

Dear Readers,

Welcome to a new edition of our newsletter.

1. Use of exploration and other costs from abandoned blocks

As did the two prior Myanmar Gazette editions, the edition dated 19 April 2024 published Revenue Appellate Tribunal judgments ([English translation](#)) that are important to the upstream oil and gas sector.

Both judgments published this time concern the use of exploration and other costs from abandoned blocks. They are slightly at variance with each other.

- In the same vein as a judgment on which we reported in our [previous newsletter](#) (the facts are the same, but concern two different years), one of the two judgments published this time held that exploration and “own costs” from an abandoned block may, when calculating income tax, not be deducted in a lump-sum from the income of other, petroleum-producing blocks, but depreciated over the life of the block.
- The other judgment, on the other hand, treats exploration costs from an abandoned block as fully lost, without taking into consideration the thought that they might be depreciated and deducted over time from the income of other, petroleum-producing blocks.

Ultimately, the Revenue Appellate Tribunal is probably right in treating exploration costs as capital expenditure spent on creating a capital asset, i.e., the petroleum block which will hopefully produce oil and gas in the future.

If it turns out that the hope was in vain and the block is barren, this capital asset becomes worthless and must be written off. The Income Tax Law prohibits the set-off of a capital loss with income from ordinary business operations or other income (section 20 (a) (2)).

In fact, a capital loss may not even be set off with a capital gain (e.g., from a farm-out transaction) as rule 5 (c) Income Tax Rules specifies what may be deducted from the value of the transfer of a capital asset, and a capital loss from other assets is not listed.

Therefore, exploration costs from an abandoned block should probably be treated as lost for good, and it may not be prudent to rely on the judgments that suggest that such costs may be



deducted over time through depreciation from the income of other, petroleum-producing blocks.

2. SAC significantly increases penalties in the National Food Law

The Myanmar Gazette edition dated 19 April 2024 published a “Law Amending the National Food Law (2024)” decreed by the State Administration Council (“SAC”) on 20 March 2024 which significantly increases the penalties.

Imprisonment up to 10 years is now mandatory for a variety of offences which were previously punishable with imprisonment and/or a fine.

Among others, the punishment for producing, importing, exporting, storing, transporting, distributing or selling “food differing from standards” has been increased from up to 1 year imprisonment and/or a fine to up to 10 years imprisonment to which a fine may be added.

Furthermore, imprisonment up to 5 years is now mandatory for failing to comply with orders, directives and conditions in respect of quality assurance, labelling, and advertising.

CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED

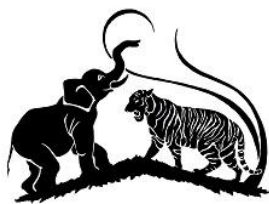
National Food Law

(State Law and Order Restoration Council Law No. 5/97 as amended by Pyidaungsu Hluttaw Law No. 24/2013)

As amended by SAC Law No. 20/2024 dated 20 March 2024

Chapter 10 Prohibitions

21. No one shall fail to abide by any order passed under section 13.
22. No one shall produce, import, export, store, transport, distribute or sell the following food:
 - (a) Food that may be poisonous, dangerous or injurious to the health of the consumer;



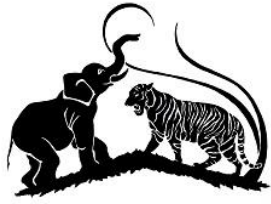
- (b) food wholly or partly substituted or adulterated so as to affect or endanger the nature, substance or quality of the food;
 - (c) food in which food additives are used in excess of the prescribed limit;
 - (d) food containing agricultural chemicals in excess of the maximum permissible level determined by the authority concerned;
 - (e) food containing a substance prohibited or not allowed by the authority concerned;
 - (f) food containing putrid, deteriorated substance or substance unfit for human consumption;
 - (g) food differing from standards;
 - (h) food, on the label of which property not included in it is wrongly stated;
 - (i) food, which does not include the information to be stated, as determined by the relevant Government department or organisation which is authorised to issue the licence.
23. No one shall produce controlled food without a licence.
24. No one shall export, store, transport, distribute or sell controlled food produced without a licence.
25. No one who produces, imports, exports, stores, transports, distributes or sells food shall fail to abide by the order, directive and conditions issued by the relevant Government department or organisation or the Authority in respect of the following:
- (a) Quality assurance;
 - (b) labelling;
 - (c) advertisement.



