



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



**LEGAL AND TAX CONSIDERATIONS FOR MIDSTREAM AND
DOWNSTREAM OIL AND GAS INVESTMENTS IN MYANMAR**
ELECTRICITY AND ENERGY EXHIBITION, 24 June 2018

MARKET ACCESS LIBERALISATION



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MIC NOTIFICATION 15/2017

- Increasing foreign investment is a national policy; in comparison to many countries in the region, Myanmar's market is **very open to foreign investment**
- New Myanmar Investment Law (Pyidaungsu Hluttaw Law No. 40/2016 dated 18 October 2016)
- Myanmar Investment Commission Notification No. 15/2017 dated 10 April 2017: "List of Restricted Investment Activities"
- **Removed joint-venture requirements in many areas**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MIC NOTIFICATION 15/2017

- For oil and gas-related investments, the following restrictions still apply:

Joint venture (maximum foreign ownership ratio: 80%) - **no change** - required for:

- Manufacturing and domestic distribution of flammable solid, liquid and gaseous fuels and aerosols (acetylene, gasoline, propane, hairsprays, perfumes, deodorants, insect spray)



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MIC NOTIFICATION 15/2017

- Approval from the Ministry of Electricity and Energy - MoEE - **(but no more joint venture with MoEE)** required for:
 - Construction and installation of all kinds of offshore platforms; import, production, construction and installation of equipment, accessories and parts therefor
 - Import, export, transport, storage, distribution and sale of oil, gas and petroleum products



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MIC NOTIFICATION 15/2017

- Construction and operation of storage tanks, ports for loading and unloading petroleum products and other petroleum product-related facilities
- Construction and operation of new refineries; upgrading and maintenance of existing refineries
- Exploration and interpretation of oil and gas by geological and geochemical methods; import, production, construction and installation of equipment, accessories and parts therefor



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MIC NOTIFICATION 15/2017

- **Drilling, production and testing of oil and gas; import, production, construction and installation of equipment, accessories and parts therefor**
- **Transportation of, and construction of a pipeline network for, oil and gas; import, production, construction and installation of equipment, accessories and parts therefor**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MINISTRY OF COMMERCE NOTIFICATION 25/2018

- With exceptions, administrative practice barred foreign investors from operating wholesale and retail businesses
- Ministry of Commerce Notification 25/2018 dated 9 May 2018 opens market to foreign companies as follows:
 - **Wholesale:** Minimum capital USD 5 mill. (USD 2 mill. for joint ventures with max. 80% foreign ownership)
 - **Retail:** Minimum capital USD 3 mill. (USD 0.7 mill. for joint ventures with max. 80% foreign ownership) + minimum 929 square metres of sales area



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MINISTRY OF COMMERCE NOTIFICATION 25/2018

- We think, however, that MoC Notification 25/2018 does not apply to businesses that operate under specific permits:
- Consequently, an importer and distributor of petroleum products with a license from the MoEE should not be required to apply for a wholesale or retail permit from the MoC and be subject to the minimum capital and floor space requirements under MoC Notification 25/2018
- MoC 25/2018 may, however, be welcome news to foreign distributors of equipment (e.g., cylinders, hard hats) whose distribution does not require a license from MoEE



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEW COMPANIES LAW

- Myanmar Companies Law (Pyidaungsu Hluttaw Law No. 29/2017 dated 6 December 2017); will enter into force on 1 August 2018
- According to the new Companies Law, a company with up to 35% foreign ownership is not a “foreign company” and should therefore be able to own real estate and freely engage in trading, insurance and banking business
- Whether such a company will, however, really be treated as a Myanmar company outside the Companies Law still remains to be seen



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

INVESTMENT PROCEDURE



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

INVESTMENT PROCEDURE

1. **Find land/premises, negotiate lease agreement**
2. **Apply for approval from MoEE** (see MoEE’s “standard criteria” published on 9 April 2018 on DICA’s homepage for details)
3. **Apply for MIC permit or endorsement** (if long-term lease of immovable property is required and/or tax incentives are sought)
4. **Apply for construction permit and construct facility** (if not there yet)



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

INVESTMENT PROCEDURE

- 5. Apply for license from MoEE and other required licenses**
(see Petroleum and Petroleum Products Law 2018 for what ministries to turn to)



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

**ENDORSEMENT OR PERMIT FROM THE
MYANMAR INVESTMENT COMMISSION
(MIC)**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MIC ENDORSEMENT OR PERMIT

- Foreign investors may not own land and other immovable property. The Transfer of Immovable Property Restriction Law of 1987 furthermore disallows in principle all leases of immovable property to foreigners if the term exceeds one year.
- **Foreign investors requiring land for their investment** (in order to, e.g., construct and operate LPG terminals, jetties, storage tanks and warehouses) **must obtain a (i) permit or (ii) an endorsement from the Myanmar Investment Commission (MIC).**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MIC ENDORSEMENT OR PERMIT

