

投资缅甸和老挝：电力和采矿项目是重点

Investing in Myanmar and Lao PDR: With a focus on power and mining projects

电力和采矿业的外商直接投资需要获得缅甸投资委员会 (MIC) 签发的许可证。获得 MIC 的许可证后，投资者可以享受有关税收、用地等方面的优惠。根据 2012 外商投资法，外国投资者首次租赁土地的最长期限是 50 年，届满后最多可再延长两个 10 年。经 MIC 事先批准，长期租赁可以转租和抵押。

缅甸电力。目前，外国公司以建造、营运及移交 (BOT) 和合资 (JV) 的形式投资电力项目。首先，投资者必须与电力部 (MoEP) 签署一份谅解备忘录，进行可行性研究。如果可行性研究获批，双方将签署一份协议备忘录。在这个阶段，将进行环境和社会影响评估。接下来，外资发起人与 MoEP 等相关部委就各种项目文件的细节进行谈判，包括但不限于，合资协议、BOT 协议、购电协议以及各种贷款和担保文件。

缅甸新电力法有如下主要特点：建立电力监管委员会，该委员会负责向 MoEP 以及地方和中央政府就电价定价提供建议。此外，经内阁批准，MoEP 为连接到国家电网的电力项目、发电能力达到或超过 30 兆瓦的项目，以及没有连接到国家电网的地方和中央政府电力项目，设定电价和签发许可证。该法律的实施细则目前尚未颁布。

采矿。缅甸拥有丰富的尚未发掘的珍宝、宝石、煤炭等资源，为中国投资者提供了巨大的机遇。

采矿法和采矿规则规定了全面的投资框架。矿业部为采矿作业签发相关许可证。在不久以后，采矿法将被另一部新法取代，或者其现行规定将被修订。

根据 MIC 通知 2014 年第 49 号，通常禁止外国人进行翡翠和宝石的勘探与生产、矿物质的中小规模生产，以及矿物质的勘探，包括河流和水道里的黄金。

在缅甸的中国投资者也应考虑中缅鼓励促进和保护投资协定所带来的好处。中缅之间没有签署避免双重征税协定。

老挝人民民主共和国

电力。老挝电力法规定，涉及外国投资者的电力项目必须拥有特许权。装机容量超过 100 兆瓦，或者拥有面积超过 1 万公顷的水库，或者对环境、社会和自然具有较大影响的电力项目应当经国民议会常设委员会 (NASC) 批准。装机容量超过 15 兆瓦，但小于 100 兆瓦的电力项目需要经老挝人民民主共和国中央政府 (GOL) 的批准。装机容量达 15 兆瓦的项目需要省级批准。电力定价需要经过 GOL 批准，无论输出的电力是出口还是内销。一个电力项目的最长特许权期限为 30 年，从投入商业运营之日起算。

如果要获得 NASC 或中央 GOL 的批准，则需要与能源和矿业部 (MEM) 的能源事业部门进行一场漫长且细致的谈判。这包括三个

Foreign direct investments in the electric power and mining sectors of Myanmar require a permit issued by the Myanmar Investment Commission (MIC). An MIC permit provides an investor tax, land use and other benefits. Under the Foreign Investment Law foreign investors can lease land for an initial maximum term of 50 years, and can be extended for two additional ten-year terms. With prior MIC approval, a long-term lease may be subleased or mortgaged.

Electric power in Myanmar. Currently foreign companies invest in electric power projects on the basis of build, operate and transfer (BOT) and Joint Venture (JV). Firstly, a memorandum of understanding (MOU) with the Ministry of Electric Power (MoEP) must be executed for conducting a feasibility study.

A memorandum of agreement (MOA) will be signed if the feasibility study has been approved. In this phase, environmental and social impact assessments will be conducted. Then the foreign sponsor(s) negotiate with the MoEP and other relevant ministries the details of various project documents, including, but not limited to, the JV agreement (JVA), BOT agreement, power purchase agreement and various loan and security documents.

A major feature of the new Electricity Law includes establishing the Electricity Regulatory Commission, which gives advice to MoEP and region and state governments on tariff setting. In addition, MoEP, with cabinet approval, sets tariffs and issues permits for electric power projects connected to the national grid and projects with capacity of up to and more than 30 mw and regional and state government power projects not connected to the national grid. The implementing regulations for the law have not been issued yet.

Mining. Myanmar possesses a wealth of unexcavated gems, precious stones, coal and more, presenting great opportunities for Chinese investors.

The Mining Law and Mining Rules provide comprehensive framework for investments. The Ministry of Mines issues relevant permits for mining operations. The law is set to be repealed by a new law, or amendments to the existing law, in the near future.

Under MIC notification 49/2014, exploration and production of jade and gem stones, small- and medium-scale production of minerals, and exploration of minerals, including gold in the rivers and waterways, are generally prohibited for foreigners.

Chinese investors in Myanmar also should consider benefits of the China-Myanmar Agreement on the Promotion and Protection of Investment. There is not a double taxation agreement between China and Myanmar.

