

Oil Regulation 2019

Contributing editor
Bob Palmer



Publisher

Tom Barnes

tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall

claire.bagnall@lbresearch.com

Senior business development managers

Adam Sargent

adam.sargent@gettingthedealthrough.com

Dan White

dan.white@gettingthedealthrough.com

Published by

Law Business Research Ltd

87 Lancaster Road

London, W11 1QQ, UK

Tel: +44 20 3780 4147

Fax: +44 20 7229 6910

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First published 2003

Sixteenth edition

ISBN 978-1-83862-116-2

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



Oil Regulation

2019

Contributing editor**Bob Palmer**

CMS Cameron McKenna Nabarro Olswang LLP

Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Oil Regulation*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Bob Palmer of CMS Cameron McKenna Nabarro Olswang LLP, for his continued assistance with this volume.



London

May 2019

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This article was first published in June 2019

For further information please contact editorial@gettingthedealthrough.com

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Myanmar

Khin Cho Kyi

Myanmar Legal Services Limited

GENERAL

Key commercial aspects

- 1 | Describe, in general terms, the key commercial aspects of the oil sector in your country.

Oil production has taken place in Myanmar for more than 1,000 years. The first export was in 1854. The Bama Oil Company discovered the onshore Yenangyaung oil field in 1887. The oil and gas sector was nationalised in 1962.

At present, there are 17 onshore blocks and three main offshore blocks in production. Output from these fields were estimated at approximately 9,631bbl/d in 2018. The offshore Yadana (Total, Chevron and PTTEP) and Yetagun (Petronas, Nippon Oil and PTTEP) natural gas projects began production in 1998 and 2000 respectively under gas sales contracts to the Thai state oil company PTT. Yadana produces natural gas of approximately 800Mmcf/d, while Yetagun produces an average of 3,131bbl/d of condensate together with natural gas of around 160Mmcf/d for processing at Thanlyin Oil Refinery. In addition, the offshore Shwe (Posco Daewoo, plus four partners including MOGE) natural gas project commenced production and sales in 2013 to China National Petroleum Corporation (CNPC) and MOGE and produced natural gas of approximately 400Mmcf/d in 2018. The offshore Zawtika (PTTEP and MOGE) commenced production and sales in March 2014 to PTT and produced around 300Mmcf/d of natural gas in 2018.

MOGE is reported to be planning to begin the next bidding round before the water festival in April 2019. The round will include 18 onshore and 15 offshore blocks. Possible revisions to standard PSC contract terms are under consideration. See Myanmar Oil and Gas Services Society's 'Challenges of Myanmar PSC's in Downtime', 25-26 January 2018.

Energy mix

- 2 | What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

At present, Myanmar's energy needs are met by oil, gas, hydro and renewable and solar projects. The country's oil production is approximately 11,866bbl/d. However, the present daily oil consumption rate is estimated to be approximately 29,000bbl/d. Myanmar is, by consumption, a net importer of oil.

In the short term, Myanmar will be increasingly dependent on oil imports. However, once CNPC's refining facilities and pipelines are in place, Myanmar will increasingly rely on crude oil imports to satisfy its domestic needs and may become a net exporter of refined products.

Government policy

- 3 | Does your country have an overarching policy regarding oil-related activities or a general energy policy?

There are many laws regarding oil-related activities that date back to 1918; these are largely based on the British legal codes of pre-independence Indian statutes. The Myanmar Energy Master Plan was issued by the National Energy Management Committee in December 2015.

Registering a licence

- 4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

Certain information, including names of contractors and maps of exploration blocks, are available on the Ministry of Electricity and Energy (MoEE) (formerly Ministry of Energy (MoE)) website at www.moe.gov.mm. Oilfield ownership or operatorship, even if listed in a register for internal government records, is not publicly available.

Legal system

- 5 | Describe the general legal system in your country.

Myanmar has an English common law legal system, which, in 1962, was overridden by a socialist regime. The 2008 Constitution and 2010 general election marked a return to the common law regime. Following the 2015 general election, re-establishing the rule of law became a priority, aided by the assistance of numerous international institutions.

