



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



LEGAL AND TAX CONSIDERATIONS WHEN INVESTING IN MYANMAR'S RENEWABLE ENERGY SECTOR WITH A FOCUS ON ELECTRICITY TARIFFS

**MYANMAR GREEN ENERGY SUMMIT
YANGON, 15TH AUGUST 2017**



Subsidised Electricity Prices in Myanmar

- Electricity is produced by state-owned Electric Power Generation Enterprise (EPGE) and private producers (sometimes in a joint venture with EPGE).
- With the exception of off-grid projects, private producers have to sell to EPGE.
- EPGE on-sells to state-owned Electricity Supply Enterprise (ESE), Yangon Electricity Supply Corporation (YESC) and Mandalay Electricity Supply Corporation (MESC) which on-sell (either directly or through private intermediaries) to customers.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



Subsidised Electricity Prices in Myanmar

- EPGE pays production costs plus margin (to private producers), **but on-sells at a loss.**
- Forecast for 2017/18: Revenue from electricity distribution - Ks. 1.164 trillion (approx. USD 862 million); costs for production, purchase and distribution - Ks. 1.541 trillion (approx. USD 1.141 billion); **loss: Ks. 377 billion (approx. USD 279 million)** (source: Myanmar Times, 31 July 2017)
- Production/purchase costs: Ks. 91.92/unit (approx. USD 0.07); revenue from distribution: Ks. 69.26/unit (approx. USD 0.05) → **state subsidy: Ks. 22.66/unit (approx. USD 0.02)** (source: Myanmar Times, 31 July 2017)



Subsidised Electricity Prices in Myanmar

- In comparison: Total 2017/18 Union budget: Ks. 20.59 trillion (approx. USD 15.25 billion) out of which Ks. 4.12 trillion (approx. USD 3.05 billion) are for the Ministry of Electricity and Energy (*source: The Irrawaddy, 17-3-2017*)
- **Electricity subsidies account for 1.8% of the Union budget and 9.15% of the budget of the Ministry of Electricity and Energy**
- Sustainable? Maybe, but plans for more electricity production mean that the deficit will increase. This could of course be offset by higher revenue due to higher economic growth, but...



Subsidised Electricity Prices in Myanmar

- In October 2016, it was announced that
 - a consortium around APR Energy would build a 300 MW per day gas-fired temporary power plant and
 - Karpower would send a power barge to produce an additional 300 MW per dayfor Yangon as a five-year interim solution.
- In March 2017, it was made public that the plans had fallen through due to lack of budget.
- In the meantime, terms and conditions had been negotiated with the two electricity providers, and the power barge had set sail from Turkey for Yangon.



Subsidised Electricity Prices in Myanmar

- (In defense of the new government: The tender was originally called by the old government which also had no budget for it.)
- If the two new power generation facilities had gone online, the Ministry of Electricity and Energy's **annual deficit from subsidising electricity would have increased to Ks. 900 billion (approx. USD 667 million)**. *(Source: Global New Light of Myanmar, 29 Dec 2016)*
- The Ministry has since announced that electricity prices were to rise, but no numbers and no timeline have been made public yet.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



Subsidised Electricity Prices in Myanmar

- The current tariffs (for Yangon) are:

Households		Industrial user	
Up to 100 units:	Ks. 35/unit (USD 0.03)	Up to 500 units:	Ks. 75/unit (USD 0.06)
101-200 units:	Ks. 40/unit (USD 0.03)	501-10,000 units:	Ks. 100/unit (USD 0.07)
200+ units:	Ks. 50/unit (USD 0.04)	10,001-50,000 units:	Ks. 125/unit (USD 0.09)
		50,001-300,000 units:	Ks. 150/unit (USD 0.11)
		300,001+ units:	Ks. 100/unit (USD 0.07)

(Source: The Irrawaddy, 11 May 2017)



Subsidised Electricity Prices in Myanmar

- It is clear that **a price hike would be deeply unpopular.**
- The previous government attempted to raise prices to Ks. 50/unit (for households with 100+ units) and Ks. 150/unit (for industrial users with 5,000+ units) in 2013. (*Source: Mizzima, 29 Oct 2013*)
- However, **the previous government aborted these plans.**
- Nominal electricity prices seem to have doubled since 2006 (*source: Mizzima, 29 Oct 2013*). If one factors in inflation at an estimated 8% per year, it appears, however, that electricity prices have remained rather stable.



