



**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, 15<sup>TH</sup> 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.



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# 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.



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# 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.**



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# 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?



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# 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.



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# 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.**



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# 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.)



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# 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



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# 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



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# 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



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# 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



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# 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

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