

(The Rules Under the (Lower) Myanmar Fisheries Act (VII. Of 1875))

No. 233

[Amendment : 18.06.1989]

No. 233. - In exercise of the power conferred by section 8 of the (Lower) Myanmar Fisheries Act (VII of 1875) and with the previous sanction of the Governor-General in Council, the Chief Commissioner is pleased to make the following rules in supersession of all previous rules made under the said Act.

RULES.

Preliminary.

1. For the purposes of these rules, all words and phrases shall have the meaning, if any, assigned to them in section 2 of the (Lower) Myanmar Fisheries Act (VII of 1875) save that the word "fishery" shall not include public wells, or collections of water in reserved forests, or collections of water in borrow pits or in other land under the control of the Public Works Department or of the Railway Department, or of an Embankment Officer.

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2. In these rules-

"fixed obstruction" means and includes a weir, lock, bank or dam, or any fixed engine which impedes navigation, interferes with the flow of water, or prevents fish from proceeding up or down stream; it does not include a fixed engine which extends only partially across a stream:

"implement" means and includes any implement or engine for catching, or facilitating the catching of, fish other than a fixed obstruction.

Clause (a).

Of the survey and demarcation of the limits of fisheries.

3. The limits of every fishery, not being a sea fishery, the exclusive right of fishing in which, or any part of which, has been, or is about to be, disposed of under the provisions of section 4, clause (b) of the Act, shall be surveyed and demarcated as soon as may be by such officer or officers as may be appointed by the Deputy Commissioner in this behalf.
4. The limits of every fishery so demarcated shall be reduced in extent as much as possible so as to allow of the fishery being worked by the actual lessee or lessees. The limits of each fishery, and unless the Deputy

Commissioner shall think it unnecessary or unadvisable, the sites, if any, at which fixed obstructions may be erected, placed, maintained, or used by the lessee or lessees, shall be marked by tubes or posts fixed on the adjacent banks.

5. No alteration of the limits aforesaid shall be made except with the sanction of the Commissioner of the division within which the fishery, or the greater part thereof, is situated; and when any such alteration of limits is made, the survey plan and copies thereof hereinafter referred to, shall be altered accordingly.
6. A list of all fisheries surveyed and demarcated, and a plan of each, shall be made and deposited in the Revenue office of the Deputy Commissioner, and copies of such list and plans shall be deposited in the offices of the Subdivisional Officer and of the Township Officer of the subdivision and township, respectively, within which such fishery, or the greater part thereof, is situated.
7. In each such plan shall be shown every stream, lake, tank, or pool, or other collection of water, belonging to the fishery, and the authorized sites of all weirs of other fixed obstructions.

Clause (b).

Determination of the mode of disposal of rights to fish.

8. The Commissioner shall from time to time determine in which of the modes mentioned in section 4 of the Act the right to fish in each fishery shall be disposed of.

Clause (c).

Conditions on which, and procedure by which, fisheries may be opened to the public or leased to individuals.

9. Fish shall be taken in a fishery disposed of under sub-section (a) of section 4 of the Act in such modes and with such implements only as the Deputy Commissioner may, with the previous sanction of the Commissioner, prescribe in this behalf. Any person fishing in a fishery which has been declared open, in any mode or with any implement not so prescribed, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to Rs. 200, or with both.
10. Leases of the exclusive right of fishing in fisheries in which the supply of water is regular may be granted for such term of years not exceeding five as the Deputy Commissioner may in each case deem fit. Leases of such a right in fisheries in which the supply of water is uncertain shall be granted for one year only; provided that the Commissioner may permit the grant of a lease in such a fishery for any number of years not exceeding five. Leases shall ordinarily expire on the 30th June.
11. Fisheries may be disposed of by lease-

- (i) by giving a further term to a former lessee;
 - (ii) by inviting tenders upon such conditions as to the Deputy Commissioner may seem advisable, and granting the lease to any of the persons who may tender;
 - (iii) after public auction in manner hereinafter described; or
 - (iv) in the case of tanks dug on Government waste land, by granting a lease to the digger;
- but except where such disposal shall have been by auction, it shall be subject to the confirmation of the Commissioner of the division.

Of the disposal of leases by auction sale.

