powers, the Commission may consult with any Authority in considering a Submission, and in relation to any Application may consult with and obtain information which it considers relevant to its determination from other stakeholders and persons affected by the determination.	

Rules	Comments
<i>Investment Screening Applications</i>	
<p>41. An Investor may submit an Investment Screening application to the Commission for non-binding guidance on whether its proposed Investment is of the kind:</p> <ul style="list-style-type: none"> (a) where a Proposal to the Commission is required to be submitted under section 36 of the Law; (b) likely to be submitted to the Pyidaungsu Hluttaw for approval under section 46 of the Law prior to the issue of the Permit; (c) which is a Prohibited Investment under section 41 of the Law and any related notification; (d) which is a Restricted Investment under section 42 of the Law and any related notification; or (e) which is a Promoted Investment under section 43 of the Law and any related notification. <p>The Investment Screening guidance will not express a likelihood of an Approval being granted.</p>	
<i>Investment Screening Procedure</i>	
<p>42. Once the Investment Screening application has been submitted and the correct application fee paid, it shall be assessed. Once the assessment is complete the Commission shall issue the guidance. Such guidance is non-binding and may be conditional.</p>	
<p>43. The maximum duration for assessing a complete Investment Screening application shall not exceed [10] Working Days, or [20] Working Days where guidance is sought under rule 41(b). The assessment period can be extended if the Commission requires additional information from the Investor.</p>	
<p>44. An Investment Screening application will lapse if information requested by the Commission is not provided</p>	

Rules	Comments
by the Investor within 10 Working Days from the date that it was requested, or such extended timeframe as may be approved by the Commission.	
<i>Change of Guidance</i>	
45. If the Commission determines at any time that guidance issued under rule 41 should be amended, it may inform the Investor. The Investor is required at all times to comply with the Law and take whatever action is necessary in response to the amended guidance.	
<p>46. Provided that the Investor:</p> <ul style="list-style-type: none"> (a) fully disclosed the nature of the Investment in the Investment Screening application; (b) disclosed all information which a reasonable person would consider material to the Commission's assessment of the Investment Screening application; and (c) acted in good faith and did not mislead the Commission or act fraudulently or wilfully conceal any information, <p>it shall not be subject to any penalty for taking action in response to guidance issued under rule 42 which may be subsequently amended under rule 44. The Investor shall be given a period of 6 months (or such extended timeframe as may be approved by the Commission) to take whatever action is necessary in response to the amended guidance.</p>	
<i>Restricted Investment Notice</i>	
47. Subject to rule 48, an Investor proposing to make a Restricted Investment under section 42 must notify the Commission of its proposed Investment in the prescribed form.	

Rules		Comments
48.	The notice under rule 47 must be submitted within 3 months of the commencement of implementation of the Investment.	
49.	The notice may be submitted to the Commission Office or State or Regional Commission Office as notified by the Commission.	
50.	Rule 47 does not apply to a Small Company or to an Investor who is submitting a Proposal or Endorsement application in respect of the Investment within the time period referred to in rule 48.	
51.	Unless a Permit for the Investment is required, and subject to overall compliance with the Law and other applicable laws, no determination or approval of the Commission is required to proceed with an Investment which must be notified under rule 47.	
<i>Proposals</i>		
52.	An Investor must submit a Proposal to the Commission if the Investment requires a Permit under section 36 of the Law.	
53.	When submitting the Proposal, the following persons must apply: <ul style="list-style-type: none"> (a) the Investor; (b) any Subsidiary involved in the Investment, including those applying for a Land Rights Incentive or a Tax Incentive in relation to the Investment. 	
54.	A relevant Authority may submit the Proposal if the Authority:	

