

UNDERSTANDING MYANMAR PSCs

**SOE MYINT
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AIM OF FOREIGN INVESTMENT LAW

- **THE FIL AIMS TO FACILITATE EXPLORATION AND PRODUCTION OF NATURAL RESOURCES SUCH AS PETROLEUM AND NATURAL GAS OF THE COUNTRY BY EMPLOYING A JOINT VENTURE AMONG THE INVESTOR(S), THE UNION GOVERNMENT AND/OR CITIZEN.**
- **THE FIL FURTHER STIPULATES THAT THE INVESTOR TO CARRY OUT THE TASKS TO REACH THE PRODUCTION LEVEL ON COMMERCIAL SCALE AT THE STIPULATED SITE WITHIN THE STIPULATED PERIOD, MUST USE THE INVESTOR'S CAPITAL FULLY, IN THE PRODUCTION OF PETROLEUM AND NATURAL GAS.**

AIM OF FOREIGN INVESTMENT LAW

- THE FIL STRESSED THAT THE PRODUCTION OF NATURAL RESOURCES MUST FIRST FULFILL THE CONSUMPTION REQUIREMENT OF THE COUNTRY, BOTH FOR SHORT TERM AND LONG TERM AS WELL.**
- THE SURPLUS , IT WAS FURTHER STIPULATED, WILL THEN BE FOR EXPORT.**
- EXPORT OF VALUE ADDED PRODUCTS RATHER THAN RAW MATERIAL IS ENCOURAGED.**

MOGE , AN ENTERPRISE FORMED BY THE GOVERNMENT OF REPUBLIC OF THE UNION OF MYANMAR

- IS CONCERNED WITH EXPLORATION AND PRODUCTION OF PETROLEUM AND NATURAL GAS WITHIN MYANMAR BOTH ONSHORE AND OFFSHORE,**
- HAS THE EXCLUSIVE RIGHT TO CARRY OUT ALL OPERATIONS RELATING TO EXPLORATION AND PRODUCTION OF PETROLEUM AND NATURAL GAS.**

MULTIPLE ROLES OF MOGE

- **MOGE IS THE GOVERNMENT.**
- **MOGE REPRESENTING THE GOVERNMENT IS THE SIGNATORY TO THE PSC CONTRACT.**
- **MOGE IS THE PROJECT OWNER.**
- **MOGE IS THE REGULATOR OF PSC CONTRACT.**
- **MOGE IS THE COUNTERPART TO INVESTOR.**
- **MOGE IS THE PARTNER TO THE CONTRACT.**
- **MOGE BY RIGHT SHALL HAVE AND BE RESPONSIBLE FOR THE MANAGEMENT OF THE OPERATIONS CONTEMPLATED UNDER THE PSC.**

CONTRACTOR'S/INVESTOR'S RESPONSIBILITIES:

- **BY VIRTUE OF THE PSC CONTRACT SIGNED BETWEEN MOGE AND INVESTOR:**
 - ❖ **INVESTOR IS APPOINTED AND CONSTITUTED THE EXCLUSIVE COMPANY TO CONDUCT PETROLEUM OPERATIONS IN THE CONTRACT AREA.**
 - ❖ **INVESTOR SHALL BE RESPONSIBLE TO MOGE FOR THE EXECUTION OF SUCH OPERATIONS IN ACCORDANCE WITH THE PROVISIONS OF THIS CONTRACT.**
 - ❖ **INVESTOR SHALL PROVIDE ALL THE FINANCIAL AND TECHNICAL FACILITIES REQUIRED FOR SUCH OPERATIONS.**
 - ❖ **INVESTOR SHALL CARRY THE RISK OF OPERATING COSTS REQUIRED IN CARRYING OUT OPERATIONS.**

MANAGEMENT OF PSC:

- **MOGE RETAINS BY THIS CONTRACT ALL RIGHTS OF MANAGEMENT BUT RECOGNIZES THAT CONTRACTOR IS RESPONSIBLE FOR THE EXECUTION OF THE WORK PROGRAMS.**
- **TO OBTAIN THE BENEFITS OF MUTUAL COOPERATION AND TO COORDINATE THEIR EFFORTS UNDER THE CONTRACT, A “MANAGEMENT COMMITTEE” IS ESTABLISHED CONSISTING OF FOUR REPRESENTATIVES APPOINTED BY MOGE, ONE OF WHOM (NORMALLY THE MD OF MOGE) SHALL ACT AS CHAIRMAN OF THE COMMITTEE AND THREE REPRESENTATIVES APPOINTED BY CONTRACTOR.**
- **TO FACILITATE THE DISCHARGE OF ITS FUNCTIONS, THE COMMITTEE APPOINT SUB-COMMITTEES SUCH AS BUT NOT LIMITED TO**
 - **TECHNICAL SUB-COMMITTEE**
 - **PROCUREMENT SUB-COMMITTEE**
 - **ACCOUNTING SUB-COMMITTEE**
 - **PETROLEUM VALUATION SUB-COMMITTEE.**

