



5 October 2018

Law Relating to Petroleum Exploration, Drilling and Production (Draft)

- Summary -

In anticipation of a new bidding round, expected to be held in the first half of 2019 (<https://tinyurl.com/y8rhrzgg>), the Ministry of Electricity and Energy published the draft of a “Law Relating to Petroleum Exploration, Drilling and Production” in the Myanmar Gazette on 2 October 2018.

An English translation of the draft is available to our premium subscribers.

If enacted, the law will govern exploration, drilling and production in addition to the production sharing contract or improved petroleum recovery contract that successful bidders will have to conclude with Myanmar Oil and Gas Enterprise (“**MOGE**”). Currently, there is not much of a legal framework for such activities; they are almost exclusively governed by the contract with MOGE.

The government encourages local companies to register with the Ministry of Electricity and Energy and find a foreign partner for a joint investment (<https://tinyurl.com/ybd68rku>). Differently from the 2013 bidding round, however, foreign investors will not be required to form a joint venture in order to be able to bid.

The most important features of the draft are as follows:

1. Establishment of a “Petroleum Activity Regulatory Central Committee”

The draft provides for the establishment of a “Petroleum Activity Regulatory Central Committee” (“**Central Committee**”) chaired by the Union Minister of Electricity and Energy and manned by representatives from various other ministries. The director general of the Petroleum and Natural Gas Administration Department and MOGE’s managing director will be the Central Committee’s secretaries.

From the perspective of oil and gas companies, the Central Committee’s most important role will probably be its function to approve or reject a private developer’s cooperation with MOGE and development and production plans.

2. Specifying a block

According to the draft, blocks are specified by the Ministry of Electricity and Energy (“**Ministry**”) in a notification with the approval of the Union government and the Central Committee.



Prior to designating an onshore block, the Ministry must inform the public of its intended area and have an investigation committee research what losses may occur to residents and arrange for lawful compensation.

The Ministry may designate blocks for exclusive operation by the Union or as (not further defined) “reserved blocks for the sustainable use of petroleum reserves”.

Exclusive blocks may, with the approval of the Ministry, be exploited by MOGE alone or in cooperation with a private partner (apparently, outside of the ordinary licensing system).

3. MOGE’s role

Regrettably, MOGE will, if the draft becomes law, continue to fulfill a dual function as regulator of and, at least to a certain extent, competitor in the oil and gas sector.

4. Private oil and gas companies

Private oil and gas companies (Myanmar- or foreign-owned) may engage in exploration, drilling and production only in cooperation with MOGE in one of the following forms:

- (a) production sharing system;
- (b) joint venture;
- (c) operating in another type of cooperation;
- (d) profit sharing system.

5. Introduction of an exploration permit, a drilling permit and a production business license

Currently, a private developer of an oilfield or gas field has to conclude a production sharing contract with MOGE and obtain an investment permit from the Myanmar Investment Commission (“MIC”).

If the draft becomes law, the developer will, in addition, require an exploration permit, a drilling permit and a production business license issued by the Ministry with the approval of the Central Committee and the Union government.

Further licenses are required for storage, transport and export according to the Petroleum and Petroleum Products Law (<https://tinyurl.com/y8qxm4h6>).

The draft provides for the following permit/license terms:



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

1.	Exploration permit	<ul style="list-style-type: none">▪ Initial term: Up to 2 years▪ One extension for up to 1 year possible
2.	Drilling permit	<ul style="list-style-type: none">▪ Initial term: Up to 8 years▪ Apparently, no extension possible
3.	Production business license	<ul style="list-style-type: none">▪ Initial term: Up to 20 years (up to 30 years “based on the potential profit”)▪ Two extensions for up to 5 years each time▪ Further extension “for a suitable amount of time if there is a special situation”

The Ministry may set permit and license fees.

6. Tender system

The draft provides for the following tender system:

(a) Eligible bidders

According to the draft, the Ministry may issue a permit or license to any of the following successful bidders:

- (aa) Citizen or foreign company or organisation wishing to engage in a petroleum activity with 100% citizen or foreign investment;
- (bb) joint venture between a citizen and a foreigner;
- (cc) cooperation between a citizen and a foreign investor on a production sharing basis.

(b) Tender invitation

The draft provides the following, non-exhaustive list of information that must be contained in the tender invitation:

- (aa) Name, description, location, latitude and longitude of the block that will be operated in cooperation with MOGE;
- (bb) cooperation system (joint venture, production sharing contract or profit sharing contract);



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

- (cc) *[information that]* the bidder has to provide the following:
- (1) financial statements proving financial capability with regard to the investment amount;
 - (2) copy of the memorandum and articles of association or constitution if the bidder is a company or organisation;
 - (3) evidence for having sufficient technology, technicians and other experts;
 - (4) proof of experience in exploration, drilling and production in a block; in which country?;
 - (5) amount and ratio to be contributed to the State budget;
 - (6) work plan with regard to exploration, drilling and production;
 - (7) plan to make an environmental and social impact assessment after the issuance of the permit or business license.