Rules		Comments
<ul style="list-style-type: none"> (a) holds a significant ownership interest in the Investor; (b) has granted or intends to grant the Investor a concession which forms the basis of the Investment; (c) has entered a contractual agreement with the Investor which forms the basis of the Investment; or (d) is otherwise required or authorised by law to do so. 		
55.	Without limiting any of its other powers, the Commission may publish a summary of the Proposal.	
56.	A Land Rights Incentive and / or Tax Incentive application may be submitted concurrently with the Proposal.	
Proposal Assessment Procedure		
57.	Once a Proposal has been submitted and the correct application fee paid, it shall be screened for eligibility and completeness at the Commission Office (or other place designated by the Commission). If determined that the Proposal is eligible and complete it will be accepted and the Proposal shall undergo substantive assessment by the Proposal Assessment Team and then be submitted to the Commission for review and determination at the meeting of its Members (or other person or body to whom authority is delegated under rule 67). The assessment, review and determination will be made having regard to the Proposal Assessment Criteria in rule 69 and the following rules.	
58.	Within [15] working days of receipt the Commission may reject the Proposal if it is considered to be incomplete, ineligible for approval or on other relevant grounds. If a Proposal is rejected the Commission will give the Investor notice of the rejection and an explanation of the grounds of rejection within a	

Rules		Comments
	further [10] working days. If the Proposal is not rejected it will be deemed to be accepted.	
59.	Subject to rules 60 and 61, if the Proposal is accepted (or deemed to be accepted) the Commission will have up to a further [60] Working Days to complete its assessment and make its determination.	
60.	<p>The time period for the assessment of the Proposal under rule 59 can be suspended if:</p> <p>(a) the Commission requires additional information from the Investor or other party to make its assessment and determination on the Permit and any related Application; or</p> <p>(b) the Proposal is one which is to be referred to the Pyidaungsu Hluttaw for approval under section 46 of the Law.</p> <p>The time period may be suspended more than once under this rule and the Investor will be notified of the suspension. Subject to rule 64, the time period will re-commence once the additional information is received or once the decision of the Pyidaungsu Hluttaw has been communicated to the Commission.</p>	
61.	The time period for the assessment of the Proposal under rule 59 may be extended if the Secretary of the Commission determines that the complexity or novelty of the Proposal or other circumstances mean that it is beneficial to the interests of the Union to make an extension. The time period may be extended more than once under this rule and the Investor will be notified of the extension.	
62.	The Commission may require that an authorised representative of the Investor attend meetings of the Proposal Assessment Team or the Commission at which the Proposal is being considered.	
63.	The Commission may require the Investor to provide more information relevant to the Proposal at any stage of the process, including prior to acceptance for substantive consideration or before submitting the Proposal to the Commission for review at the meeting of Members.	

Rules	Comments
64. Proposals will lapse if the information requested from the Investor by the Commission is not provided within [20] Working Days from the date that it was requested, or such extended timeframe as may be approved by the Commission. If the Proposal lapses an Investor who wishes to continue making the Investment will need to re-submit the Proposal and pay the correct application fee.	
65. The Commission will consult with other Authorities as necessary or desirable in the conduct of the assessment of a Proposal, and all such Authorities shall be required to make relevant personnel and other resources available to ensure that the timeframes prescribed for the assessment of the Proposal are met.	
66. The Commission may reject a Proposal at any time if it is not considered to be in compliance with law or is otherwise ineligible for approval.	
67. The Commission will establish a Proposal Assessment Team to conduct the primary review of Proposals, which may include officials from other Authorities. The Commission may also delegate the authority for assessing the Proposal and issuing a Permit to a State or Regional Committee if the value of the Investment is less than \$5 million.	
68. The Commission may issue further guidelines on the Permit application and assessment procedure.	
Proposal Assessment Criteria	
69. The Commission must in accordance with section 25(c) of the Law assess every Proposal and determine if it is beneficial to the interests of the Union. In making its assessment the Commission will have regard to the objectives, principles, rights and responsibilities in the Law, including in sections 3, 47 and 65. It shall also consider whether the Investor and/or the Proposal satisfies the following criteria: <ul style="list-style-type: none"> <li data-bbox="269 1234 1545 1304">(a) the Investor is acting, and the Investment will be made, in accordance with the laws of the Union; 	

