



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



**COMMENTS ON THE LATEST DRAFT OF THE PETROLEUM  
EXPLORATION, DRILLING AND PRODUCTION LAW**

**9<sup>th</sup> October 2019**

# Government take must be clear from the start

- The current draft disables investment in oil & gas:
  - According to the draft, the investor first has to obtain an exploration and drilling permit.
  - It is only after (costly) exploration and drilling that the investor is to enter into a (new?) contract with MOGE (s. 24).
  - The investor therefore only knows the terms and conditions for production (in particular the government take) after exploration and drilling → **no investment decision can be made with such a big unknown factor**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

## Reason for the “permits” unclear

- An investor willing to invest in exploration and drilling will also want to do production.
- Introducing a “production permit” adds uncertainty as it may at least theoretically be denied after millions were invested in exploration and drilling
- The reason for separate permits is unclear as the investor already has to conclude a PSC with (state-owned) MOGE and obtain an MIC permit



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

## Rights section (s. 30)

- As an absolute minimum, the right of the contractor must include the exclusive right to carry out petroleum operations within the area covered by the contract concluded with MOGE, for the time period or periods specified therein, subject to the provisions of the contract



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

## PSC terms must be clear from the start (1)

- Investors are interested in transparency from the start
- Instead or in addition to the “tender items” in s. 16, a clause along the following line should be included (cf. Vietnam’s Petroleum Law)

**“Prior to calling a tender, the Ministry shall publish the contract to be concluded with MOGE by the tender winner and indicate which clauses are negotiable and which are not. Depending on the contract type, the contract shall include at least the following key terms: [...]”**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

## PSC terms must be clear from the start (2)

- The key terms of a production sharing contract may be taken from the World Bank's "Guide to Extractive Industries Documents - Oil & Gas"



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

## Fiscal regime must be clear from the start (1)

- Myanmar's current petroleum fiscal regime is unattractive (cf. Wint Thiri Swe and Nnaemeka Vincent Emodi, Assessment of Upstream Petroleum Fiscal Regimes in Myanmar, 2018)
- We understand that the MoEE is in the process of revising the PSC templates to include a more attractive fiscal regime



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

## Fiscal regime must be clear from the start (2)

- It would be best for the law to list all payments (bonuses, royalties, minimum expenditure, cap on the cost petroleum, MOGE's production share, discount at which the contractor has to sell petroleum to MOGE for domestic consumption, corporate income tax, capital gains tax, R&D fund, CSR) to be made to the state or MOGE and specify ranges (cf. Vietnam's Petroleum Law), depending on the location (onshore, offshore, deep sea) and size of the operation



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



## Fiscal regime must be clear from the start (3)

- Lower rates may be given for gas exploration and production due to upstream gas operations being more costly and gas being sold cheaper than oil



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

## Length of exploration, drilling and production

- The law should state that the initial production period of 20 or 30 years may be extended (by 5 to 10 years - this seems to be international practice; and if the contractor was forced to suspend activities in between)



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

## Land issues

- This may be an unrealistic suggestion, but it would be a great improvement if a sentence were to be added to s. 8(d) as follows:

*“The Ministry shall coordinate with relevant ministries to develop guidelines for the amount of compensation to be paid for the land used for the petroleum activity as well as for buildings, crops and forests.”*



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

# Arbitration

- **The law should specifically state that the PSC (or other contract) may include an arbitration clause providing for arbitration abroad, irrespective of whether the contract is for an onshore or offshore block. The background is that the arbitration centre set up by UMFCCI still has many deficiencies.**
- **Furthermore, the law should specifically state that the contract may contain a waiver of sovereign immunity with regard to the enforcement of the arbitral award, and that the Government of the Republic of the Union of Myanmar shall not set aside or alter the contract**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

## Miscellaneous (1)

- Delete: *“Petroleum activity” means any activity related to petroleum exploration, drilling and production onshore or offshore in the Union. ~~This term includes petroleum-related activities such as planning, designing, managing, engineering, servicing, purchasing, construction, maintenance, systematic dismantling and the supply of petroleum equipment.~~*

Suppliers and service providers to the contractor ARE NOT required to win a petroleum tender, obtain a permit and enter into a PSC or other contract with MOGE.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

## Miscellaneous (2)

- Delete:

*“Petroleum production” means production, by means of **human strength**, machines or technology, of petroleum after having made development arrangements to commercially produce petroleum.*

**Petroleum production “by human strength” would presumably be covered by the Hand-dug Petroleum Law.**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

**THANK YOU FOR YOUR ATTENTION!**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

## Contact

**Lincoln Legal Services (Myanmar) Ltd.**

**La Pyi Wun Plaza, Room 409 (4<sup>th</sup> Floor),  
37, Alan Pya Pagoda Road, Dagon Township,  
Yangon, Myanmar**

**Phone: +95-9-790488268**

**E-mail: [nyeinchanzaw@lincolnmyanmar.com](mailto:nyeinchanzaw@lincolnmyanmar.com)**

**Homepage: [www.lincolnmyanmar.com](http://www.lincolnmyanmar.com)**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**