(c) Tender process

According to the draft, the tender process is as follows:

- (aa) The Ministry designates blocks with the approval of the Central Committee and the Union government;
- (bb) the Ministry forms a tender committee;
- (cc) the Ministry invites open tenders in cooperation with MOGE;
- (dd) the tender committee makes an initial selection among the bidders;
- (ee) the Ministry announces the shortlisted bidders;
- (ff) the Petroleum and Natural Gas Administration Department (“**Department**”) under the Ministry instructs the shortlisted bidders to register with the Department until a deadline;
- (gg) the tender committee reviews the bids and suggests to the Ministry which bidder should win;



- (hh) the Ministry issues an exploration permit, drilling permit or production business license to the winner;
- (ii) the winner pays the permit or license fee;
- (jj) the Department shall then “make required arrangements with regard to negotiations and the conclusion of the contract for jointly engaging in a petroleum activity between MOGE and the holder of the permit or business license”;
- (kk) we suppose that the terms and conditions of the contract with MOGE will have to be approved by the Central Committee.

7. Discovery of petroleum for commercial production

An exploration permit holder shall, according to the draft, notify the Ministry and MOGE within 30 days from the date of discovery together with sufficient evidence if petroleum for commercial production has been found in the permitted exploration block, and submit a detailed appraisal plan covering the commercial production of the petroleum found and a financial estimate to the Ministry and MOGE for confirmation. The Ministry shall furthermore obtain an appraisal from reputable third-party experts and announce the amount that can be commercially produced to the public.

A drilling permit holder shall, after having discovered petroleum that can be commercially produced, make a development and production plan in accordance with the terms of the contract with MOGE and submit it to the Ministry for approval.

8. Royalties and other payments; environmental and other funds

The draft provides that 12.5% of the crude oil or natural gas (gross value or volume) produced annually shall be given as royalty to the Union budget in cash or in kind.

The draft furthermore provides that “the Ministry may specify the fees for a permit and a business license, rent, service fees and other fees” with the approval of the Union government.

The draft is silent on the amount of MOGE’s production or profit share or share in the joint venture, a potential signature bonus and the developer’s cost petroleum.

According to the draft, the developer shall establish and maintain a reserve fund for rehabilitation, a reserve fund for environmental conservation and a training fund for human resources development. The developer shall furthermore make a corporate social responsibility



plan with an estimate of the amount to be spent and submit it annually to the Ministry for approval.

9. Relinquishment

The draft allows developers to relinquish a block or part of a block as follows:

- (aa) An exploration permit holder may relinquish a block with the approval of the Ministry by giving 30 days notice;
- (bb) a drilling permit holder may relinquish a block if no petroleum has been found until the end of the permit term. If petroleum has been found, the drilling permit holder may relinquish the “dry” parts;
- (cc) a production business permit holder may relinquish an exhausted block with the approval of the Ministry by giving 90 days notice;
- (dd) the developer shall settle any expenses, damages, liabilities and other matters prior to the relinquishment and arrange for the relinquished block to be rehabilitated; MOGE is not obliged to share any costs in this regard unless agreed otherwise.

10. Rights and obligations of a developer

The draft lists the following rights and obligations of a developer:

(a) Rights

- (aa) In order to prepare for a petroleum activity: Right of access to geological or geophysical data of the relevant block kept by MOGE according to the terms specified by the Ministry;
- (bb) right to apply for the Ministry’s approval of the sale, transfer or other disposal of all or part of the shares, rights and obligations or interest in a petroleum activity;
- (cc) right to open and manage a bank account with a bank; if the bank account is in a foreign currency, the bank must be licensed to engage in international banking;
- (dd) right to transfer funds from a bank in the Union to a foreign bank at the exchange rate specified according to the type of currency;



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

- (ee) right to keep data and information obtained from the operation of the petroleum activity confidential *[note: but not from the Ministry which may request the developer to hand over “the physical assets used when engaging in the petroleum activity, original data collected in such activity, calculations and estimates, samples of soil, petroleum and chemicals, information and reports”]*; right to disclose such data to the relevant government authority, members of the operator, financial organisations and potential transferees with the approval of the Ministry;
- (ff) right to disclose operation, production and financial data obtained from the operation of the petroleum activity with the exception of business secrets such as geological, geophysical and engineering data.