Rules	Comments
<ul style="list-style-type: none"> (b) the Investment is one for which a Permit is required; (c) the Proposal is in accordance with the Law; (d) the Investor has demonstrated a commitment to carry out the Investment in a responsible and sustainable manner, including by, as relevant, limiting any potentially adverse environmental and social impacts; (e) the Investor or Holding Company or an Associate involved in the management of the Investment have business experience and acumen relevant to the Investment; (f) the Investor has demonstrated its financial commitment to the Investment; (g) the Investor is of good character and business reputation; and (h) the Investment is compatible with national development, security, economic, social and cultural policies, taking into consideration development, security, economic, social and cultural policy objectives announced by the Government or the government of any State or Region affected by the Investment. 	
<p>70. In assessing the Proposal in accordance with rule 69 the Commission:</p> <ul style="list-style-type: none"> (a) must consider all criteria and determine of the criteria in rules 69(d) to (h) are most relevant to the Investor and the Proposal (with the criteria in rules 69(a) to (c) being mandatory criteria); and (b) must determine whether the mandatory criteria are met and the relevant non-mandatory criteria are substantially met. 	

Rules	Comments
71. For the purposes of rule 69(f), in assessing whether the Investor is of good character and business reputation the Commission may consider (without limitation) whether the Investor or any an Associate with an involvement or interest in the Investment has committed an offence or other contravention of the law of the Union or another jurisdiction, including any environmental, labour, anti-bribery and corruption or human rights law.	
<u>Endorsement Applications</u>	
72. Any Investor who is not required to submit a Proposal under section 36 of the Law but who wishes to apply for a Land Rights Incentive and / or Tax Incentive may apply for an Endorsement.	
73. When submitting the application for an Endorsement, the following applicants must apply: <ul style="list-style-type: none"> (a) the Investor; (b) any Subsidiary involved in the Investment, including those applying for a Land Rights Incentive or a Tax Incentive in relation to the Investment. 	
74. The relevant Land Rights Incentive and / or Tax Incentive application should be submitted concurrently with the Endorsement application.	The Endorsement and Land / Tax Incentive application processes will in effect be done as the one process.
75. As required by section 38 of the Law all recommendations, approvals, licences, permits and similar authorisations relevant to the initial implementation of the Investment must be submitted with Endorsement Application, provided that where such a recommendation or authorisation necessarily follows the implementation of the Investment or relates solely to ongoing operational matters then such authorisation shall be obtained after the submission of the Endorsement Application in the ordinary course.	A hotel licence and construction approval is an example of this – the recommendation letter of the Ministry of Hotels and Tourism is required before construction of a hotel can commence. The hotel licence itself will not be issued until after construction is complete. The

	Rules	Comments
		Endorsement may be applied for once the recommendation letter is issued by the Ministry, with the licence to follow.
76.	Without limiting any applicable law, an Investor holding an Endorsement in respect of an Investment may import any equipment, goods or materials relevant to the Investment. Where any licence or other approval is required under an applicable law to proceed with such an import, the Investor will be entitled to apply to the relevant Authority for and receive such a licence.	
Endorsement Application assessment procedure		
77.	Once the Endorsement application has been submitted and the correct application fee paid, it shall be screened for eligibility and completeness at the Commission Office (or other place designated by the Commission). If determined that the application is eligible and complete the application for Endorsement shall be submitted for review and determination at the meeting of Members (or other person or body to whom authority is delegated under rule 87). The assessment, review and determination will be made have regard to the Endorsement assessment criteria in rule 89 and the following rules.	While the Endorsement assessment procedure mirrors that used for a Permit, the intention is that it will occur in a far more streamlined way if the content of the application and associated Land / Tax Incentive application is simpler. Flexibility exists to delegate decision making authority to DICA staff and, consistent with the Government's policy towards decentralisation, to State and Regional Government bodies (see Rule 87). Subject to further Government consideration it is possible that following a transitional period applications involving investment amounts of less than \$5 million will be handled at the State/Regional level, with the close involvement of senior DICA staff stationed in the State/Region. It is also likely that most other Endorsement applications (and related Tax and Land Rights Incentive

