

INSTRUCTION No. 06 /2016

(7 October 2016)

**The Republic of the Union of Myanmar
The Management Committee
Thilawa Special Economic Zone**

Instruction on the Procedures for Handling Cargos Held on Account

The Management Committee of Thilawa Special Economic Zone (“Management Committee”) hereby issues this Instruction in accordance with Section 11(f) of the Myanmar Economic Zone Law (“Law”) on the procedures for handling Cargos Held on Account that shall be followed by investors approved to do business as per Rule 51 (b) and 54(d) of the Myanmar Special Economic Zone Rules (“Rules”) as under;

1. Definitions

In this Instruction, the following words shall have the following meanings and capitalized terms used but not defined in this Instruction shall have the meanings given to them in the Law:

“Assigned Customs Officer” means that Customs Officers attached to the OSSC of the SEZ;

“Cargo” means chattel, merchandise, consumer goods, food products, raw materials, semi-finished materials, components and packaging materials or otherwise any finished or unfinished goods which are not prohibited by the Law and the Rules and orders made thereunder and which have been brought into Myanmar and which are not otherwise classified as a Regulated Article;

“Cargos Held on Account” means Cargos in transit for storage in a Free Zone Warehouse pertaining to the temporary storage of Cargos from a Foreign Supplier without the payment of duties and other taxes until such time that such Cargos are withdrawn for consumption in Myanmar or shipped to another location outside of Myanmar;

“Delivery Order” means a document simultaneously issued by the Foreign Supplier to an Operator and to the Recipient which contains instructions confirming the release of Cargos Held on Account from an Operator to the Recipient;

“Deposited Cargos” means Cargos, except Cargos Held on Account, temporarily stored in a Free Zone Warehouse for the purpose of further processing for export to be added by an Operator before packing, packing before export, or storing until export for any other reason;

“DTA” means Domestic Tariff Area outside TSEZ;

“FCL” means Full-Container-Load;

“Free Zone Warehouse” means a warehouse owned and operated by an Operator located in the Thilawa Special Economic Zone for the purpose of storage of Deposited Cargos and/or Cargos Held on Account and/or other purposes as approved by the Management Committee. Whole premise and building or a part of these if clearly delineated as Free Zone Warehouse part shall be an area or territory which is deemed to be situated outside the country as defined in the Article 3 (i) of the Myanmar Special Economic Zone Law;

“Foreign Supplier” means a foreign person or entity, whether or not doing business in Myanmar, which has shipped Cargos into Myanmar for the purpose of storing the Cargos as Cargos Held on Account in a Free Zone Warehouse;

“FZB” means a Business which is provided with the same privileges as a Business located in a Free Zone, when a SEZ is not demarcated as a Free Zone and a Promotion Zone as stipulated in the Law and Rules;

“LCL” means Less-than-Container load;

“Operator” means an Investor approved to do businesses in the TSEZ as per Rule 54 (d) of the Rules and owns and operates a Free Zone Warehouse;

“OSSC” means the One-Stop Service Center of the TSEZ

“Other Business” means a Business which is provided with the same privileges as a Business located in a Promotion Zone, when a SEZ is not demarcated as a Free Zone and a Promotion Zone as stipulated in the Law and Rules;

“Recipient” means the person or entity named in a Delivery Order, who is entitled to receive the Cargos Held on Account in a Promotion Zone or DTA, and is deemed to be the actual importer of such Cargos, and as such, will be liable to undertake and complete Import Customs Clearance to be withdrawn from a Free Zone Warehouse;

“Regulated Cargos” means any Cargo which requires special clearance as may be prescribed under relevant laws in Myanmar or by relevant authorities of Myanmar for importation into Myanmar, including 4-wheel and 2-wheel vehicles, regulated food products, pharmaceutical products, alcohol, tobacco, cigarettes, and other products,

except explosives, the importation of which is specifically regulated by relevant Ministries;

“Ship-back” means the shipment of Cargos Held on Account for a destination outside of Myanmar without having entered or imported into Myanmar;

“Supporting Documents” means documents prescribed by the Customs Section of OSSC of Thilawa SEZ and approved by the Management Committee to complete the importation or Ship-back of the Cargos, and includes waybills, invoices, packing lists and other similar documentation;

“TSEZ” means the Thilawa Special Economic Zone.