Myanmar is a party to the United Nations Convention Against Corruption (Resolution 58/4 of 31 October 2013), pursuant to which it has agreed to cooperate with other countries in addressing anti-corruption issues. More productive measures are expected by the current civilian government (see question 42).

REGULATION OVERVIEW

Legal framework for oil regulation

- 6 | Describe the key laws and regulations that make up the principal legal framework regulating oil and gas activities.

Current legislation governing oil and gas in Myanmar includes 11 principal laws:

- the Oilfields Act 1918;
- the Oilfield Rules 1936;
- the Petroleum and Petroleum Products Law 2017;
- the Petroleum Rules 1937;
- the Essential Supplies and Services Law 2012;
- the Oilfields (Labour and Welfare) Act 1951;

- the Petroleum Resources (Development Regulation) Act 1957 (subject to repeal by the new Petroleum Law, see Updates and trends);
- the Law Amending the Petroleum Resources (Development Regulation) Act 1969;
- the Myanmar Petroleum Concession Rules 1962 and Notification No. 615/2015;
- the National Environmental Quality Emission Guideline 2015; and
- the Environmental Impact Assessment Regulations 2015.

These laws are mostly based on the British legal codes from pre-independence Indian statutes. Although the terms and conditions of production-sharing contracts (PSCs) largely govern exploration and production (E&P) operations, the above-mentioned Oilfields (Labour and Welfare) Act 1951 is of continuing importance to contractors and their service companies. Environmental regulations have become part of the legal framework regulating oil activities.

Of equal importance in the oil and gas sector are the State-Owned Economic Enterprises Law (under which the Myanmar Oil and Gas Enterprise (MOGE) is assigned responsibility for the E&P sector under PSCs with private companies), the Myanmar Investment Law of 2016 (MIL) (formerly the Foreign Investment Law of 2012 (FIL), repealed by MIL), Myanmar Investment Rules and Myanmar Investment Commission (MIC) Notification (under which permits are granted by MIC to approve terms and conditions of draft PSCs).

The old petroleum laws mainly deal with rights characterised as concessions. Although the above-mentioned laws relating to petroleum are still applicable, in practice, investors generally enter into PSCs, performance compensation contracts (PCCs), improvement of marginal recovery agreements (IPRs), and reactivation agreements. The terms and conditions of these contracts govern the process as long as they are not contrary to the laws in force.

See the new Companies Law 2017, which came into force on 1 August 2018, which repealed Company Law 1914.

See the draft new Petroleum Law issued in October 2018 in Update and trends

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?.

Expropriation of licensee interest

7 | Are there any legislative provisions that allow for expropriation of a licensee’s interest and, if so, under what conditions?

No. MIL 2016 includes a prohibition against nationalisation.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee’s interest?

Yes.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The MoEE is the primary government agency responsible for the oil and gas sector. Entities within the MoEE that are influential in energy projects are:

- the Oil and Gas Planning Department (OGPD) (formerly Energy Planning Department), which is responsible for negotiating PSCs with foreign oil companies); and
- MOGE, which is responsible for E&P of petroleum within Myanmar and has exclusive rights to carry out all oil and gas operations with private contractors.

MOGE is both a regulator and operator. The MoEE and MIC also have some regulatory roles. If there is a breach or default, the PSC may be terminated.

Government statistics

10 | What government body maintains oil production, export and import statistics?

The MoEE maintains some statistics on oil production, which are presented at workshops from time to time. Some statistics can be found on its website.

The MoEE issued the ‘Myanmar Energy Statistics 2019’ on 11 March 2019, which is the result of a four-year development project, and fills a gap in the statistical knowledge of Myanmar’s energy and electricity sectors.

The Myanmar Energy Monitor is the sector’s leading source of information, research and analysis (see www.energy.frontiermyanmar.com).

NATURAL RESOURCES

Title

11 | Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

The Myanmar Constitution of 2008 stipulates that the state is the ultimate owner of every natural resource, whether found above or below the ground, above or below the water, or in the atmosphere.