12. Leases shall be put up to auction at the headquarters of the township within which is situated the whole, or the greater portion, of the fishery the right of fishing in which is to be disposed of (or at such other place as the Deputy Commissioner may in any special case direct) and upon such dates as may be fixed by the Deputy Commissioner.
 13. Auctions shall be held by the Deputy Commissioner of the district or, if he shall so direct, by the Subdivisional Officer, or by the Inkunwun or (provided that the rent usually obtained for the lease to be sold does not exceed Rs. 500) by the Township Officer; but no lease shall be granted except by the Deputy Commissioner, to whom the result of the sale shall be reported by the officer holding the sale.
 14. An advertisement in Myanmar, specifying the terms upon which the lease will be granted, the fixed obstructions (if any) which the lessee will be permitted to erect, place, maintain, or use, with the place or places at which, and time or times during which the same may be so erected, placed, maintained, or used, shall, if possible, be available for the perusal of intending bidders for two days at least before the day of auction; and in all cases the officer holding the auction shall, before the bidding is commenced, record and read out to those present a statement specifying the terms aforesaid.
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15. Except as is hereinafter otherwise provided, the lease shall be granted to the bidder who offers the highest annual rent. The Deputy Commissioner may fix an upset rent.
 16. Except with the sanction of the Deputy Commissioner, no bid at any auction shall be received (or, if received, be deemed valid) from any person who is not qualified in the manner hereinafter provided to bid thereat and who does not hold a certificate to that effect signed by some officer appointed by the Deputy Commissioner in that behalf.

17. No person shall be qualified to bid at an auction (i) if any fees, rents, or other moneys are at the date of the auction due from him to Government in respect of any right of fishing made, granted, or acquired under the Act; or (ii) if he shall have at any time made any default in payment of any moneys due to Government in respect of any right of fishing; or (iii) unless he is a fisherman or cultivator and has resided for a period of three years preceding the date of the auction in a circle within which is situated some part of the fishery the right of fishing in which is to be disposed of, or within ten miles of such fishery.
18. Notwithstanding anything in the last preceding rule contained, a member of a firm or partnership of fishermen or cultivators shall be qualified to bid for or on behalf of such firm or partnership; provided that not less than two-thirds of the members of the firm or partnership are qualified to bid under the provisions of the last preceding rule.
19. The Deputy Commissioner may require each bidder to deposit a sum not exceeding Rs.100 before he is permitted to bid. When a bidder has bought one lease the officer holding the auction may require him to deposit a further similar sum before he bids for another lease. The deposits of unsuccessful bidders shall be returned to them after the auctions.
20. The Deputy Commissioner, or other officer holding the auction, may refuse to accept any bid, or may exclude any person from the auction without assigning any reason to such person; but he shall record his reason for such refusal or exclusion in a memorandum which shall be attached to the proceedings.
21. The Deputy Commissioner, or other officer holding the auction, shall record the final offer of each bidder, and sales shall not be considered closed until one hour after the auction, and until all other fishery auctions held at the same place on the same day, are concluded. If the highest bidder within that time desires to surrender his purchase the officer holding the auction may, for reasons to be recorded by him, either accept or refuse the surrender. In the former case the lease shall be offered in turn to the next highest bidder on the terms noted against his name, and so on. The bidder who has surrendered his purchase may be excluded by order of the Deputy Commissioner from all other fishery auctions during the same year.
22. The auction purchaser shall, within such time as shall be fixed by the Deputy Commissioner, and, if no time is fixed, within one week of the date of the auction, pay as earnest-money a sum equal to 10 per cent, of the rent offered by him, or such other sum as may be fixed by the Deputy Commissioner (provided that the sum so fixed shall not exceed Rs.500 or be less than Rs.50), which sum shall be taken as part-payment of the first instalment of rent. The sum deposited under Rule 19 shall be credited as part

of the earnest-money. The auction purchaser shall thereupon be entitled to have a lease granted to him and shall execute the lease and a bond for securing the payment of future instalments of the rent, and shall cause the lease and bond to be executed by his sureties, if sureties are required, within thirty days from the date of the auction.

23. There shall be given to the lessee with his lease a copy of the plan of the fishery, the right of fishing in which is leased to him, showing distinctly the limits within which he has a right to fish, and the sites of all fixed obstructions which he is permitted to erect. The Deputy Commissioner shall, with respect to each lease, determine by what instalments and upon what dates the rent shall be payable, and what sureties or other security, if any, the lessee shall be called upon to furnish.
24. The Deputy Commissioner shall from time to time test or cause to be tested the value of the security given for future instalments of rent, and, if at any time he finds such security to be insufficient, he may require the lessee to furnish further security within a time to be fixed by the Deputy Commissioner.
25. If the auction-purchaser shall fail-
- (i) to pay the whole of the earnest-money as provided by Rule 22, or
 - (ii) execute and cause to be executed the lease and security bond in manner hereinbefore provided within thirty days from the date of the auction,
- the lease may be resold, and the auction-purchaser shall be liable for any loss during the first year of the term of the lease disposed of, and shall likewise forfeit any sum which he may have paid as earnest-money.