GOVERNING LAW & ARBITRATION LAW:

- **PSC CONTRACT STATES THAT “THE CONTRACT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ALL RESPECTS IN ACCORDANCE WITH THE LAWS OF THE UNION OF MYANMAR...”.**
- **IT FURTHER STATES THAT “ NO TERM OR PROVISIONS OF THIS CONTRACT , INCLUDING THE AGREEMENT OF THE PARTIES TO SUBMIT TO ARBITRATION HEREIN, SHALL PREVENT OR LIMIT THE GOVERNMENT OF THE UNION OF MYANMAR FROM EXERCISING ITS INALIENABLE RIGHTS.”**
- **THE FOREIGN INVESTMENT LAW 2012 HOWEVER STIPULATES THAT**
 - “(a) DISPUTES BE RESOLVED AMICABLY,**
 - (b) (i) IF THERE IS NO AMICABLE SETTLEMENT AND IF THERE IS NO PRIOR AGREEMENT OF DISPUTE SETTLEMENT MECHANISM, TO RESORT TO EXISTING LAWS OF THE UNION OF MYANMAR**
 - (ii) TO COMPLY AND CARRY OUT IN ACCORD WITH THE DISPUTE SETTLEMENT MECHANISM IF IT IS STIPULATED IN THE RELEVANT AGREEMENT.”**

ESTABLISHMENT OF CONTRACTOR OFFICE AND COMPANY:

- PSC CONTRACT IS EFFECTIVE AS OF THE DATE IT IS SIGNED. IT IS 90 DAYS AFTER THE EFFECTIVE DATE, THE EXECUTION OF FIRST EXPLORATION PERIOD STARTS COUNTING (EXECUTION DATE).**
- IT IS WITHIN THIS 90 DAYS, THE CONTRACTOR MUST ESTABLISH AN OFFICE IN MYANMAR, MUST PREPARE TO RECEIVE DATA FROM MOGE, MUST PLAN FOR EXPLORATION WORK PROGRAMS AND
MUST PAY THE SIGNATURE BONUS (WITHIN THE FIRST 30 DAYS).**

EXPLORATION PERIOD AND EXTENSIONS:

- **THE EXPLORATION PERIOD IS FOR THREE YEARS AND CALL FOR**
 - **G & G AND SEISMIC IN YEAR 1**
 - **DRILL 1 WELL IN YEAR 2**
 - **POST WELL EVALUATION AND DRILL 1 WELL IN YEAR 3**
- **A FIRST EXTENSION PERIOD FOR 2 YEARS IS PERMITTED AT THE CONTRACTOR'S OPTION AND REQUIRES A 30 DAYS PRIOR REQUEST BEFORE THE EXPIRY OF THE EXPLORATION PERIOD.**

POINTS TO PONDER:

- **CONTRACTOR IS REQUIRED TO COMMIT BOTH MINIMUM EXPENDITURE AND WORK PROGRAM. THERE CAN BE CASES WHERE THE CONTRACTOR MAY BE PERMITTED TO CARRY ITS COMMITMENTS TO NEXT YEAR IF IT IS IN THE MIDDLE OF AN EXPLORATION PERIOD.**
- **THE CONTRACTOR IS HOWEVER RELIEVED OF PAYMENT OF DEFICIT MINIMUM EXPENDITURE IF THE CONTRACTOR COMPLETE THE WORK PROGRAM IN GOOD TIME.**

EIA AND SIA REQUIREMENTS

- **PSC CONTRACT SAYS THAT “CONTRACTOR SHALL TAKE THE NECESSARY PRECAUTIONS FOR PROTECTION OF NAVIGATION AND FISHING AND SHALL PREVENT ENVIRONMENT POLLUTIONS. IT IS ALSO UNDERSTOOD THAT THE EXECUTION OF THE WORK PROGRAM SHALL BE EXERCISED SO AS NOT TO CONFLICT WITH THE LAWS OF THE UNION OF MYANMAR.”**
- **PREVAILING RULES AND REGULATIONS CALLS FOR THE CONTRACTOR TO CONDUCT EIA STUDIES , SIA STUDIES AND REMEDIAL MEASURES TO COMBAT AGAINST THE ENVIRONMENTAL DAMAGE AND SOCIAL IMPACTS.**
- **RECENT NEWS FROM NAY PYI TAW SAYS THAT EIA AND SIA STUDY ARE DEFINITELY TO BE CONDUCTED FOR SIX MONTHS BEFORE THE EXPLORATION PERIOD AND SUBMITTED TO MIC FOR GUIDENCE.**

