



Electrifying Myanmar: A Law, Tax and Investment Master Class

Bangkok, Thailand

10 March 2016

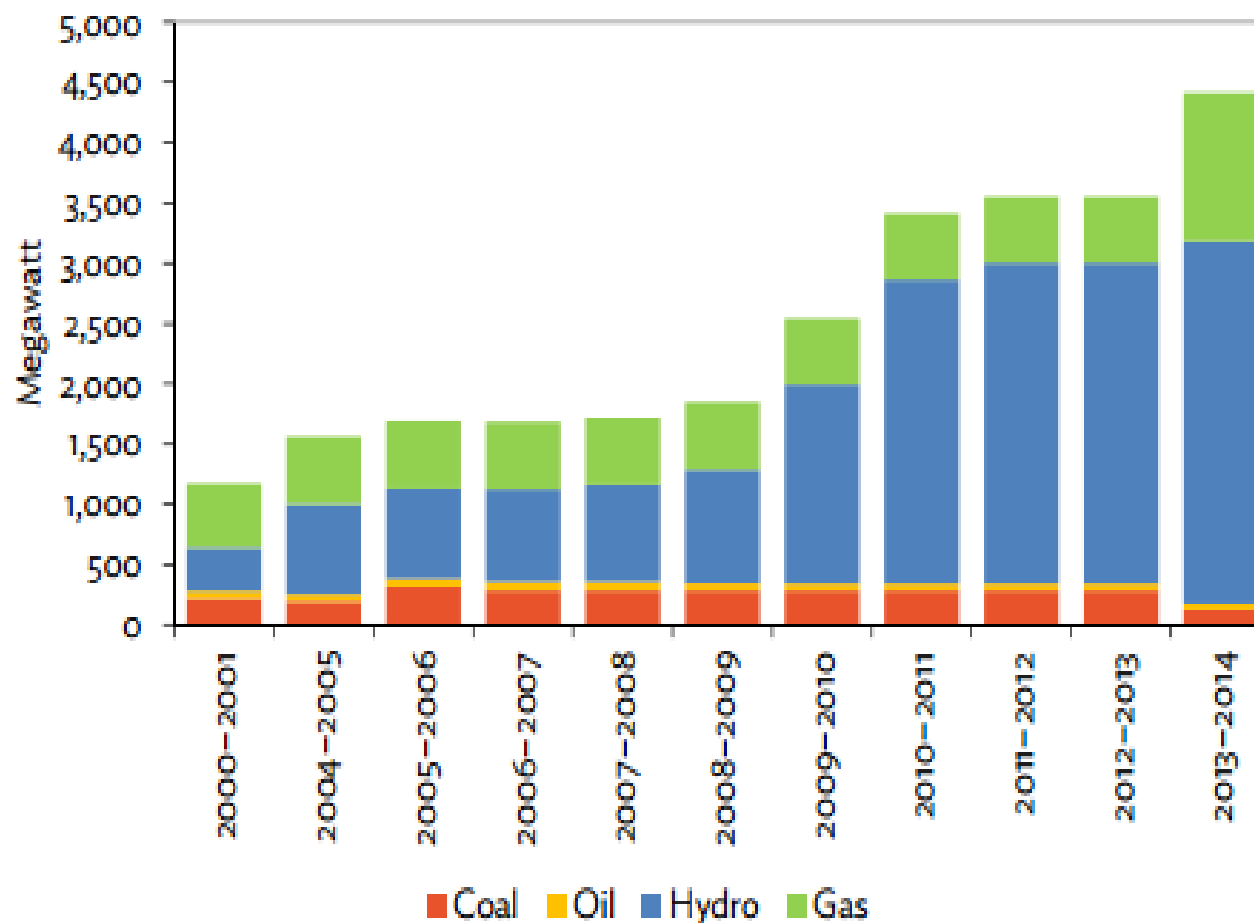
Introduction



- Demand projections (WB/ADB/JICA) requires growth from 4255 MW (2014) to 20,000 MW Installed Capacity by 2030
- WB Estimate 30B: 20B USD in Generation and WB Estimate
- 10b USD in Transmission and Distribution
- Other estimate 40B: 27B in Generation and 13 Billion in T&D
- 2B / year
- Assumes 7.1% growth (v. 4.8 or 9.5%)
- Provide access to 7.1 Million households / 36 Million People

HIGH DEMAND GROWTH

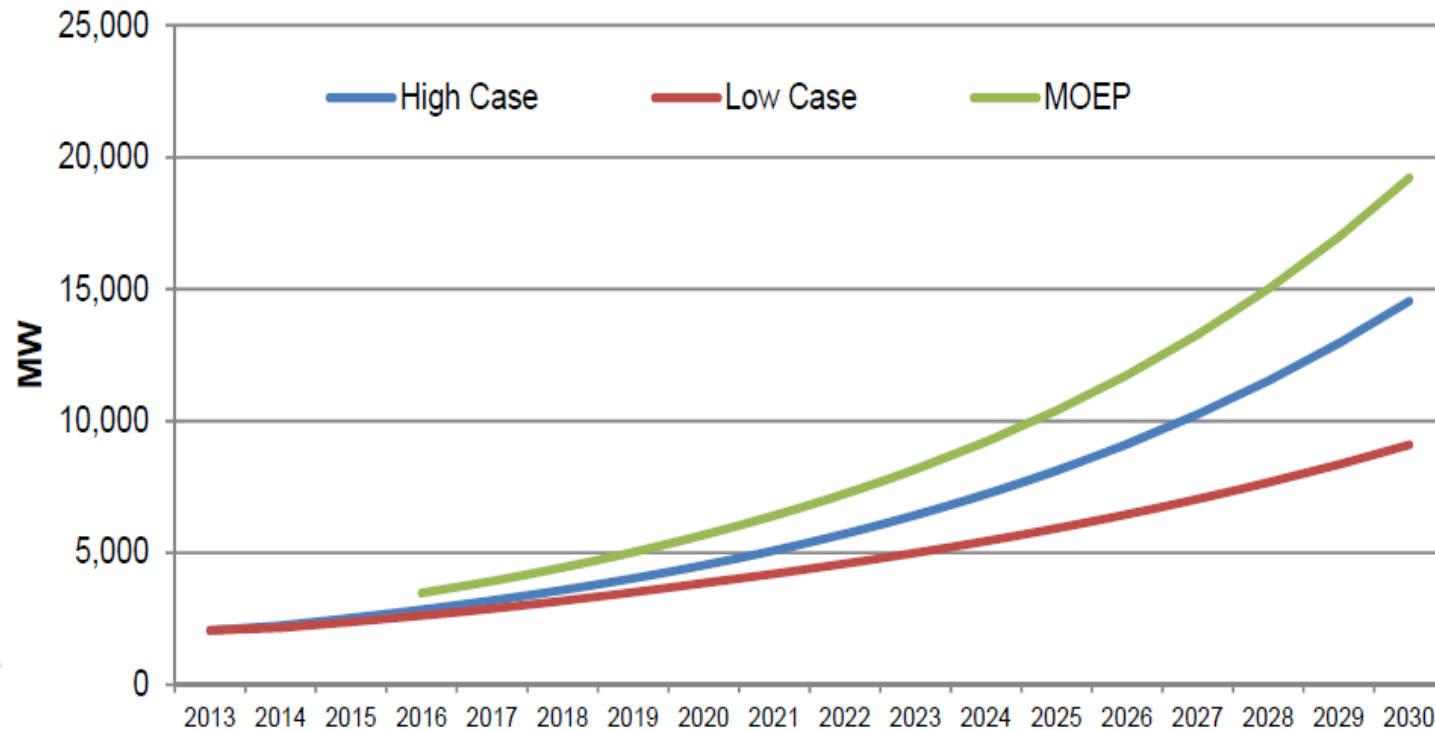
Current installed capacity



Source: ADB Power Sector Development in Myanmar (October, 2015)

Current Installed Capacity

High electricity demand growth



High Electricity Demand
Growth

Power demand forecast to 2030 (MW)

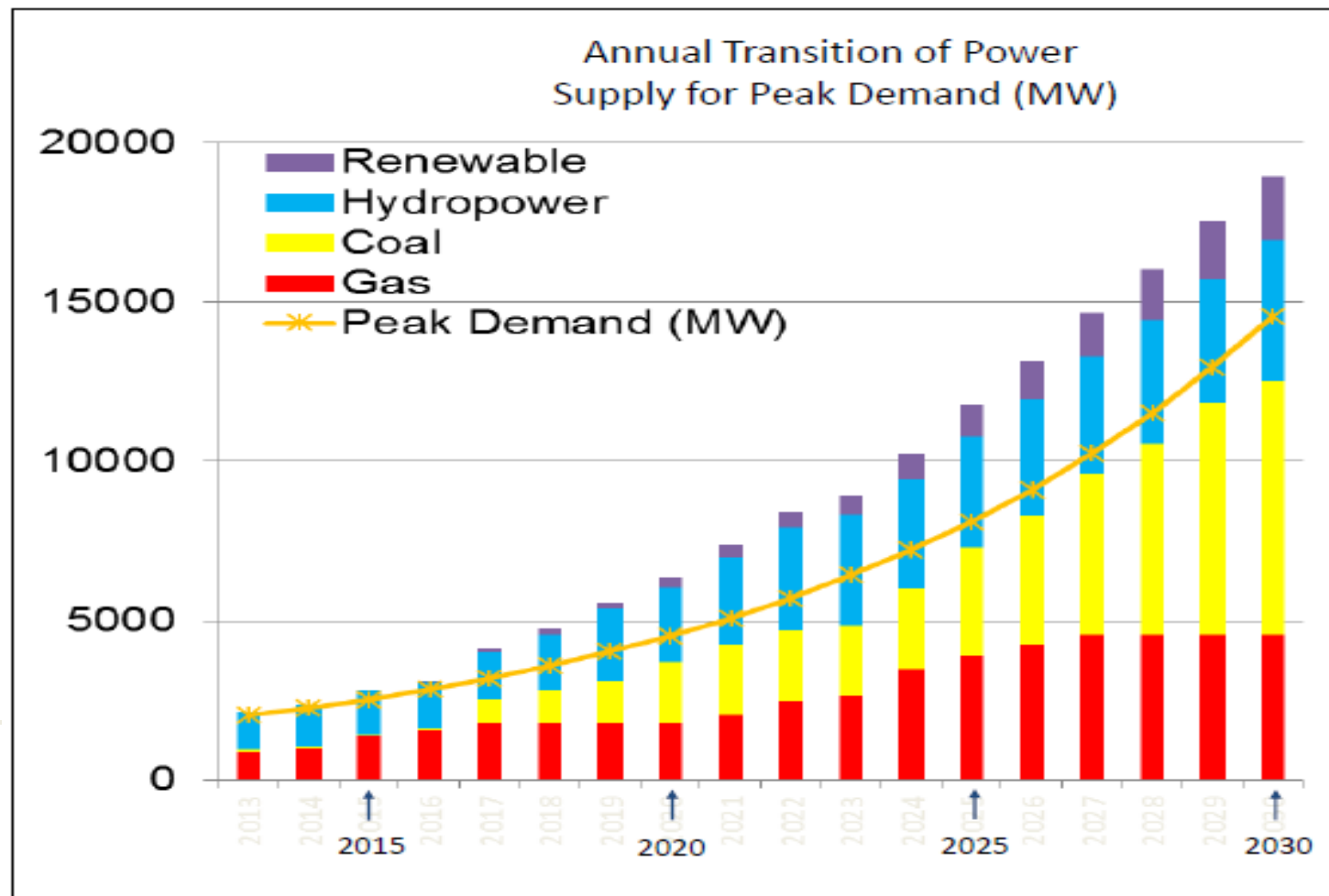
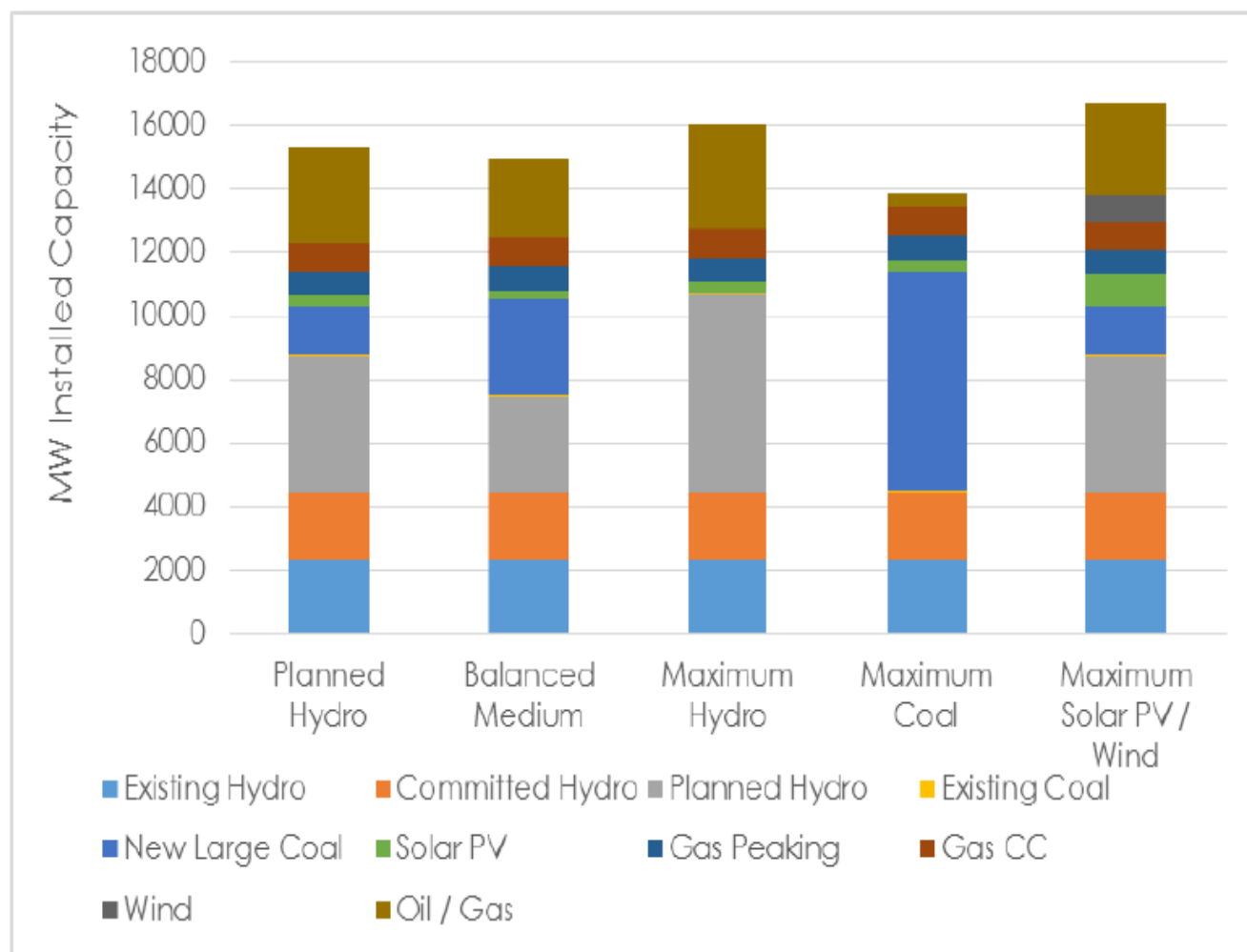


