

MYANMAR

Overview of Legal and Regulatory Regime, Sanctions, Cross-border Projects and ASEAN Integration 2015

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Special Features of the Myanmar Legal System

- Colonial British Laws, codified under the Burma Code, are still in force unless specifically superseded.
- Most legislation was published in Myanmar and English languages up to 2011 by the AGO.
- The official language of the courts is Myanmar. At university, law is taught at the undergraduate level primarily in English language.
- No jury system, except labour tribunals.
- Myanmar gazette is published weekly.
- Few official statistics are published.
- The pace of civil court proceedings is slow.
- Criminal cases are tried under the Code of Criminal Procedure [India Act V, 1898] and Civil Cases are tried under the Code of Civil Procedure [India Act V, 1908]. Both criminal and civil cases are also tried under the Evidence Act, India Act 1, 1872 and the Courts Manual.
- There were no international accounting firms in Yangon in February 2012. There are now a number, including KPMG, Deloitte, PwC and EY. Accounts system is governed by Myanmar Accountancy Law.
- Exchange of foreign currencies was formerly allowed only through government banks and licensed exchange centers, which were established in late 2011. As of November 2016, the government licensed 3 of 4 state-owned banks and 14 of the 23 private banks to offer foreign currency accounts. The government granted approval to 13 foreign banks to setup branch offices.
- On 1st April 2012, the CBM officially floated the Kyat, and adopted a “managed float.”
- The laws and practices governing investing in Myanmar are undergoing rapid changes. The Myanmar Government is obtaining technical assistance and training in a number of key areas, including foreign exchange controls, finance and investment law reform and trade facilitation from foreign countries.

Sources of Law

British colonial law, from India

Burma Code (13 volumes, enacted 1841-1954)

Selected laws and regulations (as amended)

- Myanmar Companies Act (1914), Rules (1940) and Regulations (1957), as amended.
- Oil and gas laws. Oilfields Act (1918) supplemented by numerous laws and regulations, including The Oilfield Rules (1936); The Petroleum Act (1934), The Petroleum Rules (1937), The Essential Supplies and Services Law (Law No. 13/2012), The Oilfields (Labour and Welfare) Act (1951), The Petroleum Resources (Development Regulation) Act (1957), The Law Amending the Petroleum Resources (Development Regulation) Act (1969), and the Myanmar Petroleum Concession Rules (1962). Production sharing contracts are signed with Myanmar Oil and Gas Enterprise (“MOGE”). Draft Petroleum and Petroleum Products Law and Draft Hand Dug Wells Law have been published in daily newspaper and public comments were invited.
- Special Companies Act (1950) (if joint venture with government enterprise)
- Myanmar Investment Law (2016) was enacted on 18th October 2016, replacing the Foreign Investment Law (2012) and citizens Investment Law (2013), administered by the Myanmar Investment Commission. On 30th March 2017, MIC Notification No. 35/2017 - the Foreign Investment Rules was passed. On 22nd February 2017, MIC Notification No. 10/2017 - Designation of Development zones; on 1st April, 2017, MIC Notification No. 13/2017 - Classification of Promoted Sectors; and on 10th April 2017, MIC Notification No. 15/2017 re types of restricted activities, were passed.
- Transfer of Immoveable Property Restriction Law (1987): Foreigners shall not purchase land and buildings. Condominium Law allows foreigners to purchase limited units, but on certain conditions prescribed.
- Myanmar Citizens Investment Law (2013). Superseded by MIL
- MSEZL: Myanmar Special Economic Zone Law January 2014, repealing the 2011 MSEZL and 2011 Dawei SEZL. Implementing rules were announced on 27th August 2015. See slide 11. MSEZ Rules promulgated on 27th August 2015.
- On 1st October 2014, Ministry of National Planning and Economic Development Department issued the Regulation Relating to Applying Investment in Thilawa Special Economic Zone as Notification 81/2014. On 3rd October 2014 Myanmar Investment Commission issued Notification 59/2014 in respect of an area of 4,075, 153.029 square meters (1007 acres) which located in the Kokang Self- Administered Zone within the boundaries specified in para -3 as the “Kokang Economic Zone” with effect as from the date of issuance of this Notification.

Sources of Law (Cont' d)

- State-owned Economic Enterprises Law (1989)
- Private Industrial Enterprise Law (1990)
- 2017 Union Tax Law was published on 10th March 2017, and became effective from 1st April 2017. The new law includes certain adjustments to existing personal, commercial and capital gains tax rates.
- In 2014 the parliament announced that tax rates would be announced through the Union Tax Law and amended as needed on an annual basis.
 - Income Tax : The income tax rates that were enacted in March 2014 remained unchanged under the 2016 Law, which reduced tax brackets from 12 to 5 (the top rate is still 25% for Myanmar companies and has been reduced to 25% for branches of foreign companies under the new law), the threshold for capital gains is now denominated by Myanmar currency rate, except those in the oil and gas sector. Thresholds have been raised to MMK 10 million, and capital gains taxes for non-residents are reduced to 10% under the new 2016 Law. Other rates under the 2014 Union Law, including harmonized stamp duty for documents in foreign and domestic currency, and payment of income tax before the end of each quarter instead of monthly remain the same
 - Commercial Tax Law (1990) (a turnover tax levied on goods and services, rates vary). Amendments effective 1 April 2015 kept the range of rates the same, but the list of taxable goods changed. The threshold for tax exemption increased from MMK15 Million to MMK 20 Million and the penalty for failing to provide receipts to a purchaser went from 10% to 100% of tax due
- Special Commodity Tax Law (2016). (Commodity)
 - According to the Special Commodity Tax Law, various kinds of cigarettes, tobacco, Virginia tobacco, cheroots, cigars, pipe tobacco, betel chewing preparations, various kinds of liquor, beer, wine, teak, hard wood jewelleryes, jades, rubies, sapphires, emeralds, diamonds and other gems and petrol, diesel, aviation jet fuel, natural gas and van above 1,800 cc except Double cab, Pick up, saloons, sedans and estate wagons and coupes are included in the special commodities.
- Double Tax Agreements: India, Laos, Malaysia, Singapore, South Korea, Thailand, United Kingdom, and Vietnam.
- Bilateral Investment Treaties: China, India, Indonesia, Israel, Japan, Kuwait, Laos, the Philippines, Republic of Korea, Thailand, USA and Vietnam.

Sources of Law (Cont' d)

- Labour Laws:
 - Formerly, there were 21 labour laws, but following recent legislation there are 14 in use. On 28th March 2012, the Dispute Settlement Law [the Settlement of Labour Dispute Law] relating to Labour Affairs was enacted, and the Trade Disputes Act (1929) was revoked. In 2014 the Law Amending the Labour Dispute Law, 2012, enacted and some of the punishment section was amended. The Social Security Law (2012) was enforced on 1 April 2014 by Notification 15/2014 of the President's Office, which revoked the old Social Security Act (1954). Under the new Social Security Law, both employees and employers are required to contribute to the social security fund at rates set by the Ministry of Labour, Immigration and Population (formerly Ministry of Labour, Employment and Social Security- MOLESS) through notification. In 2014 the Law Amending the Leave and Holidays Law enacted and inserted that the female workers with pregnancy shall be granted maternity leave either with a relevant allowance or salary six weeks before and eight weeks after the confinement. Maternity leave may be granted in combination with medical leave.
 - In 2016, the Payment of Wages Act, 1936 was revoked by the 2016 Payment of Wages Law. And then the Shop and Establishments Act, 1951 was revoked by the 2016 Shops and Establishments Law. According to this Law, if employer intended to work employee 24 hours per day of the nature of the work shall be required prior approval of the Labour Department. In 2016, the Law Amending the Factories Law was enacted and some of the clauses are amending in working hours and age of the employee.
 - The Minimum Wages Law (2013) was enacted, and the Minimum Wages Act (1949) and Minimum Wages for Farm Workers Act (1948) were revoked. The Minimum Wage Law allows the government by notification to set the minimum wage per sector. Notification No. 2/2015 was announced on 28th August 2015 fixing a rate at 3,600 kyat for an 8-hour work day, excluding small businesses and family-run businesses with less than 15 employees.
 - The MOLESS issued the Announcement No. 1/2015 on 31st August 2015 relating to signing the employment contract between employer and employee in accordance with the model employment contract drafted by the Ministry of Labour.
- Immigration law, governing visas for foreigners. Certain foreigners require stay permits or business visas. Residence of Foreigner Rules were issued on 18 November 2014.
- Myanmar Mines Law (1994), Myanmar Mines Rules (1996) and the Law Amending the Myanmar Mine Law (2015)
- Central Bank Law (2013)
- Security Exchange Law (2013)
- The Union Parliament (September 2011 through April 2017) adopted 258 new laws/amendments.

Selected Current Developments in Legal Regime

- Additional bills in the works:
 - Companies Act, to replace 1914 act (Draft posted)
 - Petroleum Law
 - Petroleum and Petroleum Products Law
 - Labour Law (consolidated)
 - Other laws, which are being drafted by Ministries, under review of AGO
- Intellectual Property bills in the works:
 - Trademark Law
 - Copyright Law
 - Patent Law
 - Industrial Design Law

Arbitration

- Myanmar Arbitration Act (1944).
- Party to Geneva Protocol on Arbitration Clauses of 1923.
- Member of ASEAN, with obligation to ratify Protocol on Dispute Settlement Mechanism.
- Conciliation through the Union of Myanmar Federation of Chambers of Commerce and Industry.
- Myanmar acceded to the New York Convention effective 15th July 2013.
- New Arbitration Law No. 5/2016 dated 5 January 2016, which revoked the Arbitration Act (1944), was drafted based on the UNCITRAL model law.

Exchange Rate Centers

- Opening of licensed exchange rate centers, October 2011.
- Government exchange rate US\$1 to approx. 6 kyats was superseded on 2nd April 2012 by a managed floating exchange rate.

Permits to Trade (currently known as DICA Permit)

- Permits to Trade were granted to foreign companies for industrial, trading and service companies in the past. From 2002, they were no longer granted for foreign trading companies (but this was not officially announced, and renewals of Permits to Trade for foreign trading companies issued in the past have not been approved. On 10th April 2017, MIC Notification No. 15/2017 allowed foreigners to invest on wholesale and retailing services with the approval from the Ministry of Commerce.

IMF Technical Assistance

- The Government took steps in consultation with IMF to reform the country's dual exchange rate system.
- Several foreign governments are offering technical assistance re: environmental and social safeguards, etc.
- On 1st August 2012, the World Bank and Asian Development Bank opened interim offices in Yangon, and in February 2013 they officially resumed work in Myanmar.

Extractive Industry Transparency Initiative

- On December 2012, Myanmar took a step to implement EITI (Extractive Industries Transparency Initiative) in Myanmar. The first meeting of Myanmar's EITI multi-stakeholder group was held on 8th February 2014. In June 2014 Myanmar became a candidate member joining 48 other states. Myanmar submitted its first report December 2015.

Ministries

- Reduced from 36 to 21 by the new government. The Ministry of State Chancellor's Office was established on 17th May 2016.

Anti-bribery and Corruption Guidelines

- Gift Acceptance Guidelines issued by President's Office on 4th April 2016.

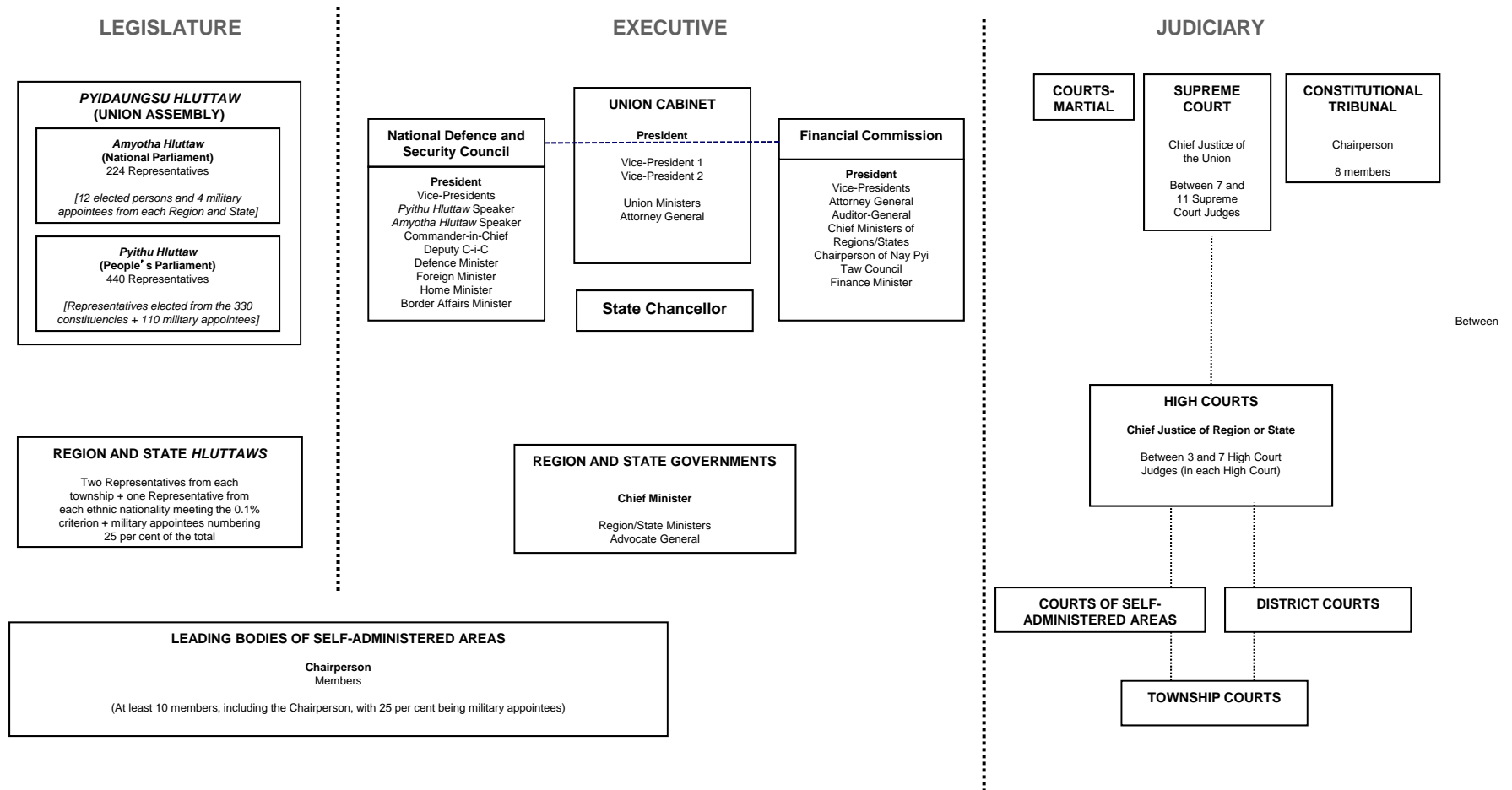
Website Sources of Legal and Regulatory Information

- **DICA, Directorate of Investment and Company Administration (Secretariat of Myanmar Investment Commission)**
www.dica.gov.mm/. Click link to “Investment Guide”
- **The New Light of Myanmar:** Government publication, issues daily Gazette
www.myanmar.com/newspapers/the-new-light-of-myanmar.html
- **Myanmar Times: news and information in English**
www.mmtimes.com
- **Mizzima:** news and information in English
www.mizzima.com
- **The Irrawaddy:** news and information in English
www.irrawaddy.org
- **Alternative Asean Network on Burma:** comprehensive information on Assemblies’ activities (national and regional levels)
www.altsean.org/Research/Parliament%20Watch/Home.php
- **Law Library of Congress, Burma Research Help:** list of webpages grouped by category, including links to Myanmar Permanent Mission in Geneva Laws and Notifications, and International Labour Organization NATLEX Myanmar Labour Laws
www.loc.gov/law/help/guide/nations/burma.php
www.ilo.org/dyn/natlex/country_profiles.nationalLaw?p_lang=en&p_country=MMR
- **Permanent Mission of Myanmar to the UN and other international organizations in Geneva**
www.myanmargeneva.org
- **Myanmar.ca, Doing Business page**
www.myanmar.ca/business/index.htm#2.%20Labour%20Cost
- **Myanmar Online Data Information Network Solutions:** information on Myanmar government, Ministries, law, politics, culture and society
www.modins.net/myanmarinfo/
- **Thura Swiss**
www.thuraswiss.com/news/newsletter
- **Eleven Group and Nation Multimedia**
www.elevenmyanmar.com and <http://pdf.asianewsnet.net/>
- **Business Today**
www.mmbiztoday.com
- **Frontier Myanmar**
www.frontiermyanmar.net
- **Myanmar Energy Monitor**
www.energy.frontiermyanmar.com

Government Organization

2008 Constitution of Myanmar

Announced on 29 May 2008 that Constitution of the Government of the Republic of the Union of Myanmar was ratified and promulgated by the National Referendum. The Constitution became effective on 31 January 2011 (first convening of the new Union Assembly).



Government Organization (Cont' d)

- The Myanmar Investment Commission is responsible for administering the Myanmar Investment Law, under which investors may receive incentives after receiving an MIC permit or Endorsement permit.
- DICA serves as the Secretariat for MIC. www.dica.gov.mm
- DICA's website provides summaries of laws effecting foreign investment as well as sample application forms.
- DICA's Director General also serves as Registrar of Companies and receives applications for incorporation of local and foreign Myanmar companies and branches of foreign companies.
- DICA and the MIC are part of the Ministry of Planning and Finance (MPF) (formerly Ministry of National Planning and Economic Development—MNPED).

DICA: In 1993 DICA was established under MNPED. Major functions of DICA are scrutinizing and appraisal of projects that are proposed for investment in Myanmar, monitoring and reporting the implementation of permitted enterprises, registration and administration of limited companies, joint ventures, partnerships and associations and taking part in regional cooperation relating to investment matters.

- Special Economic Zones are each administered by a Management Committee under the MSEZL 2014, under which investors receive incentives

NEW MYANMAR INVESTMENT LAW

Drafted in consultation with the International Finance Corporation (IFC), the new Myanmar Investment Law (2016, Notification No. 4) was enacted on 18 October 2016. Implementing rules were passed on 30th March, 2017 by Notification No. 35/2017 by the Ministry of Planning and Finance.

The new Investment Law combines and replaces the Myanmar Citizens Investment Law 2013 and Foreign Investment Law 2012. A brief summary of certain of the key changes under the New Investment Law follow below.

MIC Application Process

There will be a new type of MIC approval process, which for purposes of this note we call an MIC Endorsement. Consequently, it is expected that there will be two types of MIC approval under the new law, depending on the nature of the investment: either (i) approval by way of MIC Permit, or (ii) approval by way of MIC Endorsement (which is expected over time to be a more simple process than under the current investment regime).

Tax Incentives

Tax holidays and incentives are no longer automatic, and instead depend on the geographic location of the investment, the sector, and it appears to some extent, MIC's discretion.

- Investors must apply to MIC separately for any tax exemption. Tax exemptions under the MIL will still in theory be available, but instead granted to investors at the discretion of the MIC and under the provisions of the MIC Notifications.
- A new zoning system is introduced, pursuant to which investments in certain regions or zones (the locations and details are prescribed in MIC Notification No. 10/2017 dated 22nd February, 2017) granted different corporate income tax exemptions. Under the new zoning system:
 - Zone 1 (representing the least developed areas of Myanmar), will attract the greatest potential income tax holiday of up to 7 years;
 - Zone 2 will attract an income tax holiday of up to 5 years; and
 - Zone 3 (representing the most developed areas of Myanmar) attracts the shortest potential income tax holiday of up to 3 years.
- Comments from DICA in October 2016 also suggest that any tax exemptions granted will also depend on whether the relevant project falls within a 'promoted sector', which is prescribed in MIC Notification No 13/2017 dated 1st April, 2017.

* http://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/unofficial_translation_mil_20161019-e.pdf

NEW MYANMAR INVESTMENT LAW (Cont'd)

Land use rights

This basic prohibition that foreign invested companies cannot lease premises for more than one year still applies, with the following exceptions:

- A lease of up to 50 years, with option for two 10 year extensions, may be granted to MIC Permit holders and MIC Endorsement holders.
- Longer lease terms may also be granted in 'less developed and remote regions', the details are clarified in MIC Notification No. 10/2010.

Remittance of Funds

The new Investment Law clarifies the categories of funds which may be remitted offshore, provided that the company remitting the funds has complied with all tax obligations in respect of the funds transfer.

Expropriation Guarantee

The new law expressly contains a guarantee against expropriation, as well as nationalization, although exceptions have also now been set out in the law, including for public interest.

Employment

Foreign investors now appear to have more flexibility in their approach to employees, since the required local employee hiring ratios of FIL have been deleted.

The new law however retains provisions on recruitment and capacity building of local employees.

New Special Economic Zone Law

On 23rd January 2014 the Government enacted a new Myanmar Special Economic Zone Law (MSEZL), Law No. 1/2014 which applies to all Special Economic Zones, and which repeals to 2011 MSEZL and the Dawei SEZL. The MNPED issued Notification 81/2014 re applications for investment in Thilawa SEZ, and MIC issued Notification 59/2014 re area of Kokang SEZ. On 17th July 2015, MIC issued Notification 62/2015 and demarcated the boundary of the Myawaddy SEZ in Karen State.

The MSEZL provides for a Central Body, Central Working Body, and a Managerial Committee for each SEZ. The new Special Economic Zone (SEZ) Central Management Committee and Central Working Committee was formed by the President Office's Notification No. 59/2016 on 12th August 2016.

An SEZ may have several zones: Free Zone, Business Development Zone, Promotion Zone and other Zones.

The new MSEZL offers the following incentives to investors within a SEZ:

- 100% Foreign Ownership
- The right to lease land for 50 years, with a 25 year renewable period.
- 7 year income tax exemption for businesses in “Exemptions Zones” and for “Exempted Businesses”; 5 year income tax exemption for “Investment Businesses” in “Promotion Zones” or other businesses in a SEZ; 5 year income tax reduction of 50% following any exemption period, reduction can be extended for another 5 years for profits which are reinvested.
- No customs duties:
 - in “Free Zones”
 - for materials and equipment used during construction and exemptions or relief for other imported materials or equipment.
- “Investors” will pay customs on raw materials and goods used for production but can apply for reimbursement if the finished goods are used in the SEZ.
- The right to carry forward losses for five years after they were sustained.
- Certain reliefs and exemptions from VAT and Commercial tax.
- Right to open foreign currency accounts with approved banks.

Project Financing in Myanmar

- **Local banking practices**
 - Prior to 2011, primitive banking system. Few individuals had personal bank accounts.
 - The local banking sector did not provide financial services required to support major project financings.
 - Prior to 2015, there was no branch or subsidiary of a foreign commercial bank. Preliminary approval was given in 2014 to 9 foreign banks to open branch offices. In 2015 CBM invited additional foreign banks to open branch offices. As of November 2016, 13 foreign bank branches are operating.
 - 4 State owned banks, 24 privately owned banks and 45 representative offices.
 - Financial Institutions Law No. 20/2016 was enacted on 25th January 2016.

- **Regulatory approvals are required for foreign loans**
 - Approvals of MIC (for MIC companies) and Central Bank of Myanmar.
 - 15% withholding tax rate on interest on offshore loans.

- **Foreign exchange regime**
 - Until 1 April 2012, the official rate was US\$1 to 6 Kyats, but the unofficial rate US\$1 to approximately 800 Kyats. Dual exchange rates posed problems for accounting, determination of taxable income, etc. A new floating foreign exchange regime was adopted in April 2012. As of 30th April 2017, the floating exchange rate was US\$1 to 1,350 Kyats.
 - Foreign Exchange Management Law requires prior approval by the Central Bank of Myanmar for remittances. Approval by the Myanmar Investment Commission is also necessary for companies operating under the Myanmar Investment Law.

- **Insurance**
 - In the past, insurance must be procured from the sole state-owned insurance organization, Myanma Insurance Corporation.
 - Under the MIL and Rules, an investor may procure insurance from any insurance company in Myanmar.
 - Recently Myanma Insurance has issued a number of licenses to Myanmar companies. It is not clear whether standard cover for CAR, delay in start up and business interruption is available, nor what rules apply to reinsurance by foreign insurance companies.
 - Myanma Insurance Law, Section 12 (c), permits re-insurance in and outside of Myanmar. Myanma Insurance Corporation provides re-insurance cover, according to the Ministry of Planning and Finance.

Project Financing in Myanmar (*cond'd*)

▪ Forms of security available

- Forms of security available under British colonial law are provided for in the Burma Code. However, practice has taken over in many respects.
- Most forms of security must be registered and have stamp duty affixed.
- MIC and Central Bank approvals must be obtained for offshore security.
- As general rule, foreigners are prohibited from owning or taking any interest in immovable property.
- Forms of security over immovable property.
 - Registered or equitable mortgage or a charge.
 - Six types of mortgages are provided for, with varying enforcement processes. In practice, the “Mortgage by deposit of title deed” and “Simple mortgage” are used.
- Forms of security over moveable property.
 - Mortgages
 - Charges
 - Transfer of actionable claims
 - Floating charges
- Other forms of security.
 - Negative pledge
 - Guarantees
 - Charge on shares
 - Offshore security

Precedent "project financings"

- Yadana gas pipeline
- Yetagun gas pipeline
- MICCL S&K copper mine (1997)
- Shwe gas and oil pipelines (2010)
- MPRL E&P office building (March 2014)
- Kempinski Hotel, Yangon (November 2014)

SANCTIONS

The following countries have relaxed sanctions:

- United States (see next slide)
- European Union (see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:115:0025:01:EN:HTML>)
 - Council of the European Union Decision 2014/214/CFSP issued on 14th April 2014: All sanctions have been lifted with the exception of the arms embargo and equipment embargo that might be used for internal repression, which will continue until 30th April 2015, at which point it will be renewed, amended or otherwise as appropriate. (source: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0214>)
- United Kingdom (see www.hm-treasury.gov.uk/fin_sanctions_burma.htm)
 - Latest relaxation: See European Union latest relaxation above
- Australia (see <http://www.ft.com/intl/cms/s/0/250d9bf2-876b-11e1-865d-00144feab49a.html>)
 - Latest relaxation: All autonomous travel and financial sanctions have been lifted. Australia's arms embargo remains in place. Retains capacity to re-impose sanctions (source: <http://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/burma.aspx>)
- Canada (see <http://www.gazette.gc.ca/rp-pr/p2/2012/2012-05-09/html/sor-dors85-eng.html>)
 - Latest relaxation: Prohibitions on import, export, investment, financial transactions and technical data have been removed. Asset freeze and prohibition on transactions also remain in effect for designated individuals and certain companies and banks.

US Sanctions

U.S. Treasury Department Office of Public Affairs

Treasury Implements Termination of Burma Sanctions Program

October 7, 2016

WASHINGTON – Today, President Obama signed an Executive Order terminating the national emergency with respect to Burma, revoking the Burma sanctions Executive Orders, and waiving other statutory blocking and financial sanctions on Burma. As a result, the economic and financial sanctions administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC) are no longer in effect. These steps fulfill the announcement made by President Obama during the visit of State Counsellor Aung San Suu Kyi, stand as a testament to the far-reaching changes that Burma has undergone in the past few years, and are intended to support efforts by the civilian government and the people of Burma to continue their process of political reform and broad-based economic growth and prosperity.

"Burma has made significant strides in recent years, including choosing a civilian-led, democratically elected government," said Adam J. Szubin, Acting Under Secretary for Terrorism and Financial Intelligence at the U.S. Department of the Treasury. "Lifting economic and financial sanctions will further support trade and economic growth, and Treasury will continue to work with Burma to implement a robust anti-money laundering regime that will help to ensure the security of its financial system."

Termination of the Burma Sanctions Program

Executive Order (E.O.) 13742 of October 7, 2016, "Termination of Emergency With Respect to the Actions and Policies of the Government of Burma," terminated the national emergency, revoked E.O.s 13047, 13310, 13448, 13464, 13619, and 13651, and waived financial and blocking sanctions in the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008. As a result, the economic and financial sanctions on Burma administered by OFAC are no longer in effect. This includes the following impacts, among others:

All individuals and entities blocked pursuant to the Burmese Sanctions Regulations (BSR) have been removed from OFAC's Specially Designated Nationals and Blocked Persons (SDN) List.

All property and interests in property blocked pursuant to the BSR are unblocked.

The ban on the importation into the United States of Burmese-origin jadeite and rubies, and any jewellery containing them, has been revoked.

All OFAC-administered restrictions under the Burma sanctions program regarding banking or financial transactions with Burma are no longer in effect. OFAC will remove the BSR from the Code of Federal Regulations.

Compliance with the State Department's Responsible Investment Reporting Requirements is no longer required by OFAC's regulations and is now voluntary.

The termination of the Burma sanctions program does not impact Burmese individuals or entities blocked pursuant to other OFAC sanctions authorities, such as counter-narcotics sanctions. They remain on the SDN List, and their property and interests in property remain blocked. Further, pending or future OFAC enforcement investigations or actions related to apparent violations of the BSR when in effect may still be carried out.

Banking with Burmese Banks

This Executive Order terminates all OFAC-administered restrictions and authorizations under the Burma sanctions program pertaining to banking with Burma. This includes the OFAC general licenses issued in 2012 and 2013 that authorized certain correspondent account activity with Burmese banks.

In 2003, the Financial Crimes Enforcement Network (FinCEN) found Burma to be a "jurisdiction of primary money laundering concern" under Section 311 of the USA PATRIOT Act. As a result, FinCEN issued a prohibition on U.S. financial institutions from maintaining correspondent accounts for Burmese banks. The 2003 finding remains in place, but FinCEN is issuing an administrative exception today to suspend the prohibition so that U.S. financial institutions can continue to provide correspondent services to Burmese banks, subject to the appropriate due diligence requirements. This exception is based on Burma's progress in improving its anti-money laundering regime and its commitment to continue making progress to address money laundering, corruption, and narcotics-related activities. FinCEN intends to rescind its action in its entirety when Burma has made sufficient progress in addressing these issues.

FinCEN's administrative exception can be found at website. <https://www.fincen.gov/news/news-releases/fincen-issues-exception-prohibition-imposed-section-311-action-against-burma>

Source: The U.S. Treasury Department Office of Public Affairs website : <https://www.treasury.gov/press-center/press-releases/Pages/jl0569.aspx>

US Sanctions (*cond't*)

- **Facilitation**

- US companies and individuals are prohibited from engaging in any activity that would “facilitate” transactions that involve any market, product, or party that the US national would otherwise be prohibited from dealing with directly under US sanction policies and prohibitions
- For a more detailed overview of prohibitions and acceptable activities for US citizens under current sanctions as well as relevant licensing and laws, see Office of Foreign Assets Controls (OFAC) website: <http://www.treasury.gov/resource-center/sanctions/Programs/pages/burma.aspx>

FATF (Financial Action Task Force)

On 23 October 2015 FATF confirmed its position on Myanmar and identified Myanmar as a jurisdiction that has strategic deficiencies which pose a risk to the international financial system

“Myanmar has taken important steps towards improving its AML/CFT regime, including by issuing AML and CFT Rules and strengthening customer due diligence requirements for the financial sector. However, despite Myanmar’s high-level political commitment to work with the FATF and APG to address its strategic AML/CFT deficiencies, Myanmar has not made sufficient progress in implementing its action plan, and certain strategic deficiencies remain. Myanmar should continue to implement its action plan to address these deficiencies, including by: (1) adequately criminalizing terrorist financing; (2) implementing the procedures to identify and freeze terrorist assets; and (3) ensuring an operationally independent and effectively functioning financial intelligence unit. The FATF encourages Myanmar to address the remaining deficiencies and continue the process of implementing its action plan.”

Kingdom of Ayutthaya 1400 CE

- 1350 - 1767
- Burmese captured Dawei in 1614
- Siam reclaimed Dawei in late 1740's
- In 1765, Burmese recaptured Dawei and continued south, capturing Myeik
- Burmese ceded region to British after first Anglo-Burmese war (1824-1826)



Environment

Relevant legislation

- Constitution
- Environmental Conservation Law, 2012 Union Parliament Law No. 9, 30th March 2012. Implementing rules have been enacted, which provide for Environmental Impact Assessments (EIA)
- Myanmar Investment Law, 18th October 2016 and its Rules dated 30th March 2017
- MIC Notification Nos. 15/2017 dated 10th April, 2017 requiring approval from the Ministry of Natural Resources and Environmental Conservation for certain business activities
- MIC Notification 50/2014, requiring EIAs for 30 different types of projects
- MSEZL 23rd January 2014
- Environmental Impact Assessment Procedure 2015
- National Environmental Quality Emission Guideline 2015

Regulatory regime

- Ministry of Natural Resource and Environmental Conservation (formerly Ministry of Environmental Conservation and Forestry)
 - Planning and Statistics Department
 - Forest Department
 - Dry Zone Greening Department
 - Myanmar Timber Enterprise Department
- Environmental Conservation Committee, 2004

Growth of EIA regime

Foreign government assistance re environmental and social issues, example of exemptions from certain current sanctions

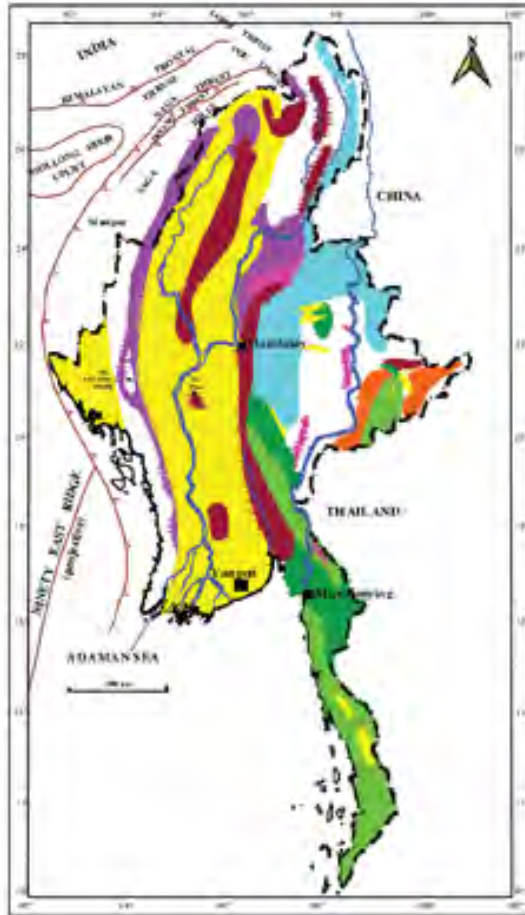
Precedents for environmental and social programs:

- Yadana/Yetagon pipeline corridor Socio-Economic Program
- MICCL program in vicinity of copper mine
- Lao “environmental safeguards” attached to concession agreements (Swedish Environmental Assistance Program)
- Thai EIA, SIA and public participation requirements

Recent environmental issues:

- Mytisone hydro power suspension case, 30th September 2011
- Dawei coal fired power project
- Shwe gas and oil pipelines
- EIA, SIA and EMP obligations in current PSC’s for O&G onshore and offshore exploration blocks

Hydro and Mineral Projects and Distribution

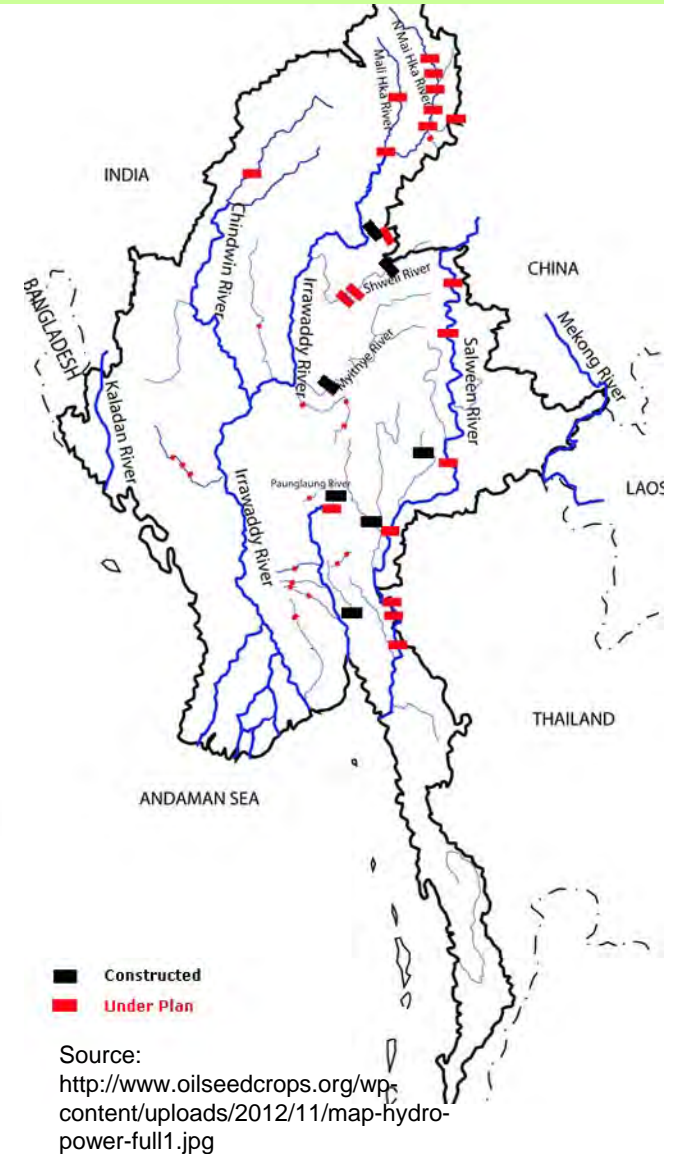


MINERAL BELTS OF MYANMAR

INDEX

- Tin - Tungsten Belts
- Antimony Belts
- Lead - Zinc - Silver - Copper Belts
- Gold - Copper - Iron Belts
- Nickel - Chromite - Copper - Gold - Platinum Belts
- Iron - Manganese Belt
- The Precious Stone Belts
- Oil - Gas and Coal Belts

Source:
<http://www.crossroadsmyanmar.com/sites/default/files/articles/2013/11/Mineral-Belts.png>



Source:
<http://www.oilseedcrops.org/wp-content/uploads/2012/11/map-hydro-power-full1.jpg>

Thilawa, Kyauk Phyu and Dawei SEZ General Overview

As of May 2016 there are five SEZ's: Thilawa, Kyauk Phyu, Dawei, Kokang and Myawaddy. Of the five SEZs, Dawei, Thilawa and Kyauk Phyu have commercial operations.

- On 3rd October 2014, MIC issued Notification 59/2014, and demarked the boundary of Kokang SEZ in Shan State.
- On 17th July 2015, MIC issued Notification 62/2015 and demarcated the boundary of Myawaddy SEZ in Karen State.

Each Special Economic Zone is administered by a Management Committee under the MSEZL 2014

- The Thilawa SEZ is being developed by Myanmar and Japanese investors with Myanmar owning 51 percent and Japan 49 percent. The Thilawa project involves construction and development of textile, manufacturing and high-tech industries, as well as a deep-sea port. It was started in November 2013 and Myanmar-Japan Thilawa Development Limited (MJTD) was established to develop the project. Phase 1 of the project became commercially operational in September 2015.
- The Kyaukpyu SEZ serves a port and an oil and gas terminal and is the western end of pipelines linking Myanmar and China. There are further plans for the SEZ. A Singapore firm has been appointed consultant. Construction is expected to begin in 2016. This project is attracting several Chinese investors due to its favourable trade location between China and India.
- The Dawei SEZ is being developed under an agreement signed on 17th June 2013 by Myanmar and Thailand. Three memoranda of understanding were signed between Thailand and Myanmar in November 2013 creating 50/50 investment in the project and transferring the Dawei concession from Italian-Thai Development Plc (ITD) to DSEZ. On 4 July 2015, the Japanese government signed an MOU with Myanmar and Thailand to invest and provide technical know-how for the project.
- Seven local industrial zones in Nay Pyi Taw, Mandalay, Kayin, Rakhine, and Shan states are to be created under the MSEZL

GMS Network in 2016

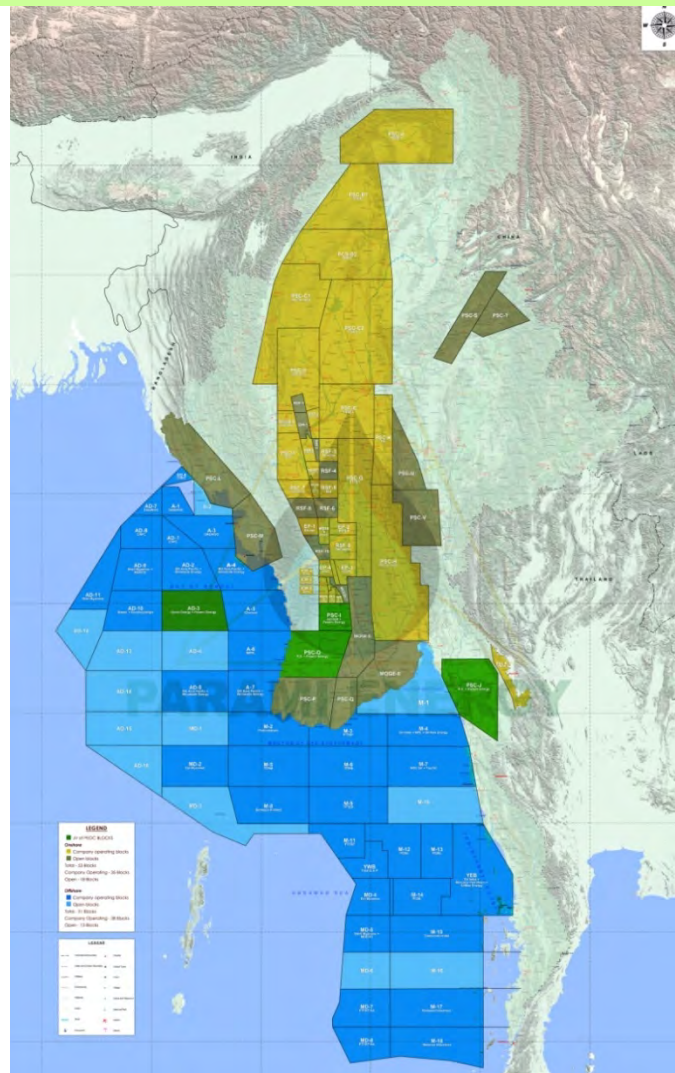
- Construction of three new cross-border highways between Myanmar and Thailand were approved in principle:
 - Three Pagoda Pass, Kanchanaburi (*open to Thai and Myanmar citizens only*)
 - Ban Nam Pu Ron, Kanchanaburi (not yet open)
 - Singkorn, Prachuap Khiri Khan (not yet open)