Similar to other former British colonies, the land tenure system in Myanmar recognises freehold and leasehold titles. Such a title must be registered to be effective, and is subject to reservation, in favour of the government, of all mines, mineral products and buried treasure (Burma Town and Village Lands Act 1898). The government has the right to expropriate land with appropriate consideration (Land Acquisition Act 1898). Foreign nationals, or companies with one or more shares owned by foreign nationals, are barred from acquiring land (or any interest in land) by way of a transfer, grant, lease or mortgage, except with government permission (Transfer of Immovable Property Restrictions Law 1987). In September 2011, a notification was passed that a company operating under a FIL permit may be granted a ‘right to use’ government-owned land or private land, but that right does not automatically include the right to sublease the land, so applicants under MIL should include their specific requirements for the land in their permit application (known as the proposal) before MIC.

Exploration and production – general

- 12 | What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Oil exploration and production is conducted both on- and offshore. No areas within stated exploration blocks have been designated off-limits to exploration and production.

Exploration and production – rights

- 13 | How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

The MoEE is the primary government agency responsible for the oil and gas sector (see question 9 regarding the roles of the OGPD and MOGE). In most cases since 2011, the awarding of blocks has been made by international tender.

On 17 January 2013, MOGE announced a new bidding round for 18 onshore blocks; three IPRs and 15 PSCs. Bidders were required to include a minimum of one Myanmar nationally owned company registered with the EPD. The deadline for filing expressions of interest was 16 March 2013, and 59 bidders were shortlisted. Sixteen onshore blocks were awarded to 10 contractors in October 2013.

On 11 April 2013, MOGE announced a new bid round for shallow-water blocks (11 PSCs) and deep-water blocks (19 PSCs). Bidders for shallow offshore blocks must include one Myanmar nationally owned company. Bidders for deep offshore blocks may include a Myanmar nationally owned company. The deadline for filing expressions of interest was 14 June 2013, and 61 bidders were shortlisted. Twenty offshore blocks were awarded to 13 contractors in March 2014. On 7 May 2015, MOGE announced that another bidding round would not begin until 2016 at the earliest but did not disclose how many onshore or offshore blocks it would make available.

For updates, see www.moee.gov.mm, and the terms of the next bidding round expected in 2019.

Government participation

- 14 | Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

All three of the standard PSCs used by the OGPD contain state buy-in provisions. For onshore blocks, the standard PSC reserves a 15 per cent undivided interest for MOGE, with the option for the state to increase its share up to a 25 per cent undivided interest in a project. For offshore blocks, MOGE has the right to buy in to the project up to 20 per cent upon a commercial discovery (increasing to 25 per cent if the reserves are greater than 5Tcf).

There are no mandatory carry requirements for the government's interest and the government does not have any right to participate in the operating of a PSC.

Royalties and tax stabilisation

- 15 | If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are there any tax stabilisation measures in place?

The contractor must pay 12.5 per cent of all available petroleum as a royalty. Aside from royalties and income tax, contractors are liable for capital gains tax, special goods tax and bonuses. In the past, mention of tax stabilisation was relegated to a side letter signed between MOGE and contractors. There is a general stabilisation provision in PSCs in the 2013 rounds (section 27.7).

Licence duration

- 16 | What is the customary duration of oil leases, concessions or licences?

For onshore blocks, the duration is:

- preparatory period – six months;
- exploration period – three years plus two years plus one year; and
- production period – 20 years from completion of development.

For shallow offshore blocks, the duration is:

- preparatory period – six months;
- study period – six to 12 months;
- exploration period – three years plus two years plus one year; and
- production period – 20 years.

For deep offshore blocks, the duration is:

- preparatory period – six months;
- study period – two years;
- exploration period – three years plus two years plus one year; and
- production period – 20 years.

Extent of offshore regulation

- 17 | For offshore production, how far seaward does the regulatory regime extend?

The regulatory regime extends to the maritime boundaries with Bangladesh, India and Thailand.

The maritime boundary between Bangladesh and Myanmar was settled in March 2012 by the United Nations (UN) International Tribunal of the Law of the Sea 1982.

Onshore offshore regimes

- 18 | Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

PSCs govern exploration, development and production of both oil and gas; however, there are different terms for the following zones – onshore blocks, shallow-water offshore blocks and deep-water offshore blocks.

Onshore blocks

At present, onshore PSCs in Myanmar share the following features, based on the 2013 onshore model PSC:

- there is a 'preparatory period' of six months, which may be extended, during which EIA, SIA and EMP reports must be prepared and approved;
- management – MOGE is responsible for the management of operations. The contractor is responsible to MOGE for the execution of such operations and its costs;

- exploration period – initial term three years; first extension two years and second extension one year;
- seismic and well commitments – negotiable;
- production period – 20 years from completion of development or according to the sales contract, whichever is longer;
- signature bonus – payment within 30 days of signing the PSC;
- relinquishment – 25 per cent at the end of the initial term; 25 per cent at the end of the first extension;
- royalty – 12.5 per cent of available petroleum;
- cost recovery limit of 50 per cent;
- production split – progressive per rate of production 60 per cent to 90 per cent for crude oil and natural gas;
- production bonus – progressive per rate of production, from US\$500,000 to US\$6 million;
- domestic requirements – 20 per cent of crude oil and 25 per cent of natural gas of the contractor's share of profit petroleum to be sold to the domestic market, at 90 per cent of fair market prices;
- training fund – US\$25,000 per year during exploration; US\$50,000 per year during production;
- research and development fund – 0.5 per cent of the contractor's share of profit petroleum;
- state participation – 15 per cent, with an MOGE option to increase to 25 per cent;
- governing law – Laws of Myanmar;
- arbitration – Myanmar Arbitration Act 1944 and Arbitration Law, 14 January 2016;
- EITI implementation; and
- CSR obligations.

Shallow-water offshore blocks

The initial exploration period for shallow-water offshore blocks is three years and includes seismic and drilling programmes. One two-year extension and a one-year extension may be granted at the contractor's option. The production split ranges from 60 per cent to 90 or 85 per cent (crude oil) and 65 or 60 per cent to 90 per cent (natural gas) depending on the rate of production and the depth of the well. The production bonus, based on the rate of production, ranges from US\$1 to US\$10 million. The cost recovery limit is 50 per cent in water depths of 600 feet or less and 60 per cent for water depths exceeding 600 feet. Arbitration is according to the UN Commission on International Trade Law 1966 (UNCITRAL) rules with Singapore as the venue.

Subject to the Standard Terms and Conditions of Shallow Water Blocks issued by the EPD in the 2013 bidding round, the management, production period, signature bonus, relinquishment, royalty rate, domestic requirements, training fund, research and development fund, and governing law are the same as those for onshore blocks.

Deep-water offshore blocks

An initial study period for a deep-water offshore block is two years, followed by an initial exploration period of three years, which includes seismic and drilling work commitments. One two-year extension and a one-year extension to the exploration period may be granted at the contractor's option (see 'Shallow-water offshore blocks' above). The production split ranges from 60 or 55 per cent to 85 or 80 per cent (crude oil) and 60 or 55 per cent to 90 or 80 per cent (natural gas) depending on the rate of production and the depth of the well. The production bonus, based on the rate of production, ranges from US\$1 to US\$10 million. The cost recovery limit is 60 per cent in water depths of 2,000 feet or less, and 70 per cent in water depths exceeding 2,000 feet. Arbitration is according to UNCITRAL rules with Singapore as the venue.

Subject to the Standard Terms and Conditions of Deep Water Blocks issued by the EPD in the 2013 bidding round, the management, production period, signature bonus, relinquishment, royalty rate,

domestic requirements, training fund, research and development fund and governing law are the same as those for onshore blocks.

Authorised E&P entities

- 19 | Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

The State-Owned Economic Enterprises Law (SEE Law) states that the government has the sole right to carry out the exploration, extraction and sale of petroleum and natural gas and the production of its products. However, the government may, in the interest of the state, permit such activities to be carried out jointly between the government, through MOGE and any other organisation. The energy plan recently announced by MOGE includes a push to increase and promote private participation in Myanmar's oil and gas sector.

In the 2013, during tenders for O&G blocks, winning bidders were obliged to register a local subsidiary or branch office within the six-month preparatory period.

Regulatory powers over operators

- 20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

In accordance with the provisions of the PSC, MOGE shall have, and be responsible for, the management of the petroleum operation. Operatorship can be revoked.

Joint ventures

- 21 | What is the legal regime for joint ventures?

Previously, offshore oil exploration and production could be undertaken 100 per cent by a foreign-owned contractor. However, in 2011, an unwritten MoEE policy required that the contractor includes a local joint venture partner holding a minority interest. A list of possible joint venture partners was available. There is no requirement for the local Myanmar partner to take any risk or make any contribution to the costs of exploration or development. In the 2011 bidding round for onshore blocks, the local partners are believed to have a 5 per cent to 10 per cent participation; however, no statistics are available on this point.

The MoEE conducted two new bidding rounds in 2013 (see question 13).

Reservoir unitisation

- 22 | How does reservoir unitisation apply to domestic and cross-border reservoirs?

At present, there are no provisions concerning unitisation.

Licensee liability

- 23 | Is there any limit on a party's liability under a licence, contract or concession?

No express limit is provided in the model form of PSC.

Guarantees and security deposits

- 24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

Parent-company guarantees in respect of each company comprising a contractor are required under PSCs. Following the announcement of the

2013 bid rounds, the OGPD introduced a requirement for a bank guarantee of 10 per cent of the initial minimum work commitment.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

- 25 | Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services, capital or personnel?

Myanmar's model PSC (2013) requires contractors to use 25 per cent of their annual budget to procure goods and services either available in Myanmar or rendered by Myanmar nationals. The model contract also contains a general requirement that contractors give preference to Myanmar goods and services when they are available locally and as long as they are of a comparable quality, price and availability.

Social programmes

- 26 | Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

As a business entity operating under an MIC permit, a licensee, lessee or contractor is obliged to pay 2 per cent of net income for corporate social responsibility.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

- 27 | Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

MOGE retains title to all project assets, including pipelines, but grants the contractor custody and the exclusive right to use those assets. MOGE may only put the project assets to other uses where this will not interfere with the contractor's operations and with the contractor's permission.

The model PSC also contemplates the construction and operation of common facilities (including pipelines) subject to agreement on the construction and operation of such common facilities, investment recovery and charges to be paid.

MOGE and MIC consent is required in order for a company to transfer its interest under a PSC. Consent will take 90 days. The government has no pre-emptive rights.

Approval to change operator

- 28 | Is government consent required for a change of operator?

MOGE and MIC consent is required for a change of operator.

Transfer fees

- 29 | Are there any specific fees or taxes levied by the government on a transfer or change of control?

Standard PSC terms grant MOGE a share of any capital gains from share transfers at the following rates:

- profit – less than US\$100 million; MOGE share – 40 per cent;
- profit – US\$100 million to US\$150 million; MOGE share – 45 per cent; and
- profit – more than US\$150 million; MOGE share – 50 per cent.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

- 30 | Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

MOGE retains title to pipeline assets and grants the contractor custody and the exclusive right to the use of pipeline. MOGE may put the pipeline and other infrastructure to other uses with the contractor's permission if it will not interfere with the contractor's operations. On termination, all equipment purchased by the contractor and brought into Myanmar for the purpose of petroleum operations shall be passed to MOGE.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

- 31 | What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

At present, there are no laws or regulations governing abandonment and decommissioning. PSCs, in the 2013 bid round, include a general obligation in section 17.2 to remove equipment and installations in a manner acceptable to MOGE, and to perform necessary site restoration activities in accordance with government rules and international petroleum industry practices to prevent hazards to human life, the property of others and the environment.

Security deposits for decommissioning

- 32 | Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

No.

TRANSPORTATION

Regulation

- 33 | How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The MoEE and the Ministry of Transportation and Communication (formerly known as the Ministry of Transportation) are the regulators of transportation of crude oil. Approval from the relevant state or regional government may also be required.

COST RECOVERY

Determining recoverable costs

- 34 | Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

A contractor shall recover all costs and expenses in accordance with the accounting procedure of the PSC in respect of all designated petroleum operations up to a maximum of 50 per cent of all available petroleum

from the contract area; provided, however, that the costs and expenses of development and production operations in respect of any development and production area shall be recovered only from available petroleum produced from the development and production area.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

Until 2012, there was no specific law protecting the environment in Myanmar. The 2008 Constitution contains provisions guaranteeing the conservation of natural resources and the prevention of environmental degradation. However, environmental impact assessments were not required for any projects, governmental or private. A number of laws include short provisions prohibiting acts that adversely impact the environment.

Environmental protection generally falls under the aegis of the National Commission for Environmental Affairs (NCEA). The NCEA formulates the government's environmental policy and sets environmental standards. However, significant budget and resource constraints have compromised the ability of the NCEA to serve its stated purposes. In addition, lack of legislative attention has resulted in few guidelines and little support for NCEA action.

To the extent that environmental regulations do exist, they are organised by sector dealing with mines, forestry and fisheries management separately, which leaves many gaps in the regulatory regime.

The Environmental Conservation Law 2012 was enacted in March 2012. Rules to implement the new Law were announced in 2014. The Environmental Impact Assessment Procedure was passed in 2015 and National Environmental Quality Emission Guideline was passed in 2015. To date, there is no new additional regulation relating to environmental impact.

One of the leading precedents in Myanmar for environmental and social programmes is the 63km long Yadana-Yetagun pipeline corridor through which three natural gas pipelines from Yadana, Yetagun and Zawtika transit to the Thai border for delivery of natural gas to PTT (see www.cdain.com and www.chevron.com/globalissues/humanrights/myanmar).

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The Factories Act and the OLWA are the primary laws governing occupational health and safety in the oil and gas industry. In addition, the Policy Guide's chapter on Industrial Safety Measures and Welfare Facilities applies (see question 6).

A company may also use foreign labour for part of its workforce. A company registered under FIL must use domestic workers for 25 per cent of its skilled workforce during the first year, 50 per cent during the second year and 75 per cent during the third year of operation. Myanmar citizens must undertake all unskilled work. MIL does not mention the percentage requirement. An investor can appoint any

citizen as senior manager, technical and operational expert and adviser and replace the positions of management, technical and operational experts and advisers with local labour after providing the capacity building programmes. The visa requirement for foreign labour is filing for a stay permit at DICA with the prescribed documents and forms. A foreign employee must report and file for a stay permit at DICA within seven days of entering Myanmar.

There are no anti-discrimination requirements. However, additional labour laws are in the pipeline that may include such provisions.

TAXATION

Tax regimes

37 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

Companies in the oil and gas sector are subject to a 25 per cent tax on profits under the Income Tax Law. There is a five-year tax holiday under the 2012 FIL for oil companies operating under the 2012 FIL MIC permit.

Depreciation may be deducted in calculating a company's income tax liability at the following rates, subject to the applicable cost recovery limit:

- category – plant, machinery and pipelines; depreciation rate – 5 per cent;
- category – oil rigs, survey equipment; depreciation rate – 10 per cent; and
- category – shaft drilling equipment; depreciation rate – 20 per cent.

Under the 2018–19 Union Tax Law, commercial tax shall be levied at 5 per cent on exporting crude oil and special goods tax shall be levied at 8 per cent on exporting natural gas.

Customs duties vary depending on the customs classification of the goods. Companies with projects approved under FIL may receive either an exemption or relief from customs duty as an investment incentive.

Myanmar's foreign exchange regime is currently undergoing rapid change. Until 2012, the Foreign Exchange Regulation Act 1947 prohibited the buying, borrowing, selling or lending of foreign exchange by any person other than a licensed dealer. Until April 2012, the Myanmar Central Bank had maintained a fixed exchange rate of between 5.5 and 6 kyat to US\$1. The government also issued foreign exchange certificates (FECs) that were supposed to be equivalent in value to US\$1.

In consultation with the International Monetary Fund, in an effort to reduce the transaction costs associated with multiple exchange rates (caused by informal markets) and to improve the investment environment, the government abandoned its fixed exchange rate policy, and on 1 April 2012 introduced a managed float as part of its effort to unify all the exchange rates between the kyat, the US dollar and FECs. Effective from April 2013, the FEC was phased out.

From April 2014, the government has licensed one of the country's 24 private banks to offer foreign currency accounts, seven of which can be used to remit foreign exchange abroad. Some restrictions remain on the opening of such accounts, including documentation requirements showing that the account holder earns a salary in foreign exchange or a receipt from an official exchange currency centre.

In August 2012, parliament passed the Foreign Exchange Management Law, paving the way for further liberalisation of foreign exchange restrictions in Myanmar. Investors should monitor the impact of this Law as it is implemented.

Persons who have brought foreign capital into Myanmar under a permit granted pursuant to the present MIL is given more leeway with respect to foreign exchange restrictions. They are allowed to make the following transfers outside the country:

- the person's foreign currency entitlements;
- net profit after deducting all taxes and provisions;
- foreign currency permitted for withdrawal by MIC, which may include the value of assets on the winding up of business; and
- a foreign employee can transfer his or her salary and lawful income after deducting taxes and other living expenses incurred domestically.

According to the Ministry of Planning and Finance Notification No. 51/2017 of 22 May 2017, persons responsible for disbursement of the following types of payments (other than those under the heading of salaries) must at the time of payment deduct and remit withholding tax, in the currency in which the disbursement is made, at the following rates:

- interest paid to non-resident foreign nationals – 15 per cent;
- royalties – 10 per cent on payments to residents, 15 per cent on payments to non-resident foreign nationals; and
- payments for the purchase of goods and services in the country – 2 per cent on payments to residents, 2.5 per cent on payments to non-resident foreign nationals.

Myanmar is, at present, party to eight double tax treaties with India, Laos, Malaysia, Singapore, South Korea, Thailand, the United Kingdom and Vietnam. The treaties with Bangladesh and Indonesia are pending ratification.

COMMODITY PRICE CONTROLS

Crude oil mining

- 38 | Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

There is no mandatory price-setting regime for crude oil or crude oil products.

COMPETITION

Competition enforcers

- 39 | What government bodies have the authority to prevent or punish anticompetitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

On 24 February 2015, Myanmar enacted the Competition Law, which came into force on 24 February 2017. It provides for the creation of a new regulatory body. The Myanmar Competition Rules were passed by the Ministry of Commerce with Notification No. 50/2017, dated 9 October 2017.

Obtaining clearance

- 40 | What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

Until rules are enacted (see question 39), it is not possible to describe the process or time the process may take.

DATA

Seismic data

- 41 | Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

We understand that there are two parts for seismic data acquired during the term of the PSC:

- under a service contract the company holds title of seismic data; and
- under a PSC, MOGE holds the title of the asset.

Therefore, at the time of terminating a PSC, the company has to transfer the data to MOGE. According to PSC stipulations, a company has the right to use the data freely during the term of the PSC. Because it is confidential information under the PSC, without having MOGE consent, the company has no right to disclose this data to any third party. Under the model PSC provision in the secrecy clause, it states that the contractor undertakes to maintain in strictest secrecy and confidence all data and information purchased or acquired from MOGE including during the course of operations in Myanmar. The contractor understands that this undertaking and obligation is a continuing one that will be binding, also to its successors and permitted assigns, until the time when MOGE agrees in writing to release the contractor from its undertakings and obligations. The contractor may disclose data and information to government authorities if required by law and in order to facilitate the conduct of the petroleum operations may also disclose data and information to affiliates, its contractors' consultants and bona fide prospective assignees, provided that the contractor obtains an undertaking by the recipient to maintain the data in strictest secrecy and confidence.

INTERNATIONAL

Treaties

- 42 | To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

During 2012, Australia, Canada, the European Union, the United Kingdom and the United States all relaxed various economic sanctions against Myanmar in light of recent reforms. However, attention must still be paid to the terms of the relaxed sanctions. OFAC authorised new investment by US persons by issuing General Licence No. 17, which includes a prohibition against investments or provision of financial services to persons on the US Treasury Department's Specially Designated Nationals and Blocked Persons List, and the new requirement for periodic reporting.

US citizens investing US\$500,000 or more or contracting with MOGE are required to report on a range of policies and procedures with respect to their investments in Myanmar, including:

- human, labour and land rights;
- community consultations and stakeholder engagement;
- environmental stewardship;
- anti-corruption arrangements with security service providers;
- risk and impact assessments and mitigation;
- payments to the government; and
- an obligation to notify the Department of State of any investments with MOGE and any contact with the military or non-state armed groups.

See www.state.gov/ and General Licence Nos. 17 and 19 for more information on US sanctions.

