



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



**LEGAL AND TAX CONSIDERATIONS WHEN INVESTING IN
MYANMAR'S LPG SECTOR**

LPG MYANMAR 2018, 6 June 2018

MARKET ACCESS LIBERALISATION



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MIC NOTIFICATION 15/2017

- In comparison to many countries in the region, Myanmar's market is **fairly 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**



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MIC NOTIFICATION 15/2017

- For LPG-related investments, the following restrictions still apply:
 - Import, export, transport, storage, distribution and sale of LPG; construction and operation of storage tanks, ports for loading and unloading LPG and other LPG-related facilities: Requires approval from the Ministry of Electricity and Energy (**no more joint venture with MoEE required**)



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MIC NOTIFICATION 15/2017

- Domestic production of LPG for domestic distribution:
Requires a joint venture (max. 80% foreign shareholding ratio) with a private 100% Myanmar-owned company or the state **(no change)**



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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



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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 LPG 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 Notification 25/2018 may, however, be welcome news to foreign distributors of LPG-related goods (e.g., cylinders) whose distribution does not require a license from MoEE



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NEW COMPANIES LAW

- Myanmar Companies Law (Pyidaungsu Hluttaw Law No. 29/2017 dated 6 December 2017); expected to 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



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SELLING LPG IN MYANMAR



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- The “import, export, transport, storage, distribution and sale” of LPG requires approval from the MoEE
 - **License A** (wholesale): Import, storage and distribution with own terminals and jetties
 - **License B** (wholesale): Import, storage and distribution with own storage tanks and cylinder warehouses
 - **License C** (wholesale): Storage and distribution of LPG to filling stations
 - **License D and E** (retail): Storage and sale to end-customers



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- All five licenses are available to foreign investors –
- Well, admittedly, this is not entirely certain. The MoEE officer whom we called yesterday, however, said: “There is no explicit bar on foreign investment, and in this time of promoting foreign investment, we treat each case without explicit prohibition as ‘allowed’. All five licenses should therefore be available, but it may be more difficult getting the ‘smaller’ licenses than the ‘bigger’ ones.”



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- **We would say: Try!**
- **Obstacle, however: It is not possible to obtain a license first and then search for, and rent, suitable premises. The premises must be ready at the time of the license application as a check of the land documents, check for fire safety by the fire department and environmental check are important aspects in the license application.**



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INVESTMENT PROCEDURE

- 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).**



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INVESTMENT PROCEDURE

- 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.)
- Furthermore, tax incentives are only available with an MIC permit or endorsement (or an investment permit from an SEZ Management Committee)



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INVESTMENT PROCEDURE

- **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



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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)



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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)



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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, transportation, 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 [LPG]



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PETROLEUM AND PETROLEUM PRODUCTS LAW

- **Ministry of Natural Resources and Environmental Conservation:** Storage licenses for warehouses and storage tanks; transportation permits for motor vehicles, watercraft and barges for the transportation of [LPG]



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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 LPG and the sale of LPG (offset of input with output tax possible);
- **Special goods tax?** Should not apply (only to “natural gas”)
- **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:** Exemption from customs duty and commercial tax at the import stage for the import of machinery, equipment and construction material during the construction period
- **Exemption from corporate income tax** probably often **not available outside of an SEZ** as LPG import, export, transport, storage, distribution and sale are not listed in MIC Notification 13/2017 (list of promoted sectors)



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CONTACT

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