Chapter 11

Offences and penalties

26. Whoever violates a provision in section 21 shall on conviction be punished with imprisonment for a term which may extend to 1 year, or with a fine which may extend to MMK 100,000, or with both.
27. Whoever, after conviction for failing to abide by a provision in section 21, fails continuously to abide by the same, shall be punished with a further fine of MMK 5,000 for each day during which the failure continues.
28. Whoever violates a provision in section 22 shall on conviction:
- (a) If it is an offence relating to food contained in subsection (a), (b), (c), (d), (e), ~~or (f), or (g)~~, be punished with imprisonment ~~of either description~~ for a term which may extend to ~~3~~ 10 years, ~~or with a fine which may extend to MMK 300,000, or with both.~~ and may in addition be punished with a fine which may extend from a minimum of MMK 300,000 to a maximum of MMK 3,000,000.
 - (b) If it is an offence relating to food contained in subsection ~~(g)~~, (h) or (i), be punished with imprisonment ~~of either description~~ for a term which may extend to 1 year, or with fine which may extend to MMK ~~10,000~~ 500,000, or with both.
 - (c) ~~The exhibits involved in the offence shall be liable to be confiscated. The court shall make an order to destroy the exhibits involved in the offence or to handle them as prescribed.~~
29. Whoever violates a provision in section 23 shall on conviction be punished with imprisonment ~~of either description~~ for a term which may extend to ~~5~~ 10 years, ~~or with a fine which may extend from a minimum of MMK 100,000 to a maximum of MMK 500,000, or with both. In addition, the exhibits involved in the offence shall also be liable to be confiscated.~~ and may in addition be punished with a fine which may extend from a minimum of MMK 1,000,000 to a maximum of MMK 5,000,000. In addition, the court shall make an order to destroy the exhibits



involved in the offence or to handle them as prescribed.

30. Whoever violates a provision in section 24 shall on conviction be punished with imprisonment for a term which may extend to 3 years, or with a fine which may extend from a minimum of MMK ~~100,000~~ 300,000 to a maximum of MMK ~~300,000~~ 3,000,000, or with both. ~~In addition, the exhibits involved in the offence shall also be liable to be confiscated.~~ In addition, the court shall make an order to destroy the exhibits involved in the offence or to handle them as prescribed.
31. Any person who produces, imports, exports, stores, transports, distributes or sells food and who violates a provision in section 25 shall on conviction be punished with imprisonment ~~of either description~~ for a term which may extend to ~~3~~ 5 years, ~~or with a fine may extend from a minimum of MMK 100,000 to a maximum of MMK 300,000, or with both.~~ and may in addition be punished with a fine which may extend from a minimum of MMK 300,000 to a maximum of MMK 3,000,000.

3. Others

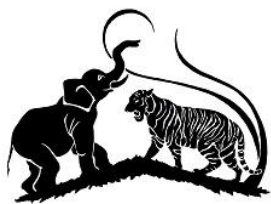
The Myanmar Gazette edition dated 19 April 2024 furthermore contains the following which may be of interest to some of our readers:

- The SAC replaced certain expressions in the Employment and Skill Development Law (e.g., “Ministry of Labour, Employment and Social Security” became “Ministry of Labour”).
- The Ministry of Defence under the SAC issued “Reserve Forces Rules” dated 10 March 2024. These are bye-laws to the Reserve Forces Law which the SAC activated on 13 February 2024 and which makes it compulsory for veterans who left the Armed Forces to rejoin them if they are called to do so within 5 years after their resignation. Of note, no such bye-laws have been published yet for the National Service Law.

We hope that you have found this information useful.

Sebastian Pawlita
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LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

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About Lincoln Legal Services (Myanmar) Limited

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