



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 4 - 27 JUNE 2016

Dear Readers,

Welcome to a new edition of our newsletter.

It has become better now, but remember the frequent power cuts before the rainy season? We have taken this occasion to start a long (we hope) **series on investing in the power sector**, starting with today's first part, "the institutional framework".

Furthermore, we have included in this newsletter a brief **primer on how to register long-term lease agreements**, especially those of **telecom tower companies** with tower sites all over the country.

We would furthermore like to repeat our **invitation to join our seminar on debt collection in Myanmar** on 7 July (English language) and 14 July (Japanese language). Please find the invitations inside.

We trust that you will find this newsletter useful and hope that you will enjoy reading it.

Sebastian Pawlita
Managing Director

Nyein Chan Zaw
Director



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Press review (10 June - 27 June 2016)

- Inter-governmental body Financial Action Task Force removes Myanmar from money laundering watch list: <http://tinyurl.com/zqj9sxf>
- New regulations for heavy machinery showroom?: <http://tinyurl.com/jby5gzd>
- Export jump narrows trade deficit: <http://tinyurl.com/zwz9lju>
- Yangon Region government's inspection of suspended high-rise building projects to run into next week: <http://tinyurl.com/hue42a6>
- Sagaing authorities start to clamp down on unlicensed gold mines: <http://tinyurl.com/h5r77xk>
- Firms not dissuaded by market volatility in their move to list at YSX: <http://tinyurl.com/jh2pflg>
- Yangon real estate businesses take aim at "unlicensed" foreign companies: <http://tinyurl.com/z527gcn>

Rather confusing article. There is no such thing as a "real estate consultancy license" or a "real estate brokerage license", and local companies - who seem to be complaining that foreign companies operate without a license - would not have one themselves. There is presently also no prohibition on foreigners entering this sector, at least not to the extent that we are aware. Furthermore, services businesses are - generally speaking, and differently from what the article seems to suggest - outside the scope of MIC applications.

- DCA drawing up new air transport policy: <http://tinyurl.com/z5l8ocr>
- Yangon eases vehicle import regulation: <http://tinyurl.com/gsa3yfa>
- NLD economic policies "to be published soon"; should "ease restrictions on foreign investment": <http://tinyurl.com/zb36gdg>
- ADB plans to drastically increase lending to Myanmar: <http://tinyurl.com/jnfqxu2>



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SEMINAR INVITATION: DEBT COLLECTION IN MYANMAR

Date and time	Thursday, 7 July 2016, 2:30pm - 4:00pm
Place	Sule Shangri-La, 223 Sule Pagoda Road, Yangon
Topics	<ul style="list-style-type: none">▪ Amicable collection▪ Collection with the help of the police▪ Collection with the help of courts▪ Taking and enforcing security▪ Enforcement of foreign judgments and arbitral awards
Speakers	<ul style="list-style-type: none">▪ Sebastian Pawlita▪ U Nyein Chan Zaw
Language	English
Fee	The event is free of charge.
Registration	Please register by sending an e-mail to sebastian@lincolnmyanmar.com or nyeinchanzaw@lincolnmyanmar.com , stating the name of your company and the names of the participants.



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「ミャンマーにおける債権回収」セミナー開催のお知らせ

お客様各位

拝啓 時下ますますご清祥のこととお慶び申し上げます。日頃は格別のご愛顧を賜り厚く御礼申し上げます。

さて、このたび弊社事務所主催セミナーを下記により開催致しますので、ご案内申し上げます。

ご多忙中とは存じますが、お繰り合わせのうえ、ご参加くださいますようお願い申し上げます。

日時	2016年7月14日(木) 14:30~16:00
会場	弊社事務所オフィス (La Pyi Wun Plaza, Room 103 (ground floor), 37 Alan Pya Pagoda Road, Dagon Township)
内容	<ul style="list-style-type: none">■ 裁判や当局に頼らない債権回収■ 警察の助けを借りての債権回収■ 裁判による債権回収■ ミャンマーにおける担保取引及び担保権の実行■ 外国判決・仲裁判断の執行
講師	Sebastian Pawlita (ゼバスティアン・パヴリータ) 弊社事務所代表
言語	日本語
参加費	無料
参加申込	ご出席をご希望の方は、御社名及びお名前をご記入の上、 sebastian@lincolnmyanmar.com までメールにてご返信ください。





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Investments in the power sector (I)

Institutional framework

1. Institutional framework

1.1. The various ministries

The power sector is presently overseen by several Union Ministries:

