



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



INVESTING IN MYANMAR'S POWER SECTOR

10th November, 2016



INTRODUCTION

- **Current capacity: 4,412 MW (2014)**
- **Targeted capacity by 2030: 24,000 MW**
- **FDI in the power sector in 2015/16: USD 360m**
- **Projected investment needs until 2030: USD 66.6 billion**
- **Electricity is presently produced by (i) Ministry of Electricity and Energy (70%), (ii) IPPs (10%), and (iii) joint ventures with the Ministry of Electricity and Energy (20%)**



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INTRODUCTION

- Electricity is purchased by Electric Power Generation Enterprise and distributed to consumers by Yangon Electricity Supply Corporation, Mandalay Electricity Supply Corporation, and Electricity Supply Enterprise (“single state-owned buyer model”)
- Policy shift from coal to hydro



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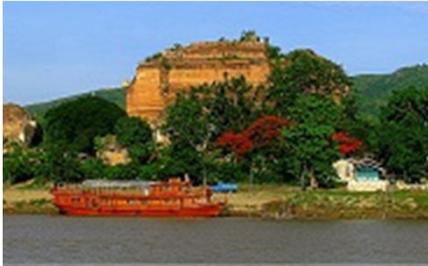


LEGAL FRAMEWORK

- Myanmar Investment Law 2016 (implementation probably 1st April 2017)
- Foreign Investment Law 2012
- Citizens Investment Law 2013
- MIC Notification 26/2016
- Foreign Investment Rules 2013
- Special Economic Zones Law 2014
- Electricity Law 2014
- State-owned Economic Enterprises Law 1989



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LEGAL FRAMEWORK

- Environmental Conservation Law 2012
- Environmental Conservation Rules 2014
- Environmental Impact Assessment Procedure 2015
- All sorts of land laws



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INSTITUTIONAL FRAMEWORK

Important ministries:

- **Ministry of Electricity and Energy**
 - **Electricity: Planning, generation (coal, hydro, gas, oil, solar, wind, geothermal), transmission, distribution**
 - **Energy: Production, import/export, distribution of oil and gas and derived products**



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INSTITUTIONAL FRAMEWORK

- **Ministry of Natural Resources and Environmental Conservation**
 - **Production, import/export and distribution of coal**
 - **Biomass and firewood**
 - **Environmental impact assessment**



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INSTITUTIONAL FRAMEWORK

- **Ministry of Agriculture, Livestock and Irrigation**
 - **Rural (off-grid?) electrification**



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INSTITUTIONAL FRAMEWORK

Organization of the Ministry of Electricity and Energy

- Myanmar Oil and Gas Enterprise (MOGE)
- Myanmar Petrochemical Enterprise (MPE)
- Myanmar Petroleum Products Enterprise (MPPE)
- Department of Electric Power Transmission and System Control (DEPTSC)
- Electricity Supply Enterprise (ESE)