Figure IV-13: Installed Capacity by Plan (MW) in 2030

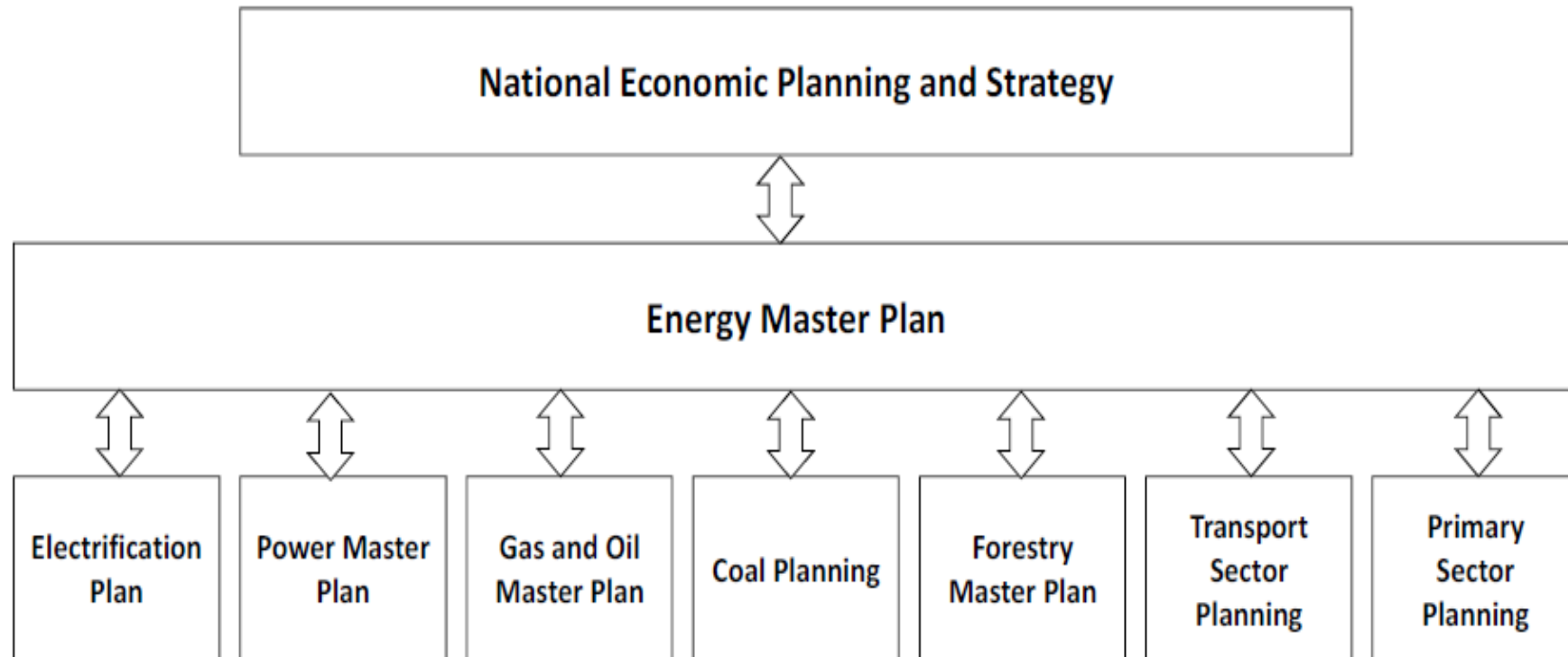


Source: Consultant's analysis

- ADB: Myanmar Energy Master Plan (EMP) (Dec 2015)
 - ADB Working Paper No 460, Oct 2015: Power Sector Development in Myanmar
 - Energy Sector Initial Assessment (Oct 2012)
 - Final Report Electricity strategy (pp 583 ++ of the EMP)
 - Final Report consolidated Demand Forecasts (pp 457++ of the EMP)
- JICA: National Electricity Master Plan (NEMP) (Dec 2014)
 - Very active in Power Sector, TA and rehabilitation
- World Bank: Myanmar National Electrification Plan (NEP – 2014) and Program (2015)
 - Add 7 Million Households / 36 Million people by 2030
 - USD 10 M (electrification) + 20 M (growth at 7.1%)
 - USD 2B per year from 2015 to 2030
- ---
- IFC: E&S; Hydropower; Myingyan, YESB
- Norway: Legal Reform

Key Donor Support Services

Figure V-4: Energy Master Plan Relationship to other Planning Processes



Source: Consultant

■ *Source: NEMP*

Energy Master Plan



Opportunities

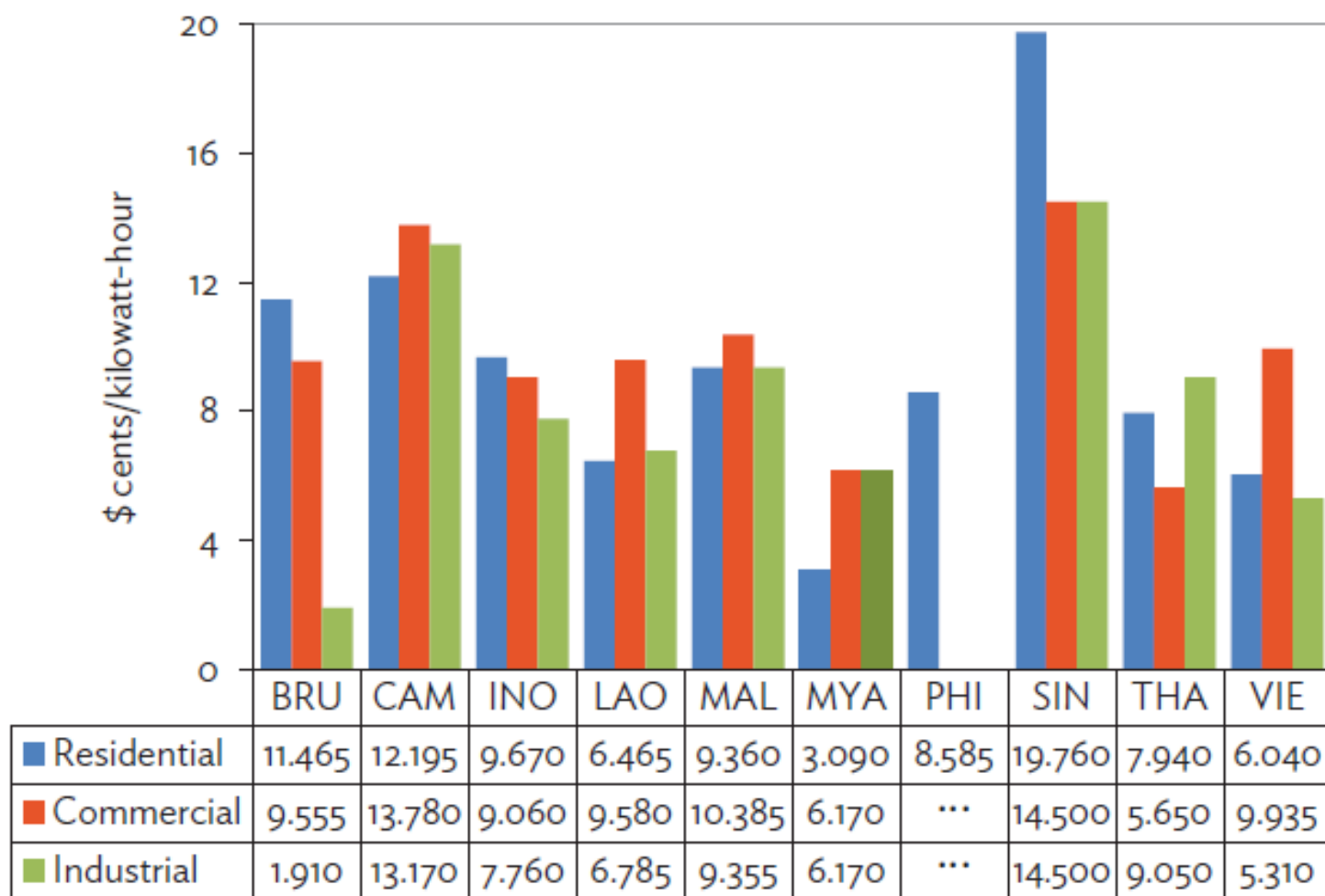
Uncertainties

Obstacles



- Elections and Transition of Power
- New Govt's Policy on Key Sector Issues
- Export v Domestic Supply
- Financing untested
- Some New Laws fixing old Problems, but Sector reform ongoing and incomplete
- Transformational Projects Progressing but .
- Tariff Rates too low
- No clear source of fuel type for short term
- Electrification Rate very low.
- Public to Private: IPPS 10% of total Installed Capacity (440 MW: 270 W Gas and 170 MW Hydro)

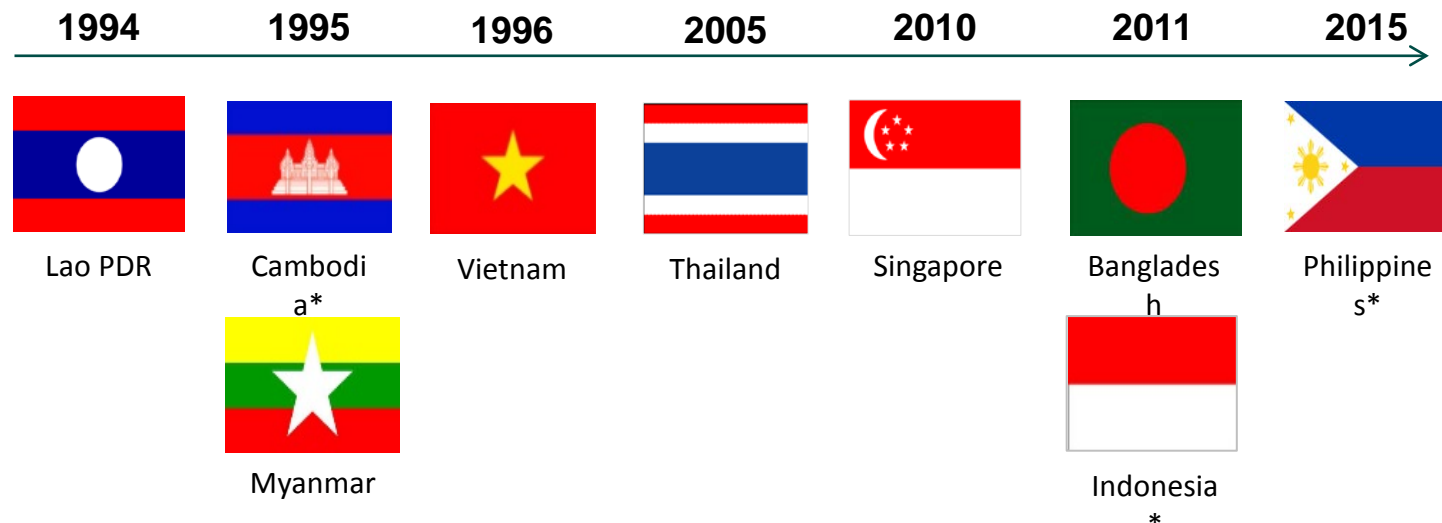
Low Electricity Tariff – Below cost



Source: ADB "Power Sector Development in Myanmar" (October, 2015)

What Makes Us Unique?

Pioneers in frontier markets of S.E. Asia



"Very international - but there on the ground!" - **Chambers Asia 2016**

*In Cambodia, DFDL works in commercial cooperation with local law firms. In Indonesia, DFDL works in association with Mataram Partners. DFDL does not operate or practice law in the Philippines. DFDL

Regional Reach: ASEAN and South Asia



Bangladesh (2011)

Country Partner: 1

Advisers: 5

Cambodia* (1995)

Partners: 5

Advisers: 42

Lao PDR (1994)

Partners: 2

Senior counsels: 1

Advisers: 10

Indonesia* (2011)

Mataram Partners

Partner: 1

Advisers: 10

Myanmar (1995)

Partners: 2

Senior Counsel: 1

Advisers: 20



Philippines‡ (2015)

Ocampo & Suralvo Law Office

Partners: 3

Singapore (2010)

Partners: 2

Advisers: 3

Thailand (2005)

Partners: 4

Advisers: 28

Vietnam (2006)

Partners: 4

Advisers: 17

Legal and tax advice in the Philippines and Indonesia are provided by local firms who collaborate with DFDL to allow our clients to receive seamless service throughout the region.

An award winning practice



Myanmar

Law Firm of the Year
(2013, 2014, 2015)



Project Finance

Deal of the Year



Telco - Media - Techno

Deal of the Year



Most Innovative ASEAN Law Firm



David D. Doran

*Partner and Chairman,
Head of Energy, Mining and Infrastructure Practice Group*

- Partner and Chairman
- Head of regional Energy, Mining & Infrastructure
- Head of outbound Thailand practice
- Over 20 years' experience as a legal adviser in the Mekong Region
- Co-founded Dirksen Flipse Doran & Le (DFDL), in Vientiane, Laos
- Focus on large energy sector projects
- Special expertise in the energy sector and project finance in all sectors



William D. Greenlee Jr.

Partner; Managing Director DFDL Myanmar

- Based in Yangon, Myanmar
- His practice focuses on M&A, project finance and securities.
- He is involved in negotiating, structuring, documenting and managing large private equity and opportunity-fund companies and transactions
- Juris Doctor from the University of San Francisco, California. Member of the State Bar of California, State Bar of Nevada, State Bar of California International Law Section and the Inter-Pacific Bar Association.



Audray Souche

Partner; Deputy Managing Director, Thailand

- Deputy Head of Regional Energy, Mining & Infrastructure Practice Group
- Heavily involved on energy and project finance projects, providing advice on major project finance deals in Thailand, Lao PDR, Cambodia, Myanmar, Vietnam and Bhutan
- Leads DFDL technical assistance to MOEP on Power Sector Regulatory Reform
- IFLR 1000 Leading Lawyer for Banking, Energy & Infrastructure



Jack Sheehan

Partner, Regional Tax Practice Group

- Partner and leads the regional tax practice at the firm.
- Specializes in providing advice on international tax planning across multiple jurisdictions, mergers and acquisitions and due diligence, transfer pricing and cross-border tax advisory services.
- Authored a number of tax guides and publications including CCH Asia Tax Planning Guides for Vietnam, Cambodia, Laos and Myanmar, IBFD, Bloomberg, and International Tax Review.
- Featured speaker, panelist or chairperson at seminars in South East Asia.



Robert G. Fitzgibbons, Jr.

Senior Counsel

- Team Leader, technical assistance project for enhancing the Myanmar power sector's legal and regulatory framework.
- Over thirty years specializing in strategic, legislative, contractual, and regulatory issues relating to energy and infrastructure.
- Specializes in drafting of legislation, strategic planning for sector restructuring, economic regulation of electric power services, alternative dispute resolution and construction arbitration.



