



Myanmar - Significant Law and Regulation Relevant to the Offshore Oil and Gas Industry

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Key Legislation:

- State-Owned Economic Enterprises Law, 1989
- Foreign Investment Law, 2012 (FIL), its rules and notifications:
 - FIL rules as promulgated by the Ministry of National Planning and Economic Development, January 2013
 - Myanmar Investment Commission Notification No. 49/2014

Key Legislation continued:

- Labour Reform – Implementing Minimum Wage
- Presidential Directive No. 1/2013
 - Regulations to be abided by when issuing Tenders for Investment and economic activities

Key Legislation continued:

- Environmental Conservation Law, 2012
 - Implementing Rules, 2014
 - Empowers Ministry of Conservation and Forestry to determine (i) liability owed due to environmental damage and (ii) contributions to environmental management fund.
- Environmental Social Impact Assessment is required (ESIA) for submittal to the Myanmar Investment Commission

Key Legislation continued:

- Presidential Directive No. 1/2013
 - Regulations to be abided by when issuing Tenders for Investment and economic activities
- Environmental Conservation Law, 2012
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Key Membership in International Initiatives/Treaties:

- Admitted to Extractive Industries Transparency Initiative (2014) (EITI)
 - 44 countries that have signed up
 - Requires extensive disclosure and measures to improve accountability in how oil, gas and minerals are governed.
 - Myanmar lacking in implementing
- New York Convention (2013)
 - Recognition and Enforcement of Foreign Arbitration Awards

Process for E&P in Myanmar

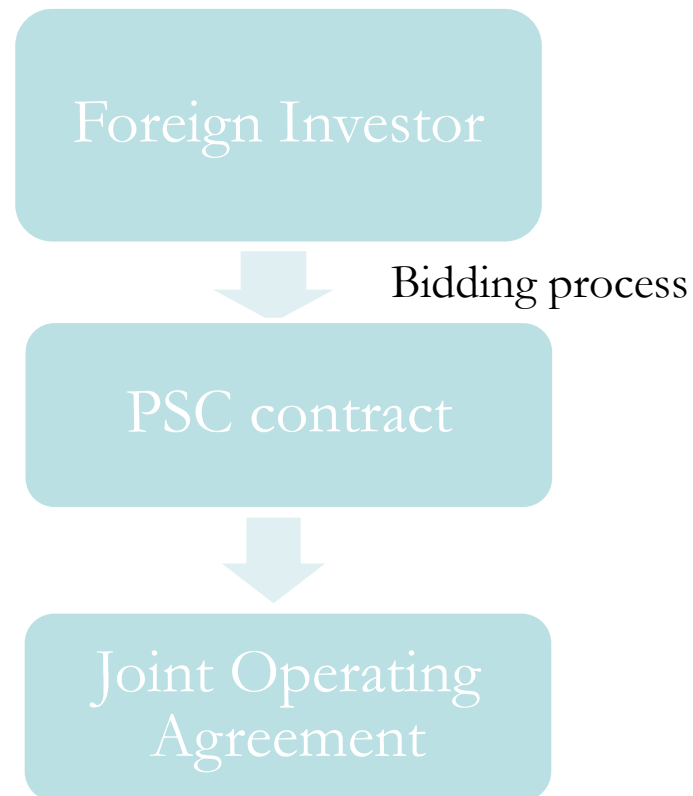
- State Monopoly – controlled by Ministry of Energy (MoE), through the Myanmar Oil and Gas Enterprise (MOGE)
- Foreign Investment permitted under FIL, Myanmar Investment Commission
- Generally implemented in the form of a Production Sharing Contract with MOGE
- Negotiation with Energy Planning Department (Department in MoE)

Local Partner?

- MOGE requires a local joint venture partner holding a minority interest for:
 - Onshore and shallow water block projects.
 - Deep water block project may be undertaken by a 100%
- No statistics on local partner minimum ownership interest
 - Typically Myanmar Investment Commission prefers up to 20%

Illustration:

Foreign investment O&G Sector



- Branch offices are typical form of establishment if awarded a concession by MOGE
- Signed with MOGE (owner) and Foreign Investor (contractor)
- Signed between the foreign investor and a local company approved by MOGE

How to find the 'right' local partner

- Local partner must be approved by MOGE
- Previously, a list of approved domestic companies was on the MOGE website (www.energy.gov.mm).
- Site is not functioning, suggest to visit facebook of Ministry of Energy (www.facebook.com/MinistryOfEnergy.Myanmar)

How to find the ‘right’ local partner

- MOGE approval does not necessarily mean local partner or its owners are not on the SDN list
www.treas.gov/offices/enforcement/ofac/
- Due Diligence of local partner suggested

Model PSC for Offshore Blocks

- Management: MOGE
- Production period: 20 years from completion of development or depending on contract terms, the longer applies.
- Signature bonus: payment within 30 days of signing PSC.
- Relinquishment (requiring the Contractor to surrender certain parts of the contract area to the State after a given period of time; these are typically areas that have not been exploited (and are not expected to be exploited): 25% at end of initial term; 25% at end of first extension
- Royalty: 12.5% of available petroleum
- Domestic requirements: 20% of crude oil and 25% of natural gas of Contractor's share of profit petroleum to be sold to the domestic market, at 90% of fair market prices
- Arbitration: UNCITRAL Arbitration Rules, venue is Singapore.

Model PSC for Offshore Blocks

- Training funds (for local workers): USD 25,000/year during exploration; USD 50,000/year during production
- R&D fund (established by Contractor for developing R&D capabilities during Project Operation, expenditure to be consulted with MOGE): 0.5% of contractors' share of profit petroleum
- Governing law: laws of the Union of Myanmar
- Exploration period: **5 years** - 3 years (Initial exploration period, including seismic and drilling programs) + 2 one-year extensions
- Production split: 60%-90% depending on the rate of production and the depth of the well
- Production bonus:
 - Shallow water offshore block features: USD 1.0 million– USD 10.0 million
 - Deep water offshore block features: USD 10 million – USD 100 million
- Cost recovery limit:
 - Shallow water offshore block features: 50% in water depths of 600 feet or less; 60% for water depths more than 600 feet
 - Deep water offshore block features: 50% in water depths of 600 feet or less; 60% for water depths between 600 feet and 2,000 feet
70% in water depths more than 2,000 feet

Model PSC for Onshore Blocks

- Exploration Period: initial term 3 years, 1st extension 2 years, and 2nd extension 1 year
- Seismic and well commitments: negotiable
- Production Period: 20 years from completion of development or according to sales contract, whichever is longer.
- Signature bonus: payment within 30 days after approval from MIC on EIA/SIA
- Relinquishment: 100% at end of Exploration Period, less Discovery Areas and Development and Production Areas.
- Royalty: 12.5% of available petroleum
- Cost recovery limit of 50%
- Production split: progressive per rate of production 60 to 90% for crude oil and natural gas

Model PSC for Onshore Blocks

- Production bonus: progressive per rate of production. USD 0.5 million to 6.0 million
- Domestic requirements: 20% of crude oil and 25% of natural gas of Contractor's share of profit petroleum to be sold
- to the domestic market, at 90% of fair market prices
- Training fund: USD 25,000 per year during exploration; USD 50,000 per year during production
- Research and development fund: 0.5% of Contractors share of profit petroleum
- State participation: 15% with MOGE option to increase to 25%
- Governing law: Laws of the Republic of the Union of Myanmar
- Arbitration: Myanmar Arbitration Act, 1944. Venue: Yangon
- EITI Implementation
- Contractor must include a local Myanmar national owned company

Key Investor Concerns:

- Stability of Union Government
 - Election 8 November, new Union Government takes power on 1 April (to coinciding with Budgetary Cycle (1 April – 31 March))
- Enforcement in event of breach against MOGE
- Enforcement of Arbitration Award
(Implementation of New York Convention proposed new Arbitration Act in discussion)
- Transparency in the Tendering Process

Risk Management Strategies - Recommendation

- Engage local counsel to assist with submitting contractual exceptions to the Tender.
- If no contractual exceptions are permitted, understanding local law aspects is important to allow Foreign Investor to 'price-in' risk.
- Understanding doing business in Myanmar – avoiding the common pitfalls

Any News?

- When? 2014 MOGE announced new nine offshore oil and gas blocks for tender in 2015.
- Delay due to election

Thank you very much!

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