Rules		Comments
		applications) will be efficiently determined by designated DICA officials. Further guidance on this will be provided as procedures are developed.
78.	Within [15] working days of receipt the Commission may reject the Endorsement application if it is considered to be incomplete, ineligible for approval or on other relevant grounds. If an application for an Endorsement is rejected the Commission will give the Investor notice of the rejection and an explanation of the grounds of rejection within a further [10] working days and an explanation of the grounds of rejection within. If the Endorsement application is not rejected it will be deemed to be accepted.	
79.	Subject to rules 80 and 81, if the Endorsement application is accepted (or deemed to be accepted) the Commission will have up to a further [60] Working Days to complete its assessment and make its determination.	
80.	The time period for the assessment of the Endorsement application under rule 79 can be suspended if the Commission requires additional information from the Investor or other party to make its assessment and determination of the Endorsement application and any related Application. The time period may be suspended more than once under this rule and the Investor will be notified of the suspension. Subject to rule 84, the time period will re-commence once the additional information is received.	
81.	The time period for the assessment of the Endorsement application under rule 79 may be extended if the Secretary of the Commission (or delegate) determines that the complexity or novelty of the Endorsement application or other circumstances mean that it is beneficial to the interests of the Union to make an extension. The time period may be extended more than once under this rule and the Investor will be notified of the extension.	
82.	The Commission may require that an authorised representative of the Investor attend meetings of the Commission at which the Endorsement application is being considered.	

Rules	Comments
83. The Commission may require the Investor to provide more information relevant to the Endorsement application at any stage of the assessment process.	
84. Endorsement applications will lapse if the information requested from the Investor by the Commission is not provided within [20] Working Days from the date that it was requested, or such extended timeframe as may be approved by the Commission. If the Endorsement application lapses an Investor who wishes to continue making the Investment will need to re-submit the Endorsement application and pay the correct application fee.	
85. The Commission will consult with other Authorities as necessary or desirable in the conduct of the assessment of an Endorsement application, and all such Authorities shall be required to make relevant personnel and other resources available to ensure that the timeframes prescribed for the assessment of the Endorsement application are met.	
86. The Commission may reject an Endorsement application at any time if it is not considered to be in compliance with law or is otherwise ineligible for approval.	
87. The Commission may delegate the authority for assessing the Endorsement application and issuing an Endorsement to a State or Regional Committee if the value of the Investment is less than \$5 million or to another officer of the Commission of Director level or above or committee of Commission officials formed for that purpose.	
88. The Commission may issue further guidelines on the Endorsement application and assessment procedure.	
Endorsement Application assessment criteria	
89. The Commission must in accordance with section 25(d) of the Law assess every application for an Endorsement, and determine whether to issue an Endorsement, after considering the objectives, principles, rights and responsibilities in the Law, including in sections 3, 47 and 65, and applying the	

Rules		Comments
<p>following criteria:</p> <ul style="list-style-type: none"> (a) the Investor is acting, and the Investment will be made, in accordance with the laws of the Union; (b) the application for an Endorsement is in accordance with the Law; (c) the applicant is an Investor as defined by the Law; (d) the application relates to an Investment as defined by the Law; and (e) the Investor is eligible to receive one or both of the Land Rights Incentives or Tax Incentives applied for with the Endorsement application. 		
90.	<p>In assessing the Endorsement application in accordance with rule 88 the Commission must determine whether the criteria are met.</p>	
<u>Tax Incentive Application</u>		
91.	<p>Any Investor:</p> <ul style="list-style-type: none"> (a) proposing to make an Investment in a Promoted Sector or in respect of any other Investment activities which have been notified as being eligible for Tax Incentive; and (b) who has been issued a Permit or an Endorsement, or who is in the process of applying for a Permit or Endorsement, in relation to the Investment, <p>may apply for a Tax Incentive.</p>	
92.	<p>Applications for a Tax Incentive may be submitted together with a Proposal or application for an</p>	