(b) Obligations

- (aa) Compliance with the provisions of the Law Relating to Petroleum Exploration, Drilling and Production, the rules, regulations, procedures, notifications, orders and directives issued under this law and the terms and conditions of the permit, business license and the contract;
- (bb) paying taxes due according to the law in force;
- (cc) when engaging in a petroleum activity, operating responsibly according to international best practice, the policy and the law in force with regard to environmental conservation, work safety and security, health matters and waste disposal;
- (dd) in production, producing with reduced wastage by means of high technology and commercial best practice;
- (ee) providing insurance with an insurance company licensed in the Union for workers working for the petroleum activity based on their type of work;
- (ff) hiring citizen experts and workers with priority; making arrangements to build their capacity; causing the operator and sub-contractors to do the same; according the same rights to citizen experts and workers as are accorded to foreign experts and workers based on their proficiency and seniority;
- (gg) paying compensation for the land used for the petroleum activity as well as for the buildings and crops attached to this land according to the law in force;



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

- (hh) immediately notifying the Ministry or relevant department if any natural resources, antiques or treasures other than petroleum are found during the operation in the permitted block;
- (ii) transferring to the Ministry, during or after the expiry of the permit or business license period or after having relinquished the block, physical assets used when engaging in the petroleum activity, original data collected in such activity, calculations and estimates, samples of soil, petroleum and chemicals, information and reports;
- (jj) complying with the law in force, international best practice and the policy with regard to environmental conservation, work safety, security and health matters;
- (kk) allocating produced petroleum to the consumption needs of the Union as provided in the terms of the contract;
- (ll) providing a guarantee of the parent company and a performance bank guarantee as required for the activity;
- (mm) purchasing domestic goods and services required for the activity with priority;
- (nn) after a commercial production reserve has been confirmed, submitting the development and production plan according to the terms provided in the permit or business license to the Ministry and obtaining its approval;
- (oo) arranging for the rehabilitation for an onshore block after the completion of petroleum exploration, drilling or production;
- (pp) making emergency plans for the disposal of hazardous waste, accidents and natural disasters, submitting them annually to the Ministry and obtaining its approval;
- (qq) complying with the specified procedure of the Ministry for safe operation with regard to the venting and flaring of natural gas during the production period;
- (rr) making a corporate social responsibility plan including an estimate of the amount to be spent, submitting it annually to the Ministry and obtaining its approval;



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

- (ss) obtaining the Ministry's approval with regard to the sale, transfer or other disposal of all or part of the shares, rights and obligations or interest in a petroleum activity;
- (tt) using modern and good quality equipment for measuring and testing the produced petroleum and the petroleum to be sold;
- (uu) if a person having the right to engage in a petroleum activity is composed of more than one person or organisation, appointing, from among them and with the approval of the Ministry, as operator the person or organisation that is the most qualified, financially strongest and best equipped to operate according to international best practice;
- (vv) keeping the required equipment and data safe so that the Ministry can check them for compliance with the laws, rules and regulations in force;
- (ww) if a petroleum reserve is located within the area of more than one block, the respective persons having the right to engage in a petroleum activity shall cooperate, with the approval of the Ministry, in order to produce jointly;
- (xx) with regard to production: constructing with the approval of the Ministry using goods of standard quality; dismantling and deconstructing with the approval of the Ministry after the relinquishment of the activity; reserving a fund for conducting such activities;
- (yy) obtaining approval from the Ministry for testing apparatus and processes to be used for measuring, testing and analysing produced petroleum and petroleum to be sold according to internationally acceptable methods;
- (zz) obtaining third-party confirmation on the amount of the reserves which can be exploited from a reputable person with experience and knowledge in the international petroleum sector.

11. Labour matters

If the law is enacted as drafted, the "Ministry shall, with the approval of the Union government and based on the special nature of the petroleum activity and international best practice, specify the regular working hours, working days, overtime pay, leave, off-days and benefits for workers being employed on offshore blocks and associated businesses using a shift system".



12. Third-party operators

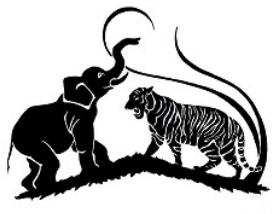
The draft explicitly provides for the right of a permit or license holder to transfer management to a third-party operator with the approval of the Ministry.

13. Administrative action and penalties

If enacted, the law will enable the Ministry to terminate the developer's contract with MOGE, suspend or revoke the permit or business license and blacklist a developer if the developer is found to have violated the contract with MOGE, the Law Relating to Petroleum Exploration, Drilling and Production or any the rules, regulations or orders issued according to this law. Certain grave violations may lead to criminal prosecution.

14. Grandfather clause

Existing petroleum activities may continue according to the terms in the contract made with MOGE.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

About Lincoln Legal Services (Myanmar) Limited

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