Walter Heiser

Senior Counsel

- Based in Bangkok , Thailand and Vientiane, Lao PDR.
- 30+ years of experience as an attorney, developer and project finance specialist for the electric power and infrastructure industries.
- Broad experience in developing, structuring, negotiating and financing energy projects and distribution companies in the United States, Brazil, Argentina, India, Southeast Asia and China.



Jaime Casanova

Senior Adviser

- Based in Yangon, Myanmar.
- 10+ years of legal experience in energy projects, incl. corporate and regulatory matters.
- Experience in Asia, the Middle East and Europe.



Bridget Di Certo

Legal Adviser

- Based in Yangon, Myanmar.
- More than 5 years of experience in Asia.
- Specializing in corporate and commercial law.



Agenda

Electrifying Myanmar: Agenda



8:15 – 8:30	Introduction (David Doran)
8:30 – 9:00	Session 1– Legal and Regulatory framework for Power Sector: overview updates and considerations (William D. Greenlee)
9:00 – 9:20	Session 2–Environmental laws and obligations for Power Projects (Audray Souche and Bridget Di Certo)
9:20 – 9:50	Session 3 – Tax Structuring of Power Projects (Jack Sheehan)
9:50 – 10:00	Question & Answer
10:00 - 10:20	COFFEE BREAK
10:20 – 10:50	Session 4– Ongoing Power Sector Reforms in Myanmar (Audray Souche)
10:50 – 11:30	Session 5– Project Documentation (William D. Greenlee, Walter Heiser and Jaime Casanova)
11:30 – 12:00	Session 6– Financing Issues (William D. Greenlee)
12:00 – 12:10	General Discussion

Introduction

Power sector overview – key industry trends, players and opportunities: general investment statistics as of 31 January 201



Sr. No	Particulars	Permitted Investors		
		No.	Approved Amount (US \$ in million)	%
1	Oil and Gas	151	19641.778	33.03
2	Power	9	19371.542	32.57
3	Manufacturing	604	6360.069	10.69
4	Transport & Communication	29	4753.222	7.99
5	Mining	70	2870.866	4.83
6	Real Estate	33	2622.771	4.41
7	Hotel and Tourism	58	2270.800	3.82
8	Livestock & Fisheries	35	454.835	0.76
9	Agriculture	17	242.686	0.41
10	Industrial Estate	4	203.113	0.34
11	Construction	2	37.767	0.06
12	Other Services	44	641.016	1.08
	Total	1056	59470.465	100.00

Recently Completed Power Plants

2011-2015



49 Power Plants

Currently Being Implemented

To be Completed
in 2016



17 Power Plants

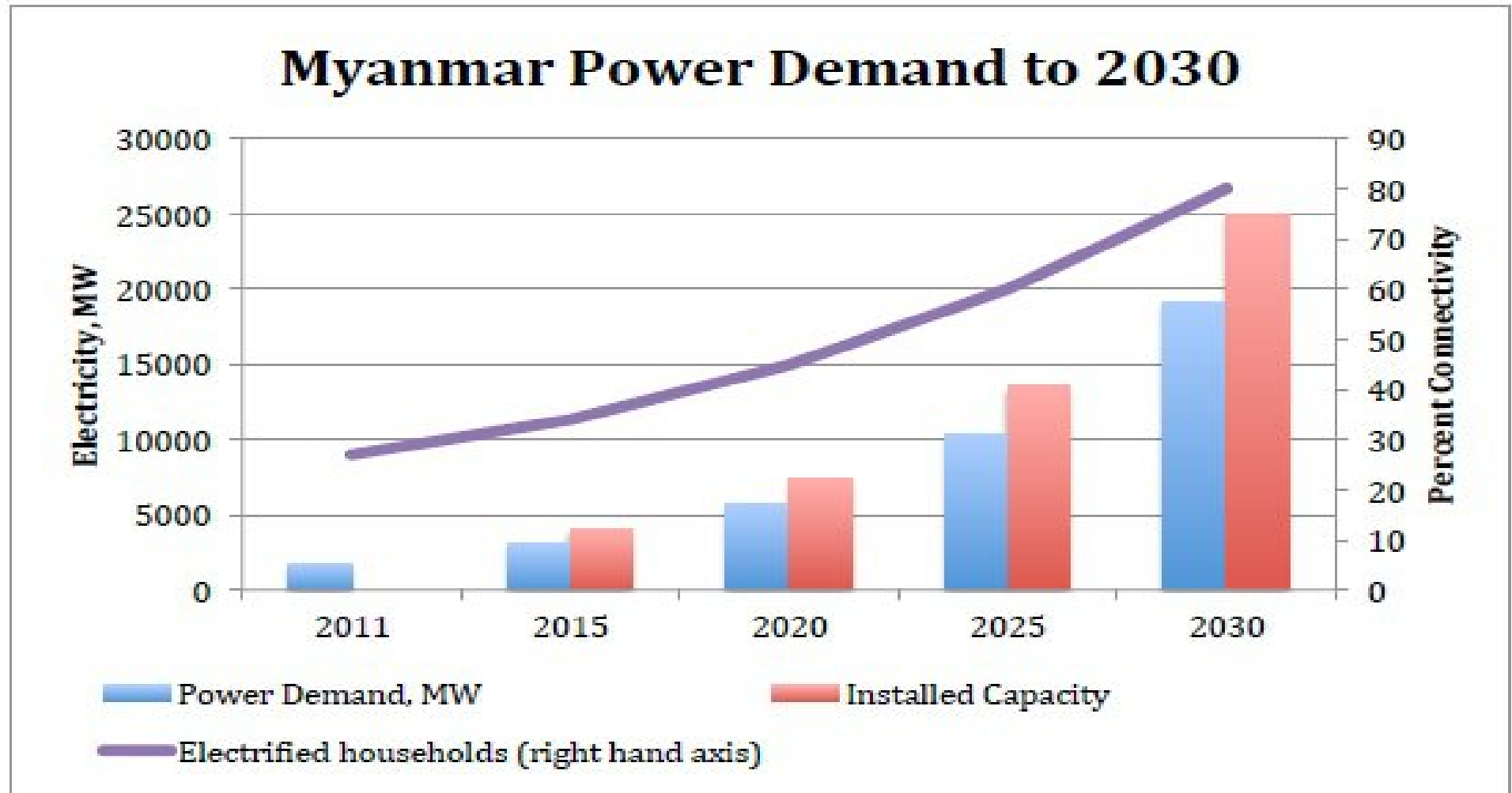
Plans to Construct

In the next few years



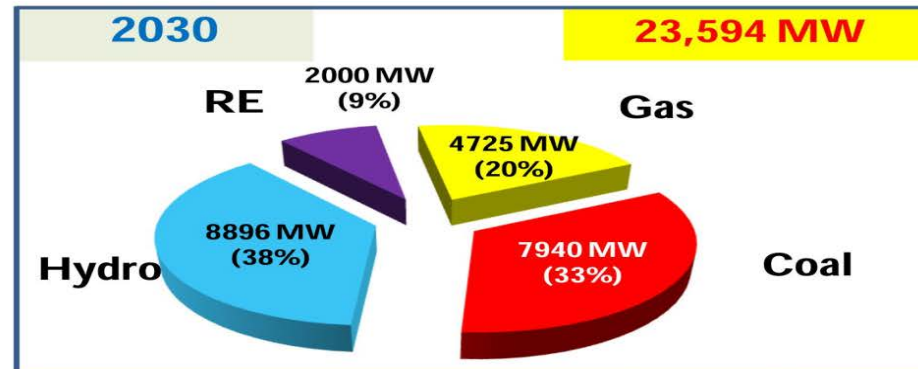
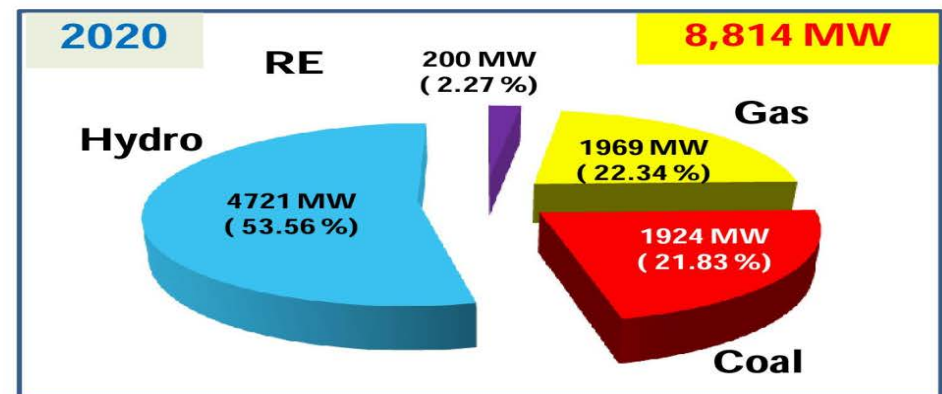
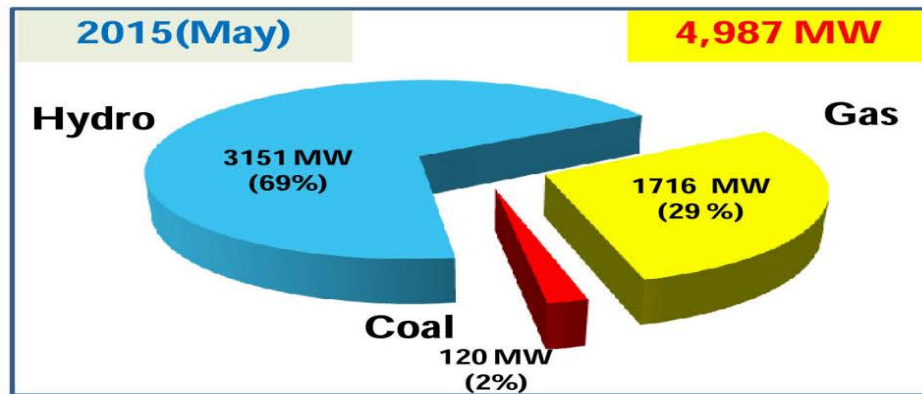
87 Power Plants (54,608
MW of Installed capacity)

Supply vs. Demand

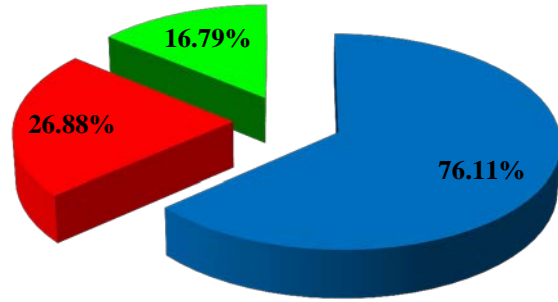


Source: MOEP

Generation Mix by Electricity Master Plan



Generation Facilities 2011-2016



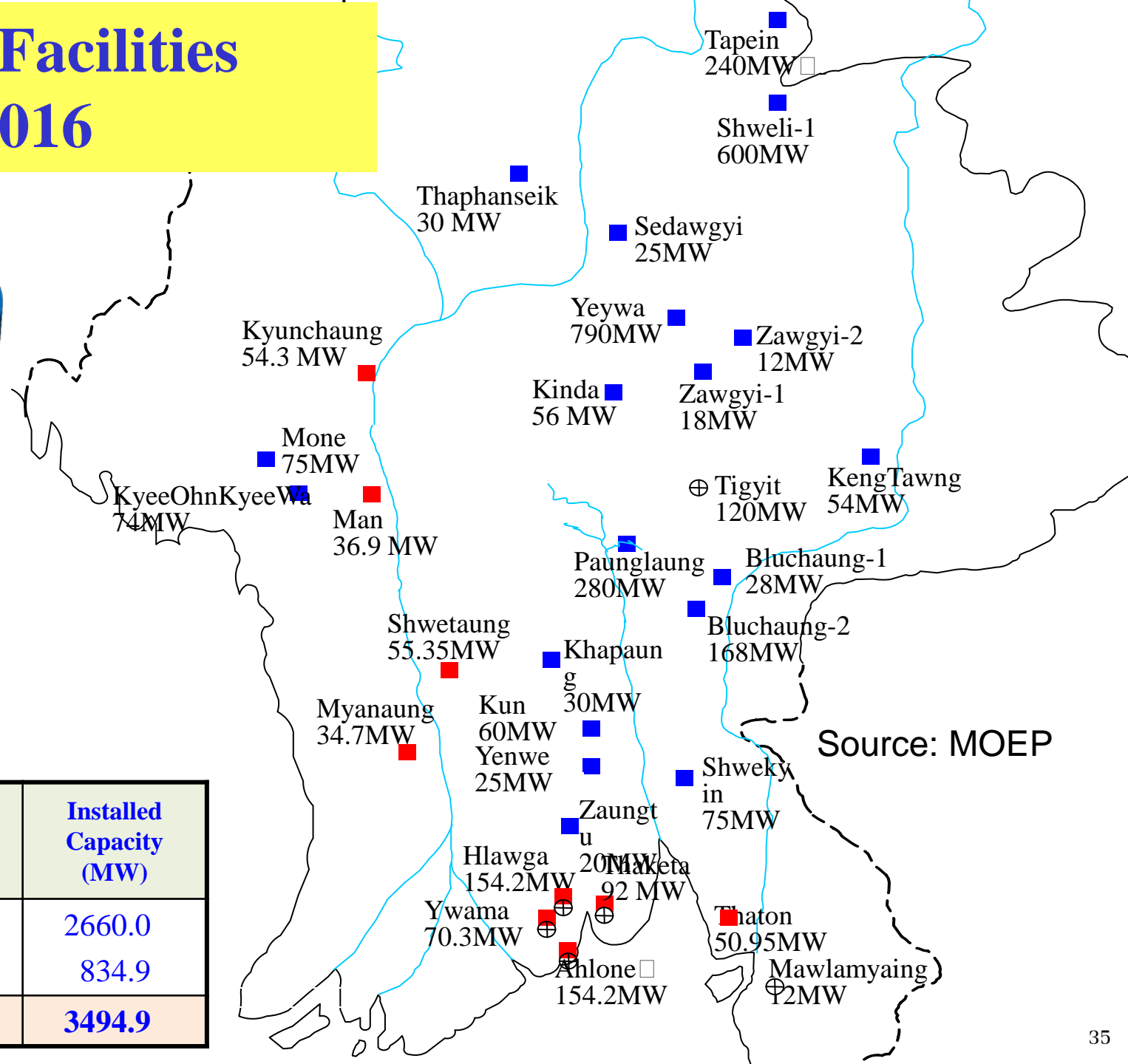
■ Hydroelectric ■ Gas ■ Coal

■ Hydro Power Plant

■ Gas Power Plant

⊕ Steam Power Plant

Sr No.	Type of Power Plant	Number	Installed Capacity (MW)
1.	Hydro Power	19	2660.0
2.	Gas & Steam	11	834.9
Total		30	3494.9



Source: MOEP

Session 1- Updates and prospective considerations of Myanmar legal framework

The new government and what it means for the power sector: post-election considerations and perspectives

