

Gas Regulation

Contributing editors

David Tennant, Adam Brown and Liam O'Flynn



2019

GETTING THE
DEAL THROUGH 

GETTING THE
DEAL THROUGH 

Gas Regulation 2019

Contributing editors

David Tennant, Adam Brown and Liam O'Flynn

Dentons UKMEA LLP

Reproduced with permission from Law Business Research Ltd

This article was first published in March 2019

For further information please contact editorial@gettingthedealthrough.com

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

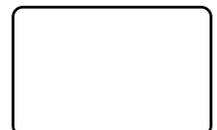


Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3780 4147
Fax: +44 20 7229 6910

© Law Business Research Ltd 2019
No photocopying without a CLA licence.
First published 2003
Seventeenth edition
ISBN 978-1-83862-085-1

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between January and February 2019. Be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

Global overview	5	India	90
David Tennant, Adam Brown and Liam O’Flynn Dentons UK and Middle East LLP		Venkatesh Raman Prasad, Megha Arora and Sweta Singh J Sagar Associates	
Albania	7	Italy	98
Alban Caushi CR Partners		Pietro Cavasola and Matteo Ciminelli CMS Adonnino Ascoli & Cavasola Scamoni	
Angola	12	Japan	104
Emanuela Vunge and Mafalda Francisco Matos LEAD Advogados – Sociedade de Advogados RL		Kentaro Kubo TMI Associates	
Austria	19	Mexico	108
Thomas Starlinger Schima Mayer Starlinger Rechtsanwälte GmbH		Rogelio López-Velarde, Amanda Valdez and Fernando Quesada Dentons López Velarde SC	
Brazil	25	Myanmar	117
Giovani Loss and Felipe Feres Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados		Khin Cho Kyi Myanmar Legal Services Limited	
Croatia	34	Nigeria	122
Miran Maćešić and Ivana Manovelo Maćešić & Partners Law Offices		George Etomi, Ivie Ehanmo, Samson Ozah and Diana Abasi Okop George Etomi & Partners	
Denmark	42	Norway	129
Per Hemmer, Johan Weihe and Rania Kassis Bech-Bruun		Yngve Bustnesli Kvale Advokatfirma DA	
European Union	49	Pakistan	136
Christian Filippitsch and Max Seuster Norton Rose Fulbright		Aemen Zulfikar Maluka and Pir Abdul Wahid Josh and Mak International	
Faroe Islands	58	Portugal	141
Per Hemmer, Johan Weihe and Rania Kassis Bech-Bruun		Mónica Carneiro Pacheco and Bernardo Cunha Ferreira CMS Rui Pena & Arnaut	
France	63	Spain	147
Christophe Barthélemy and Aurore-Emmanuelle Rubio CMS Francis Lefebvre Avocats		Gonzalo Olivera and Alberto Artés King & Wood Mallesons	
Germany	77	United Kingdom	153
Gerd Stuhlmacher, Felix Dinger and Tobias Grans Norton Rose Fulbright LLP		David Tennant, Adam Brown, Sam Boileau, Rebecca Owen-Howes, Laura Mackett and Liam O’Flynn Dentons UK and Middle East LLP	
Greenland	84	United States	169
Per Hemmer, Johan Weihe and Rania Kassis Bech-Bruun		Robert A James and Stella Pulman Pillsbury Winthrop Shaw Pittman LLP	

Preface

Gas Regulation 2019

Seventeenth edition

Getting the Deal Through is delighted to publish the seventeenth edition of *Gas Regulation*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

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 **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Angola, India and Austria.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

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.

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 editors, David Tennant, Adam Brown and Liam O’Flynn of Dentons UKMEA LLP, for their continued assistance with this volume.

GETTING THE 
DEAL THROUGH 

London
February 2019

Myanmar

Khin Cho Kyi

Myanmar Legal Services Limited

Description of domestic sector

1 Describe the domestic natural gas sector, including the natural gas production, liquefied natural gas (LNG) storage, pipeline transportation, distribution, commodity sales and trading segments and retail sales and usage.

Crude oil has been produced in Myanmar for many years. Owing to a history of military rule (1962 to 2010) and sanctions, and a lack of technical infrastructure, Myanmar's natural gas sector is underdeveloped. However, natural gas production has been rising substantially over the past decade, and is now the country's most important source of export revenue.

Daily gas production is reported to be 50 million cubic feet per day (mmcf/d) (onshore) and 1900 mmcf/d (offshore).