- The MIC permit or endorsement entitles a foreign investor to lease land or other immovable property for a term of up to 50 years (two renewals for up to 10 years each are possible)
- (If the land is located in an SEZ, an investment permit from the SEZ Management Committee has to be sought instead; max. initial lease term 50 years; one renewal for 25 years.)
- Furthermore, tax incentives are only available with an MIC permit or endorsement (or an investment permit from an SEZ Management Committee)



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MIC ENDORSEMENT OR PERMIT

- Difference between “permit” and “endorsement”: An endorsement (introduced by the 2016 Myanmar Investment Law) entails a simpler procedure; available for smaller investments that do not require an environmental impact assessment or involve the use of state-owned land



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MOEE'S "STANDARD CRITERIA"



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MOEE'S "STANDARD CRITERIA"

- Published on the homepage of the Directorate of Investment and Company Administration (DICA)
- Based on section (d), sub-section (6) of MIC Notification 15/2017
- Contain a list of documents and information that have to be submitted when applying for MoEE approval for the following oil and gas investments:
 - Installation of offshore supply bases



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MOEE'S "STANDARD CRITERIA"

- Import, storage and distribution of LPG
- Construction and operation of refineries, LPG plants, fertiliser plants and petrochemical plants
- Exploration of oil and natural gas
- Installation and operation of pipelines for oil and natural gas
- Import and installation of oilfield testing equipment



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

PETROLEUM AND PETROLEUM PRODUCTS LAW



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

PETROLEUM AND PETROLEUM PRODUCTS LAW

- According to the Petroleum and Petroleum Products Law (Pyidaungsu Hluttaw Law No. 20/2017 dated 1 August 2017), the following ministries are in charge of the sector:
 - **MoEE:** Licenses for “the refinery, transit, transportation with pipelines, distribution, testing, and analysing”
 - **Ministry of Commerce:** Import and export licenses
 - **Ministry of Transport and Communications:** Licenses for motor vehicles, watercraft and barges for the carriage of petroleum and petroleum products



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

PETROLEUM AND PETROLEUM PRODUCTS LAW

- **Ministry of Natural Resources and Environmental Conservation (Department of Mines):** Storage licenses for warehouses and storage tanks; transportation permits for motor vehicles, watercraft and barges for the transportation of petroleum and petroleum products
- **Petroleum and Petroleum Products Rules** currently being drafted (will in particular contain the license types, requirements for application, authority of the ministries involved, duties and obligations of the licensees, rules for LPG, LNG and CNG business)



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

TAX CONSIDERATIONS



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

TAXES

- **Corporate income tax:** 25% of the annual income as shown in the annual audited financial statements (accounting standard: IFRS)
- **Withholding tax** on service fees paid to a destination abroad (2.5%), royalties, interest (but no withholding tax on dividends)
- **Salary income** is taxed at a progressive rate from 0% to 25%
- **Capital gains tax:** 10% on the capital gain (40-50% if shares in an oil or gas field are sold)



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

TAXES

- **Commercial tax** (similar to VAT): 5% on the landed costs if goods are imported, on the sales price of goods sold, on service fees (transport services are exempt with the exception of transport by pipeline) and on the sales price of exported crude oil; offset of input with output tax possible
- **Special goods tax** (offset of input with output tax possible)
 - Kerosene, petrol, diesel and aviation jet fuel: 5% on the landed costs if imported; 5% on the sales price if sold in the country
 - Natural gas: 8% on the landed costs if imported; 8% on the sales price if sold domestically or exported



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

TAXES

- **Customs duty**
- **Stamp duty**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

TAX INCENTIVES

- **Tax incentives at the discretion of the MIC in particular:**
- Exemption from corporate income tax for 3, 5 or 7 years (depending on the location) if investment is made in a “promoted sector” (MIC Notification No. 13/2017) - production of petroleum chemical products, of engine oil; cargo transport on inland waterways; construction and leasing warehouses, silos and tanks; packing goods
- Exemption from customs duty and commercial tax at the import stage for the import of machinery, equipment and construction material during the construction period



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

TAX INCENTIVES

- **Tax incentives in an SEZ:**
- Difference between “free zones” (production for export) and “promotion zones” (all other businesses)
- **Free zone:** Exemption from corporate income tax for 7 years, 50% reduction for the following 5 years, 50% reduction for another 5 years if profits are reinvested; no commercial tax and customs duty on the import of capital goods and raw materials; no commercial tax on the land lease (Thilawa)



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

TAX INCENTIVES

- **Promotion zone:** Exemption from corporate income tax for 5 years, 50% reduction for the following 5 years, 50% reduction for another 5 years if profits are reinvested; exemption from commercial tax and customs duty on the import of capital goods for 5 years and 50% reduction for the following 5 years



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

CONTACT

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

- Sebastian Pawlita, Managing Director
Phone: +95-9-262546284 (English)
E-Mail: sebastian@lincolnmyanmar.com
- Nyein Chan Zaw, Director
Phone: +95-790488268 (Myanmar)
E-Mail: nyeinchanzaw@lincolnmyanmar.com

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

Web: www.lincolnmyanmar.com



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED