



# Construction projects, Oil & Gas, Mining, Export Processing Zones, Ports and Power in Myanmar

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Talk in two parts:

Myanmar:

I. General legal landscape for infrastructure projects,

II Specific issues— Construction, oil & gas, mining, ports, export processing zones and power projects

## Part I

FOREX issues (The Central Bank of Myanmar adopted Managed Floating Exchange Rate Regime on April 2, 2012). Exchange rate set at auction daily at Central Bank.  
New Law: Foreign Exchange Management Law

- Buying shares from a Myanmar shareholder currently not permitted
- Structuring through other ASEAN countries 2009 Comprehensive Investment Agreement (now fully ratified, --a. free transfers of income, b. reaffirmation of existing benefits such as MFN and equal treatment of ASEAN investors, c. enforcement of foreign ASEAN arbitration.) How would a Japanese investor get access?
- Trading restricted to Myanmar nationals.
- Enforcement of judgments and arbitration awards.
- 12 economic activities are restricted by the State-owned Economic Enterprises Law of 1989 (the SOE Law).

- State Owned Enterprise (SOE) Law of 1989. Waiver under Myanmar Foreign Investment Law (MFIL).
- New Foreign Investment Bill was approved by the Parliament on September 7, 2012 and sent it to the President for his signature.
- The president has sent back to the Parliament with his comments. The Parliament will discuss this in next legislation session, which will start on October 22. The Parliament may accept his comments and resolve to amend the Bill or may resolve to approve the Bill as it is without accepting the President's comments.
- The 1988 version of the MFIL still in force. Next I'll compare old law and what's been proposed.

- The Existing Myanmar Foreign Investment Law of 1988 (MFIL)
  - MIC
  - 100 % Foreign ownership allowed in selected industries
- MFIL Minimum foreign capital
  - manufacturing = USD 500,000
  - service = USD 300,000
- Leasing: 30 years + 15 + 15 (negotiable under special circumstances);[New switchover possibility]
- Tax (three years; accelerated depreciation) and customs exemption (construction phase and raw materials following completion);
- Guarantee against nationalization; and
- Foreign exchange benefits (profits; exiting the investment)

# Proposed New Foreign Investment Law *continued*

- Leases: 50 years plus two ten-year extensions
- Controversy: vagueness of categories of 50:50. This will be revised.
- 5-year tax holiday
- MIC may nominate some investments that are not eligible for tax holiday.
- Local content of work force
- Nationalization—market compensation
- Note: doesn't apply to projects not under Foreign investment law- Optional except 12 economic activities are restricted by the State-owned Economic Enterprises Law of 1989 (the SOE Law). – Also, manufacturing, big projects, infrastructure projects.

# Public Construction Projects

## Roads & Bridges, Ports, Dams



### Part II

- There is no dedicated construction law.
- Road & Bridges Construction can be done by private parties under B.O.T system, assigned by the Ministry of Construction. To date, no procedure is available and no bidding process.
- Must operate under the MFIL
- Construction Period: 3 years. I've been asked what happens if construction goes beyond 3 yrs. Based on Parliamentary debate, start of BOT deferred to finish of construction.
- Must meet standards set by the Ministry of Construction
- B.O.T term: 40 years
- Under the BOT construction companies can collect toll fees. To our knowledge, all are now local. If the new MFIL allows, foreigners will be able to invest 100%.
- Dams are constructed by the Ministry of Agriculture and Irrigation and the Ministry of Electric Power. For big projects, the ministries hire foreign companies as consultants or contractors. There is one BOT with a foreign company, Mitzone, but it's been suspended. MOEP has JVs with foreign companies.
- There are ports done with foreign companies [Thilawa –Hutchinson and Yangon—Myanmar Cosolidated as BOTs and MOU signed with Indian government for BOU]

- The Special Economic Zone Laws of 2011—
- Sets up SEZs. Two now operating, Thilawah and Kyaukphu. Application through Central body.
- Service enterprises—commercial tax relief from year of operation.
- Income tax holiday. First 5 yrs. 100%, second 5 yrs 50%, third reinvested profits exempted. Thereafter, additional benefits.
- Export processing zones. Exemption from customs duties and other internal taxes on raw materials, factory machinery and equipment . Free import of other machinery and motor vehicles for five years. Thereafter, reduced treatment.
- Special zones other than export processing zones will be established and have similar benefits.



- Ministry of Electric Power ("MOEP")
- Hydro power implementation and hydro power generation. organized with two departments and one enterprise: Department of Hydropower Planning ("DOHP"), Department of Hydropower Implementation and Hydropower Generation Enterprise.
- Thermal Power Generation from Gas, Power Generation other than hydro power, Operation and Maintenance of Power System, Implementation of Transmission Lines and Substations Projects, Distribution of Electricity throughout the country. Consists of one department, two enterprises and one board. They are Department of Electric Power, Myanma Electric Power Enterprise ("MEPE"), Electricity Supply Enterprise, Yangon City Electricity Supply Board.

- To start, every foreign energy company must have a meeting with MOEP depending on the power project.
- To put up request forms and negotiate with the MOEP to reach general agreements.
- MOU will be signed to carry out the feasibility studies, and a report on the findings is to be submitted to MOEP within (12) months after signing the MOU.
- MOEP will then pass approval to MIC. When MIC approves, then cabinet approval for large projects. Then company formed and construction starts.

- State-owned Economic Enterprises Law of 1989 (SOE Law)
- Grant exemption in the form of notification issued under the SOE Law
- In practice, allow production sharing basis with MOGE New: competitive bidding offshore and JOA with local participant. To organize this, current round of bids delayed indefinitely.
- Must operate under the Myanmar Foreign Investment Law of 1988 (MFIL)
  - MIC, MIC permit
  - Following issue of MIC permit, the Myanmar Companies Act of 1914 (the Companies Act)
  - Permit to Trade (Operating license)
  - Certificate of Registration (Registration after permit to trade issued)

- Under the SOE Law, the Myanmar government has the sole right to do exploration and extraction of metals and export the same.
- Section 4 of the SOE Law empowers the government to grant exemption to foreign entities to operate a mining project.
- By virtue of section 7 of the Mines Law of 1994, a Mining Permit is also required.
- Prospecting, exploration and production of minerals may not be undertaken without a Mining Permit.

- Prospecting, exploration and production of minerals may not be undertaken without a Mining Permit. Each type of permit grants the holder a tenement and these are summarized in the table in next few slides.
- A distinction is made between “large scale” production and “small scale” production. Large scale production means the commercial production of minerals which requires substantial investment and expenditure or specialist technical know-how or methods, while small scale production does not require these. Practically all foreign projects are large scale.
- An “integrated permit” may also be granted. Technically such a permit may allow for a permit holder to engage in prospecting, exploration and production of mineral resources in a specific area. However, in practice the Ministry issues an integrated permit for prospecting and exploration, followed by a separate permit for production.
- Mining permit is transferable with the approval of the MOM.

# CATEGORIES OF MINING PERMITS

Operations	Mining Tenements	Provisions	Tenure of Permit
Mineral <u>Prospecting</u>	Mineral Prospecting Permit	Exclusive right to carry out prospecting operation in the prospecting area, at the <u>maximum area of 4,200 km<sup>2</sup></u> pursuant to specific stipulations.	Valid for a period not exceeding <u>1 year</u> and <u>extendable for up to 12 months</u> .
Mineral Exploration	Mineral Exploration Permit	Exclusive right to carry out exploration operation in the <u>specified area, at the maximum area of 3,150 km.</u>	Valid for a period not exceeding <u>3 years</u> and <u>extendable twice, each time for 1 year, and longer</u> .
Mineral Production (Large Scale)	Large Scale Mineral Production Permit	Exclusive right to extract minerals in the specified area.	Valid for a period not exceeding <u>25 years</u> and <u>extendable for a period not exceeding 5 years at a time</u> .
Mineral Production (Small Scale)	Small Scale Mineral Production Permit	Exclusive right to extract minerals in the specified area.	Valid for a period not exceeding 5 years and extendable for a period not exceeding 1 year for a maximum of four occasions

- Ministry of Communications, Posts and Telegraphs
- Subordinate government agencies
  - Myanma Posts and Telecommunications (MPT)
  - Posts and Telecommunications Department (PTD)
  - MPT: Main operator
  - PTD: Regulatory Body (Licensing authority)
  - Quasi government-owned entities
    - MPT established Yatanarpone Teleport Co., Ltd in 2006 in the form of MPT JV with local private companies. (small operator)
    - MPT took over Myanmar Tele Port Co. Ltd in 2007.
    - No foreign operator
- Foreign services providers to MPT(Alcatel, Singtel, Huawei, Netvigator (eg. A full turn-key solution for voice, data and fibre optics network infrastructure, Implementation of a fibre optics network in Myanmar to increase its network capacity, Supply of network infrastructure to the relevant ministry, Providing fixed line and cellular services, Providing a network infrastructure project for a government ministry involving the setting up of a telecommunications backbone linking, Installation and commissioning of telecommunication equipment to MPT.)

- New Telecommunication Law has been drafted. Now being reviewed by the Attorney General's Office.
- There will be four Telecom Operators.
  - Yatanarpone Teleport Co., Ltd
  - Myanmar Tele Port Co. Ltd
  - Two more Separate Operator Companies
- Telecommunication Tender Consultants to above will be appointed.
- International telecom services providers will then be selected in accordance with the international practice.



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- Airport projects can be done through bidding process.
- Department of Civil Aviation, the Ministry of Transport invites tenders for Airport projects.
- Can be implemented through a PPP or JV, BOT.
- Must operate under the MFIL
- Must be in compliance with FIDIC (Federation Internationale Des Ingenieurs-Conseils) Design Build Turnkey.

- Must have paid-up capital of more than US\$ 300 millions
- Must have experience in general construction work for more than 20 years and similar construction work for past 10 years or more.
- Must have experience in supply and/or installation of the similar airport related equipment for past 10 years or more.
- Must have project field supervisory personnel with experiences of more than 10 years in similar works.
- Must have airport management, operation and maintenance experiences of at least 10 years.

- The main scope of works for the Project will include:
  - Master planning including design criteria;
  - Preliminary and detailed design;
  - Construction of Control Tower and Operation Building, Terminal Building(s),
  - Runway, Taxiway, Apron and Drainage System;
  - Installation of Communication, Navigation and Surveillance (CNS) System,
  - Airfield Lighting System;
  - Fire Fighting Building & Facilities;
  - Water Supply and Sewage Treatment System;
  - Electrical Power Supply and Distribution System;
  - Fuel Storage and Distribution System including fuel hydrant system;
  - Security System;
  - Environmental Impact Study (EIS);
  - Social and Cultural Impact Study (SIS, CIS);
  - Construction of road and rail access and car parking;
  - Construction of cargo facilities, hotel and other ancillary infrastructure;
  - Management, Operation and Maintenance of the Airport;