Rules		Comments
Endorsement. Applications for a Tax Incentives under section 77(c) or 78(a) of the Law may also be submitted subsequently. The precise Tax Incentives applied for must be specified in the Application.		
93.	Without limiting other information which may be required, a Tax Incentive application comprising the income tax exemption under section 75 of the Law must state the Zone in which the Investor considers that more than 65% of the value of the Investment will be invested or carried out, calculated in accordance with rule 104.	
94.	Without limiting other information which may be required, if an Investors is applying for a Tax Incentive comprising a custom duty exemption under section 77(a) and (d) of the Law the Investor must provide: <ul style="list-style-type: none"> (a) a list of machinery, equipment, instruments, machinery components, spare parts and construction materials to be imported for the construction and implementation of the Investment. The level of detail regarding these items should reflect the HS Code chapter (four-digit HS Code); and (b) a calculation of the total value of all such imports for which the Tax Incentive comprising a custom duty exemption is being applied. 	
Tax Incentive Application assessment procedure		
95.	Rules in respect of the Permit or Endorsement assessment procedure set out above shall apply in the same way to the assessment of a Tax Incentive application with all necessary changes and save that the assessment, review and determination will be made having regard to the Tax Incentive assessment criteria in rule 98.	
96.	The Commission may delegate the authority for assessing the Tax Incentive application to a State or Regional Committee if the value of the Investment is less than \$5 million or to the Secretary of the Commission or committee of Commission officials formed for that purpose.	

Rules	Comments
97. The Commission may issue further guidelines on the Tax Incentive application and assessment procedure.	
Tax Incentive assessment criteria	
98. The Commission must in accordance with section 74 of the Law assess every Tax Incentive application, and determine if the Investor is eligible for any Tax Incentives applied for, after considering the objectives, principles, rights and responsibilities in the Law, including in sections 3, 47 and 65. It shall also consider whether the Investor and/or the Investment satisfies the following criteria: <ul style="list-style-type: none"> (a) the Investor is acting, and the Investment will be made, in accordance with the laws of the Union; (b) the application for Tax Incentives is in accordance with the Law; (c) the Investment is substantially in a Promoted Sector or in respect of other Investment activities which have been notified as being eligible for a Tax Incentive; (d) the Investor holds or is to be granted a Permit or Endorsement in respect of the Investment; (e) the Investment is being made in a place designated under a Commission notification as Zone 1, Zone 2 or Zone 3 (or combination of them); (f) the requirements and authorisations contained in rules 101 to 111; (g) the Investment will assist with the creation of new employment opportunities in the Union and the development of a skilled labour force; (h) the Investment will bring into the Union new or enhanced technology or business skills; (i) the Investment will lead to added market competition, greater efficiency or productivity, or 	Note: Additional guidance to be provided on how these criteria are to be applied to ensure incentives are efficiently used to meet the Government's economic development objectives relating to the promoted sectors.

Rules		Comments
	<p>provision of enhanced infrastructure or services, in the Union; and</p> <p>(j) the Investment will increase export receipts for the Union.</p>	
99.	<p>In assessing the Tax Incentive application in accordance with rule 98 the Commission:</p> <p>(a) must consider all criteria and determine which of the criteria in rules 98(g) to (j) are most relevant to the Investor and the Proposal (with the criteria in rules 98(a) to (f) being mandatory criteria); and</p> <p>(b) must determine whether the mandatory criteria are met and the relevant non-mandatory criteria are substantially met.</p>	
100.	The Commission may approve or refuse some or all of the Tax Incentives applied for by the Investor, and may grant a Tax Incentive in whole or in part and subject to any conditions.	
101.	The Commission may refuse to grant a Tax Incentive if the Investor or an Associate has within the previous [3] years discontinued or significantly reduced a prior Investment for which a tax incentive was given under any law.	
102.	The Tax Incentive granted will only apply in relation to the portion of the Investment in a Promoted Sector or in respect of other Investment activities which have been notified as being eligible for a Tax Incentive, and not to income earned or other actions taken in respect of other activities of the Investor and any Subsidiary in respect of the Investment.	
103.	<p>Where the Investor makes or undertakes its Investment in more than one Zone, if more than 65% of the value of the Investment is invested or carried out in:</p> <p>(a) Zone 1, the Investment is considered to be made in Zone 1;</p>	