Of the conditions subject to which all leases are held.

26. All the persons executing a lease shall be jointly and severally liable and responsible for the due payment of the rent thereby reserved, and the performance by themselves, their servant, and agents of all the terms and conditions to which it is subject, and shall be liable to pay such sum as the Deputy Commissioner may direct, not exceeding four annas per cent, on the annual rent, for each day or part of a day during which the annual rent or any part thereof is in arrear.
27. Upon the death of a sole lessee, or of the survivor of two or more joint lessees his heirs or other legal representatives shall not be entitled to succeed to his rights and liabilities under the lease, unless they shall within fifteen days after his death apply to the Deputy Commissioner to be admitted in the place of the deceased, and unless they shall be approved of by the Deputy Commissioner as persons qualified under these rules to bid for the lease at an auction. The applicants may give notice that they desire to

relinquish the lease at the expiration of the then current year thereof and may be admitted subject to such notice.

28. If, in the case of any application made under the last preceding rule the applicants shall not be approved of by the Deputy Commissioner as persons qualified to bid for the lease at an auction, it shall nevertheless be competent to him to admit them in place of the deceased, subject to the condition that the lease shall terminate at the expiration of the then current year thereof.
29. If no such application as is mentioned in Rule 27 is made, or if, being made, the applicants are not admitted by the Deputy Commissioner in place of the deceased, the remainder of the term of the lease shall be disposed of and the estate of the deceased shall be liable for all loss which may result upon such disposal during the year in which the fishery is resold.
30. A lease shall be in no way transferable, except with the previous sanction of the Deputy Commissioner. The lessee may nevertheless sublet or permit any other person or persons to exercise all or any of the rights which he holds under the lease; but, in any such case, he shall be responsible for all the acts of such sub-lessee or licensee as if they had been done by himself.
31. Every lessee shall keep and, at the end or sooner determination of his term deliver up, the fishery leased to him (including the post or other marks indicating the limits of the fishery and the sites of fixed obstructions) in good order and condition and shall not, without the permission in writing of the Deputy Commissioner, do or permit anything to be done to alter the channels or drains of the fishery leased to him, or to make new channels or drains or fill up old ones. He shall also deliver up the expired lease and the plan referred to in Rule 23. Any person doing, or permitting to be done, anything to the drains or channels of a fishery in contravention of the terms of this rule shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to Rs.200, or with both.
32. A lessee shall have no right in or to the waters of the fishery leased to him except such as are conferred by the terms of the lease. Unless it is expressly permitted by the lease, he shall not bale out or otherwise remove the water. Any lessee who without such express permission bales out or otherwise removes the water of the fishery leased to him, or permits any other person to do so, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to Rs.200, or with both.
33. A lessee may, at the close of any fishing season, provided that he has paid up the full rent for the whole year in which such season falls, apply to the Deputy Commissioner, not less than one month before the

next instalment fall due, for the cancellation of his lease. When any such application has been made the Deputy Commissioner may with the sanction of the Commissioner, cancel the lease upon such terms as he considers fit.

34. At the close of any working season the Deputy Commissioner may, with the previous sanction of the Commissioner, cancel any permission to erect, place, maintain, or use any fixed obstruction granted to a lessee and may offer the lessee an abatement of rent. Upon any such permission being cancelled as aforesaid the lessee may surrender his lease.

35. The Deputy Commissioner may cancel any lease granted under these rules-

- (i) if such lease has been obtained by any dishonest, fraudulent, or illegal means;
- (ii) if the lease fails to pay any sum due under the lease, or to comply with and perform any of the terms and conditions under which it is held;
- (iii) if the lessee fails to execute or to cause to be executed, a further security bond to the satisfaction of the Deputy Commissioner, whenever required to do so under Rule 24;
- (iv) if the lessee, or any one of several lessees, is guilty of any act or omission punishable by fine or otherwise under any law or rule having the force of law, relating to fisheries in Myanmar; or
- (v) if, when there are more lessees than one, disputes arise among the lessees of such a nature as, in the opinion of the Deputy Commissioner, to be detrimental to the proper working of the fishery;

and may confiscate thereupon the whole or any portion of any instalment of rent which may have been paid in respect of such lease. If a lease is cancelled under clauses (i), (ii), or (iii) and resold, the lessee shall also be liable for any loss arising from resale during that and the following year: Provided always that no lease shall be cancelled under this rule until notice shall have been served upon the lessee (or, if there are more lessees than one, then upon one of them), either personally or by affixing the same to his house or (if that cannot be found) upon some public spot adjacent to the fishery, calling upon him, within a reasonable time, to show cause, if any, why such lease should not be cancelled, and until the said lessee shall have had an opportunity of so showing cause; provided also that, on any failure to pay any sum due, under the lease, the Deputy Commissioner may by peremptory written order stop the working of the fishery pending service of the above named notice, such order being issued in the manner prescribed for the said notice.