2. Approval of Entry of Cargos Held on Account into TSEZ

An Operator who intends to receive Cargos Held on Account from Foreign Shipper for storage shall submit a report detailing such Cargos, including an information of Foreign Supplier and quantity of cargos, to the Management Committee and obtain its prior approval of entry of such Cargos into TSEZ.

No used or reconditioned or refurbished 4-wheel and 2-wheel vehicles shall be allowed to be shipped to and stored in TSEZ as Cargos Held on Account.

3. Transportation of Cargos Held on Account from port of entry to a Free Zone Warehouse

a. Cargos Held on Account to be deposited in a Free Zone Warehouse will not undergo Import Customs Clearance at the Port of Arrival, in accordance with the Paragraph 22 and 134 of Myanmar Special Economic Zone Rules and undergo Import Customs Clearance at Customs Section of OSSC before they may be released to the Recipient from a Free Zone Warehouse.

(1) Declarant shall submit an application for bonded transportation to the Customs Section of OSSC.

(2) For FCL shipments, the Customs Department officer at the Port of Arrival shall seal the Container to be used for the transport of the Cargos.

(3) For LCL and Air Shipments, the Customs Department officer at the Port of Arrival shall seal the corresponding Container in the same manner as prescribed for FCL shipments, ensuring, however, that the packages are transported intact from the Port of Arrival to the Free Zone Warehouse.

b. The transportation of such Cargos bound for a Free Zone Warehouse shall not be considered an Import from Overseas and such Cargos shall not be subject to

assessment for duties upon entry to the TSEZ or upon storage in a Free Zone Warehouse. However, Containers entering the TSEZ may be subject to inspection by officials of the Customs of OSSC for security purpose.

Upon receipt of the Container for entry to the TSEZ, an Operator (by itself or through its agent, with the cooperation of the Foreign Supplier's Customs Broker, if necessary) shall present the following documents to the Customs Section of OSSC for review:

- (1) Free Zone Warehouse Form;
- (2) Original invoice relating to the shipment either in paper-based or electronic form;
- (3) Original Packing List relating to the shipment either in paper-based or electronic form; and
- (4) Bill of Lading or Air Waybill relating to the shipment.

Containers bound for a Free Zone Warehouse which are unsealed or seals of which have been broken shall not be allowed entry into the TSEZ, and will be subject to further investigation by the Customs Section of OSSC. A report of such incident will be provided to an Operator as soon as practicable. The Customs Section of OSSC may inspect Cargos contained in unsealed Containers or in Containers whose seals have been broken, take necessary actions in accordance with the Customs procedures and release them only after the payment of appropriate import duties and taxes.

4. Deposit and storage at a Free Zone Warehouse

- a. Upon arrival of the Cargos Held on Account at TSEZ, the Customs Section of OSSC shall confirm that the Containers bearing such Cargos are properly sealed. Upon such confirmation, an Operator may proceed to unseal the Containers and conduct its own examination of the Cargos to be deposited. In doing so, an Operator can undertake the necessary measures to examine and document the Cargos, and may, where necessary, take pictures thereof.
- b. Only Cargos contained in the proper case or receptacle can be stored in the individual storage units in a Free Zone Warehouse, and only in the appropriate area of storage.
- c. There shall be no restriction on the period of storage of Cargos Held on Account or any other cargo as approved by the Management Committee in the Free Zone

Warehouse, however, maximum period of storage of Cargos in the Promotion Zone Warehouse is three years.

- d. If the Deposited Cargos are of a perishable or otherwise flammable in nature that, by their continued storage at a Free Zone Warehouse, will deteriorate greatly in value or may be liable to injure other persons or property, an Operator may take the following actions and precautions:
 - (1) An Operator will notify the Foreign Supplier or anybody who deposits cargos as is reasonable and possible under the circumstances, to remove the Cargos from a Free Zone Warehouse.
 - (2) If the Foreign Supplier or anybody who deposits cargo fails to remove or fails to cause the removal of the Cargos, an Operator shall be responsible for removal of Cargos.