Rules		Comments
	<p>(b) Zone 1 and Zone 2, the Investment is considered to be made in Zone 2; and</p> <p>(c) Zone 1, Zone 2 and Zone 3, the Investment is considered to be made in Zone 3.</p>	
104.	The Commission may only grant a Tax Incentive comprising a customs duty exemption under section 77(a) and (d) of the Law for machinery, equipment, instruments, machinery components, spare parts and construction materials required for the construction of the Investment or during the Investment implementation period.	
105.	The Commission may make it a condition of granting the Tax Incentive comprising a customs duty exemption under section 77(a) and (d) of the Law that a contractor appointed by the Investor for the construction and implementation of the Investment confirm the accuracy of the list of goods to be imported.	
106.	Tax Incentives comprising customs duty exemptions or relief under section 77(b) of the Law may only be granted if 80% of the income expected to be earned from the Investment is in foreign currency from exports, and may be granted on a pro-rata basis based on the percentage of income in excess of this amount expected to be earned from the Investment in foreign currency from exports.	
107.	Tax Incentives comprising a reimbursement of customs duty under section 77(c) of the Law will be calculated by the Commission on a pro-rata basis of the entire custom duties paid by the Investor based on the proportion of income from the Investment earned in foreign currency from exports. The reimbursement can be applied for at the end of an assessment year for the custom duties paid in the assessment year. The reimbursement may be in the form of a tax credit which can be offset against future customs duties to be paid by the Investor.	
108.	The Commission may grant a Tax Incentive comprising the exemption or relief from income tax under section 78(a) of the Law if the following additional conditions are met:	

Rules	Comments
<ul style="list-style-type: none"> (a) the profits reinvested are from earnings received by the Investor in the assessment year in which the income tax exemption under section 78(b) is being claimed; (b) the re-investment has occurred in the assessment year following the assessment year in which the income tax exemption under section 78(b) is being claimed; (c) the reinvestment is made in capital items or other expenditure for the purpose of increasing the productive capacity of and earnings from the Investment or a similar, related Investment. In this regard, the payment of operating expenses is not considered reinvestment of profits for the purpose of this rule; and (d) all income tax and other taxes due in respect of the assessment year in which the income tax exemption under section 78(b) is being claimed have been duly paid. 	
109. The Commission may grant the Investor a Tax Incentive comprising the right to depreciate its assets at a rate equal to 1.5 times the rate permitted under the relevant laws of the Union or such other rate as may be notified from time to time.	[Note: these additional limits are being considered]
110. The Commission may grant the Investor a Tax Incentive Comprising the right to deduct research and development expenses from its assessable income under section 78(c) of the Law if: <ul style="list-style-type: none"> (a) the research and development activity is carried out within the Union; (b) the research and development activity relates solely to the Investment; (c) the research and development is required for the economic development of the Union; and (d) the research and development expenses are recognised as such under the applicable accounting standards in the Union. 	

Rules	Comments
111. The Commission may prescribe additional limits or criteria concerning the amount of or procedure for applying or administering the Tax Incentive comprising the right to deduct research and development expenses from its assessable income under section 78(c) of the Law.	[Note: these additional limits are being considered]
Other matters relevant to Tax Incentive Applications and Approvals	
112. The Tax Incentive comprising the income tax exemption under section 75 of the Law shall commence from the earlier of the year of assessment in which the Investor commences commercial operation or the year of assessment in which the Investment earns income which would otherwise be assessable.	
<p>113. Where a Tax Incentive comprising the income tax exemption under section 75 of the Law is granted, after three and five years of operation the Zone(s) in which more than 65% of the value of the Investment is invested or carried is to be re-assessed, and if the value of actual Investment in the Zone(s) is different from the way assessed when granting the Tax Incentive, the Commission may amend the Tax Incentive to reflect the Zone in which the actual Investment is made in accordance with the formula in rule 103.</p> <p>Any re-assessment will be retrospective and if the Investor is found to have received a greater amount of Tax Incentive than it was eligible for based on the re-assessment it will be deemed to have incurred a tax liability in respect of this amount, which will be payable in its next annual tax assessment. No adjustment will be made if the Investor is found to have received a lesser amount of Tax Incentive than it may have been eligible for based on the re-assessment.</p>	[Note: re-assessment tests based on the Zone where income is earned are also being considered]
114. Where a contractor is required by an Investor to import goods for the construction and implementation of the Investment and title is to be transferred to the Investor after the goods are imported, the Commission may, by listing the contractor on the Investor's Tax Incentive Approval, grant the contractor the right to benefit from the Tax Incentive comprising the customs duty exemption under section 77(a) and (d) of the Law when importing the goods for the Investment.	
115. Unless prior approval is granted by the Commission, if the machinery, equipment, instruments, machinery	