Union Ministry	Minister	Brief description of the area of competence
Electric Power and Energy (formerly divided into the Ministry of Electric Power and the Ministry of Energy)	U Pe Zin Tun (since 6 April 2016; former permanent secretary of the Ministry of Energy; no party affiliation)	<ul style="list-style-type: none"> ▪ Electric power: planning, generation (coal, hydro, gas, oil, solar, wind, geothermal), transmission, distribution ▪ Energy: Production, import/export, distribution of oil and gas and derived products
Natural Resources and Environmental Conservation (formerly divided into the Ministry of Mines and the Ministry of Environmental Conservation and Forestry)	U Ohn Win (since 30 March 2016; former professor of forestry at Yezin University; no party affiliation)	<ul style="list-style-type: none"> ▪ Production, import/export and distribution of coal ▪ Biomass and firewood ▪ Environmental impact assessment
Agriculture, Livestock and Irrigation (formerly divided into Ministry of Agriculture and Irrigation and Ministry of Livestock, Fisheries and Rural Development)	U Aung Thu (since 30 March 2016; former rector of Yangon University, NLD)	<ul style="list-style-type: none"> ▪ Rural electrification (off-grid), e.g. mini-hydro ▪ Hydropower facilities connected to irrigation
Ministry of Industry	U Khin Maung Cho (since 30 March 2016; engineer; no party affiliation)	Energy efficiency and conservation, (theoretically:) nuclear power, formerly: off-grid rural electrification (was transferred to Ministry of Livestock, Fisheries and Rural Development)



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It is not as apparent now that a number of ministries were merged in the wake of the handover of power to the new NLD led government (in particular the Ministry of Energy and the Ministry of Electric Power), but energy and electricity policy was rather fragmented due to the high number of ministries under the previous government whose areas of competence were sometimes not clearly demarcated. In order to create a framework for the establishment of a coherent policy, the previous government instituted a “**National Energy Management Committee**” on 9 January 2013 which comprised at the time members of the following Union Ministries and other organizations:

Composition of the National Energy Management Committee under the old government	
Old Ministry name/name of the organization	Fate of the old Ministry/organization after the change of government
Ministry of Energy	Merged to Ministry of Electric Power and Energy
Ministry of Electric Power	
Ministry of Agriculture and Irrigation	Merged with the Ministry of Livestock, Fisheries and Rural Development to the Ministry of Agriculture, Livestock and Irrigation
Ministry of Mines	Merged to Ministry of Natural Resources and Environmental Conservation
Ministry of Environmental Conservation and Forestry	
Ministry of Industry	Still exists
Ministry of National Planning and Economic Development	Merged with the Ministry of Finance to the Ministry of Planning and Finance
Ministry of Science and Technology	Ministry abolished
Myanmar Engineering Society	Still exists
Renewable Energy Association Myanmar	Still exists

The National Energy Management Committee made good on its intended role and published, on 8 January 2016, a “**Myanmar Energy Masterplan**” (<http://tinyurl.com/zw93vw6>), a 900+ pages document with projections up to the year 2030.

It remains to be seen how the new government will reshape the National Energy Committee. Its former members consisted largely of Union ministers who are not in office any more.

It should be noted that, although the **Ministry of Electric Power and Energy** is the lead ministry in almost every power project, a number of other ministries and government entities will often have to be consulted. Examples:

- The **Ministry of Transport and Communications (Department of Meteorology and Hydrology)** is responsible for “measurements, assessment and monitoring for rivers” in hydropower projects (Myanmar Energy Masterplan page 193).



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- The **Chief Minister of the State or Region** in which the project is located has to approve if the project (as will usually be the case) involves the long-term use of land.

It is furthermore clear that foreign-invested power projects require an investment permit from the **Myanmar Investment Commission** or, if they are located in a special economic zone, from the relevant **Special Economic Zone Management Committee**.

1.2. The Ministry of Electric Power and Energy

The Ministry of Electric Power and Energy (“**MoEPE**”) was merged, on 30 March 2016, from two previously separate ministries, the Ministry of Electric Power and the Ministry of Energy. The previous Ministry of Electric Power had been separated from the Ministry of Energy in 1997 and split, from 2006 to 2012, into No. 1 Ministry of Electric Power and No. 2 Ministry of Electric Power.

MoEPE is central to the production, transmission and distribution of electric power. Electricity is produced either by **Myanmar Electric Power Enterprise** (which now seems to have morphed into **Electric Power Generation Enterprise**), a state-owned economic enterprise under MoEPE, local or foreign independent power producers or joint ventures between MoEPE and local or foreign investors. The electricity is then purchased by MoEPE (previously, through Myanmar Electric Power Enterprise, now - presumably - through Electric Power Generation Enterprise) and distributed to the consumers (through **Yangon Electricity Supply Corporation, Mandalay Electricity Supply Corporation** and **Electricity Supply Enterprise**). MoEPE acts as the single buyer of electricity, similar to models in Thailand and Indonesia.

MoEPE is presently composed of the following departments (<http://tinyurl.com/zoq35ep>).