At present, there are four major gas fields in operation:

- Yadana, which has been exporting gas to Thailand since 1998, is currently the largest producer in the country, making up approximately 37 per cent of gas production in the country. Its operators are Total (31.2 per cent), Unocal (28.3 per cent), PTTEPI (25.5 per cent) and Myanmar Oil and Gas Enterprise (MOGE) (15 per cent). Its gas production rate is 910 mmcf/d, of which approximately 650 mmcf/d is exported;
- Yetagun, which has been exporting gas to Thailand since 2000 and produces approximately 22 per cent of gas production in the country. Its operators are Petronas (40.8 per cent), Nippon (19.4 per cent), PTTEPI (19.4 per cent) and MOGE (20.4 per cent). Its gas production rate is 250 mmcf/d, of which approximately 150 mmcf/d is exported;
- Shwe (Daewoo), which exports gas to China and domestic factories (first gas in July 2013), produces approximately 25 per cent of gas production in the country. Its operators are Daewoo International (51 per cent), MOGE (15 per cent), KOGAS (8.5 per cent), GAIL (8.5 per cent) and ONGC (17 per cent). Its gas production rate is 500 mmcf/d, of which approximately 475 mmcf/d is exported; and
- Zawtika, which started delivery to Thailand in March 2014, produces approximately 17 per cent of gas production in the country. Its operators are PTTEPI (80 per cent) and MOGE (20 per cent). Its gas production rate is 360 mmcf/d, of which approximately 250 mmcf/d is exported.

The majority of natural gas produced is currently exported to either Thailand (1,275 mmcf/d from the Yadana, Yetagun and Zawtika fields) or China (250 mmcf/d from the Shwe field).

There is no LNG storage in Myanmar. The above statistics were current as at January 2019 and were taken from 'Development Programs in Myanmar Energy Sector', Soe Myint, Myanmar Energy Power Conference, January 2019.

2 What percentage of the country's energy needs is met directly or indirectly with natural gas and LNG? What percentage of the country's natural gas needs is met through domestic production and imported production?

Current energy production in Myanmar fails to meet demand. Regarding Myanmar's population, 70 per cent live in rural areas and 74 per cent lack access to energy. Yangon is the largest city in Myanmar, and it is estimated that only 67 per cent of its residents are connected to the grid.

The country's primary energy supply includes coal, oil, gas, hydropower and biomass. As of 2018, biomass accounts for 51 per cent of the supply, followed by 13 per cent from natural gas and 17 per cent from oil. Coal and Hydropower account for small shares of total energy supply, (2 per cent and 17 per cent respectively). These shares are changing, however, to reflect the rapid expansion of coal and gas production.

Energy consumption by fuel type is shifting in favour of natural gas.

No LNG is imported into Myanmar; however, importation of LNG is under discussion. A tender for EOI was issued in 2016 and received a number of responses. On 30 January 2018, the Ministry of Electricity and Energy (MoEE) issued three 'notices to proceed' to investors for imported LNG. As of January 2019, no PPA had been signed.

Government policy

3 What is the government's policy for the domestic natural gas sector and which bodies set it?

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 products of the same. However, the government may, in the interest of the state, permit such activities to be carried out jointly between the government and a private or foreign investor, through MOGE, or solely through any other organisations. The energy plan recently announced by MOGE includes a push to increase and promote private participation in the oil and gas sector of Myanmar.

The MoEE is principally responsible for the oil and gas sector. It oversees three state-owned enterprises: MOGE, Myanmar Petrochemical Enterprise (MPE) and Myanmar Petroleum Products Enterprise (MPPE). It also oversees the Oil and Gas Planning Department (OGPD).

In 2013, the government created a National Energy Management Committee and an Energy Development Committee to strengthen coordination and planning among the energy sector's institutions.

In 2016, the Myanmar Energy Master Plan and National Electrical Plan were issued.

The government is keen to attract foreign investment and issue production-sharing contracts (PSCs). The first bidding round opened in 2011, and six companies were awarded eight blocks. Recent bidding rounds include a round of bidding for 18 onshore blocks in January 2013, including three improved petroleum recovery contracts (IPRs) and 15 PSCs. In October 2013, 11 bidders were awarded 16 onshore blocks. In April 2013, the government announced a new round of bidding for shallow water blocks (11 PSCs) and deepwater blocks (19 PSCs). Thirty shortlisted bidders submitted bids for the second round of bidding in November 2013. In March 2014, 13 bidders were awarded 10 shallow water blocks and 10 deepwater blocks. 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. There has been no subsequent announcement.

Potential bidders were required to cooperate with at least one Myanmar nationally owned company registered at the OGPD for onshore and shallow water blocks. As at October 2015, over 150 companies were registered with MOGE to serve as local partners. Bidders for deep offshore blocks could include a Myanmar nationally owned company.

At present, all PSCs have been signed. Myanmar has 53 onshore blocks and 51 offshore blocks. There are 24 onshore blocks and 24 offshore blocks available. Tenders are expected to be called for vacant offshore petroleum blocks in early 2019.

The MoEE's website provides government information on the oil and gas sector: www.moep.gov.mm.

See summary of the draft new petroleum law under 'Update and trends'.

Regulation of natural gas production

4 What is the ownership and organisational structure for production of natural gas (other than LNG)? How does the government derive value from natural gas production?

The natural gas sector is under the responsibility of MOGE, a 100 per cent state-owned enterprise. MOGE is responsible for the upstream petroleum sub-sector, and has four basic responsibilities:

- to explore and produce oil and gas using its own resources;
- to supply domestic natural gas by constructing its own pipelines;
- to supply compressed natural gas (CNG) as a substitute fuel for vehicles; and
- to participate in and oversee production-sharing agreements in cooperation with foreign oil companies.

The OGPD is responsible for negotiating PSCs with foreign oil companies. In practice, investors generally enter into a PSC or an IPR with MOGE when investing in oil and gas projects.

Three types of PSC can be awarded: PSC for onshore blocks, PSC for shallow water offshore blocks and PSC for deepwater offshore blocks.

All PSCs in Myanmar share the following features:

- production periods will generally last 20 years from the date of completion of the development plant, or as according to the gas sales agreement;
- contractors are required to allot US\$25,000 per year to a training fund during the exploration period and US\$50,000 per year during the production period;
- 0.5 per cent of the contractor's share of profits from petroleum is required to be used for research and development;
- a signature bonus is required 30 days after the exploration period begins; and
- 25 per cent of natural gas must be sold to the domestic market at 90 per cent of the fair market price.

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 the project. For offshore blocks, MOGE has the right to buy in up to 20 per cent of the project upon a commercial discovery (increasing to 25 per cent if the reserves are greater than 5 trillion cubic feet).

Companies in the oil and gas sector are subject to a 25 per cent tax on profits under the Income Tax Law. The 2012 Foreign Investment Law (2012 FIL) was repealed by the 2016 Myanmar Investment Law (2016 MIL). Rules for the 2016 MIL were published in 2017. The tax holiday period under the 2016 MIL was uncertain. Myanmar Investment Commission (MIC) Notification No. 10/2017 defines less developed regions, moderate developed regions and developed regions, and tax holiday periods are specified accordingly.

A royalty of 12.5 per cent of all available petroleum is also payable by the contractor. MOGE's share of profit petroleum (after a contractor's allowable cost recovery) depends on the level of daily production (and for offshore blocks, the depth of the well). MOGE's share of production profit ranges from 60 to 90 per cent.

An 8 per cent special goods tax was introduced in January 2016 and a 40 to 50 per cent capital gains tax also exists. There are also signature and other bonuses.

5 Describe the statutory and regulatory framework and any relevant authorisations applicable to natural gas exploration and production.

Current legislation governing the oil and gas sector in Myanmar includes the following eleven principal laws and regulations:

- the Oilfield Act of 1918;
- the Oilfield Rules of 1936;
- the Petroleum Rules of 1987;
- the Essential Supplies and Services Law No. 13/2012;
- the Oilfields (Labour and Welfare) Act of 1951;
- the Petroleum Resources (Development Regulation) Act of 1957 subject to repeal by draft new petroleum law;
- the Law Amending the Petroleum Resources (Development Regulation) Act of 1969;
- the Myanmar Petroleum Concession Rules of 1962;
- the Petroleum and Petroleum Products Law of 2017;
- the Hand Dug Well Law of 2017; and
- Notification No. 100/2013, issued by the Ministry of Energy (MoE), relating to importing, storage, transportation and distribution of petroleum and products.

The old petroleum laws deal mainly with rights characterised as concessions. Although the above-mentioned laws relating to petroleum are still applicable, in practice, investors generally enter into PSCs. The terms and conditions of these contracts govern the process so long as they are not contrary to the laws in force.