- The Three Nations Highway Project was announced 12 August 2012 and will include a 3,200-km trilateral highway linking India, Myanmar and Thailand



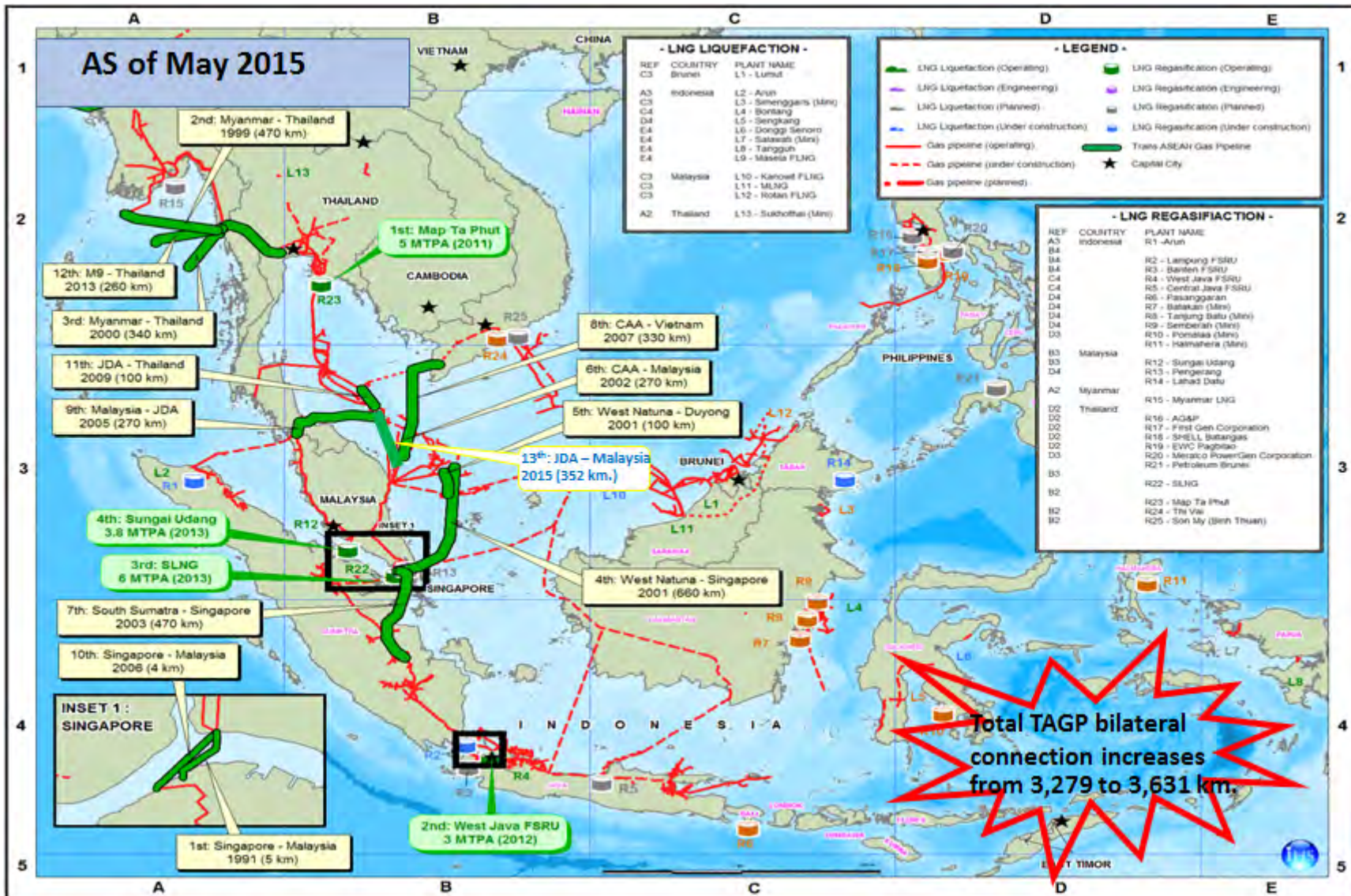
Source: www.adb.org

Union of Myanmar Petroleum Block Map as of November 2016



NOTE: On January 2013, the Ministry of Energy invited bids for 18 onshore blocks in Myanmar's second international petroleum licensing round. The MOE offered in tender 16 onshore blocks in October 2013 to 10 companies. On 11 April 2013, the MOE invited bids for 11 shallow offshore and 19 deep offshore blocks, with 30 shortlisted bidders submitting bids in November of 2013. As of September 2015, all 20 PSC for offshore blocks have been signed.

Trans ASEAN Gas Pipeline Project as of May 2015 (TAGP)



(Source: ASCOPE Secretariat, 2015)

Railway Projects

Features

- New rail lines in Thailand, Laos and Myanmar, with plans to link existing train lines in Cambodia and Vietnam
- High speed passenger train routes to be built from Bangkok through Vientiane up to Mainland China. The Thai and Chinese governments have signed an MOU for new train lines
- The Thai and Japanese governments have signed an MOU for a Bangkok-Chiang Mai rail line.
- *As of November 2016 railway projects with the China and Japan have been delayed pending required detailed surveys.



	Route	Distance (km.)	Investment (THB Mn.)
Phase 1	1 Chachoengsao-Klong 19-Kaeng Khoi	106	11,272
	2 Thanon Chira junction-Khon Kaen	185	27,007
	3 Prachuap Khiri Khen-Chumphon	167	17,293
	4 Lop Buri-Paknampo	148	24,842
	5 Map Krabao-Thanon Chira junction	132	29,855
	6 Nakhon Pathom-Hua Hin	165	20,038
Phase 2	1 Hua Hin-Prachuap Khiri Khan	90	9,437
	2 Pak Nam Po-Den Chai	285	29,822
	3 Thanon Chira junction-Ubon Ratchathani	309	32,399
	4 Khon Kaen-Nong Khai	174	18,244
	5 Chumphon-Surat Thani	167	17,510
	6 Surat Thani-Song Kla- Padang Besar	339	35,544
	7 Hat Yai-Padang Besar	45	N/A
	8 Den Chai-Chiang Mai	217	N/A
Phase 3	1 Den Chai-Chiang Khong	326	77,485
	2 Ban Phachi junction-Nakhon Luang	15	2,934
	3 Baan Phai-Nakhon Phanom	347	60,512

Source: EIC analysis based on data from Office of Transport and Traffic Policy and Planning (OTP)

https://www.google.co.th/url?url=https://www.scbeic.com/en/detail/file/product/1741/e8zsztf6cf/EIC_insight_ENG_infrastructure_q4_2015.pdf&rct=i&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwjH9uPGncrQAhWBPI8KHWJtBloQFggxMAY&usg=AFQjCNG-mokOV_2X5DktcbQUTEC6I8hf1w

