

Dear Readers,

In reply to some requests - as we think that others might be interested as well -, a few points on the solar tender:

- **Location:** EPGE published on 19th May 2020 the list of “[designated connection points](#)”. The projects are 30 MW - 50 MW each, in total 30 sites for 1,060 MW.
- **Land issue, big issue:** The tender documents basically say that the bidders have to secure required land themselves and provide proof thereof as part of the bid submission until 18th June 2020, 10:00 am. The Ministry of Electricity and Energy says that it will assist with land acquisition if the land is state-owned (basically by liaising with the government entity that owns it). Informally, it also suggests “to submit the land coordinates, Google map print-out, win the tender, sort out the land issue later”.
- **Bid security:** The bidder is requested to provide security in USD or MMK (amounts stated in the tender documents) in the form of a guarantee by a bank licensed to operate in Myanmar. From the tender documents, we understand that the bank has to be state-owned Myanma Foreign Trade Bank if the security is provided in USD (this appears to be a leftover from the time when Myanma Foreign Trade Bank was the only bank allowed to handle foreign currency). The guarantee letter will be returned to the unsuccessful bidder. The successful bidder will have to replace it by a performance bank guarantee.
- **Feed-in tariff:** Obviously, it is up to the bidder to come up with one, based on the bidder’s estimated costs and expected profit. The tariff may be stated in USC per kWh. EPGE will, however, make payment in MMK, based on the Central Bank exchange rate at the time of payment.
- The feed-in tariff has to be stated inclusive of **applicable taxes**. This would be 5% commercial tax (similar to VAT). Furthermore, there is a withholding tax. The WHT rate is 2% (this is the resident rate) if the successful bidder sets up a company in Myanmar and operates through this company. In this case, the WHT is set off with the company’s corporate income tax liability at the end of the financial year. The tender documents say that the WHT rate is 2.5%, but this is the non-resident rate and, for a variety of reasons, we do not really see how one could lease land long-term and operate a solar plant as a non-resident.
- **Tax incentives:** Power generation is a so-called “promoted sector”, so the investor is eligible for corporate income tax holidays of 3, 5 or 7 years (depending on whether the solar plant is



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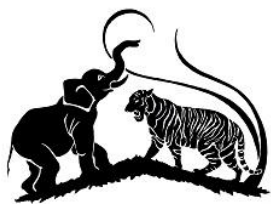
located in a developed, moderately developed or less developed area of the country). During the corporate income tax holiday period, there should be no WHT. Furthermore, the investor may import construction materials and equipment (that are not available in the country) during the construction period free from customs duty and commercial tax. The import or local purchase of solar panels is generally exempt from commercial tax.

- **Transmission to the designated connection points:** To be taken care of by the bidder (and the tender documents suggest that the bidder has to show proof of right of way as part of the proposal to be submitted until 18 June 2020 10:00 am - another headache).
- **Bidder qualification:** Experience in power generation (at least three reference projects which must include at least one photovoltaic project); audited accounts for the last three financial years; minimum annual turnover USD 20 million (per proposed site, it appears).
- **Evaluation criteria:** Bidders are requested to submit a technical proposal and a price proposal. We expect that the price will ultimately be the decisive criterion.
- **Letter of acceptance and power purchase agreement:** Drafts are provided as part of the tender documents; realistically, they are not negotiable.
- **Performance bank guarantee:** Within 14 days from the signing date of the power purchase agreement, the successful bidder has to provide a guarantee executed by a bank licensed to operate in Myanmar in USD or MMK (amounts stated in the tender documents). Release upon the start of commercial operation.
- **Dispute resolution:** Arbitration in Singapore administered by the SIAC according to UNCITRAL rules. Contracts are governed by Myanmar law.

We hope that you have enjoyed reading our newsletter and found it useful.

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About Lincoln Legal Services (Myanmar) Limited

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