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INSTITUTIONAL FRAMEWORK

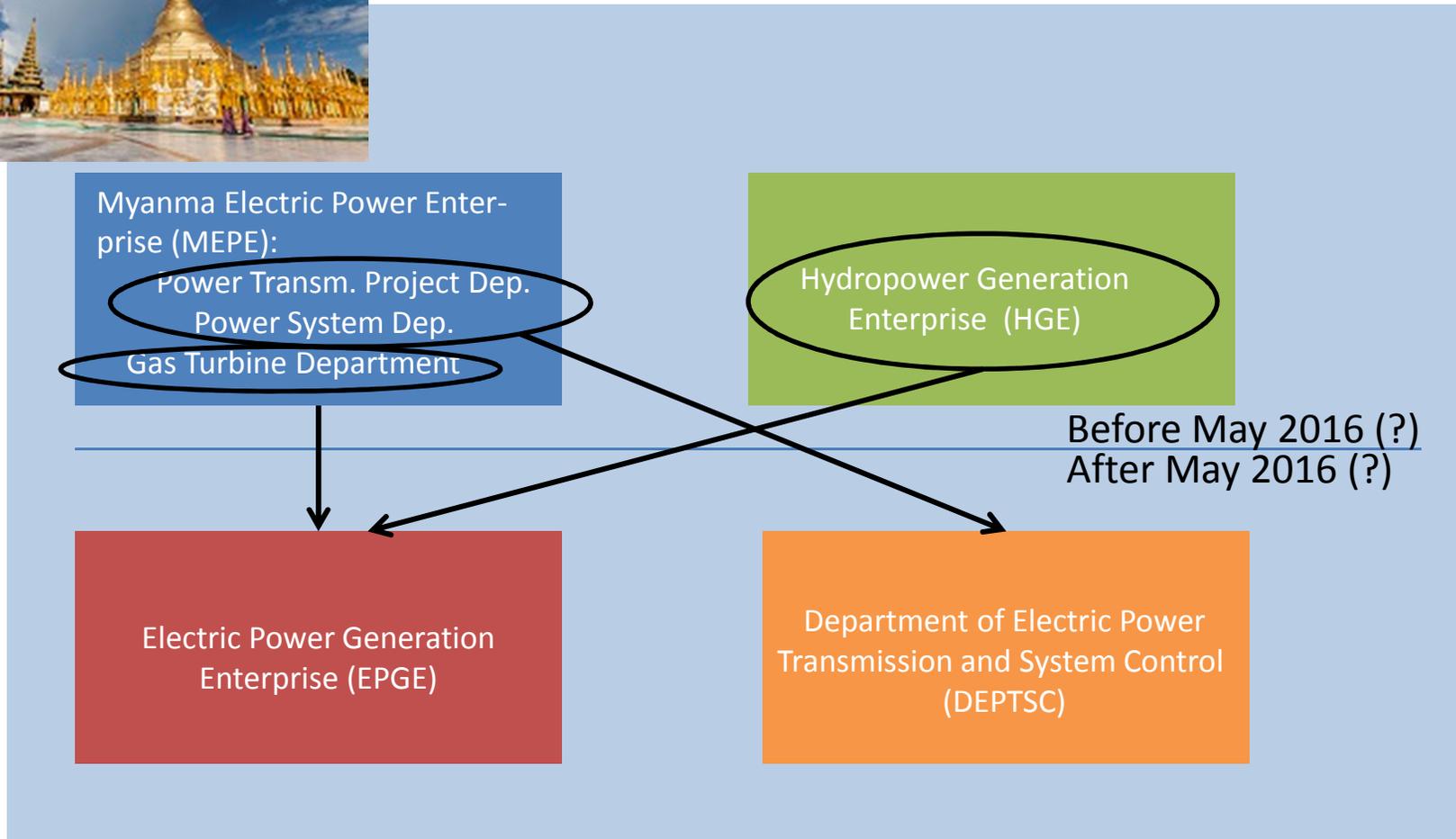
- Department of Electric Power Planning (DEPP)
- Electric Power Generation Enterprise (EPGE)
- Department of Hydropower Implementation (DHPI)
- Yangon Electricity Supply Corporation (YESC)
- Mandalay Electricity Supply Corporation (MESCC)



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INSTITUTIONAL FRAMEWORK



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OPPORTUNITIES IN POWER GENERATION



Selling, or leasing, turnkey power plants to EPGE:

Example: APR's (now) 120 MW gas-fired power plant in Kyaukse (Mandalay Region) - <http://tinyurl.com/psnptm3>



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OPPORTUNITIES IN POWER GENERATION



Construction and operation of power plants (coal, gas, hydro, solar)

- **Market access restrictions:**
 - **State-owned Economic Enterprises Law section 3(k): “Electricity generation services” as such are a state monopoly**



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OPPORTUNITIES IN POWER GENERATION



- **Foreign Investment Rules 2013: Erection and operation of power plants with less than 10MW prohibited to foreigners (but overruled by MIC Notif. 26/2016)**
- **MIC Notification 26/2016:**
 - **Prohibited: Administration of electric power systems**
 - **JV: Mid- and small-scale electricity production**
 - **JV + other requirements: Generation of electricity to be used in railway businesses**



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OPPORTUNITIES IN POWER GENERATION



- **Electricity Law 2014:**
 - **Modifies the State-owned Economic Enterprises Law: Licensing authority may grant licenses to foreign or local power producers**
 - **Licensing authorities: Ministry (projects > 30MW and/or connected to the national grid); Region/State Government (smaller, non-connected projects)**



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OPPORTUNITIES IN POWER GENERATION



Example for a small-scale project: Installation of solar panels on the roof of a factory building, selling the electricity to the factory owner - allowed?



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OPPORTUNITIES IN OTHER AREAS

- Foreign participation possible in certain supply aspects (e.g. building and operating LNG facilities, building and operating offshore gas pipelines, building onshore gas pipelines) and certain aspects of distribution (e.g. building transmission lines)
- Provision of goods and services from offshore usually possible



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MAJOR STEPS TO ESTABLISH A POWER PROJECT

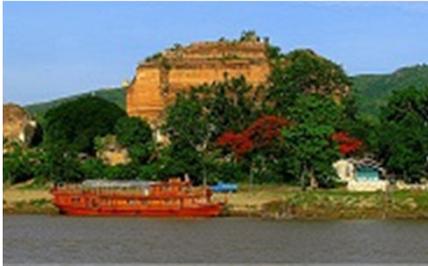


- Tender, or direct approach to the Ministry of Electricity and Energy
- Submission of the proposal
- Feasibility study
- MoA
- Possibly, land acquisition
- Negotiation of project documents (e.g. BOT contract, joint venture agreement, power purchase agreement, fuel supply agreement)



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MAJOR STEPS TO ESTABLISH A POWER PROJECT



- MIC permit and company incorporation



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STANDARDISATION OF PROJECT DOCUMENTS