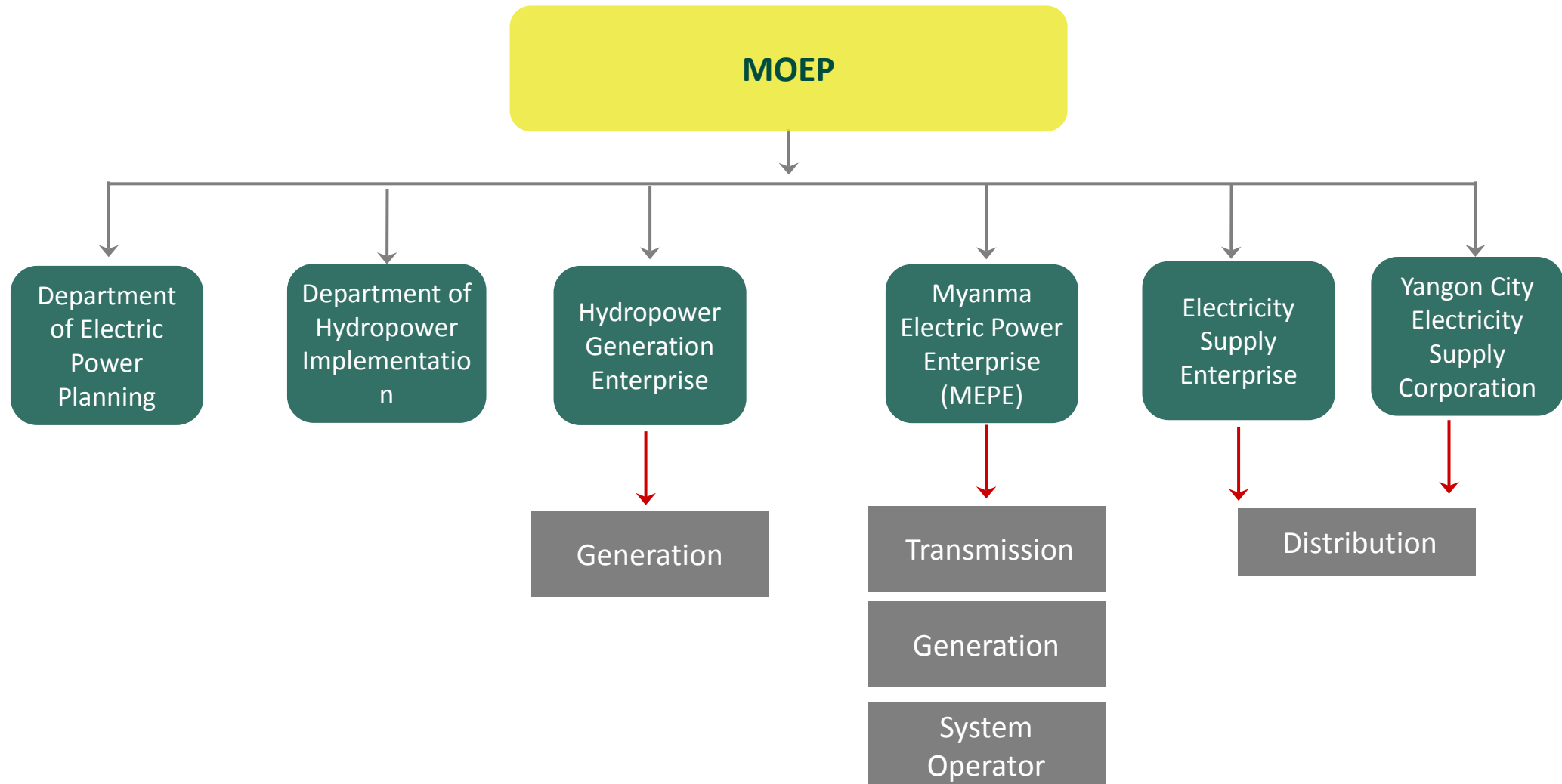
- A radical change?
- New investment surge? Or progressive, steady consolidation?
- Recovery of Myanmar's economy (2015 was very slow)
- Towards an autonomous Central Bank: various mechanisms have been announced
- Further liberalization of the banking sector



- Busy years ahead for Power sector
- Implementation of Myanmar's National Electrification Plan funded by the World Bank
- More aid funded projects



Organization structure of Ministry of Electric Power



MOEP

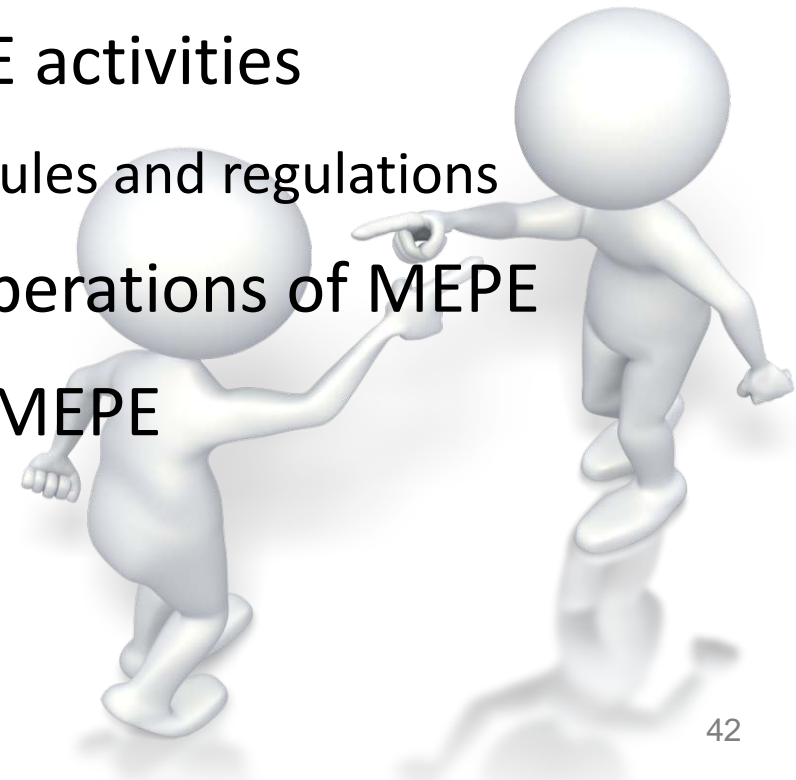
- Responsible Ministry for laying out policies in power generation, transmission, distribution and purchase throughout Myanmar
- Section 200 of the Constitution 2008:
 - Union Government comprised of: (a) President; (b) Vice-Presidents; (c) Ministers of the Union, and (d) Attorney General of the Union
 - Ministers (and Ministries) are direct and integral parts of Union Government

MEPE

- Former Electric Power Corporation
- State-owned Enterprises Law of 1989
 - State-owned utility enterprise responsible for power generation, transmission, distribution and purchase of electricity throughout Myanmar
 - Together with successors and permitted assigns
- Technically operates in independent and commercial manner
 - Corporate body with:
 - Perpetual succession, and
 - Common seal
 - Can sue and be sued in its corporate name

Relationship MOEP-MEPE

- MEPE operates under supervisory control by MOEP
 - MOEP appoints and removes MD of MEPE
 - MOEP supervises activities of MEPE activities
 - Ensure compliance with existing laws, rules and regulations
- MOEP does not manage day-to-day operations of MEPE
- Legal separation between MOEP and MEPE
 - MOEP => Ministry
 - MEPE => SOE



MOGE

- State-owned enterprise created in 1963
 - Empowered to conduct all exploration, production and transportation of oil and gas in onshore and offshore areas of Myanmar.

- Four basic responsibilities:
 - Explore and produce oil and gas by using its own resources;
 - Supply domestic natural gas by constructing its own pipelines;
 - Supply the Compressed Natural Gas (CNG) as a substitute fuel for vehicles; and
 - To participate in and oversee the production sharing agreements in

MIC

- Administrative government body which administers the (i) Foreign Investment Law of 2012 and its procedures, as well as (ii) Myanmar Citizens Investment Law, 2013, and its procedures.
- Responsible for the granting, approval, and issuance of the compulsory MIC Permit after completing the negotiations and finalizing (but not executing) the project documents, which are then approved by the Cabinet.
 - After the MIC Permit is issued, the company executes the project documents.

Central Bank of Myanmar

- The CBM plays a controlling role regarding foreign loans of the Project and/or the company.
 - Foreign loans as well as their terms/conditions would have to be approved by the CBM in advance.
 - Typically, however, any such loan would be the MIC.



Other counterparties

- Ministry of Construction
- Ministry of Environmental Conservation and Forestry
- Attorney General's Office
- Cabinet
- Ministry of National Planning and Economic Development (Directorate of Investment and Company Administration) -> company formation
- Relevant city development committee (e.g. Yangon/Mandalay) -> construction licenses

- The Myanmar Companies Act of 1914
- The State-owned Economic Enterprises Law of 1989
- The Foreign Investment Law of 2012
- The Environmental Conservation Law of 2012
- The Electricity Law of 2014



- Myanmar's Foreign Investment Law was passed on 2 November 2012
- Investment permit + exemption notification under the State-owned Economic Enterprise Law
- Administration—by the Myanmar Investment Commission (**MIC**)
- All power deals by foreign investors have to be through the relevant government entity under the Ministry of Electric Power (**MOEP**). Normally, Myanmar Electric Power Enterprise (**MEPE**) or the Department of Electric Power Planning (**DEPP**) submits the MIC proposal as promoter.

Attributes of Foreign Investment Law

- Government guarantee against expropriation
- Foreign exchange benefits (guaranteed remittance of profits; remittance upon exiting the investment)
- Lease up to 50 years + two (2) consecutive terms of ten (10) years each.
- Tax holiday—five years. Accelerated depreciation and customs exemptions are the same as the old law with added incentives

Investment activities that will not benefit from tax exemption and relief under the FIL framework, includes:

- Distribution of petrol, diesel, fuel and natural gas
- Exploitation of natural resources (excluding the exploration and drilling of petroleum and natural gas)

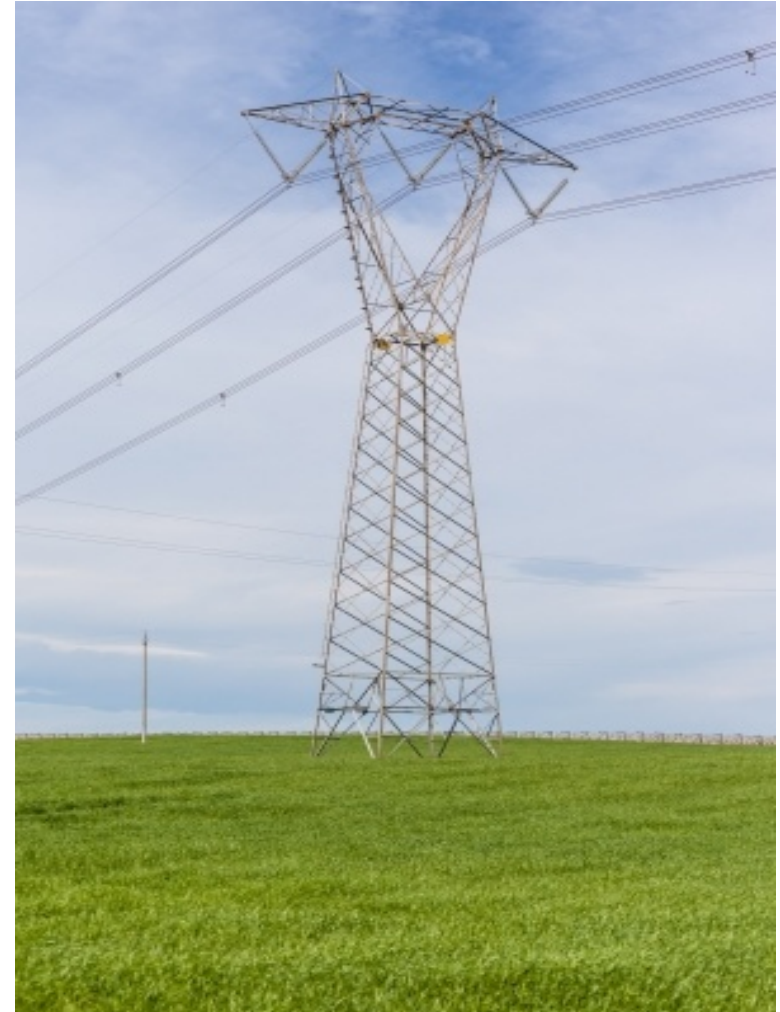
Subject to the size and type of the power project, SPV can be:

- 100% foreign owned
- Joint Venture with a local company
- Joint Venture with a government entity

FIL has few restrictions on foreign investment in power projects, notably:

- Electricity generation under 10 megawatts – generally reserved for local investors
- However, with MOEP approval, foreign investors can have a joint venture with a project under 10 megawatt (up to 80 % equity)

Under Electricity Law of 2014, projects ≥ 30 MW can be carried out via 100% foreign investment.



- Investors must submit a specific schedule of investment if the proposal provides that the investment funds will be brought in over a period of time.
- Investors must complete the construction works within the period stipulated in the MIC permit.
- If an extension is needed for the construction period, the investor must apply to the MIC at least 60 days before expiration of the construction period.
- Investors must submit a progress report to the MIC every 3 months.

- Investors can sub-lease or mortgage the long-term lease subject to MIC approval and land owner's consent.
- Shares in an FIL-approved company, whether owned by a foreigner or a Myanmar citizen, may be transferred to a foreigner or a Myanmar citizen with MIC approval.
- Specific rules for clearing land of population; relocation subject to approval of competent local authorities and payment of compensation.
- In the absence of any, agreement to the contrary, disputes can be settled using the laws of Myanmar.

- Foreign energy companies are allowed to act as Independent Power Producers (IPP) in Myanmar.
- The concession for natural gas turbine, hydro, solar waste-fired and wind are possible.
- One of the government's main objectives is to promote electricity production from new and renewable sources of energy (hydro, solar, wind...).

- Arbitration Law of 2016
 - New York Convention
 - Offshore arbitration
- Public Debt Management Law of 2016
 - MOF may provide payment guarantees for a loan (explained later)
- Perfection of security
 - Progress being made
- IEE/EIA procedures (explained later)
- New government



Arbitration Law 2016

- Largely adopts the “New York Convention” Model rules.
- Foreign arbitral awards implemented by way of court decree under Myanmar’s Civil Code of Procedure – this must be done within 90 days of the issuance of the foreign award.
- A party who is applying for the enforcement of a foreign arbitral award shall produce the following documents before the court:
 - The original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;
 - The original agreement for arbitration or a duly certified copy thereof; and
 - Such evidence as may be necessary to prove that the award is a foreign award. If the foreign arbitral award is not made in English, a certified translation will have to be produced too.

Arbitration Law 2016

- However, enforcement of the foreign arbitral award may be refused if the court finds that:
 - Subject-matter of the dispute is not capable of settlement by arbitration under laws of the Myanmar; or
 - Enforcement of the award would be contrary to the national interest (public policy) of Myanmar.
- Finally, in order to enforce foreign arbitral award made in contracting state of New York Convention, Myanmar needs to appoint officer from Office of Supreme Court (or other person) to certify/authenticate copy of arbitration agreement/arbitral award.
 - Not happened yet.