5. Release or withdrawal of Cargos Held on Account for use or consumption in Myanmar

- a. Recipient requesting for the release of Cargos Held on Account for use or consumption in Myanmar must submit the following documents to the Customs Section of OSSC:
 - (1) Delivery Order duly signed and executed by the Foreign Supplier
 - (2) Import Declaration (FORM-CT2)
 - (3) Free Zone Warehouse Form
 - (4) Original Invoice relating to the shipment either in paper-based or electronic form
 - (5) Original Packing List relating to the shipment either in paper-based or electronic form
 - (6) Original Import License duly issued by the Ministry of Commerce either in paper-based or electronic form
- b. The Delivery Order must contain the following information:
 - (1) Name and particulars of the Recipient;
 - (2) Description of the Cargos Held on Account to be released to the Recipient which should include the following information:
 - i. Country of origin
 - ii. Date when the items were received by an Operator
 - iii. HS code; and,

(3) Quantity of the Cargos Held on Account to be released to the Recipient.

- c. Persons receiving the Cargos Held on Account on behalf of the Recipient must present the following documents, and failing to do so will warrant the withholding of the items from release:
- (1) Duplicate original copy of the Delivery Order issued by the Foreign Supplier;
 - (2) Government issued identification (*e.g.*, National Registration Card, or other identification); and,
 - (3) Authorization letter from the Recipient authorizing the persons to receive delivery of the Cargos Held on Account.

Persons who present the above-listed documents shall be presumed to be the due and rightful representatives of the Recipient, and an Operator shall be held free and harmless for the release of the Cargos to the Persons presenting such documents accordingly.

- d. Cargos Held on Account must first complete Import Customs Clearance before they may be released from a Free Zone Warehouse to the Recipient. In doing so, an Operator is allowed to take samples of Cargos Held on Account and provide such samples to the Customs Section of OSSC for the purposes of completing the Import Customs Clearance.
- e. Upon completing Import Customs Clearance, an Operator will release the Cargos Held on Account subject of the Delivery Order to the Recipient, who will acknowledge receipt of the same.

6. Ship-back of Cargos Held on Account without use or consumption in Myanmar

- a. If the Cargos Held on Account cannot be imported into Myanmar, due to the fact that they do not meet the requirements set out in relevant laws and regulations outside TSEZ or any other reason, these Cargos Held on Account shall be released for Ship-back either at the Foreign Supplier's or Operator's account.
- b. Parties requesting for the release of Cargos Held on Account for Ship-back without use or consumption in Myanmar must submit the following documents to the Customs Section of OSSC:
 - (1) Cover Letter

- (2) Delivery Order
 - (3) Free Zone Warehouse Form
 - (4) Original invoice relating to the shipment either in paper-based or electronic form
 - (5) Original Packing List relating to the shipment either in paper-based or electronic form
- c. Upon clearance from the Customs Section of OSSC, an Operator shall release the Cargos Held on Account intended for Ship-back to the Foreign Supplier or its duly designated Customs Agent in preparation for transport to the Port of Departure.
 - d. **Before releasing the Cargos for Ship-back**, the Assigned Customs Officer shall seal the shipment.
 - e. The Customs officer at the Port of Departure shall receive the sealed Container and prepare the same for Ship-back. Cargos bound for Ship-back which are unsealed or seals of which have been broken shall be withheld exportation, and will be subject to further investigation by the Customs. A report of such incident will be provided to an Operator as soon as practicable.
 - f. No customs duties or taxes shall be assessed for Cargos of a Free Zone Warehouse cleared for Ship-back, in accordance with the Myanmar Special Economic Zone Law and Rules.

7. Sale and disposal of Cargos Held on Account by an Operator

- a. In the event of a public or private sale of the Cargos Held on Account for any reason, the same can be undertaken by an Operator with or without prior advertisement, provided that in all cases, the proceeds of the sale shall apply as follows and which shall be satisfied strictly in the following order:
 - (1) Firstly: To any amount due in relation to the importation of the Cargos held on Account, including all taxes and duties due for the importation thereof; and
 - (2) Finally, and only after item (1) above has been satisfied: To the account of an Operator.