The above laws are mostly based on British legal codes of pre-independence Indian statutes. Although the terms and conditions of PSCs largely govern exploration and production (E&P) operations, the above-mentioned Oilfields (Labour and Welfare) Act of 1951 is of continuing importance to contractors and their service companies. Of equal importance in the oil and gas sector are the following:

- the SEE Law (under which MOGE is assigned responsibility for the E&P sector under PSCs with private companies); and
- the 2016 MIL, enacted in October 2016, which superseded the 2012 FIL. The following rules for the 2016 MIL were enacted in 2017:
 - MIC Notification No. 35/2017 – the Foreign Investment Rule – was passed on 30 March 2017;
 - MIC Notification No. 10/2017 – Designation of Development zones – was passed on 22 February 2017;
 - MIC Notification No. 13/2017 – Classification of Promoted Sectors – was passed on 1 April 2017; and
 - MIC Notification No. 15/2017 regarding types of restricted activities – was passed on 10 April 2017.

The Ministry of Environmental Conservation and Forestry issued the National Environmental Quality Emission Guideline (EQEG) on 29 December 2015 as Notification No. 615/2015. The EQEG provides the basis for the regulation and control of noise and vibration, air emissions and liquid discharges from various sources in order to prevent pollution for the purposes of protection of human and ecosystem health. The EQEG applies to the onshore and offshore oil and gas sector, including seismic exploration, exploratory and production drilling, development and production activities, offshore pipeline operations, offshore transportation, tanker loading and unloading, ancillary and support operations, and decommissioning.

6 Are participants required to provide security or any guarantees to be issued with a licence to explore for or to store gas?

The current model PSC requires both a parent company guarantee and a performance bank guarantee to be issued with a licence to explore for gas, the second of which is to be provided within 30 days of commencement of the operation date. The performance bank guarantee is issued by a corresponding bank of Myanmar Foreign Trade Bank, in respect of the minimum expenditure commitment of the contractor.

Regulation of natural gas pipeline transportation and storage

7 Describe in general the ownership of natural gas pipeline transportation, and storage infrastructure.

MOGE is responsible for the transportation of crude oil and natural gas in Myanmar.

8 Describe the statutory and regulatory framework and any relevant authorisations applicable to the construction, ownership, operation and interconnection of natural gas transportation pipelines, and storage.

MOGE is a state-owned enterprise with onshore operatorship, and it depends on the government's budget. It initiates the joint venture process for three drilling rigs, pipeline construction (onshore) and seismic acquisition. It is privatised in downstream (trading and marketing) and uses only conventional resources.

The Ministry of Electricity and Energy (MoEE) was divided into four organisations:

- regulation (OGPD), which is responsible for coordination, management and regulation;
- upstream (MOGE), which is responsible for exploration, drilling, production, on-land oil and gas pipeline network and CNG;
- midstream (MPE), which is responsible for refineries and process, fertiliser plants, methanol plant, carbon dioxide and LPG plants and waxing and tar; and
- downstream (MPPE), which is responsible for marketing and distribution.

The Ministry of Electric Power and the MoE were recently merged to become the MoEE.

Websites

- Ministry of Electricity and Energy (www.moee.gov.mm);
- Myanmar Oil and Gas Enterprise (MOGE) (www.moee.gov.mm/en/ignite/page/40);
- Myanmar Petrochemical Enterprise (MPE) (www.moee.gov.mm/en/ignite/page/41); and
- Directorate of Investment and Company Administration (www.dica.gov.mm).

9 How does a company obtain the land rights to construct a natural gas transportation or storage facility? Is the method for obtaining land rights to construct natural gas distribution network infrastructure broadly similar?

Similar to other former British colonies, the land tenure system in Myanmar recognises freehold and leasehold title. Title must be registered to be effective, and is subject to reservation, in favour of the government, of all mines, mineral products and buried treasures. The government has the right to expropriate land with appropriate consideration.

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.

The 2016 MIL provides a right to lease or use land. Specific procedures for granting land use rights under the 2016 MIL are provided in the MIL Rules issued in 2017.

The Companies Act (1914) has been superseded by the new Companies Law (2017), which came into force on 1 August 2018. The new Companies Law allows up to 35 per cent foreign ownership in a Myanmar company.

10 How is access to the natural gas transportation system and storage facilities arranged? How are tolls and tariffs established?

This information is not available. On a case-by-case basis, such arrangements are negotiated with the relevant government regulator and local government organisation.

11 Can customers, other natural gas suppliers or an authority require a pipeline or storage facilities owner or operator to expand its facilities to accommodate new customers? If so, who bears the costs of interconnection or expansion?

Not applicable.

12 Describe any statutory and regulatory requirements applicable to the processing of natural gas to extract liquids and to prepare it for pipeline transportation.

Not applicable.

13 Describe the contractual regime for transportation and storage.

Not applicable.

Regulation of natural gas distribution

14 Describe in general the ownership of natural gas distribution networks.

MOGE is responsible for transporting natural gas, and is overseen by the MoEE (see question 3).

The MoEE has taken steps to expand the utilisation of LPG as a household fuel. Distribution of LPG is controlled by the government, through MPE. According to MPE, there are three LPG plants with a total design capacity of between 42 and 50mmcf/d. The Minbu LPG Extraction Plant was established by Mitsubishi Heavy Industry Co (Japan), while the remaining two plants, one in Nyaung Don and one in Kyun Chaung, were established by CMC Dong Fang International Co (China).

The MoEE has also taken steps to promote CNG and CNG filling stations.

15 Describe the statutory and regulatory structure and authorisations required to operate a distribution network. To what extent are gas distribution utilities subject to public service obligations?

There is no clear legal or regulatory practice.

16 How is access to the natural gas distribution grid organised? Describe any regulation of the prices for distribution services. In which circumstances can a rate or term of service be changed?

The total domestic gas pipeline network ranges from four to 20 inches in diameter and spans 2,200 miles. The domestic pipeline from Yadana to Yangon is 24 inches in diameter and 436km long. The export pipelines from each of the natural gas fields vary in lengths and diameters:

- Yadana Pipeline (36 inches, 410km);
- Yetagun Pipeline (24 inches, 274km);
- Myanmar China Gas Pipeline (40 inches, 782km in Myanmar); and
- Zawtika Pipeline (28 inches, 300km).

Access to the gas pipeline requires contracting with MOGE. The terms and conditions of contracts with MOGE are not made public.

17 May the regulator require a distributor to expand its system to accommodate new customers? May the regulator require the distributor to limit service to existing customers so that new customers can be served?

Not applicable.

18 Describe the contractual regime in relation to natural gas distribution.

Not applicable.

Regulation of natural gas sales and trading

19 What is the ownership and organisational structure for the supply and trading of natural gas?

See question 14.

20 To what extent are natural gas supply and trading activities subject to government oversight? What authorisations are required to engage in wholesale trading of gas?

Natural gas supply and trading activities are under the control of MOGE.

21 How are physical and financial trades of natural gas typically completed?

Not applicable.

Update and trends

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 2018. 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.

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 Hand Dug Well Law shall not be applied.

The contractor must establish reserve funds for conservation of environment and a training 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/procurement process and in international contracting, and banking payment issues (www.expport.gov).

- 22 Must wholesale and retail buyers of natural gas purchase a bundled product from a single provider? If not, describe the range of services and products that customers can procure from competing providers.**

Not applicable.

Regulation of LNG

- 23 What is the ownership and organisational structure for LNG, including liquefaction and export facilities, and receiving and regasification facilities?**

There are currently no LNG facilities in Myanmar. There has been discussion about possible floating receiving and regasification facilities to address the current demand for gas, but no concrete plans have been put in place. A tender for EOI for LNG facilities was issued in 2016 and a number of responses were received. The tender for LNG facilities was postponed to 2018. Three notices to proceed with LNG import projects were signed by the MoEE on 30 January 2018 (see question 2).

- 24 Describe the regulatory framework and any relevant authorisations required to build and operate LNG facilities.**

Three LNG projects have been initiated by the GOM at Kanbaunk in the Tanintharyi region, Mee Laung Gyaing in the Ayeyarwady region and Ahlone in the Yangon region. The French company Total and Germany's Siemens will install 1,230 MW of capacity at Kanbaunk within 48 months. 615 MW in the first phase will come online in three years at Mee Laung Gyaing, China's Zhefu and local company Supreme group will undertake a 1,390 MW project, with the first phase to be completed in 36 months and reaching full capacity 12 months later. The two other projects are smaller and will be implemented in 28 months. Thai-based Toyo-Thai will build the Ahlone 356 MW LNG-to-power-plant, while China's Sinohydro and Supreme will implement a 135 MW combined-cycle gas turbine project at Kyaukphyu.

The MoEE is the authority that will develop the regulatory framework and relevant authorisations required for LNG facilities in the future.

- 25 Describe any regulation of the prices and terms of service in the LNG sector.**

Myanmar law is silent on this point.

