



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



LEGAL AND TAX CONSIDERATIONS WHEN INSTALLING AN FSRU
NATURAL GAS MYANMAR
23rd May, 2018

THE FOUR CURRENT LNG PROJECTS (THAT WE ARE AWARE OF)



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WHY LNG TO POWER?

- **Coal**: unpopular
 - **Hydropower**: Unpopular; construction takes time
 - **Domestic gas production** (most goes to China and Thailand under long-term contracts anyway) declining; future discoveries likely, but development takes time
 - **Renewable energy** an alternative?
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- MoEE invited expressions of interest for the “bulk import and/or regasification of LNG” on 6 September 2016, but never followed through with a tender
 - Instead, MoEE negotiated directly with interested parties



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WHY LNG TO POWER?

- Ultimately, MoEE focused on **three LNG to power projects** (and one using domestic gas piped from the Shwe gas field) as shown in “notices to proceed” issued by MoEE to the project companies on 30 January 2018
- MoEE opted **for integrated solutions** whereby the project companies take care of the “**construction of the floating storage regasification units (FSRUs), gas pipelines, power plants and power supply lines**”
- Independently, PTT announced in August 2017 that a bilateral MoU would soon enable it to start an “EIA” of an **FSRU in Kanbawk**, Tanintharyi Region (*The Nation 11-8-2017*)



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PROJECT SITES

1. Mee Laung Gyaing
Zhefu (China),
Supreme (Myanmar)
LNG to power
1,390 MW
2. Ahlone
TTCL (Thailand)
LNG to power,
356 MW
3. Kanbauk
Total (France), Siemens (Ger)
LNG to power, 1,230 MW

4. Kanbauk
PTT (Thailand)
FSRU for export to Thailand



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MEE LAUNG GYAING (LNG TO POWER)

- Project companies: Zhefu Holdings (China), Supreme Group (Myanmar)
- Planned output: 1,390 MW
- Investment: USD 2.4 billion
- Four 225 MW gas turbines and two 245 MW steam turbines
- Initially 170 miles transmission line from the project site to Hlaingtharyar (Yangon)
- **FSRU** 1.6 km offshore, capable of docking 80,000 tonne vessels
- Timeline: “First phase within 36 months; full production within 42 months”



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AHLONE (LNG TO POWER)

- Project company: TTCL (Thailand)
- Planned output: 356 MW, including?/in addition to? currently installed 100MW
- Investment: USD 350 million
- Two 117 MW gas turbines and one 122 MW steam turbine
- 22.5 km existing 230 kV transmission line from the project site to Hlaingtharyar (Yangon)
- **FSRU** with a capacity of 36,000 cubic metres probably at Thanlyin, then 16 km gas pipeline to project site
- Timeline: “Within 28 months”



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KANBAUK (LNG TO POWER)

- Project companies: Total (France), Siemens (Germany)
- Planned output: 1,230 MW
- Investment: USD 2.1 billion
- Two 410 MW gas turbines and one 410 MW steam turbine
- 280 miles 500 kV transmission line from the project site to Mawlamyine to Pharagyi; 500 kV substation
- **FSRU** connected to the power plant on land with a pipeline
- In addition, gas piped through an existing pipeline from the Yadanar field to be used
- Timeline: “First phase within 36 months; full production within 48 months”



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(SOURCES)

Sources for the previous three slides:

- *MoEE Facebook post dated 31 January 2018*
- *“Chamber news” of CCI France Myanmar dated 1 February 2018, quoting a report from the Myanmar Energy Monitor*
- *Frontier Myanmar articles dated 8 February and 26 February 2018*
- *Myanmar Times articles dated 15 March, 26 May 2018*



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KANBAUK (LNG FOR RE-EXPORT)

- Project company: PTT (Thailand)
- 3 million tonne LNG **FSRU**
- Investment: USD 621.7 million (THB 20 billion)
- Gas supply expected to come on stream by 2027
- Export of most of the gas through the existing pipeline to Thailand; some of the gas to be delivered to Myanmar
- PTT has apparently completed the feasibility study and is waiting “for approval” from the Myanmar government

(Sources: The Nation article 11 August 2017; Myanmar Times article 26 May 2018)