Lao PDR

Electric power. The Electricity Law requires that electric power projects involving foreign investors hold a concession. Electricity projects with an installed capacity of greater than



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阶段：谅解备忘录；项目开发协议；以及特许权协议。签署谅解备忘录和项目开发协议并不保证特许权的授予。

对取得电力特许权来说，GOL 参股不再是必要条件，但实践中，作为特许权协议谈判的一部分，GOL 可能会提出这样的要求。一般来说，GOL 会自行融资，但在安排筹措资金时可能需要协助。

采矿。 矿产法要求采矿领域的投资者在获得 MEM 的批准后才能进行下列活动：收集基础地质资料；分析矿物样品；进行可行性研究；授予探矿、勘探和开采活动的许可证；以及建立矿产加工工厂。

一般来说，目前需要两个独立的特许权协议，第一个是在探矿或勘探阶段，第二个是在开采阶段。获得探矿和勘探阶段的批准并不保证授予开采阶段的特许权。勘探许可证的首次最长期限为三年，之后可能延期两年。开采阶段特许权的最长期限为 20 年，之后经 MEM 批准可以延期五年。

矿产法规定，GOL 有权参股所有的采矿项目。矿产法允许 GOL 以项目公司应向其支付的未来股息进行参股融资。

研究、减缓计划和批准。 可行性研究和各种环境、社会和健康影响研究，以及影响缓解计划在大多数的电力和采矿项目中都是必须的。此外，还需要获得 MEM、天然资源和环境部以及卫生部的批准。GOL 对于安置项目受影响人需要的费用和安置操作不承担任何责任；这是项目方的责任。

此外，如果一个水电项目位于湄公河干流，将会影响到枯水季节，则必须根据湄公河协定进行“事先协商”。

税收、投资和避免双重征税协定。 老挝的电力和采矿项目不再享受广泛的税收豁免。标准的企业税率是 24%。增值税率为 10%。有限的免税期、更低的税率以及有限的建设阶段豁免可以在特许权协定中协商，但是一般需经 NASC 批准。

中方投资者在投资老挝时，应当考虑中国 - 老挝双边投资协定和中国 - 老挝避免双重征税协定中的权利和利益。

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100 megawatts, or having a reservoir which has an area of more than 10,000 hectares, or having considerable impact on the environment, society or nature must be approved by the National Assembly Standing Committee (NASC).

Electricity projects with an installed capacity of more than 15 mw but less than 100 mw require approval by the government of Lao PDR (GOL) at the central level. Projects of up to 15 mw require provincial approval. The power tariff requires GOL approval regardless of whether the output is being exported or sold domestically. The maximum concession term for an electricity project is 30 years from the start of commercial operations.

If NASC or central level GOL approval is required, a lengthy and detailed negotiation process with the Department of Energy Business of the Ministry of Energy and Mines (MEM) is required. This involves three stages: MOU; project development agreement (PDA); and, finally, concession agreement. Execution of the MOU or PDA is no guarantee of a concession award.

GOL equity participation is no longer required for an electric power concession but, in practice, may be demanded by the GOL as part of the concession agreement negotiations. Generally, the GOL party will fund its own equity but may require assistance in arranging financing.

Mining. The Minerals Law requires investors in the mining sector to obtain approvals from the MEM for the gathering of basic geological data; the analysis of mineral samples; the feasibility study; the granting of licences for prospecting, exploration and mining activities; and the establishment of a mineral processing plant.

Generally, two separate concession agreements are now required, the first on the prospecting or exploration phase, and the second on the exploitation phase. Approval for the prospecting or exploration phase is no guarantee of award of an exploitation phase concession. The maximum initial term for an exploration licence is three years, with a possible two year extension. The maximum term for the exploitation phase concession is 20 years, with a possible five year extension upon MEM approval.

The Minerals Law provides that the GOL has the right to equity participation in all mining projects. The Minerals Law allows the funding of the GOL's equity stake out of future dividends payable to the GOL by the project company.

Studies, mitigation plans and approvals. A feasibility study and various environmental, social and health impact studies and impact mitigation plans will be required for most electric power and mining projects. Approval will be required from MEM, the Ministry of Natural Resources and Environment and the Ministry of Public Health. The GOL does not take responsibility for the cost or implementation of any required resettlement of project-affected persons; this is a project responsibility.

Additionally, if a hydropower project is located on the main-stream Mekong River and will impact the dry season, the Mekong River Agreement requires compliance with a "prior consultation".

Taxation, investment and double taxation agreements. Lao PDR electric power and mining projects are no longer granted broad exemptions from taxation. The standard corporate taxation rate is 24%. VAT is 10%. Limited tax holidays, lower tax rates and limited construction phase exemptions can be negotiated in the concession agreement but are generally subject to NASC approval.

The rights and benefits of the China-Lao Bilateral Investment Treaty and China-Lao Double Taxation Agreement should be considered by Chinese investors when investing in the Lao PDR.