Mergers and competition

- 26 Which government body may prevent or punish anticompetitive or manipulative practices in the natural gas sector?**

There is no government body to prevent or punish anticompetitive or manipulative practices specifically for the natural gas sector. The Competition Law, which entered into force on 24 February 2017, establishes the Myanmar Competition Commission under the Ministry of Commerce. The Commission is the government body to prevent or punish anticompetitive or manipulative practices, including those in the natural gas sector. The Commission will be vested with investigative and adjudicative powers.

- 27 What substantive standards does that government body apply to determine whether conduct is anticompetitive or manipulative?**

Myanmar law is silent on this point.

- 28 What authority does the government body have to preclude or remedy anticompetitive or manipulative practices?**

Similar to other jurisdictions, the Competition Law prohibits anticompetitive agreements and the abuse of a dominant position.

- 29 Does any government body have authority to approve or disapprove mergers or other changes in control over businesses in the sector or acquisition of production, transportation or distribution assets?**

Yes. If the business entity is under the MIC, it will require the MIC's approval. The MIC may seek advice from the Ministry of Commerce regarding merging regulations under the Competition Law. There are no rules enforced yet to exercise the Law.

- 30 In the purchase of a regulated gas utility, are there any restrictions on the inclusion of the purchase cost in the price of services?**

Myanmar law is silent on this point. Section 13 of the Competition Law may be applicable once it has come into force.

31 Are there any restrictions on the acquisition of shares in gas utilities? Do any corporate governance regulations or rules regarding the transfer of assets apply to gas utilities?

The SEE Law prescribes that gas utilities may only be undertaken by a state-owned enterprise, subject to exceptions allowed by the government for joint ventures between the government and another person or economic organisation. Section 7 of the Competition Law may be applicable.

International

32 Are there any special requirements or limitations on foreign companies acquiring interests in any part of the natural gas sector?

Foreign companies are restricted in acquiring interests in the natural gas sector by the SEE Law and MIC Notification No. 15/2017.

Myanmar's model PSC (2013) requires contractors to use 25 per cent of their annual budget to procure goods and services either 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 comparable quality, price and availability.

The model contract also requires a contractor to employ qualified citizens of Myanmar to the maximum extent possible.

Previously, offshore oil exploration and production could be undertaken by a 100 per cent foreign-owned contractor. MOGE currently requires that the foreign contractor include a local joint venture partner holding a minority interest for both onshore and shallow water block projects. A deepwater block project may be undertaken by a 100 per cent foreign-owned contractor. For offshore exploration, the government allows a maximum of three blocks for each company.

A list of possible joint venture partners is available on www.moep.gov.mm.

33 To what extent is regulatory policy affected by treaties or other multinational agreements?

Myanmar is a member of the Association of Southeast Asian Nations (ASEAN), and a participant in the Trans-ASEAN Gas Pipeline project (TAGP project). Myanmar is a party to the ASEAN Memorandum of Understanding on the Trans-ASEAN Gas Pipeline, signed on 5 July 2012 in Bali, Indonesia. The ASEAN Council on Petroleum is developing a regulatory framework including open access, gas transit principles and gas specification harmonisation to facilitate the TAGP project. The updated ASCOPE-TAGP Masterplan 2000 involves the construction of 4,500km of pipelines (mainly undersea) worth US\$7 billion. Eight bilateral gas pipeline interconnection projects, with a total length of approximately 2,300km, are currently operating.

The above statistics were produced by the ASEAN Centre for Energy.

34 What rules apply to cross-border sales or deliveries of natural gas?

Cross-border sales or deliveries are regulated by the terms of the relevant PSC and gas sales agreement, and terms under law of cross-border jurisdiction.

Transactions between affiliates

35 What restrictions exist on transactions between a natural gas utility and its affiliates?

None.

36 Who enforces the affiliate restrictions and what are the sanctions for non-compliance?

Not applicable.

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 / +95 1 652 139
Fax: +95 1 650 466
info@mlslyangon.com
www.myanmarlegalservices.com

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Art Law
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Corporate Reorganisations
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Defence & Security Procurement
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Compliance
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gaming
Gas Regulation
Government Investigations
Government Relations
Healthcare Enforcement & Litigation
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Litigation Funding
Loans & Secured Financing
M&A Litigation
Mediation
Merger Control
Mining
Oil Regulation
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public M&A
Public Procurement
Public-Private Partnerships
Rail Transport
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
Sovereign Immunity
Sports Law
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Technology M&A
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally

Online

www.gettingthedealthrough.com