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THE MOST IMPORTANT LAWS



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MYANMAR INVESTMENT LAW

- Myanmar Investment Law, 18 October 2016
- Myanmar Investment Rules, 30 March 2017
- Myanmar Investment Commission (“MIC”) Notifications 10/2017 (“Designation of Development Zones”), 13/2017 (“Classification of Promoted Sectors”) and 15/2017 (“Restricted Investment Activities”)
- Two procedures: MIC endorsement (“small impact investment”) and MIC permit (“big impact investment”)
- Long-term lease of land and tax incentives
- 100% foreign investment in electricity and energy projects possible (with MoEE approval)



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PETROLEUM AND PETROLEUM PRODUCTS LAW

- Petroleum and Petroleum Products Law 1 August 2017
- Combination of the Petroleum Act 1934 and Ministry of Energy Notification 100/2013
- Covers the “import, export, transportation, transit, storage, possession, refinery, distribution, inspection and testing of petroleum and petroleum products”
- Provides for the establishment of a “committee regulating petroleum and petroleum products businesses”
- Says which ministry is responsible for which licenses without providing details
- Contains a few specific provisions on safe handling



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OTHER IMPORTANT LAWS

- **Electricity Law 2014; Electricity Rules 2015**
- **Environmental Conservation Law 2012; Environmental Conservation Rules 2015; Environmental Impact Assessment Procedure 2015**
- **Land laws (many!)**



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GOVERNMENT ENTITIES INVOLVED



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GOVERNMENT ENTITIES INVOLVED

- **Ministry of Electricity and Energy (line ministry):**
 - Ministry; Department of Electric Power Planning: Overall assistance (*BOT/concession agreement for the power plant; license for electricity generation*)
 - Electric Power Generation Enterprise: Offtaker (*PPA*)
 - Department of Power Transmission and System Control: Transmission (*Build-transfer agreement for transmission lines*)
 - Myanma Oil and Gas Enterprise: Owns and operates domestic gas pipelines; offshore and export pipelines are privately owned (*agreement for use of existing pipelines*)



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GOVERNMENT ENTITIES INVOLVED

- Oil and Gas Planning Department (presumably): licenses for “refinery, transport, transport with pipelines, testing, analysing”
- **Myanmar Investment Commission (MIC):** Investment permit; allows long-term use of land; grants tax incentives
- **Union Government:**
 - Cabinet’s Economic Committee: Pre-screens the matter
 - Cabinet: Allows MoEE to execute the project



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GOVERNMENT ENTITIES INVOLVED

- **Union Parliament:** Has to “approve investment businesses which may have a significant impact on security, economic condition, the environment and the national interest of the Union” (S. 46 Myanmar Investment Law - never invoked so far in practice)
- **Union Attorney General’s Office:** Reviews contracts to be concluded by government entities
- **Chief Minister of the Region or State:** Has to OK the land use in his Region/State



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GOVERNMENT ENTITIES INVOLVED

- **Min. of Natural Resources and Environmental Conservation:**
 - EIA/SIA
 - Storage licenses for warehouses and storage tanks; transportation permit for motor vehicles, watercraft and barges for petroleum and any kinds of petroleum products

- **Ministry of Transport and Communications:**
 - Registration of vessels
 - Licenses for “motor vehicles, watercraft and barges for the carriage of petroleum and any kinds of petroleum products”



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GOVERNMENT ENTITIES INVOLVED

- Designation of ports for watercraft and barges for the import and export by waterway
- **Ministry of Commerce:**
 - Importer/exporter registration
 - Issuance of licenses for import and export
 - Prohibiting the import and export through any places other than the specified places
- **Ministry of Planning and Finance:** Issuance of sovereign guarantees (maybe in the future)



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GOVERNMENT ENTITIES INVOLVED

- **Central Bank:** Approval of cross-border loans



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TAX CONSIDERATIONS



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TAXES

- **Corporate income tax:** 25% of the annual income as shown in the annual audited financial statements (accounting standard: IFRS)
- **Commercial tax** (similar to VAT): 5% on the import of LNG (may be offset with 5% commercial tax on the sale of electricity if used for electricity production);
- **Special goods tax:** 8% on the import of LNG (may be offset with 8% special goods tax on the export of re-gasified gas if used for export)
- **Customs duty**
- Withholding tax on service fees, royalties, interest (but no withholding tax on dividends)



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TAX INCENTIVES

- **Tax incentives** at the discretion of the MIC **in particular:**
 - 3, 5 or 7 years of corporate income tax exemption for “power generation, transmission and distribution”
 - Exemption from customs duty and commercial tax at the import stage for the import of machinery, equipment and construction material during the construction period



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CONTACT

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