Rules	Comments
components, spare parts and construction materials covered by the Tax Incentive comprising a customs duty exemption under section 77(a) and (d) are used for any other purpose than the construction or implementation of the Investment, the Investor is required to pay all applicable customs duties which would have been payable but for being granted the Tax Incentive comprising the customs duty exemption. If a contractor was listed on the relevant Tax Incentive Application, the contractor will be jointly liable with the Investor for the payment of any customs duty under this rule.	
116. Prior to granting the Tax Incentive comprising a custom duty exemption under section 77(a) and (d) of the Law the Commission may assess whether the goods imported are to be used in the construction and implementation of the Investment.	
117. If a tax Incentive comprising a custom duty exemption is granted under section 77(b) of the Law and the percentage of income actually earned in foreign currency from exports in an assessment period is less than the expectation stated in the Tax Incentive Application but more than 80% of income earned, the customs duty exemption will be reduced to a pro-rata exemption based on the actual earnings from exports in that period, and the Investor will be required to repay any excess customs duties which were incorrectly exempted under the Tax Incentive Approval.	
118. If a Tax Incentive comprising a custom duty exemption is granted under section 77(b) of the Law and the percentage of income actually earned in foreign currency from exports in an assessment period is less than 80% of income earned, the Investor will be required to repay all customs duties which would have been payable but for being granted the customs duty exemption under the Tax Incentive Approval.	
119. If a Tax Incentive comprising a right to accelerated depreciation is granted under section 78(b) of the Law The Investor must apply such depreciation rate from the earlier of the year of assessment in which the Investor commences commercial operation or the year of assessment in which the Investment earns income that would otherwise be assessable.	
<u>Land Rights Incentive Application</u>	

Rules		Comments
120.	Any Investor who has been issued a Permit or an Endorsement, or who is in the process of applying for a Permit or Endorsement, in relation to the Investment may apply for a Land Rights Incentive.	
121.	Applications for a Land Rights Incentive may be submitted together with a Proposal or application for an Endorsement.	
122.	<p>Without limiting other information which may be required, a Land Rights Incentive application must state:</p> <ul style="list-style-type: none"> (a) to the extent known, the area, type and location of the land or buildings; (b) to the extent known, the landlord(s) of the land or buildings; (c) if available, a recommendation letter or similar document or approval from a State or Regional Government Authority or other Authority endorsing any proposed change in use of the land to allow it to be used as contemplated in the Investment; (d) to the extent known, whether the Investors proposed use of the land will require any significant alteration of topography or elevation of the land, as contemplated in section 65(f) of the Law; and (e) the period of the Land Rights Incentive requested (which, subject to section 50(f) of the Law, may not exceed 50 years for the initial lease and not more than two consecutive periods of not more than 10 years each). 	
Land Rights Incentive Application assessment procedure		
123.	Rules in respect of the Permit or Endorsement assessment procedure set out above shall apply in the same way to the assessment of a Land Rights Incentive application with all necessary changes and save that the assessment, review and determination will be made having regard to the Land Rights Incentive	

Rules		Comments
assessment criteria in rule 126.		
124.	The Commission may delegate the authority for assessing the Land Rights Incentive application to a State or Regional Committee or to an officer of the Commission of at least Director level or committee of Commission officials formed for that purpose.	
125.	The Commission may issue further guidelines on the Land Rights Incentive application and assessment procedure.	
Land Rights Incentive assessment criteria		
126.	<p>The Commission must in accordance with section 25(d) of the Law assess every application for a Land Rights Incentive and determine whether to issue a Land Rights Incentive after considering the objectives, principles, rights and responsibilities in the Law, including in sections 3, 47 and 65. It shall also consider whether the Investor and/or the Investment satisfies the following criteria:</p> <ul style="list-style-type: none"> (a) the Investor is acting, and the Investment will be made, in accordance with the laws of the Union; (b) the application for Land Rights Incentives is in accordance with the Law; (c) the Investor holds or is to be granted a Permit or Endorsement in respect of the Investment; (d) the land over which the Investor has applied for Land Use Rights is able to be used for the purposes contemplated in the Investment under applicable laws, whether presently or following the completion of a change of use or similar statutory procedure; and (e) if the Investors proposed use of the land will or may be likely to require any significant alteration of topography or elevation of the land, whether such alteration is likely to have a material adverse effect on the environment which cannot be reasonably mitigated. 	