Subsidised Electricity Prices in Myanmar

- **In contrast: Wood-based fuel (in particular firewood, charcoal) consumption for cooking accounts for 81% of the country's total fuel consumption. (*Source: Global New Light of Myanmar, 10 Aug 2017*)**
- **It is clear that Yangon (and to some extent, other cities) are overspending on electricity at the expense of the unelectrified countryside.**
- **But: There are severe political risks in raising electricity prices for the urban population.**



Subsidised Electricity Prices in Myanmar

- For investors (and their financiers) in power plants connected to the national grid, unsustainable state subsidies mean: **Will the state-owned offtaker run out of funds to purchase our electricity at the agreed price?**
- Further risks: EPGE will pay in Ks. (not in USD) in case of newer projects.
- Government guarantees: Contractual, not backed up by a bank guarantee
- Political risk insurance?



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



Investing in Off-Grid Solutions

- Providers of off-grid solutions do not have to worry about the state-owned offtaker running out of funds.
- **The sector has been liberalised for foreign investment:**
 - The Foreign Investment Rules 2013 (31 Jan 2013) prohibited foreign investment in up to 10MW power plants.
 - MIC Notification 26/2016 (21 March 2016) required a joint venture with a Myanmar citizen or 100% Myanmar-owned enterprise for “mid- and small-scale” production of electricity.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



Investing in Off-Grid Solutions

- **MIC Notification 26/2016 (21 March 2016) required a joint venture with a Myanmar citizen or 100% Myanmar-owned enterprise for “mid- and small-scale production of electricity”.**
- **MIC Notification 15/2017 (10 April 2017) removed the joint venture requirement.**
- **Section 13 Electricity Law (27 Oct 2014) provides that licenses for off-grid power plants up to 30MW are issued by the Regional or State Governments, not the Union Ministry of Electricity and Energy.**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



Investing in Off-Grid Solutions

- The answer to a recent enquiry with regard to a solar project (initial investment: USD 2 million) with the Myanmar Investment Commission (MIC) in Yangon and a Regional director of the Directorate of Investment and Company Administration (DICA) was: **“You don’t need any license. Just go ahead!”**
- (In view of the wording of the Electricity Law, it may, however, still be a good idea to ask the Regional or State Government if there are any objections.)



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



Investing in Off-Grid Solutions

- **Three investment methods:**
 - (1) Simply setting up a company
 - (2) In addition to setting up a company: Obtaining an MIC endorsement
 - (3) In addition to setting up a company: Obtaining an MIC permit



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



Investing in Off-Grid Solutions

- **Simply setting up a company:** Fast and uncomplicated (the company is ready within a few days); minimum capital: USD 50,000 (50% to be paid in at the time of incorporation, the rest within five years)
- **MIC endorsement:** Simplified investment approval procedure newly introduced by the Myanmar Investment Law (18 Oct 2016)
 - Required if the project requires the lease of land for a period in excess of one year
 - Required if tax incentives are sought
 - (Possibly) required to be able to import equipment



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



Investing in Off-Grid Solutions

- **MIC permit:** Full-blown investment approval procedure - required for:
 - Investment above USD 20 million;
 - projects with significant social environmental impact;
 - projects for which state-owned land or buildings are leased for more than five years;
 - investments across Regions or States;
 - investments in border or conflict areas;
 - certain other investments



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



Investing in Off-Grid Solutions

- **Tax incentives:**
 - Require an investment of at least USD 300,000
 - Most important incentives:
 - Exemption from corporate income tax for 3, 5 or 7 years (depending on whether the investment is in a developed, moderately developed or less developed township) for “power generation, transmission and distribution using solar power, wind power or geothermal power”
 - Exemption from customs duty and 5% commercial tax at the import stage for equipment imported during the construction phase



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



Investing in Off-Grid Solutions

- **Environmental and social impact considerations:**

Generating capacity thresholds above which an initial environmental examination (IEE) or an environmental impact assessment (EIA) are required are laid down in the Environmental Impact Assessment Procedure (29 Dec 2015).



Contact

Lincoln Legal Services (Myanmar) Ltd.

**La Pyi Wun Plaza, Room 409 (4th Floor),
37, Alan Pya Pagoda Road, Dagon Township,
Yangon, Myanmar**

Homepage: www.lincolnmyanmar.com

Managing Director: Sebastian Pawlita

Phone: +95-9-262546284

E-mail: sebastian@lincolnmyanmar.com

Director: Nyein Chan Zaw

Phone: +95-9-790488268

E-Mail: nyeinchanzaw@lincolnmyanmar.com



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