New legislations expected soon



More details of EIA and EMP requirements



New Companies Act



New FIL blended with Myanmar Citizens Investment Law



Subsidiary legislation and directives for the Electricity Law



Subsidiary legislation and directives for Financial Institution Law

Q&A

Session 2 – Brief overview of Myanmar environmental laws and obligations

- Environmental Conservation Law 2012
- Environmental Conservation Rules 2014
- Environmental Impact Assessment Procedures 2015 (EIA Procedures)
- National Environmental Quality (Emission) Guidelines 2015
- Environmental Conservation Committee at Ministry of Environmental Conservation and Forestry
- Environmental Impact Assessment Review Committee



- If any individual or organization carries on any activity which is **likely to harm or effect the environment**, it must seek prior permission from the Ministry of Environment Conservation and Forestry (MECF) and shall follow all conditions for that activity that are decided by the MECF (including conduct of an Environmental Impact Assessment (EIA))
- Foreign Investment Notification of 2013 issued by the MIC on 31st January 2013: For some manufacturing projects involving natural resources (such as water), an EIA will be required to be submitted as one of the elements of an application for a MIC investment permit **prior to establishing the company**
- MIC Notification 49 of 2014 further stipulates that any projects “**likely to have an impact on the environment**” will be required to submit an EIA

Projects that require Environmental Impact Assessment under the **Environmental Conservation Law 2012**:

- **Project based categories:** Hydropower and other heavy electricity production and construction of national grid for electric power; and
- **Location based categories:** Operations in fragile ecological site, area of endangered flora or fauna, in the vicinity of main resource or public drinking water, lake and reservoir, in areas prone to natural disasters.



Environmental laws and obligations: Environmental Conservation Rules 2014

- Powers of the MECF and the Environmental Conservation Committee
- Environmental Fund
- Future creation of gazetted Environmental Standards and a list of Environmentally Relevant Activities that would trigger reporting and reparation obligations
- Chapter directed toward toxic, harmful and industrial waste management
- Impact analysis can only be carried out by a MECF-certified third party audit agency
- MECF may require an Initial Impact Assessment and upon review of this preliminary document will provide further scope for the EIA

- **Environmental impact** : “the **probable** effects or consequence on the natural environmental and people of a proposed Project of Business or activities or undertaking. Impacts can be **direct or indirect**, cumulative, and positive or adverse or both.”
- **Project proponent**: any natural person, legal entity, or organization, from the public or private sector, **intending to undertake** a Project or any aspect of a Project (including study, survey, design, development, pre-construction, construction, operation, decommissioning, closure and post closure) within the territorial borders of the Republic of the Union of Myanmar, and for the avoidance of doubt shall include the Project Owner **at such time as the undertaking of such Project has commenced.**

- Ministry **may** stipulate the form, content and structure of the EIA.
- EIA Review Committee to review reports and also act as an internal appellate body.
- IEE/EIA must be completed and approved before the project can receive any other licenses or permits (including MIC Permit).
- Requirements for a construction phase EMP, a social impact assessment and management plan folded into the EIA that addresses ethnic groups, involuntary resettlement and climate change impacts among other factors.
- The project proponent is responsible for all public consultations.

EIA requirements and procedures: Classification of projects

Depending on type and scale of project – it will fall into one of three categories:

- EIA type projects;
- IEE type projects; and
- Neither an EIA nor an IEE type project in which case no environmental



- Prior to IEE investigations, the Project Proponent shall inform MECF in writing as to the identity of the organization(s) and/or person(s) selected to undertake the IEE investigation and reporting.
- The Project Proponent shall submit the certification, in the form prescribed by the MECF, well as the IEE (in English and Myanmar version, + summary) confirming :
 - the accuracy and completeness of the IEE;
 - that the IEE has been prepared in strict compliance with applicable laws including this Procedure; and
 - that the Project will at all times comply fully with the commitments, mitigation measures, and plans in the IEE Report.

Review and approval process for initial environmental examination (IEE) –*cont'd*



- IEE Report to be submitted to MECF in both digital form and hard copies; service fee
- IEE Report to be disclosed to civil society, PAPs, local communities and other concerned stakeholders through local media, at public meeting places and at the offices of the Project Proponent after submission to MECF
- MECF shall:
 - Disclose the IEE Report to the public
 - Arrange public consultation
 - Collect and review all comments and recommendations and submit opinion to the MECF to make for final decision.

MECF final decision to be issued within 60 days of receipt of the IEE Report

Upon receipt of the EIA Report, the relevant department of the MECF shall:

- Submit the EIA Report to the EIA Review Committee
- Invite comments and suggestions on the EIA Report from all relevant parties;
- Arrange public consultation meetings where the Project Proponent shall present the EIA Report; and
- Collect and review all comments and recommendations received and shall submit opinion to the Ministry for final decision.

MECF final decision to be issued within 90 days of receipt of the EIA Report

- Must abide by the Environmental Management Plan (EMP) that has received an “Environmental Compliance Certificate” from the MECF and Environmental Conservation Committee
- Must collaborate and support the Ministry monitoring and investigations of compliance and environmental incidents
- The Project Proponent is responsible for all Ministry costs for monitoring and evaluation
- Requirement to provide monthly reports to the Ministry on compliance with EMP

- Untested environmental protection framework
- It is an offence to deviate from the EMP or to not offer full disclosure in the EIA
- Project Proponent must report within 24 hours when there has been a serious environmental incident and within 7 days where there has been an environmental incident likely to have an impact
- Some environmental offences contained in other legislation in respect of waterways and wildlife
- *Penalties* – prison sentencing of up to 5 years, monetary fines of up to MMK 2 million, compensation for damage, costs of remedy,

Practical realities of environmental compliance in Myanmar

- No baseline levels – limited existing environmental studies
- Land issues – due diligence difficulties and opaque concession process
- Vocal, active civil society organizations
- Limited technical experience of regulators
- Limited enforcement experience of regulators



RFA Myanmar – Copper Mine
Protest March 2013

Q&A

Coffee Break

Session 3 – Tax

Key tax issues upon inception:

- Identifying key tax exposures
- Availing of tax incentives
- Planning the offshore holding entity; cross-border transactions

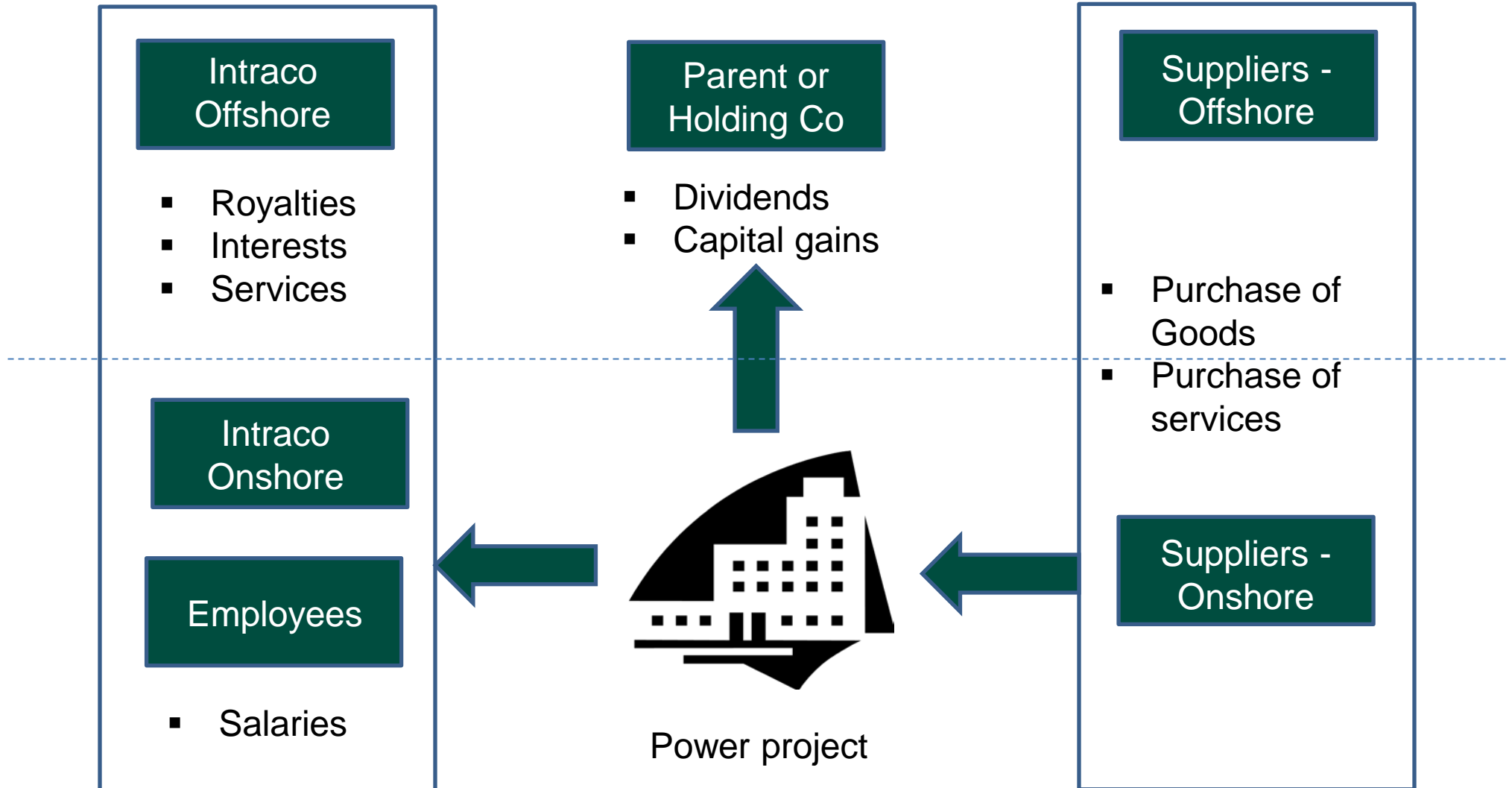
Key tax issues upon execution:

- Sourcing: Tax on importation; local sourcing of materials
- Ensuring tax compliance

Key tax issues upon exit:

- Capital gains
- Indirect transfers
- Issues on acquisitions

Typical transactions of power projects



Key tax issues upon inception:

- Identifying key tax exposures
- Availing of tax incentives
- Planning the offshore holding entity; cross-border transactions
-

Key tax issues upon execution:

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- Ensuring tax compliance

Key tax issues upon exit:

- Capital gains
- Indirect transfers
- Issues on acquisitions

Corporate Income Tax

Entity	CIT Rate	Taxable income
Resident Company	25%	Worldwide income
Branch	25%	Income within Myanmar
Foreign Contractor	WHT	Income within Myanmar

Other income taxes

- Personal income tax – 0-25% residents. Non-residents now also subject to this graduated rate of 0-25% (This used to be a flat rate of 35%).
- Capital gains tax – 10% residents. Non-residents are now also subject to 10% (This used to be 40%).
- Withholding tax - various rates; creditable or final

Withholding tax

Payment	Residents	Non-residents
Dividend	0%	0%
Interest	0%	15%
Royalty	15%	20%
Goods purchased within Myanmar	2%	3.5%
Other contracts performed	2%	3.5%
Capital Gains Tax	10%	10%

Commercial Tax

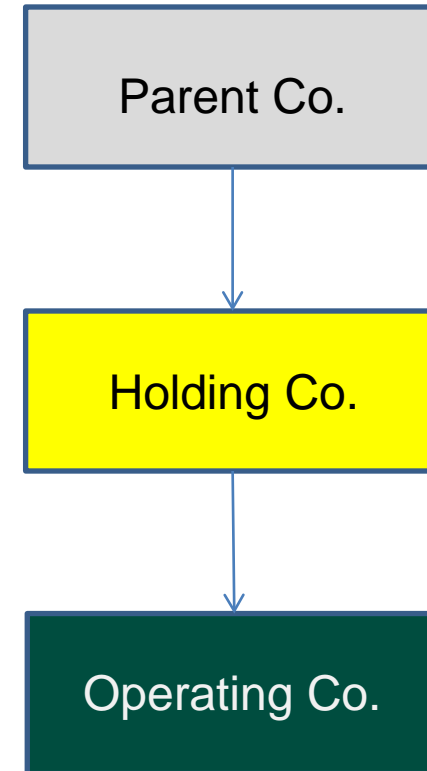
Goods or Services	CT Rate
Goods produced and sold in Myanmar	5%
Services (beginning 2016, there are 29 types of exempt services)	5%
Passenger transportation fee of domestic air passenger transportation service businesses. Sale of building constructed and sold in the country	3%
Imported goods	Generally, 5%
New Special Commodity Tax on non-essential goods	Various rates

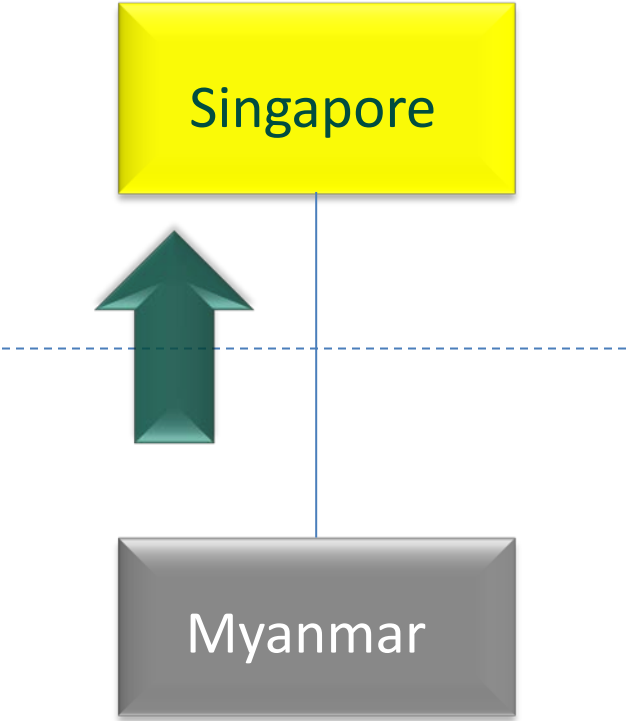
- **Others**
- Tax on importation
 - Import duties – generally, 0 – 40%
 - CT on importation – generally, 5%
 - Advance income tax on import and export – 2%
- Stamp duties

- New projects allowed an extendible 5 years of income tax exemption
 - Exemption on reinvested profits
 - Depreciation rate; deduction for research expenses; extension of 2 years loss carry forwards
 - 50% exemption on income tax for exported goods.
 - Foreigner individuals taxed in the same rate as the citizen.
 - Duty and other internal tax relief on imported machinery, equipment, during construction period.
 - Duty and other internal tax relief on the imported raw material for 3 years after establishment.
 - Duty and other internal tax relief on imported machinery, equipment, tools machinery part and accessories necessary for the expanded work
 - Exemption and relief of commercial tax on the products manufactured for export.

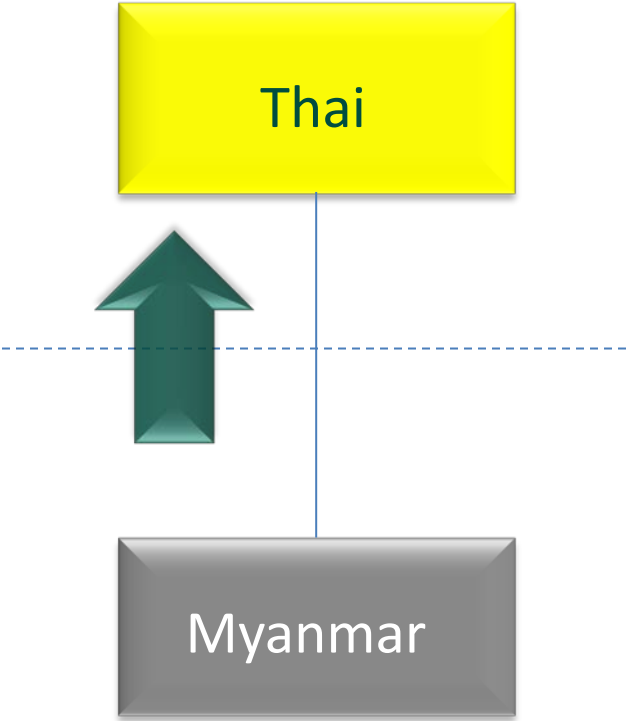
Planning the offshore holding entity

- Myanmar has DTA with a few important trade partners including India, South Korea, Lao PDR, Malaysia, Singapore, Thailand, Vietnam, UK
- DTAs allow the exemption from or reduction of WHT for non-resident income recipients
- **Caveat:** It is not enough that a HoldCo is legally interposed; the key is the HoldCo must be an entity with substance.





Payment	MM law	SG-MM DTA
Business profits (Service fees and sale goods)	3.5%	Exempt from WHT if no PE
Dividends	No WHT	5-10%
Interest	15%	8-10%
Royalties	20%	10-15%



Payment	MM law	TH-MM DTA
Business profits (Service fees and sale goods)	3.5%	Exempt from WHT if no PE
Dividends	No WHT	10%
Interest	15%	8-10%
Royalties	20%	10-15%

DTA reduction of Withholding Tax

Remittance to	Dividends	Interest	Royalties
Non-treaty	N/A	15%	20%
India	5%	10%	10%
Korea (South)	10%	10%	10-15%
Lao PDR	5%	10%	10%
Malaysia	10%	10%	10%
Singapore	10%	8-10%	10-15%
Thailand	10%	10%	5, 10, or 15%
United Kingdom	0%	No provision	Exempt
Vietnam	10%	10%	10%

Taxation on local purchase and sale of goods

- Withholding tax – 2%
- Commercial tax of 5% passed on by the seller

- **Customs Duties**
 - 0-40%
 - Myanmar has signed Free Trade Agreements (FTAs) with its ASEAN neighbors, Japan, Korea, China, India, and ANZ
 - For FTAs, country of origin is decisive in allowing reduction of duties
- **Commercial Tax on Importation**
 - Commercial Tax (CT) is due upon importation. The general rate for CT is 5% of the landed cost of the goods
- **Withholding Tax on Importation**
 - 2% advance income tax is imposed on the import and export of goods

Tax compliance grid

Fiscal Year: 1 April to 31 March

Type	Returns	Filing Deadline
Corporate Income Tax	Quarterly Annual Return	30 days after each quarter 3 months after FY (June 30)
Capital Gains Tax	Per transaction basis	1 month from transaction
Personal Income Tax (Employment)	Employer withholds No Annual Finalization	7 days after withholding (also monthly or quarterly)
Commercial Tax	Monthly Annual Return	10 th of each month 3 months after FY (June 30)
Withholding Tax	Per transaction basis	7 days after payment

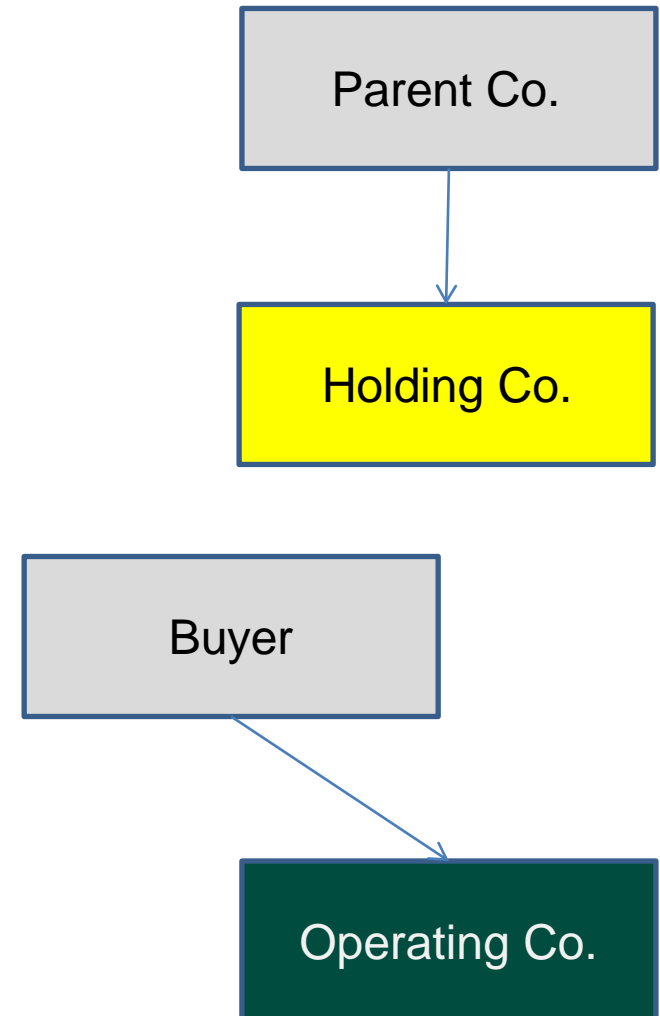
Key tax issues exiting from Myanmar

- Key tax issues upon inception:
 - Identifying key tax exposures
 - Availing of tax incentives
 - Planning the offshore holding entity
 - Tax issues on intellectual property and financing
 -
- Key tax issues upon execution:
 - Sourcing: Tax on importation; local sourcing of materials
 - Ensuring tax compliance
 - Other issues: Commercial tax credits; withholding tax; tax on salaries
- Key tax issues upon exit:
 - Capital gains
 - Indirect transfers
 - Issues on acquisitions

Capital gains

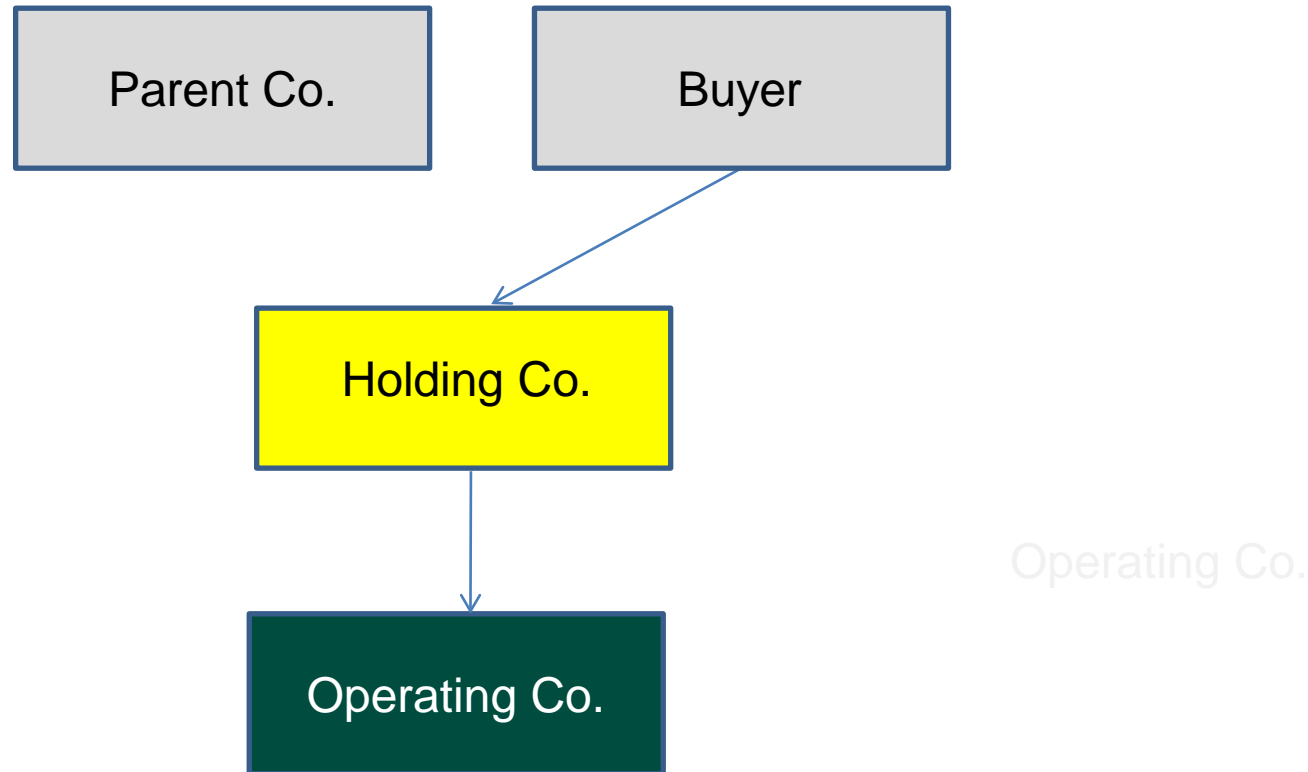
Capital Gains from disposition of capital assets including shares

Local law	10% for residents
SG-MM DTA	<p>Taxable if:</p> <ul style="list-style-type: none">▪ Property consists directly or indirectly principally of immovable property situated in Myanmar may be taxed in Myanmar.▪ Participation by SG resident is 35% or more and total shares alienated during the fiscal year amounts to at least 20% of the aggregate of his holding in the share capital of such company.▪ CGT is capped at 10%

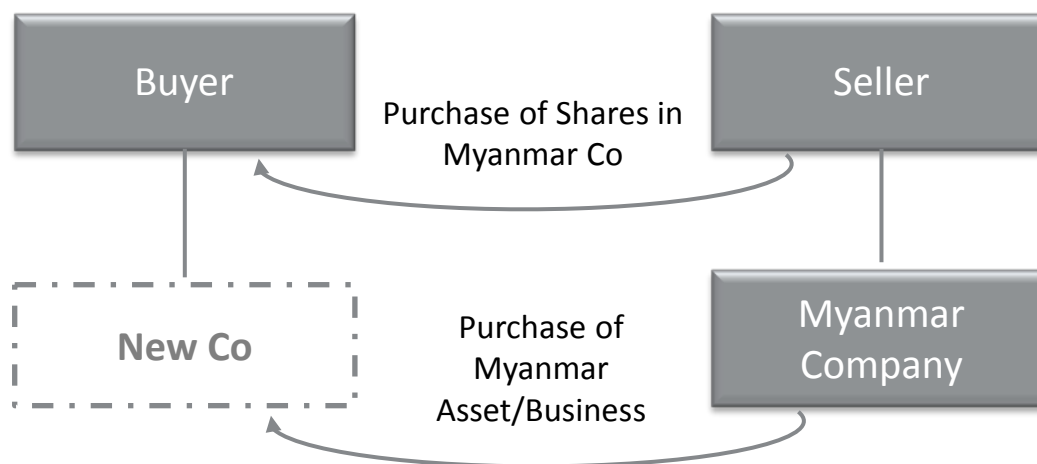


Indirect transfer

- Tax shall be payable by any person under capital gains in respect of the gains realized from the sale, exchange or other ways and means of transfer of one or more capital assets within a year.



M&A in Myanmar: Share Sale v Asset Deal



SHARE SALE

- Capital gains: 10% residents
- Stamp duties: 0.3%
- Carry over tax liabilities
- 3-year statute of limitations

ASSET DEAL

- Capital gains: 10% for residents
- Stamp duty: 3%
- Commercial tax: 5%
- Section 25 of ITL - buyer becomes responsible for seller's tax liabilities of previous year

Summary of take away tax issue for power projects



- Key tax issues upon inception:
- Identifying key tax exposures
- Availing of tax incentives
- Planning the offshore holding entity; cross-border transactions
-
- Key tax issues upon execution:
- Sourcing: Tax on importation; local sourcing of materials
- Ensuring tax compliance
-
- Key tax issues upon exit:
- Capital gains
- Indirect transfers
- Issues on acquisitions

- Q&A

Session 4- Ongoing power sector reform in Myanmar

- ADB TA Project “Enhancing Power Sector’s Legal and Regulatory Framework”
- 2 year effort assisting MoEP on continuing on-ground basis
- Components of the project:
 - ✓ Statutory and regulatory rules and regulations implementing the Electricity law
 - ✓ Rural electrification
- Methodology
- Status and what’s next?

Myanmar Power Sector Key Challenges

1. Almost 70% of Myanmar Households have No Access to Electricity
2. Insufficient generating capacity
3. Antiquated infrastructure
4. Non-Optimal Fuel Mix
5. Non-Cost Reflective Heavily Subsidized Tariffs
6. Inadequate demand forecasting and lack of meaningful planning
7. Complicated and Lengthy Process for Government Approvals of Private Projects
8. Impediments to Private Sector Investment
9. Non-Commercial Management
and Absence of Competition



The New Electricity Law

- Meet national power needs
- Encourage development of small and large-scale power generation and distribution businesses
- Enable safe and broader use of electric power
- Establish and impose standards on electricity-related businesses
- Protect consumers
- Encourage local and foreign investment
- Ensure adherence to Myanmar's international environmental protection obligations
- No specific renewable energy objective



- Acknowledgment of the importance of regulation
- Mandates for permitting regime to control market participation
- Principles to govern tariff determination
- Legal basis for corporatization and privatization of State-owned enterprises
- Standards and certification requirements
- Liability principle for damages caused by poor/negligent performance



How does licensing work?

- Permitting authority divided between:
 - MOEP and “Other Relevant Ministry”
 - Relevant Regional or State governments
 - Leading bodies of relevant self-administrated regions and zones
- Applications evaluated on the basis of “*transparency, fairness, competitiveness and sustainability*”
- Duration provided by Permitting authority
- At the end of Permit term, the permitted person is to transfer business to Permitting authority in its original form or in accordance with conditions agreed to at time of Permit issuance

The new Electricity Law:

- does not set forth any clear standards or process by which licensing decisions are to be made
- does not set forth the factors to be taken into account when determining the length of the term of licenses
- no indication as to how licensing by Region and State governments and leading bodies is to be achieved

How does tariff determination work?

- MOEP may prescribe an appropriate rate for “*consumers*” depending upon the region
- The rates may be adjusted from time to time
- Decentralized level may, through coordination with MOEP, prescribe rates under their own arrangements



- MOEP's authority to regulate tariffs appears to be limited to retail tariffs
- Only standard specified to govern tariff determinations is that electricity rates should be "*reflective of modern times*"
- Electricity Law does not yet provide the details of the processes or procedures for:
 - processing tariff applications; or
 - revising tariffs.