Rules	Comments
127. In assessing the Land Rights Incentive application in accordance with rule 126 the Commission must determine whether the criteria are met.	
128. The Commission may approve or refuse some or all of the Land Rights Incentives applied for by the Investor, and may grant a Land Rights Incentive in whole or in part and subject to any conditions, including conditions to inform the Commission of any matters referred to in rule 122 which are not fully known at the time of the Application but which subsequently become known. .	
Other matters relevant to Land Rights Incentive Applications and Approvals	
129. Subject to compliance with any other applicable law and any conditions imposed by the Commission, where the Investor has received a Land Rights Incentive the Investor will be able to enjoy the rights stated in the Land Rights Incentive. Each relevant Authority will be required to give effect to this rule.	
130. Subject to compliance with any other applicable law and any conditions imposed by the Commission, where the land the subject of the Land Rights Incentive requires the completion of a change of use or similar statutory procedure to allow it to be used as contemplated in the Investment and a recommendation letter or similar document or approval from a State or Regional Government Authority or other Authority endorsing such proposed change in use has been obtained, the Investor shall be able to implement the change of use procedure in accordance with law and each relevant Authority will be required to give effect to this rule.	
Approval of Applications	
131. An Approval under the Law and these Rules shall be granted after the Commission or the relevant delegated Authority approves the relevant Application. The Approval shall be issued within 10 Working Days of the Application being approved.	

Rules	Comments
132. An Approval will be granted to the Investor and may include any Subsidiary or other relevant applicant included in the Application.	
133. Without limiting any other rule, an Approval may be: (a) unconditional or subject to the conditions that the Commission or relevant delegated Authority think appropriate; and (b) granted retrospectively.	
134. Without limiting any other rule, the issuing of a Permit or the approval of a Tax Incentive may be: (a) granted in respect of a proposed or specified Investment; (b) granted in respect of classes of Investments; (c) granted subject to the payment of a bond; (d) granted for a specified duration; or (e) granted in whole or in part.	
135. A Tax Incentive issued by the Commission in accordance with the Law grants the Investor the right to benefit from the specified incentive. Prior to the Investor being able to benefit from any Tax Incentive under sections 75 and 78 of the Law, the Investor must submit, and the Inland Revenue Department must accept, the tax assessment for the relevant assessment year.	
136. In evaluating a tax assessment of an Investor benefiting from a Tax Incentive under sections 75 and 78 of the Law the Internal Revenue Department may review whether the Investor is complying with the	

Rules		Comments
	provisions of the Law relating to the Tax Incentive and any conditions specified in the Tax Incentive granted to the Investor.	
137.	The Commission may revoke an Approval if in the Commission's opinion the Approval has been obtained through fraud or other misleading conduct or the Investment has not been carried out substantially in accordance with the Application and no variation permitting the variation has been granted by the Commission.	
138.	<p>Without limiting any other rule, the Commission may:</p> <ul style="list-style-type: none"> (a) vary an Approval granted under the Law with the agreement of the Investor; (b) vary or add any conditions of an Approval with the agreement of the Investor; and (c) revoke a condition of an Approval. <p>An application for a variation of an Approval or a condition of an Approval may be made by the Investor by written notice to the Commission accompanied by the applicable fee.</p>	
139.	<p>It is a condition of every Approval, whether or not it is stated in the Approval that:</p> <ul style="list-style-type: none"> (a) the information provided by the Investor to the Commission in connection with the Application was correct at the time it was provided; (b) the Investor, and each other applicant where relevant, must comply with the representations and plans submitted in support of the Application, unless compliance shall reasonably be excused; and (c) the Approval is granted subject to continuing compliance with all applicable laws. . 	