Department	Under which Ministry previously?	Functions (to the extent we can make them out - online resources on MoEPE’s homepage have not been fully updated yet)
Myanma Oil and Gas Enterprise (MOGE)	Ministry of Energy	<ul style="list-style-type: none"> ▪ Owner and operator of oil and gas exploration and production (in production sharing contracts with local or foreign companies) ▪ Owner and operator of onshore gas pipeline grid
Myanma Petrochemical Enterprise (MPE)	Ministry of Energy	Operates small refineries and plants to produce petroleum and petrochemical products (petrol,



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Department	Under which Ministry previously?	Functions (to the extent we can make them out - online resources on MoEPE's homepage have not been fully updated yet)
		diesel, jet fuel, urea fertilizers, liquefied petroleum gas (LPG) and others), sometimes in joint ventures with, or by leasing out the plants to, local or foreign investors.
Myanma Petroleum Products Enterprise (MPPE)	Ministry of Energy	Wholesale and retail of petroleum products; intends to partly do so in joint ventures with local or foreign investors
Department of Electric Power Transmission and System Control (DEPTSC)	Ministry of Electric Power	Engineering service for power system operation, power system planning, operation and maintenance of transmission lines and sub-stations, operation and maintenance of power system telecommunication facilities
Electricity Supply Enterprise (ESE)	Ministry of Electric Power	Operation of the national grid and distribution of electricity in all areas of Myanmar with the exception of Yangon and Mandalay
Department of Electric Power Planning (DEPP)	Ministry of Electric Power	Planning of the production of electric power (coal, hydro, gas, oil, solar, wind, geothermal)
Electric Power Generation Enterprise (EPGE)	Ministry of Electric Power	Production of electric power (coal, hydro, gas, oil, solar, wind, geothermal)
Department of Hydropower Implementation (DHPI)	Ministry of Electric Power	Planning, design, quality control, project appraisal and feasibility evaluation of hydropower projects
Yangon Electricity Supply Corporation (YESC)	Ministry of Electric Power	Operation of the national grid and distribution of electricity in Yangon
Mandalay Electricity Supply Corporation (MESC)	Ministry of Electric Power	Operation of the national grid and distribution of electricity in Mandalay



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A note on the word “enterprise” in the table above: MOGE and the other enterprises are so-called state-owned economic enterprises (SEEs) which makes them more akin to a government unit than a corporation. The function of SEEs is two-fold: They are supposed to generate income through business activities (and nowadays they even have to pay tax on it) and, at the same time, function as the regulator of the industry in which they operate. It is clear that this gives rise to conflicts of interest and is not an ideal situation. It is expected that medium-term, the SEEs will be transformed into ordinary public companies (in which the state may still have exclusive or majority ownership) and stripped of their regulatory functions. YESC and MESC reportedly underwent corporatization to become public companies in mid-2015 (<http://tinyurl.com/h4dodtf>).

(To be continued.)

If you have any questions concerning the above, please contact Sebastian Pawlita (sebastian@lincolnmyanmar.com)



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Registering long-term lease agreements

One sometimes hears foreign investors **complaining that they cannot register lease agreements**. According to section 17(d) Registration Act 1908, leases of immovable property for any term exceeding one year have to be registered. **Failure to register such a lease agreement results in it being void.**

This is a cause of concern especially for telecom tower companies: They have a massive number of long-term lease agreements which are the basis of their business, and if they don't manage to register them, potential investors may not be willing to pay as much as they would otherwise.

It has been reported that land record departments have refused to register lease agreements if one party was a foreign-invested company on the grounds that "foreigners cannot lease land long-term". This is of course wrong - foreign-invested companies operating under an investment permit from the Myanmar Investment Commission can lease land for up to 50 years and may prolong this period to 70 years in total.

It is not clear if these reports are accurate, as it is **certainly possible to register long-term lease agreements, even if the tenant is a foreign-invested company**. However, registration poses logistical challenges if a lot of agreements have to be registered all over the country in a short period of time.

Here is what we think is important to obtain registration:

- **Registration can only be obtained within four months after the date of signing** of the agreement (section 23 Registration Act). This is something the officer checks, so you don't have too much time to obtain registration. This provision is - together with stamp duty - a reason for leaving dates blank.
- The person obtaining registration on behalf of the company must have a **notarized power of attorney**, and he has to take a witness along.
- The **landlord has to appear in front of the registration officer together with a witness** (or, alternatively, has to send someone with a notarized power of attorney). If many lease agreements have to be registered in different places in a short period of time, this is difficult to organize, as someone basically has to pick up the landlord from his home and make sure that he doesn't complain to the registration officer all the way through registration about having so many better things to do than being here...
- The **lease agreement has to be properly revenue-stamped**. Stamp duty for most long-term lease agreements is 3% of the annual rent. Unfortunately, tax offices have become difficult if they think that you have turned up too late to get the contract stamped. According to section 17



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Stamp Act, “all instruments chargeable with duty and executed by any person in the Union of Burma **shall be stamped before or at the time of execution**”, and tax officers nowadays tend to stick to these words and ask you to pay eleven times the applicable duty if you insist on getting a contract stamped after it was signed (section 35(a) Stamp Act). We have so far managed to get our contracts revenue-stamped, but it is getting more difficult day by day. A lot of trouble can be saved in practice if the contract does not contain a date.

- It is difficult to obtain registration when you’re unfortunate enough to crash into the middle of an inspection of the land record department or the registration of deeds office by a higher-ranking office.
- Amazingly, proper title documentation or the existence of an MIC permit do not seem to be of paramount importance when trying to secure registration of a lease agreement.

*If you have any questions concerning the above, please contact U Nyein Chan Zaw
(nyeinchanzaw@lincolnmyanmar.com)*



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