- **MoEE/EPGE tender (Eol until 24 Nov 2016):**
 - **Review and summarize existing IPP contracts**
 - **Review current authorizing and record-keeping procedures, suggest improvements**
 - **Assist in expanding staff capacity on financial modelling**
 - **Provide case studies from abroad for tariff structures and suggest improvements**
 - **Project duration: 12 months, starting March 2017**



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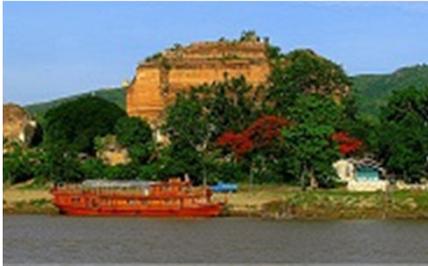


IMPORTANT LAND LAWS

- **Transfer of Property Act 1882**
- **Upper Myanmar Land and Revenue Regulations 1889**
- **Land Acquisition Act 1894**
- **Lower Myanmar Town and Village Lands Act 1899**
- **Registration Act 1909**
- **Land Nationalization Act 1953 (repealed)**
- **Transfer of Immovable Property Restriction Act 1987**
- **Constitution 2008**



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IMPORTANT LAND LAWS

- **Farmland Law 2012**
- **Vacant, Fallow and Virgin Lands Management Law 2012**
- **Foreign Investment Law 2012**
- **Special Economic Zones Law 2012**



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TYPES OF LAND

- Farmland (paddy land and several types of non-paddy land)
- Non-farmland:
 - Town land
 - Village land
 - Grant land
 - Permit land
 - Freehold (“ancestral”) land
 - Licensed land



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TYPES OF LAND

- Religious land
- Vacant land and fallow land
- Virgin land
- Forest land
- Farmland that is allowed to be used in other ways (according to section 30 (a) or 30 (b) Farmland Law; previously “LaNa 39” land)



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LAND DOCUMENTS

- Land grant certificate (lease agreement)
- Land permit
- Land license
- Land use certificate (form 7)
- Receipt for land tax
- Land forms 105, 106
- Certificate according to section 30 (a) or 30 (b) Farmland Law (formerly: “LaNa 39”)



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IMPORTANT ASPECTS OF A LAND DUE DILIGENCE



- **Verify ownership**
- **Was land acquired in a land grab?**
- **Legally possible to use the land for the project?**
- **Government land: Has the respective department the right to lease the land for the project?**



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TAKING AND ENFORCING SECURITY

Security in sophisticated transactions (e.g. cross-border deals)

- **Project bank account**
- **Step-in rights**
- **Mortgage taken by local security agent**
- **Share “pledge”**
- **Floating charge on receivables (“book debt”) and/or inventory**
- **Fixed charge on machines**
- **Assignment of rights; assignment of licenses**
- **Security over intellectual property rights**



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TAKING AND ENFORCING SECURITY

Project bank account

- Bank in Myanmar acts as the security agent of the foreign lender
- Revenue from the project is paid into a bank account provided by the security agent
- Security agent repays, from this bank account, the loan



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TAKING AND ENFORCING SECURITY

Step-in rights

- E.g. in a lease agreement with the government: “Landlord acknowledges that Tenant may obtain financing from third parties and allows Tenant to offer to such third parties to step into this lease agreement instead of Tenant with all rights and obligations of Tenant.”
- Available in Myanmar?



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TAKING AND ENFORCING SECURITY

Mortgage taken by local security agent

- **Foreign lenders cannot take mortgage of immovable property**
- **Local bank can act as security agent and take mortgage on behalf of the foreign lender**



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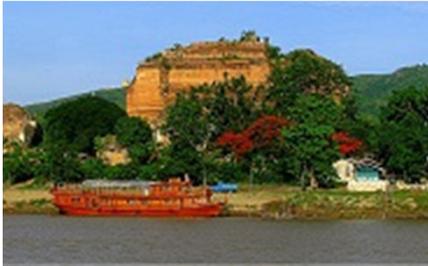
TAKING AND ENFORCING SECURITY

Share “pledge”

- Share pledge agreement and BoD resolution approving the share pledge agreement
- Handing over form 6, bank statement proving payment of paid-up capital, irrevocable power of attorney, signed undated share transfer form, signed undated resignation letters, signed undated cover letter



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TAKING AND ENFORCING SECURITY

Floating charge on receivables (“book debt”) and/or inventory

- **Requires registration with DICA (section 109 Companies Act), but DICA does not register such things**



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TAKING AND ENFORCING SECURITY

Fixed charge on machines

- **Requires registration with DICA (section 109 Companies Act), but DICA does not register such things**



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GOVERNMENT GUARANTEES

- **MoEE guarantee available for construction costs; also for loans?**
- **Project must be approved by the cabinet**
- **All payments under the project must be in the Union Budget**
- **Public Debt Management Law 2016**



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