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Clause (b).

Rates at which, and conditions on which, licenses to use implements for fishing may be granted.

36. When any fishery has not been declared open to the public, or to the inhabitants of any town or village, or to any other class of persons, and when the exclusive right of fishing in such fishery has not been leased, any person may fish therein, provided that he may not erect or use any fixed obstruction without a special license from the Deputy Commissioner under section 6 of the Act, and he may not use any of the implements or engines specified in Schedule A, hereto annexed, except under a license granted in manner hereinafter provided.
37. The Deputy Commissioner, or any Subdivisional Officer or Township Officer authorized by him, may issue licenses to use for fishing in such fisheries any one or more of the implements specified in columns 4, 5 and 6 of Schedule A; provided that no such license shall entitle any person to use any net, implement, or engine in such a manner as to hinder the movements of fish, or to interfere with the flow of water or to impede navigation.
- Such license shall be valid throughout all the districts of Lower Myanmar.
- A counterpart of every such license shall be signed by the licensee.
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38. For every such license the licensee shall, at the time of the issue of the license, or at such other time as may be fixed by the Financial Commissioner, pay a fee at the rate set opposite in the 2nd column of Schedule A to the implement which he is licensed to use.
39. The size of mesh or space to be left in the implement which the licensee is licensed to use shall not be less than that set opposite thereto in the 6th column of the Schedule A and shall be specified in the license; and any licensee using an implement with a mesh or space smaller than that which is authorized by the term of his license shall, for each such offence, be punished with imprisonment for a term which may extend to one month, or with fine which may extend to Rs.200, or with both.
40. A separate license shall be granted for the use of each implement except implements in Classes I and II, any number of which may be included in a single license; provided that the fee be paid on each implement at the rate specified in Schedule A.
41. Every license shall expire on the 30th June next following the date upon which it was granted: provided that licenses may be issued in the months of May and June to take effect from the 1st July next following, and to expire on the 30th June in the following year.

42. A license shall not be transferable. Any person transferring, or pretending to transfer his license shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to Rs.200, or with both.
43. The Financial Commissioner may, by notification in the Myanmar Gazette, alter Schedule A by adding the name of any new implement to any of the classes in the said schedule contained, or by removing any implement from the schedule, or by removing any implement from the class in which it is placed and placing it in another class, and upon any such notification the said schedule shall be deemed to be amended accordingly.

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Clause (e) and (f).

Terms and conditions on which permission to erect, place, maintain or use fixed obstructions, as described in section 6 of the Act, in fisheries or waters connected therewith, may be granted, and rules for making and maintaining free gaps in weirs.

44. Applications for licenses to use or erect fixed obstructions elsewhere than in leased fisheries may be presented to the Township or Subdivisional Officer, or the Deputy Commissioner. The Deputy Commissioner or Subdivisional Officer may refer any such application to the Township Officer for report. The final order shall be passed by the Deputy Commissioner in every case.
45. No license shall be issued to use any fixed obstructions except those specified in Schedule B hereto annexed.
46. Before any license is issued an accurate plan of the place where the fixed obstruction is to be placed shall be prepared, and the fixed obstruction itself shall be denoted thereon by red ink or paint: If the said place be within or on the edge of a kwin which has been cadastrally surveyed, the plan shall be an extract from the kwin map, showing sufficient of the surrounding features to make the spot readily identifiable, and the field numbers shall be entered on the extract. This plan shall be copied on the reverse of the license before it is signed by the Deputy Commissioner:
- Provided that when any such license has been issued with a plan on the reverse thereof aforesaid, a similar license for the following year may, in the discretion of the Deputy Commissioner, be issued in due course without any further survey.
47. Before any license to use a fixed obstruction elsewhere than in a leased fishery is issued the applicant shall pay a fee at the rate specified in the 4th column of Schedule B hereto annexed.

48. The Financial Commissioner may at any time by notification in the Myanmar Gazette alter Schedule B by striking out any fixed obstruction or by adding any new fixed obstruction, or by altering the rate of fee for any fixed obstruction, and upon any such notification the schedule shall be deemed to be amended accordingly.