It is the responsibility of the successful buyer at the public or private sale to ensure that the appropriate taxes and duties are duly paid, and the importation of Cargo is

carried out in accordance with Myanmar Special Economic Zone Law and Rules and only when the buyer possesses an Import License duly issued by Ministry of Commerce.

- b. Where an Operator is entitled to dispose of the Cargos Held on Account, an Operator shall do so in the following manner:
 - (1) Prior to disposal, the Customs Section of OSSC shall inspect such Cargos and make a report on the nature, condition, state and/or quantity of the Cargos in which the Customs shall either concur with the decision of an Operator to dispose of the Cargos or prevent the disposal of the Cargos;
 - (2) Subject to clearance from the Customs Section of OSSC, an Operator must dispose of the Cargos in a manner consistent with the Myanmar Special Economic Zone Law and Rules; and
 - (3) Where the Cargos are of hazardous character and the disposal cannot be made by conventional means, an Operator shall procure the services of experts or specialized contractors for the proper disposal thereof.

- c. In all cases, an Operator shall have the option to dispose of the Cargos Held on Account even after having availed of the option to sell the Cargos.

8. Regulated Cargos

- a. The handling, transport, storage, importation and Ship-back of Regulated Cargos, which are Cargos Held on Account, shall be subject to the limitations and restrictions as provided for under applicable laws and regulations in Myanmar or imposed by relevant ministries.

- b. Shipments consisting, or partly consisting, of such Regulated Cargos shall be subject to examination by the Customs Section of OSSC as such prior to entry into the TSEZ. To obtain clearance, an Operator (by itself or through its constituted transportation representative, with the cooperation of the Foreign Supplier's Customs Agent, if necessary) shall present the documents listed in Section 2 (b), with the addition that an Operator (by itself or through its constituted transportation representative, with the cooperation of the Foreign Supplier's Customs Agent, if necessary) must also submit an undertaking that such Regulated Cargos are packaged, marked, labelled or otherwise prepared, or otherwise that

the Cargos will be packaged, marked, labelled and prepared by the Foreign Supplier, in accordance with the relevant laws and regulations in Myanmar.

- c. If such Regulated Cargos cannot be imported into Myanmar, due to incompliance with relevant laws and regulations outside TSEZ, Operator shall release them for Ship-back either at sole cost of Foreign Supplier or Operator.
- d. Regulated Cargos shall be stored only using receptacles specifically designed to store and hold such Regulated Cargos, and only in specially designated areas of a Free Zone Warehouse. These specially designated areas shall be so chosen to allow constant monitoring and surveillance by an Operator, reduce the risk of contamination between the Regulated Cargos and the other Cargos which are in storage, and where warranted, to allow the easy and immediate inspection by the Customs and other related Section of OSSC.
- e. The release of Regulated Cargos for importation into Myanmar shall be subject to the requirements listed in Section 4 provided that, as an additional requirement, the Recipient must provide an appropriate import license allowing the importation of said Regulated Cargos.
- f. In receiving the Regulated Cargos, which are Cargos Held on Account, the Recipient must provide receptacles and transportation that can sufficiently and adequately contain the Regulated Cargos. The Customs Section of OSSC and an Operator is authorized to withhold delivery of the Regulated Cargos where it is apparent that the Recipient has failed to provide the adequate steps to handle and transport the Regulated Cargos.

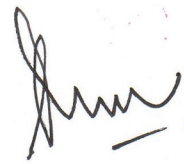
9. Obligations of an Operator of a Free Zone Warehouse

- a. An Operator, in the absence of some lawful excuse, shall deliver the Cargos Held on Account to the Recipient, following the completion of the Import Customs Clearance, the presentation of Supporting Documents by the Recipient including the Delivery Order, and all other processes as may be required under this Instruction.

- b. In any case, no title or right to the possession of the Deposited Cargos or Cargos Held on Account can arise on the part of an Operator.

10. Others

An Operator shall make an agreement with the Foreign Supplier for authorizing him to handle, transport, package, re-package, mark and label to the Cargos Held on Account and submit it to the Management Committee for approval.



Chairman

The Management Committee
Thilawa Special Economic Zone