Other ASEAN Energy Networks



	Earliest COD
1) P.Malaysia - Singapore (New)	Post 2020
2) Thailand - P.Malaysia	
• Sadao - Bukit Keteri	Existing
• Khlong Ngae - Gurun	Existing
• Su Ngai Kolok - Rantau Panjang	2016
• Khlong Ngae - Gurun (2 nd Phase, 300MW)	2016
★ 3) Sarawak - P. Malaysia	2025
4) P.Malaysia - Sumatra	2019
★ 5) Batam - Singapore	2020
6) Sarawak - West Kalimantan	2015
7) Philippines - Sabah	2020
8) Sarawak - Sabah - Brunei	
• Sarawak - Sabah	2020
• Sabah - Brunei	Not Selected
• Sarawak - Brunei	2016
9) Thailand - Lao PDR	
• Roi Et 2 - Nam Theun 2	Existing
• Sakon Nakhon 2 - Thakhek - Then Hinboun (Exp.)	Existing
• Mae Moh 3 - Nan - Hong Sa	2015
• Udon Thani 3- Nabong (converted to 500KV)	2019
• Ubon Ratchathani 3 - Pakse - Xe Pian Xe Namnoy	2018
• Khon Kaen 4 - Loei 2 - Xayaburi	2019
• Thailand - Lao PDR (New)	2015-2023
10) Lao PDR - Vietnam	2016-2020
11) Thailand - Myanmar	2018-2026
12) Vietnam - Cambodia (New)	2020
13) Lao PDR - Cambodia	2016
14) Thailand - Cambodia (New)	Post 2020
15) East Sabah - East Kalimantan	Post 2020
16) Singapore - Sumatra	Post 2020

Map: from ASEAN's Energy Situation and Growing Effort on CDM A presentation for Workshop: Frontiers of Energy and Carbon Markets Studies Singapore, 3 October 2014

ASEAN Integration and Thailand

Goal: Create an ASEAN Economic Community by 2015

BACKGROUND

- Initiative for ASEAN Integration (“ASEAN Vision 2020”) (1997)
- Hanoi Declaration (2001)
- ASEAN Concord II (2003). Roadmap for integration, to be realized by 2020
- ASEAN Charter (2007). Accelerated milestone from 2020 to 2015
- Key Legal Agreements (among others):
 - ASEAN Trade in Goods Agreement governs the ASEAN Free Trade Area for intra-ASEAN trade in goods (ATIGA)
 - ASEAN Comprehensive Investment Agreement governs intra-ASEAN investment (ACIA)
 - ASEAN Framework Agreement on Services governs intra-ASEAN trade in services (AFAS)
- ASEAN Protocol on Enhanced Dispute Settlement Mechanism (EDSM) Chair’s Statement of 19th ASEAN Summit, Bali, 17th November 2011
 - 35. Progress of ALAWMM to develop programs to strengthen the rule of law, legal cooperation and legal infrastructures

ASEAN Integration and Thailand

Goal: Create an ASEAN Economic Community by 2015 (Cont'd)

THAILAND

Progress:

- Cross-border energy projects (JDA, Myanmar, Cambodia, Laos)
- Cross-border infrastructure (bridges, transmission lines)
- Proposed cross-border infrastructure (North-South rail, Dawei east-west road/rail links)
- Automotive sector participation
- Initiatives to encourage renewable energy projects, and feed-in tariff regimes
- Bank of Thailand's preparations for regional integration of financial institutions
- BOI new incentives for international trading headquarters

Regional Challenges:

- No single regulator; no set of laws and regulations
- Except for the ACIA, other ASEAN agreements cannot be invoked by private investors
- Evolving from bi-lateral investment treaties to ACIA

Thai Challenges:

- Restrictions on foreign businesses operating in Thailand (Foreign Business Operations Act)
- Restrictions on foreigners working in Thailand (Working of Aliens Act)
- Thai tariff protectionism
- Other non-tariff obstacles to intra-ASEAN trade, and need to fast track 12 priority integration sectors
- Corruption
- Political stability
- Increasing costs, e.g. increases in minimum wages
- Water management issues
- Border disputes between Thailand and Cambodia (onshore and offshore)
- English language
- In 2013 Thailand was removed from the list of countries at risk of money laundering by terrorist groups, having taken a number of actions
- IP Priority Watch List for the 9th consecutive year in 2016, for lacking legislation to protect IP rights, and not enforcing laws that are in existence.
- Ranked as a second tier "watch list" nation (does not fully meet the TVPA's minimum standards, but is making significant efforts to meet those standards) on the US Department of State's annual Trafficking in Persons (TIP) Report, June 2016.

ASEAN Integration and Myanmar

Goal: Create an ASEAN Economic Community by 2015 (Cont'd)

MYANMAR

Progress:

- Cross-border energy projects (Yadana, Yetagun, Zawtika and Shwe pipelines)
- Cross-border infrastructure (bridges)
- Proposed cross-border infrastructure (transmission lines, Dawei east-west road/rail links)

Regional Challenges:

- No single regulator; no set of laws and regulations
- 4 existing bi-lateral investment treaties with ASEAN countries: Lao PDR, Philippines, Thailand, Vietnam; evolving to ACIA

Myanmar Challenges:

- Completion of Final Phase of the progressive reduction/elimination of investment restrictions and impediments in 2015 (2014 for ASEAN-8)
- Compliance with non-tariff barriers in 2015 to 2018 (with flexibility) (2010 for ASEAN-5, and 2012 for Philippines)
- New government 2016
- Incomplete legal and regulatory regime
- Evolving currency exchange regime (major reform April 2012)
- Limited accommodation, telecommunications, office space, infrastructure
- Chronic electricity shortages
- Limited internet connectivity
- Primitive banking system
- Corruption and cronyism
- Weak educational system
- Sanctions and AML/CFT deficiencies identified by FATF (status confirmed October 2015 by FATF)
- The TIP Report downgrades Myanmar (Burma) on its “ Tier 3” noting that the “Government of Burma does not fully meet the minimum standards for the elimination of trafficking and did not demonstrate overall increasing efforts compared to the previous reporting period, July 2016.

MLSL Profile

Myanmar Legal Services Limited (MLSL) has been in practice in Myanmar since 1998. The firm offers a broad range of legal advice and assistance on local and international commercial transactions, and on doing business in Myanmar.

The firm is committed to providing high quality, cost-effective legal services that achieve client business objectives – in every transaction. **MLSL** is recognized as a Top Ranked/Leading Firm by international commentators; by The Legal 500 Asia Pacific 2017 as a Top Tier Firm, by IFLR1000 (Financial & Corporate) 2017 as a Top Tier Firm, by Asialaw Profiles 2017 as Outstanding, and by Chambers and Partners Asia Pacific 2017 as a Top Ranked/Leading Firm. Chambers adds, “... Regularly advises on the acquisition of significant Myanmar assets and the financing of key energy and real estate projects.” Daw Khin Cho Kyi, the firm’s Managing Director, is ranked as a Leading Individual by legal researchers, and a client comments, “. . . an outstanding Myanmar lawyer with a commercial understanding of what the client wants.”

For further information, please visit www.myanmarlegalservices.com, or contact either info@mlslyangon.com or tel: (951) 650-740, 652-139.



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