PROHIBITED AREAS, RESTRICTED AREAS AND RELAXATION ON SUCH AREAS:

- **DURING THE COURSE OF EXPLORATION , CONTRACTOR MAY HAVE COME ACROSS CERTAIN LOCALITIES WHICH MAY HAVE MINERAL DEPOSITS OTHER THAN PETROLEUM OR A TREASURE TROVE OR A RELIC OF BUILDING OR A STATUTE HAVING CERTAIN TRADITIONAL OR CULTURAL VALUE. IN SUCH CASES, CONTRACTOR MUST REPORT TO MOGE OF THE FINDINGS FOR MIC TO DESIGNATE THE LOCALITY AS PROHIBITED OF RESTRICTED AREA.**
- **IF MIC DESIGNATE THE LOCALITY AS PROHIBIED OR RESTRICTED AREA, CONTRACTOR IS PERMITTED TO TRANSFER AND CARRY OUT WORKS IN A SUBSTITUTE AREA WHICH IS SELECTED AND SUBMITTED BY THE CONTRACTOR, IN ACCORDANCE WITH SECTION 17 SUB-SECTION (g) of FIL.**

PLANNING FOR DRILLING PROGRAM AS PART OF DRILLING OPERATIONS :

- THERE CAN BE CASES WHERE PHYSICAL/ACTUAL DRILLING OPERATION CANNOT HAPPEN INSPITE OF THE COMMITMENT. IN SUCH EVENT, PREPARATIONS/PLANNING FOR DRILLING PROGRAM CAN BE NEGOTIATED AS BEING AN INCLUSIVE PART OF DRILLING OPERATION.**
- FIRST EXTENSION (2 YEARS x 1 TIME) AND SECOND EXTENSION (1 YEAR x 1 TIME) ARE OPTIONAL DEPENDING ON THE SUCCESS OF EXPLORATION RESULTS IN THE FIRST 3 YEARS.**
- IF THE EXPLORATION RESULTS ARE ENCOURAGING, THE EXTENSION PERIODS ARE THE ADVANTAGEOUS INCENTIVES FOR THE CONTRACTOR.**

OBLIGATIONS OF CONTRACTOR:

- **OBLIGATIONS OF CONTRACTOR AMONG OTHERS, INCLUDE THE FOLLOWINGS:**
- ❖ **FURNISH ALL SUCH FUNDS AS MAY BE NECESSARY FOR THE ENTIRE PETROLEUM OPERATIONS EXECUTED PURSUANT TO THIS CONTRACT,**
- ❖ **APPOINT AUTHORIZED REPRESENTATIVE FOR MYANMAR WITH RESPECT TO THIS CONTRACT,WHO SHALL HAVE OFFICE IN YANGON/NAYPYITAW, SUCH REPRESENTATIVE TO REPRESENT CONTRACTOR IN THE CONDUCT OF PETROLEUM OPERATIONS.**
- ❖ **EXECUTE PETROLEUM OPERATIONS IN ACCORDANCE WITH THE WORK PROGRAM UTILIZING 25% OF THE APPROVED BUDGET FOR EACH FINANCIAL YEAR FOR GOODS AND SERVICES THAT ARE AVAILABLE IN MYANMAR OR RENDERED BY MYANMAR NATIONALS, SUBJECT TO THE APPROVAL OF MOGE UNLESS OTHERWISE AGREED UPON BY BOTH PARTIES.**
- ❖ **PROCURE SUCH GOODS AND SERVICES FOR THE EXECUTION OF THE WORK PROGRAM THROUGH INTERNATIONAL TENDER SUBJECT TO APPROVAL BY MOGE UNLESS OTHERWISE AGREED UPON BY BOTH PARTIES.**
- ❖ **CONTRACTOR AND ITS PERSONNEL, WHILE IN MYANMAR, SHALL RESPECT AND ABIDE BY ALL LAWS AND REGULATIONS OF MYANMAR AND SHALL REFRAIN FROM INTERFERING IN THE INTERNAL AFFAIRS OF THE UNION OF MYANMAR.**

RELINQUISHMENTS:

- **NOT LATER THAN AT THE END OF THE EXPLORATION PERIOD AND EXTENSION PERIODS, CONTRACTOR MUST RELINQUISH ALL OF THE CONTRACT AREA OTHER THAN DISCOVERY AREAS AND DEVELOPMENT AND PRODUCTION AREAS.**
- **CONTRACTOR MAY AT ANY TIME RELINQUISH VOLUNTARILY ITS RIGHTS TO CONDUCT PETROLEUM OPERATIONS IN ALL OR ANY PART OF THE CONTRACT AREA.**
- **IN THE EVENT CONTRACTOR DESIRES TO RELINQUISH ITS RIGHTS TO CONDUCT PETROLEUM OPERATIONS IN ALL OF THE CONTRACT AREA WITHOUT HAVING FULFILLED ITS ACCRUED MINIMUM EXPENDITURE COMMITMENT, CONTRACTOR SHALL PAY MOGE ON OR BEFORE THE DATE OF SUCH AND TOTAL RELINQUISHMENT AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE AMOUNT SPENT AND SUCH MINIMUM EXPENDITURE COMITMENT.**

DISCOVERY AND APPRAISAL:

- **THE CONTRACTOR SHALL NOTIFY MOGE NOT LATER THAN 30 DAYS AFTER ANY SIGNIFICANT DISCOVERY OF PETROLEUM WITHIN THE CONTRACT AREA.**
- **IF THE CONTRACTOR CONSIDERS THAT A DISCOVERY MERITS APPRAISAL, THE CONTRACTOR SHALL SUBMIT TO MOGE AS SOON AS IS PRACTICABLE THAT COMPLETION OF THE EXPLORATION WELL IN QUESTION, A DETAILED APPRAISAL WORK PROGRAM AND BUDGET TO EVALUATE WHETHER THE DISCOVERY IS A COMMERCIAL DISCOVERY.**
- **IF MOGE CONSIDERS THAT AN APPRAISAL IS MERITED, ACCORDING TO GENERALLY ACCPTED INTERNATIONAL PETROLEUM INDUSTRY PRACTICE, MOGE MAY DEMAND OF THE CONTRACTOR THAT SUCH APPRAISAL BE UNDERTAKEN FORTHWITH, PROVIDED THAT THE CONTRACTOR MAY GIVE REASONS ALSO ACCORDING TO GENERALLY ACCEPTED PETROLEUM INDUSTRY PRACTICE, WHY THE SAID APPRAISAL SHOULD BE DEFERRED .**
- **AFTER ADOPTION OF THE APPRAISAL WORK PROGRAM AND BUDGET, THE CONTRACTOR SHALL DILIGENTLY CONTINUE TO EVALUATE THE DISCOVERY IN ACCORDANCE WITH SUCH PROGRAM WITHOUT UNDUE INTERRUPTIONS.**
- **THE CONTRACTOR , AFTER COMPLETION OF THE APPRAISAL PROGRAM SHALL DETERMINE THE COMMERCIALITY OF DISCOVERY CONSIDERING ALL THE PERTINENT TECHNICAL AND FINANCIAL FACTORS.**

POINTS TO PONDER:

- **SOMETIMES, IT MAY BE A BIT TOO SOON FOR THE CONTRACTOR TO DETERMINE THE COMMERCIALITY OF DISCOVERY. DETERMINATION WOULD DEPEND VERY MUCH ON SIZE OF RESERVES, PROJECTED PRODUCTION COST, ECONOMIC VIABILITY AND MARKET AVAILABILITY.**
- **IF THE CONTRACTOR DECIDES THAT THE DISCOVERY IS WORTHWHILE TO AWAIT UNTIL OTHER COMMERCIAL FACTORS ARE IN PLACE, A NEGOTIATION WITH MOGE WOULD BE REQUIRED TO PERMIT THE CONTRACTOR A CERTAIN PERIOD OF TIME (RETENTION PERIOD) BEFORE THE DEVELOPMENT/PRODUCTION PERIOD.**
- **YET ANOTHER SCENARIO COULD HAPPEN IN WHICH CONTRACTOR MAY DECIDE TO GO AHEAD WITH DEVELOPMENT/PRODUCTION BUT WITH IMPROVED FISCAL TERMS FOR CONTRACTOR!!!**
- **THEN, CONTRACTOR MAY INVOKE THE RENEGOTIATION CLAUSE IN PSC WHICH STATES THAT "IN THE EVENT THAT ANY SITUATION OR CONDITION ARISE DUE TO CIRCUMSTANCE NOT ENVISAGED IN THE CONTRACT AND WARRANTS AMENDMENTS TO THE CONTRACT THE PARTIES SHALL NEGOTIATE AND MAKE THE NECESSARY AMENDMENTS."**

AVAILABLE PETROLEUM,ROYALTY , COST PETROLEUM , PROFIT PETROLEUM AND PROFIT ALLOCATION

- **AVAILABLE PETROLEUM**
- **ROYALTY**
- **COST PETROLEUM**
- **PROFIT PETROLEUM**
- **PROFIT ALLOCATION**

SCHEDULE OF PROFIT PETROLEUM ALLOCATION: AN EXAMPLE

- LET US ASSUME DAILY CRUDE OIL PRODUCTION IS 60,000 BOPD. IF THERE IS NO PETROLEUM CONSUMED FOR OPERATION IN THE CONTRACT AREA, 60,000 BARRELS IS THE AVAILABLE OIL.