<Amendment 18.06.1989>

49. Every permission for erecting, placing, maintaining, or using a fixed obstruction, whether contained in a lease of a fishery or in a license issued under Rule 45, shall specify the places at which such fixed obstruction may be erected, placed, maintained, or used, the period during which it may be so maintained or used, the openings that shall be made for the passage of boats, and the minimum width of the spaces or interstices that shall be maintained for the passage of small fry.

50. Except with the sanction of the Commissioner in each case, no permission shall be granted to erect or maintain any bund between the 1st May in any year and the 1st January in the following year, and every person shall be bound, unless he has the special sanction of the Commissioner as aforesaid, wholly to remove before the 7th May in each year any bund which he may have erected, placed, maintained, or used.

51. Every person having permission to erect, place, maintain, or use a fixed obstruction in any creek or stream shall make and maintain in such fixed obstruction such suitable opening for the passage of boats as may be entered in the lease or license as the case may be, and shall at all times, during the hours of daylight, without delay and without demanding remuneration of any kind, permit boats to pass through such openings. Every person failing to comply with any of the terms of this rule shall, for every such offence, be punished with imprisonment for a term which may extend to one month, or with fine which may extend to Rs.200, or with both.

52. Every person having permission to erect, place, maintain, or use any fixed obstruction shall keep and maintain therein such spaces or interstices for the passage of the small fry of fish as may be prescribed in his lease or license, as the case may be. Any such person as aforesaid failing to keep such spaces or interstices as aforesaid shall, for every such offence, be punished with imprisonment for a term which may extend to one month, or with fine which may extend to Rs.200, or with both.

53. Except with the sanction of the Commissioner in each case, no permission shall be granted to erect, maintain or use any fixed obstruction across any stream between the 1st May and the 1st September in any year.

GENERAL.

54. The use of nets in the kwins or inundated plains between the 1st day of June and the 31st day of October in any year is prohibited, and any person so using one shall be liable to be punished with imprisonment for a term which may extend to one month, or with fine which may extend to Rs.200, or with both.
55. Any person who, except with the previous written sanction of the Deputy Commissioner, places bushes or branches in a creek or river for the purpose of catching fish shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to Rs.200, or with both.
56. Any sum or sums of money payable to Government in respect of any right of fishing made, granted, or acquired under or by virtue of the Act, or any rule or rules thereunder shall, except as is next hereinafter provided, be paid by the person liable to the payment thereof into the treasury at the headquarters of the district within which is situated the whole or the greater part of the fishery or area over which such right extends; but any such sum or sums of money may, if the Deputy Commissioner so direct; be collected by the Subdivisional or Township Officer or, provided that the annual sum or sums payable in respect of such right or rights shall not exceed Rs.2,000, by the thugyi of the circle, who shall receive on any collection received by him a commission at a rate (not exceeding 4 per cent.) to be fixed by the Financial Commissioner.
57. With the sanction of the Financial Commissioner the Commissioner may remit any sum or sums of money payable in respect of any such right to fish as aforesaid-
- (a) if the fishery has been materially altered or damaged;
 - (b) if the causes of such material alteration or damage are such as could not have been foreseen by, and were beyond the control of, the lessee;
 - (c) if from the operation of these causes payment of the full revenue from the fishery is impossible; and
 - (d) if the lessee has intimated the material alteration of, or damage to, his fishery in sufficient time to permit verification of such alteration or damage.
58. Fishery registers shall be kept up in every Revenue office in such forms as the Financial Commissioner may from time to time direct.
59. Leases and licenses granted, and security bonds executed, under these rules shall, subject to the provisions of the foregoing rules, be in such forms as the Financial Commissioner may from time to time direct.
60. Appeals shall lie-

(a) to the Deputy Commissioner from the orders of all officers subordinate to him;

(b) to the Commissioner from the orders of the Deputy Commissioner.

Appeals shall not be admitted after the expiration of thirty days from the date of the order appealed against.

61. The Deputy Commissioner and the Commissioner, respectively, may revise any order passed by any officer subordinate to him.

62. The Financial Commissioner may revise any order passed by any officer sub-ordinate to him.

F. C. GATES,
Revenue Secretary.

----- Attachment -----

[ATTACH LIST 1] 01(The Rules Under the (Lower) Myanmar Fisheries Act (VII. Of 1875) SCHEDULE A. (See Rule 36.)

[ATTACH LIST 2] 02 (The Rules Under the (Lower) Myanmar Fisheries Act (VII. Of 1875) SCHEDULE B.