Myanmar is a party to the Association of South East Asian Nations (ASEAN) Comprehensive Investment Agreement, which provides investment protection to investors from ASEAN states (including protection against expropriation).

On 15 July 2013, Myanmar formally acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and became the 149th party to the convention.

On July 2014, Myanmar was recognised as a candidate of the Extractive Industry Transparency Initiative, a global standard to promote open and accountable management of natural resources. MOGE came in second-last in a 2019 survey covering transparency of 45 large state-owned enterprises around the world.

Foreign ownership

43 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence?

The SEE Law states that the government has the sole right to carry out the exploration, extraction and sale of petroleum and natural gas and production of products from them. However, the government may, in the interest of the state, permit such activities to be carried out jointly between the government and any other organisations.

Under section 22 of the MIL Rules, in a joint venture carried out with a citizen in prohibited or restricted sectors, foreign capital should not exceed 80 per cent of the total capital. This ceiling may be amended by MIC by notification, from time to time, with the permission of the government.

In the 2013 tender of onshore and offshore blocks, a number of deep offshore blocks have been awarded to 100 per cent foreign-owned companies. Foreign operators must have a local presence by way of a branch or subsidiary. Foreign non-operators are obligated to have a local presence under the 2013 model PSCs.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

At present, Myanmar does not export crude oil or crude oil products. As such, no special rules are in place. Myanmar does export natural gas (Yadana, Yetagun, Zawtika and Shwe pipelines) under terms of PSCs and GSAs.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

A draft new petroleum law was issued in October 2018. A summary of the draft law follows.

Draft new Petroleum Law

A draft law concerning exploration, drilling, and production of petroleum was posted in the Myanmar Gazette on 2 October 2019. This draft law would govern the up-stream oil and gas sector, and repeal the 1957 Petroleum Resources (Development and Regulation) Act (1957 Act No. 55).

The draft law applies to petroleum, including crude oil, condensate and natural gas. It provides for issue of permits to conduct exploration and drilling, and operating licences to conduct development and production.

MYANMAR LEGAL

Khin Cho Kyi

kckyi@mlslyangon.com

43(A) 2D Malikha Street (off Parami Road)

Mayangone Township

Yangon 11061

Myanmar

Tel: +95 1 650 740

Fax: +95 1 650 466

www.myanmarlegalservices.com

The draft law provides for the formation of the Petroleum Activity Regulatory Central Committee (the Central Committee).

A contract is to be entered into between the holder of the permit or operating licence and MOGE to conduct any petroleum activity. The draft is silent on what form of contract should be used. Currently, MOGE is signing production sharing contracts with most contractors. Other common forms of contracts used in the international petroleum sector are concessions and risk-sharing contracts. The draft law is silent on terms for settlement of disputes and governing law.

The draft law provides for designation of blocks, both onshore and offshore, to be announced by the MoEE with the consent of the Central Committee.

MOGE may conduct petroleum activity on its own, or jointly with local or foreign investors using joint venture (production sharing), joint venture by shares, any other system of cooperation and profit sharing.

The MoEE shall supervise and control petroleum contractors, who shall be selected by public tenders, for the benefit of the country.

Contracts with MOGE will take the form of joint venture contract, production-sharing contract or profit-sharing contract.

Royalties are fixed at 12.5 per cent. The MoEE may provide for charges, rent, services fees and other charges.

There is no mention of income taxes and special goods tax.

Rights granted to contractors prior to enactment of this law shall continue in force.

The provisions of the Hand Dug Well Law shall not be applied.

The contractor must establish reserve funds for conservation of environment and a raining fund.

The MoEE with the approval of the union government may issue work rules in accordance with the nature of the petroleum activity and international petroleum industry practices.

The MoEE with the approval of the union government may issue rules and by-laws.

The Central Committee and the MoEE may issue notifications, orders, directives and procedures. The Oil and Gas Planning Department and MOGE may issue orders and directives.

The sector has some significant challenges for foreign investors owing to the lack of established guidelines, lack of clear policy framework, shortage of skilled labour, high corruption, a lack of transparency in the tender and procurement process and in international contracting, and banking payment issues (www.moee.gov.mm).

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