- **New Electricity Regulatory Commission**

- Established under the new Electricity Law
- Formed by the Union Government and approved by Parliament
- 5 to 7 member commission
- To work in a “transparent and unbiased way”

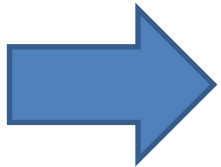
Areas not yet addressed in the Electricity Law framework:

1. The autonomy and independence of the ERC
2. The structure of the ERC
3. The relationship between the ERC and government ministries
4. Decision process and appeal
5. The funding of the ERC
6. Qualifications requirements for members
7. The process for appointment of members of the ERC etc.

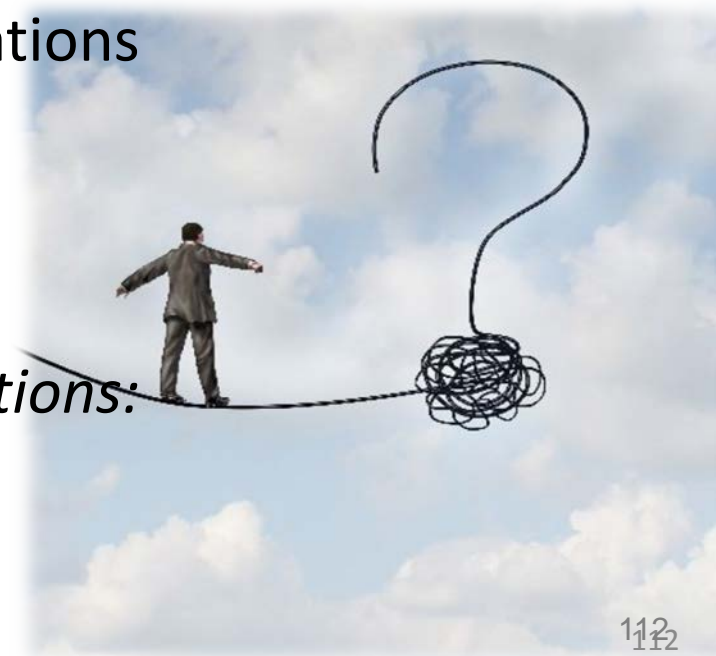


Positive early steps, but more needed

- Issues around allocation of regulatory responsibilities and functions
- Further emphasis needed on competition and power sector structural reforms
 - Desired market structure
 - Requirements on competitive power solicitations
 - Revisions of service obligations



*Priority for implementing rules and regulations:
**fixing deficiencies, providing clarification
and details***



Implementing Rules and Regulations

Rules – Initial Objectives, Genesis and Status

- Originally, objectives of the Rules:
 - (1) implement the new Electricity Law
 - (2) integrate the ERC into the regulation of the power sector and establish the basic structure, process and procedures for the ERC
 - (3) redress the identified shortcomings in the new Electricity Law.
- Change of approach on regulatory allocation during drafting effort (ERC exclusion)
- Draft Rules were approved by the cabinet and submitted to Parliament on 30 December 2015 for its approval; Pending 90 day period.



- Specification (and expansion) of regulatory responsibilities to protect against monopolistic abuses
- Specification of standards to govern regulatory decisions
- Establishes permitting regime to control market entry with sufficient flexibility to enable further structural sector reforms
- Transparency promoted by requirement for written decisions
- Tariff principles, including full cost-recovery and sufficient return to enable further capital investments

More supporting regulations...

Priority regulations which have been prepared (under MOEP consideration):

1. MOEP Filing Procedures
2. MOEP Permitting Regulations
3. MOEP Tariff Regulations
4. MOEP Regulations on Ministry Approval of Investment , Power Procurement and Resource Acquisition Plans
5. MOEP Regulations on Competitive Power Tenders
6. ERC Procedures on internal organization, rules, processes, and procedures

Towards a Rural Electrification Law?

Myanmar Rural Electrification Challenges and Impediments

1. Lack of communication and coordination between the relevant governmental authorities
2. No coordinated planning and funds' allocation
3. Not budgetary autonomy for ESE and YESC
4. No commercial incentives for grid extension
5. Reliance on governmental subsidies (rather than cost-reflective tariffs)
6. Off-grid solar electrification limited to DRD programme
7. No standard format and process for mini-grid development



- Ministry of Electric Power
- Ministry of Livestock, Fisheries and Rural Development
- Ministry of Energy
- Ministry of Agricultural Irrigation
- Ministry of Science and Technology
- Region and State Governments
- Electricity Supply Enterprise

- RE utilizing private investment is occurring
- Do we need a new law?

Not to promote private investment, but to rationalize coordination and funding allocation

REDC as a lead government institution responsible for Rural Electrification

REDC tasks:

- Prioritize rural electrification efforts of other government institutions (such as MOEP and MLFRD) in coordination with State and Region Governments;
- Annually prepare and submit for the approval of the Parliament a coherent and coordinated five year plan for the electrification of the nation at least cost;
- Supervise administration and management of the Rural Electrification Fund;

- Annually set targets for each of the following five years for the connections to be made by ESE and YESB by means of grid extensions;
- Recommend tariffs for on-grid SPP power sales to MEPE and retail power sales by isolated SPPs;
- Mobilize funds for rural electrification and serve as main point of contact with international donors; and
- Approve or reject application of developers seeking grants from the Fund, and determine the level of grants, to be granted.

■ **Required Preparation of the Annual National Rural Electrification Master Plan**

- prioritize grid extensions, mini-grid installations and household electrification based upon least cost,
- assign to ESE, YESB and other entities engaged in distribution targets for new connections,
- specify the financial resources required, the funding available, and the funding sources, and
- the proposed form and allocation of financial support across all electrification programs and projects.

- **Purpose** : providing grants to qualified developers of projects.
- **Funding Sources** :
 - (a) appropriated by the Parliament for the purposes of the Fund;
 - (b) paid to the Fund by the way of loans, grants or donations;
 - (c) donated by any foreign Government, international organizations or development partners.

- Union Government or the Minister to set up a government owned Rural Electrification Finance Corporation to provide loans on concessionary terms to finance electrification projects
- The Rural Electrification Finance Corporation to manage to pursue commercial objectives in debt financing of electrification projects by the Board of Directors composed of 7 members

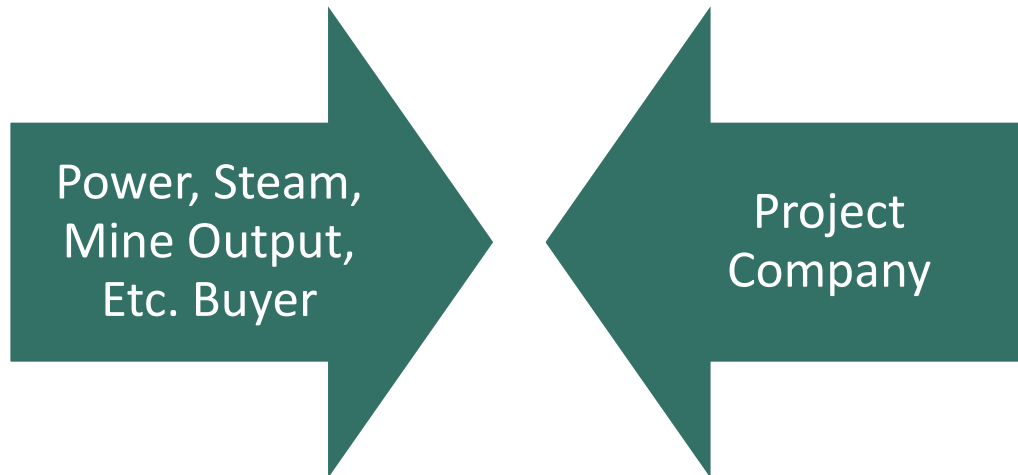
Session 5 – Preparing your project documentation

- Parties:
 - Department of Electric Power; and
 - Offshore company or consortium
- Objective:
 - To lay out the general terms of the project which will act as the basis for later negotiations with the relevant ministries.
- Term and Termination:
 - MOA will automatically terminate on the date on which all of the Project Agreements have been entered into



- MOEP shall provide all support necessary for the implementation of the Project to the Project Company, including but not limited to:
 - Upon the execution of the MOA, assist to procure the establishment of the Project Company as the concessionaire of the Project
 - Assist to procure that all necessary measures are put in place to ensure that the Shareholders and/or Sponsors will be able to recover and repatriate profits
 - Ensure that natural gas is supplied to the Project Company
 - Ensure that the Project Company has proper access to the use of relevant infrastructure, etc.
- Shareholders and/or Sponsors must procure that the Project Company shall, as soon as possible following its incorporation, enter into all Project Agreements

Power Purchase Agreement



Off-Take Agreement

- Term
- Price/Tariff
 - Energy
 - Capacity
 - Back-Up Power
- Minimum Take
- Max/Min Supply
- Delivery Point
- Transmission

Domestic Myanmar Power Sales

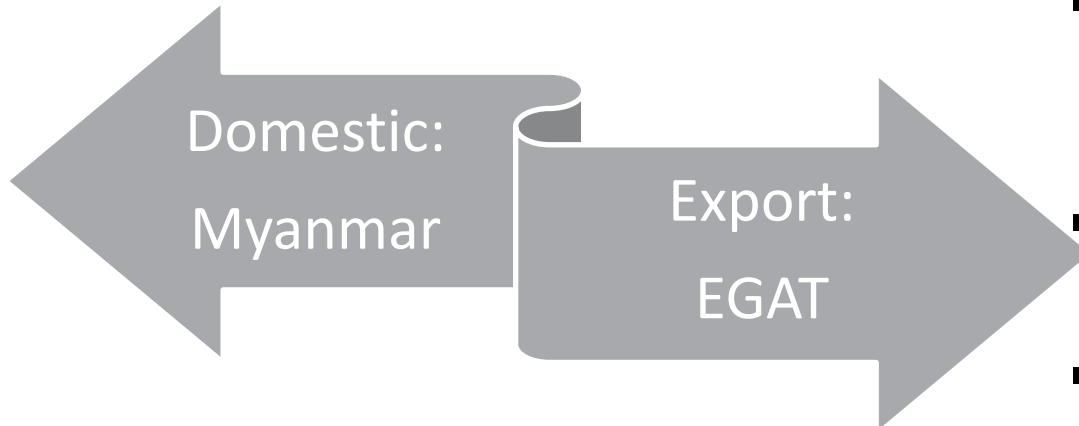
- Tariff MOU:
- PPA: *Financeable??*

Export Power Sales

- Tariff MOU: EGAT?
- PPA: EGAT? *Financeable!!*
Government Approvals?

- Myanmar Situation:
 - One well-drafted PPA template.
 - Use in multiple projects? Minimal changes? Consistent Positions?
- Take-or-Pay? Minimum Take?
- Guaranteed Minimum Delivery?
- Energy vs. Capacity vs. Availability?
- Base Load or Peaking Power only?
- Myanmar will give *momentum* to power sector with a consistent approach.
 - Good example: Thailand: Standard form EGAT PPA
 - Current capacity: 34,870 MW
 - Bad example: Vietnam: Extensive Project-by-Project Negotiations
 - Current capacity: 18,500 MW.





- Myanmar “National Grid” capacity?
- T-Lines to EGAT: Possible? Ownership? Need to Negotiate Wheeling Charge — Non-Cooperation?
- Financing? Myanmar Government Funding Unavailable?— Project Must Pay.
- Turn-Over of T-Line to Government? Compensation?
- Line Loss: Distant EGAT Delivery Points: EGAT PPA will **not** cover line loss to Thai border

- Parties:
 - MEPE; and
 - Project company – to be incorporated under Myanmar law (“**Company**”)
- Term: [22] years since Phase 1 Commercial Operation Date (to be decided by the Parties)
- Company’s responsibilities:
 - design, develop, construct, finance, operate and maintain a power plant and associated buildings, structures, roads, and other associated infrastructure
- MEPE’s responsibilities:
 - Access Rights to the site, Fuel Supply, interconnection with the transmission line, Capacity Payments/Energy Payments/Site Payments, etc

PPA – Facility Development and Connection Arrangements

- Obligations to Construct

- The Company:

- Facility
 - Facility's switchyard to be ready for the Connection to be energized and each Generating Unit to be ready for Dispatch
 - New Transmission Facilities

- MEPE:

- procure construction, testing and commissioning of the New Fuel Supply Infrastructure
 - procure timely achievement of the New Fuel Supply Infrastructure Completion Date
 - ensure timely Transmission Interconnection Date



- Capacity Payment: Contracted Capacity determined at COD; subject to re-testing and actual Availability
- Sale and Purchase of Energy
 - Net Electrical Generation (net of parasitic load)
 - Delivery Point = Plant switchyard
 - Third party sales prohibited
- Dispatch by MEPE.
- Delivery of Electricity: Facility switchyard.
- Line loss to Substation borne by MEPE

- Capacity Payments
 - On and from Phase 1 (*) Commercial Operation Date
 - *Phase 1= simple cycle gas turbine basis ; Phase 2 = combined cycle basis*
 - With respect to the Actual Availability and other relevant Contracted Operating Characteristics, regardless of the availability of fuel.
- Energy Payments
 - On and from the Phase 1 Commercial Operation Date
 - Net Electrical Generation
- Transmission Line Construction Costs
 - Company to recover costs of transmission line construction

PPA – Critical Dates and Duration

Scheduled Construction Commencement Date:	10 March 2016
Scheduled Financial Close Date:	29 February 2016
Scheduled New Transmission Facilities Handover Date:	1 February 2016
Scheduled Energizing Date:	10 March 2017
Phase 1 Scheduled Commercial Operation Date for the First Generating Unit:	1 May 2017
Phase 1 Scheduled Commercial Operation Date for all Generating Units comprising the Facility (other than the First Generating Unit):	1 May 2017
Phase 2 Scheduled Commercial Operation Date for all Generating Units comprising the Facility:	1 September 2018
Scheduled Project Commercial Operation Date:	1 September 2018

PPA – Milestones

All drawings, reports and certificates with regard to the design, construction and completion of the Facility and the New Transmission Facilities.	The dates such materials are due.
Copies of executed contracts for the design and construction of the Facility and the New Transmission Facilities.	One month prior to the Scheduled Construction Commencement Date.
Evidence demonstrating that the Company has obtained all applicable Governmental Approvals required for the construction of the New Transmission Facilities and the Facility in accordance with the provisions of this Agreement.	Within [*] months of the Effective Date.
A copy of the Company's plan to satisfy the local workforce conditions (including with respect to training and employment) set out in the Company's MIC Permit.	Within [*] months of the Effective Date.
A copy of the agreed operation and maintenance plan.	On or before the Energizing Date.
A copy of the Financial Model	On or before the Effective Date and on the date of each Financial Close.

- Step-In Rights:
 - MEPE:
 - Financing Parties' consent required
 - Lenders:
 - Financing Parties provided under direct agreement.

- Company:
 - Bank guarantee USD 15,000,000 covering Event of Default, liquidated damages, etc.
- MEPE:
 - Renewable LCs covering estimated Capacity Payments, Energy Payments and Transmission Line Cost Recovery Payments

■ **Delays:**

- USD 500/day: failure to meet Milestones
- USD 1,000/: failure to obtain all applicable Governmental Approvals
 - Aggregate cap of USD 500,000
- USD 350/ day/ MW: shortfall of Contracted Capacity.