AVAILABLE OIL = 60,000 BBLs

MOGE

ROYALTY 12.5% = 7,500 BBLs

CONTRACTOR

-

COST OIL 50% = 30,000 BBLs

PROFIT OIL = 60,000 MINUS (7,500 + 30,000) = 22,500 BBLs

60% = 6,000

40% = 4,000 BBLs

65% = 6,500

35% = 3,500

70% = 1,750

30% = 750

14,250 BBLs

8,250 BBLs

MOGE RECEIVABLES AS 15% PARTNER:

8,250 x 0.15 = 1,237.5 BBLs

DOMESTIC MARKET OBLIGATIONS (DMO):

- **NOT LESS THAN 20% OF CONTRACTOR'S PROFIT OIL ENTITLEMENT AT 90% OF FAIR MARKET VALUE AS SOLD TO THE MARKET.**
- **25% OF CONTRACTOR'S PROFIT GAS ENTITLEMENT AT 90% OF FAIR MARKET VALUE .**
- **WITH THE NEW FOREIGN INVESTMENT LAW (2012) IN PLACE, THERE IS A POSSIBILITY THAT CONTRACTOR MAY REQUIRE MORE DMO.**

CONTRACTOR'S RIGHT TO SELL, ASSIGN, TRANSFER, CONVEY OR OTHERWISE DISPOSE OF ALL OR ANY PART OF ITS RIGHTS AND INTERESTS :

- **PRIOR WRITTEN CONSENT OF MOGE IS REQUIRED FOR SUCH TRANSACTION TO AN AFFILIATE OR OTHER PARTIES.**
- **CONTRACTOR IS HOWEVER LIABLE TO PAY TO MYANMAR GOVERNMENT THE FOLLOWING TRENCHES OUT OF THE NET PROFIT MADE ON THE SALE OR TRANSFER OF THE SHARES OF THE CONTRACTOR:**
 - (i) IF THE NET PROFIT IS UP TO US\$ 100 MILLION 40%**
 - (ii) IF THE NET PROFIT IS BETWEEN US\$ 100 MILLION AND US\$ 150 MILLION 45%**
 - (iii) IF THE NET PROFIT IS OVER US\$ 150 MILLION 50%**

STATE PARTICIPATION:

- **ONCE A COMMERCIAL DECLARATION IS MADE, MOGE SHALL EXERCISE TO PARTICIPATE 15% UNDIVIDED INTEREST AND MAY DEMAND UP TO 25% IN THE TOTAL RIGHTS AND OBLIGATIONS UNDER THIS CONTRACT.**
- **MOGE'S PARTICIPATION SHALL BE PAID EITHER**
 - **BY ACCOUNT TRANSFER OR**
 - **BY PAYMENT OUT OF PRODUCTION.**

TERMINATION:

- **CONTRACTOR HAS THE RIGHT TO TERMINATE THE CONTRACT:**
 - ❖ **IF THE IMPAIRMENT OF OPERATIONS CONTINUE MORE THAN 2 YEARS**
 - ❖ **IF THERE IS NO COMMERCIAL DISCOVERY OF PETROLEUM DURING THE EXPLORATION OR EXTENSION PERIOD**
- **MOGE SHALL TERMINATE THE CONTRACT:**
 - ❖ **IF IT IS PROVED THAT THE CONTRACTOR IS INTENTIONALLY AND KNOWINGLY INVOLVED IN POLITICAL ACTIVITIES DETRIMENTAL TO THE GOVERNMENT OF MYANMAR**
 - ❖ **IF THERE IS A FAILURE TO REMEDY THE MATERIAL BREACH OF ANY OF ITS OBLIGATIONS UNDER THIS CONTRACT .**

THANK YOU VERY MUCH AND GOOD LUCK !!!

- **THERE ARE ALREADY MORE THAN A HUNDRED OF PSCs SIGNED BETWEEN MOGE AND SEVERAL OTHER NATIONAL AND MULTINATIONAL COMPANIES.**
- **MYANMAR PSC IS A WORKABLE INSTRUMENT.**