■ **Contracted Capacity Deficiencies:**

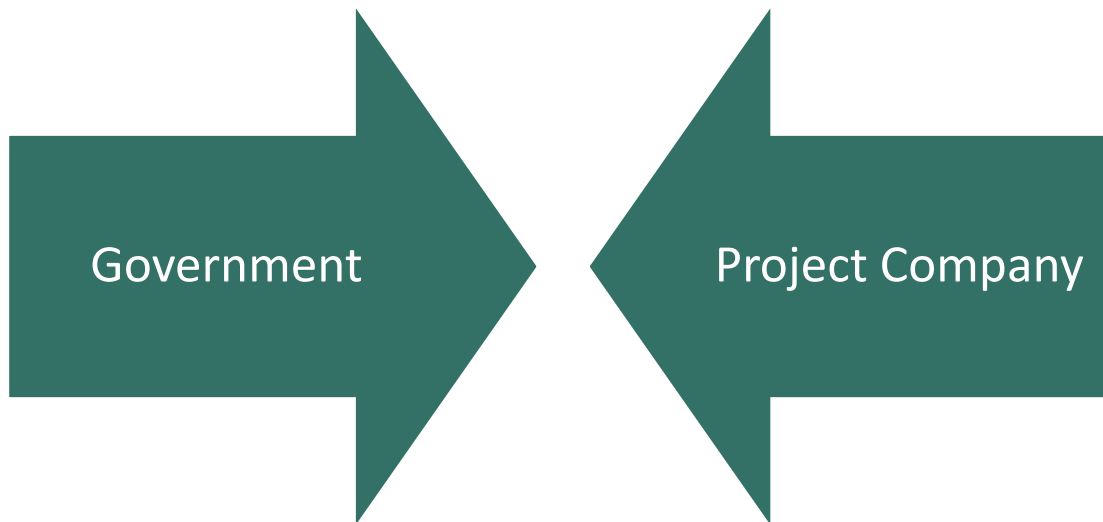
- USD 50,000/ MW: shortfall between Generating Unit's Phase 1 Initial Dependable Contracted Capacity and Phase 1 Contracted Capacity.
 - Same applies to Phase 2

- Unlike other jurisdictions, Myanmar addresses this issues in the PPA:
 - Tax Change Adjustment
 - Change in Law Adjustment
- Typically addressed in BOTA/CA.

- Transfer of Facility
 - Any transfer of equity in the Company must be approved by MEPE
- Billing and Payment
 - In USD
 - Default Rate: daily interest a rate equal to LIBOR + 2%
- Governing Law – Myanmar law
- Sovereign Immunity – not subject to sovereign immunity claims of MEPE

BOT Agreement

- Government Grant of Rights/Privileges
- Infrastructure or Natural Resources Exploitation
- Sectors: Electricity, Mining, Industrial Plantations, Railroads, Toll Roads
- Limited Term
- New Assets: Build-Own-Operate-Transfer
- Existing Assets: Own-Operate-Transfer



- BOT Agreement/Permits:
 - Grant of Exclusive Project Rights/Privileges
 - Infrastructure or Natural Resources Exploitation
 - Stated Term
 - BOT
 - Royalties and Taxes
 - Social Benefits
 - Environmental Duties

- Term: How Long? E.g. in Myanmar:
 - Before Foreign Investment Law of 2012 (FIL): 30 years
 - After FIL: 50 years + 2 extension terms of 10 years each
- Government Equity Participation?
- Force Majeure: Sovereign Risk. *Political Risk Insurance?*
- Force Majeure: Natural FM; Hydrology. *Sponsor Risk?—Fixed payment during debt repayment period under PPA?*
- Special Incentives: Tax and Duty Holidays and Reductions; Exemption from Regulations.
- Change of Law Risks
- Termination Compensation

The Sticking Points



- Government Equity — %? *Carried Interest? Special Financing?*
- Government Veto Rights — *Contractors? Project Contracts?*
- Secured Financing Rights — *Step-In Rights?*
- Second Lien of Power Off-Taker?
- Share Transfer Limitations — *Pre-COD? Post-COD?*
- Subordination of Taxes/Royalties to Debt Service
- Set Off Rights
- Force Majeure Risks
- Change of Law— *Company Risk?*
- Off-Taker Credit Issues — *Government Guarantee?*

- Buy-Out or Take-or-Pay Continuation?
- Debt + Equity + Return?
- Company Default
- Government/Off-Taker Default
- Force Majeure—Company Side
- Force Majeure—Government/Off-Taker Side
- Government Events

- Under the present practice, a certain percentage of shares of the joint venture company needs to be allotted. Subscription for shares **is required to** be paid by the foreign investor.
- Currently the Project Company must supply free of charge 7% or 15% of the net electricity generated under the Project during the Concession Period to MOEP as a royalty.
- In future MOEP would require supply of 25% of electricity generated by the projects for free, with the right to buy another 25% from the Project Company.

- Parties:
 - MOEP; and
 - Company
- Effective Date: Effective Date of PPA
- Term: until the later of:
 - Expiry of PPA; and
 - Amounts due and payable by MEPE under PPA are discharged or satisfied in full
- Objective: MOEP to provide certain support to the Company in connection with PPA and the Project

- MOEP Responsibilities:
 - Assist MEPE
 - MOEP payment guarantee
- Assignment and security:
 - No assignment without consent, except to Lenders
 - MOEP payments to be made into Lenders' lock-box
- Dispute Resolution: follow PPA provisions
- Currency of payment: USD as required under PPA
- Language: English
- Sovereign Immunity: No immunity will be claimed by MOEP
- Governing Law: Myanmar law

Fuel Supply Agreement

- Included in the PPA!
- Supply of Fuel and Scheduling
 - Fuel to be supplied by and at the cost of MEPE
 - MEPE not obliged to supply ≥ 37 million standard cubic feet/day
 - Company to submit fuel utilization schedule to MEPE -> estimated quantities of Fuel to be used
- Risk of Loss and Title to Fuel
 - Prior to delivery at Fuel Delivery Point: MEPE bears risk of damage or loss of Fuel
 - However, title to Fuel will remain with MEPE at all times until Fuel is utilized by Company for generation of electricity from Facility.

Land Lease Agreement

- Parties:
 - MEPE (Lessor); and
 - Company (Lessee)
- Term: [22] years after the Phase 1 Commercial Operation Date
 - To be decided under the PPA
- Rent: USD 1.00 per square meter per year
- The Lessee may transfer or assign the LLA to any person

- Lenders Step-in Rights
- Dispute Resolution: arbitration
- Language: English
- No sovereign immunity
- Governing Law: Myanmar

Tips for government negotiations: Practicalities...

- Know the law
- Finding good translators – crucial
- Cultural sensitivity
- Be prepared to travel to NPT and be available for the negotiations on short notice
- An aggressive approach to negotiations does not work in Myanmar

Tips for government negotiations:

Negotiation timeline...

- Providing translations of the PowerPoints and documentation will expedite the negotiation process
- Draft agreements and Myanmar translation should be provided **in advance**
- Draft the agreements as simple and concise as possible
- Normally, AGO will not attend the meetings with the Ministry, unless critical legal issues arise. Draft agreements shall be sent to the AGO, the Ministry of Finance and the Ministry of National Planning and Economic Development for their comments
- Various schedules in the agreements should be completed simultaneously with the agreements
- MOEP will also seek internal approvals from the Cabinet



Session 6 – Preparing financing for your project in Myanmar

- Secured transactions are possible in Myanmar pursuant to:
 - Companies Act 1914:
 - 1. Fixed and floating charges
 - A mortgage or charge on any book debts of the company
 - A mortgage or a charge, not being a pledge on any moveable property of the company except stock-in-trade
 - A floating charge on the undertaking or property of the company
 - A mortgage or charge for the purpose of securing any issue of debentures
 - A mortgage or charge on any immoveable property wherever situate, or any interest therein
 - 2. Charges over shares
 - A mortgage or charge on uncalled share capital of the company
 - 3. Assignments of agreements
 - Transfer of Property Act 1882 + Registration Act 1909 + FIL 2012:
 - 1. Mortgages over lease agreements



- Perfection of security requires registration in relevant registries, namely:
 - Companies Registration Office under DICA:
 - Fixed and floating charges
 - Charges over shares
 - Assignments of agreements
 - Office of Registration of Deeds:
 - Mortgages over lease agreements
- Registration requires payment of applicable (i) stamp duty fees and (ii) registration charges.
 - Land-related documents (e.g. mortgage of lease agreements) problematic if foreign mortgagee.
 - Exact duty fee uncertain

- Key enforcement issues:
 - Charge over shares:
 - Avoid discretionary powers of BOD in a Myanmar company to refuse to register share transfers -> signed but undated (i) letters of resignation; (ii) share transfer forms; (iii) cover letters to MIC/DICA requesting the share transfer, etc.
 - No precedent
- Security over assets or shares in companies approved under FIL requires MIC approval
- In insolvency proceedings, perfected security takes priority over unperfected security.

- Insurance Requirements
- Guarantee arrangements
- Perfection Issues
- Direct agreements
- AGO's legal opinion

Project finance issues: Guarantee arrangements

- Typically, lenders/sponsors require guarantee from MOF.
 - Guarantees payments to be made by off-taker (i.e. MEPE) under a PPA.
- However, it appears MOF is hesitant to provide guarantees for loans.
 - Lenders/sponsors reluctant to invest => Alternative/satisfactory solutions are required.
- Ministries are direct and integral part of Union Government.
 - A guarantee from any Ministry has the same strength => MOEP can provide guarantee on financial obligations of MEPE.
 - Separate letter of guarantee OR specific language in BOT Agreement.
- **NEWEST** Public Debt Management Law of 2016 should positively impact this issue!
 - Section 30 of the PDM provides *inter alia* that the Union Minister of MOF may in accordance with the terms and conditions adopted by the Government of Myanmar and the Parliament, issue guarantees or other forms deemed to be the guarantee for a loan to any person, organization or planning



- **Perfection of security interests--**
- **Myanmar problems:**
 - Mortgages and assignments of leases are by law required to be registered with Office of Registration of Deeds, but problems. . .

Project finance issues: Direct agreements

- Tripartite agreement between:
 - Lender(s);
 - Project company; and
 - Counterparties (e.g. MOEP/MEPE)
- If necessary, gives lender(s) right to:
 - Appoint representative; and
 - Step-in agreement to perform rights and obligations of project company.
- Keeps project running, if otherwise project would be terminated.
 - Preserves cash flows.

but MOEP/MEPE not very comfortable with their existence and challenging the need to have them.



- A legal opinion issued by AGO is necessary.
 - Authorized government department in legal-related matters.
- Why are opinions important/required?
 - Opinions provide sponsor and lenders:
 - Confirmation on relevant laws so assumptions/plans are confirmed/clear.
 - Alleviates legal risks.

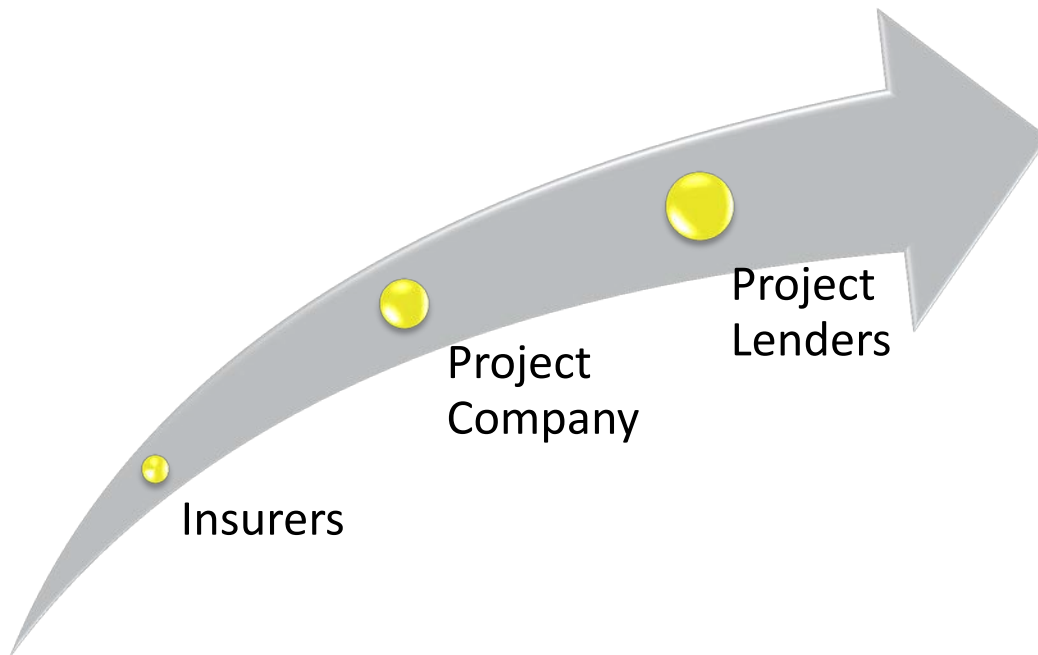
Considerations for lenders:

Key challenge areas for project finance lenders

1. Terms and enforceability of long-term “take or pay” or similar contracts
2. Structuring security packages and perfection issues
3. Increased focus on environmental and social planning
4. Foreign exchange issues : foreign loans, foreign accounts, requirement for equity injection on domestic accounts
5. Land issues
6. Fuel supply and pricing for thermal projects
7. Availability and enforceability of tax exemptions

- ORD registrations on mortgages and assignments of ground leases still rolling (i.e. one by one, as they are being entered into).
 - Telecom tower specific problem: multiple sites all over the country (i.e. it is necessary to produce title documents for the land and most rural tower site owners do not have the proper title documents in place).
 - Many mortgages/assignments have not been registered yet.
- First drawdown did take place.
 - Because of the complexity of the security package and uncertainties over stamp duty, perfection of most security instruments were waived as CPs.
 - Became CSs instead.

- 16 November 2015: completion of registration of security package with local authorities (plus Company Registrar confirmation).
- Fixed and floating charge AND share charge now registered at DICA.
 - However, issue regarding stamp duty on loan agreement with several security instruments as a package
 - Not been resolved yet.
- *First time in the last five years that a package of security documents for a private finance transaction is successfully registered*



■ Insurance

- Construction Risks
 - Hazards
 - Delayed Opening
- Commercial Risks
 - Operating Hazards
 - Natural Force Majeure
 - Business Interruption
 - Commercial Risk Cover
- Political Risks
 - Debt
 - Equity

- Foreign banks can lend monies to a Myanmar based project company if not licensed in Myanmar -> not considered banking activities.
 - However, financing may be subject to approval by MIC/CBM.
- Offshore payments re. revenue are possible.
 - Monthly bank account statements need to be submitted with CBM
- Equity must be deposited in domestic bank accounts
 - Local/foreign licensed banks
- Foreign Exchange Management Law 2012:
 - Current account transactions -> not subject to direct/indirect restrictions
 - Capital accounts transactions (e.g. dividends) -> require prior approval from CBM

Q&A and Closing Remarks

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