



**MAXIMIZING RETURNS AND MINIMIZING RISKS
IN RAPID-GROWTH ASEAN ECONOMIES**

FAIRMONT MAKATI

2 MARCH 2016



CRL Hong Kong



**Maximizing Returns and Minimizing Risks
in Rapid-Growth ASEAN Economies**
Fairmont Makati, 2 March 2016

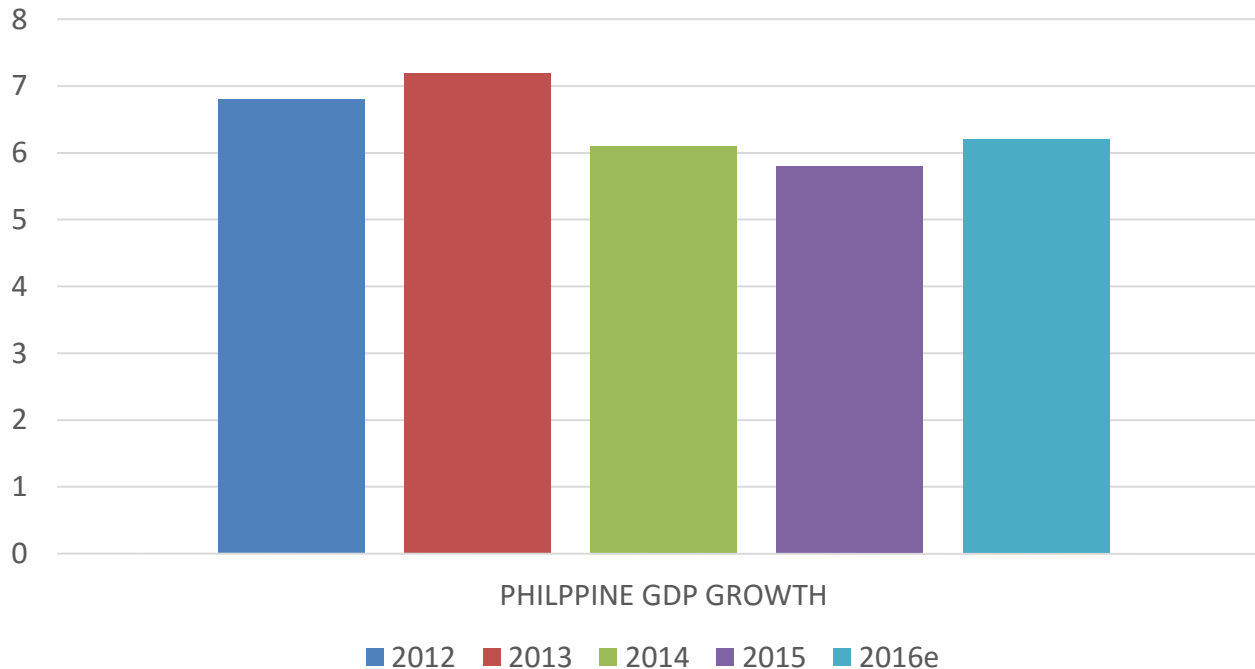


Conference Welcome

Atty. Jude B. Ocampo
Partner, Ocampo & Suralvo Law Offices

EXUBERANCE

GDP GROWTH 2012 to 2016e

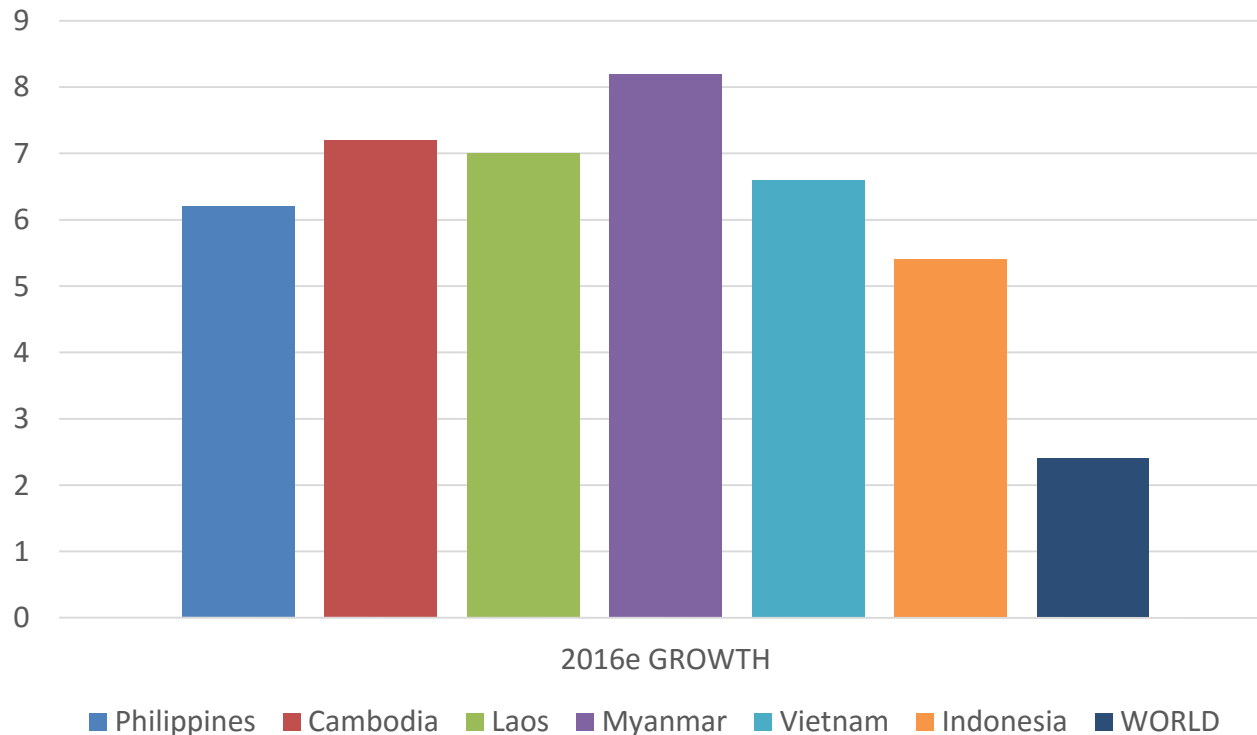


Maximizing Returns and Minimizing Risks in Rapid-Growth ASEAN Economies



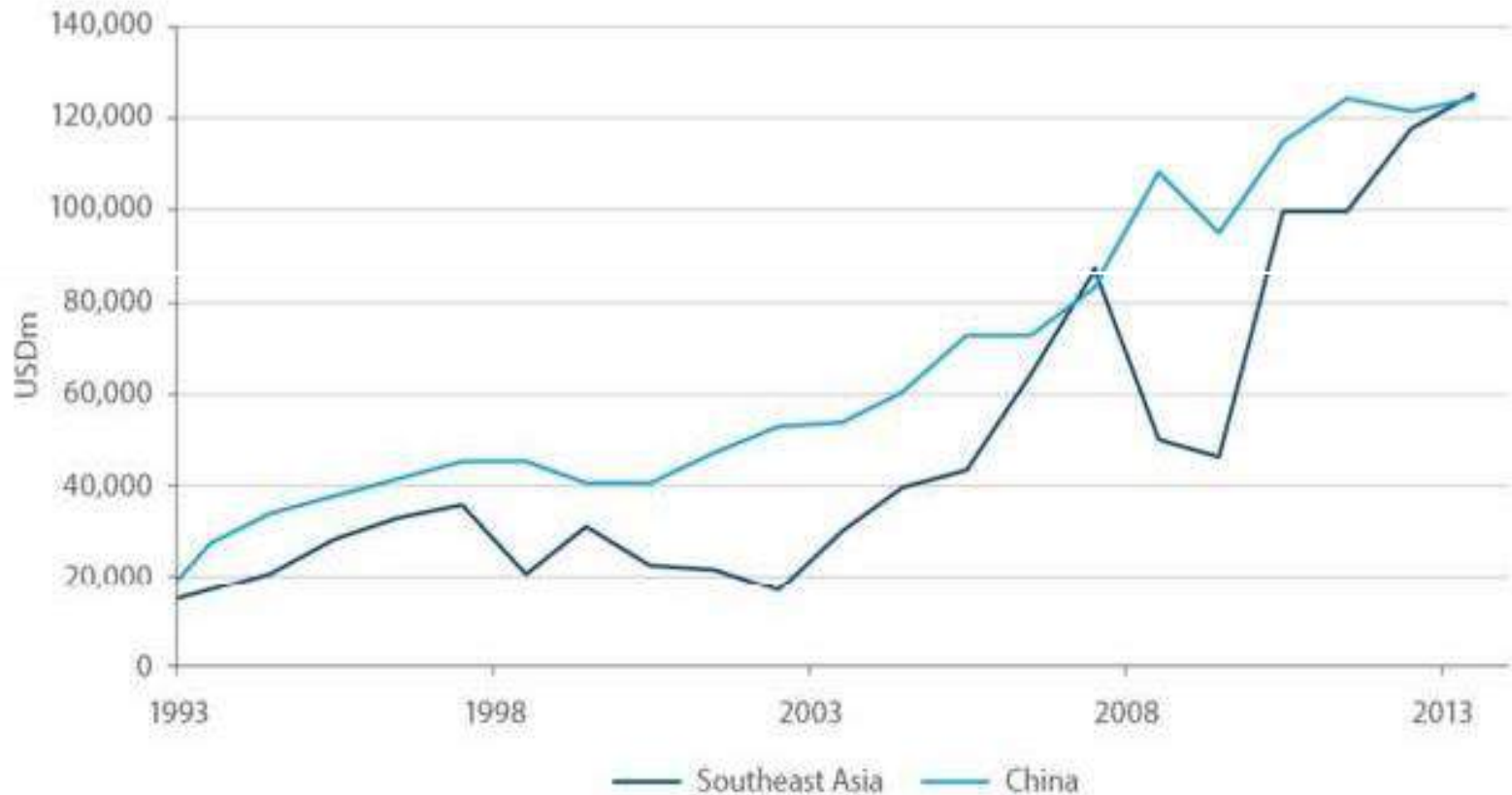
CONFIDENCE

RAPID GROWTH ASEAN



Maximizing Returns and Minimizing Risks in Rapid-Growth ASEAN Economies

FDI into the ASEAN now exceeds FDI into China



Source: Haver, WITS, CEIC, UNCTAD, ANZ Research

Maximizing Returns and Minimizing Risks in Rapid-Growth ASEAN Economies



300 professional staff including 140 lawyers

12 regional partners and 10 national partners

9 countries

11 offices and 2 collaborating firms

24 nationalities

Core expertise

- Banking and Finance
 - Corporate and M&A
 - Energy, Mining and Infrastructure
 - Real Estate and Construction
 - Taxation
-



Chambers & Partners

Cambodia
Band 1 – General Business Law

Lao PDR
Band 1 – General Business Law

Myanmar
Band 1 – General Business Law

Thailand
Band 3 – Projects & Energy
Band 3 – Real Estate
Recognized Practitioner – Corporate / M&A
Recognized Practitioner – Tax

Vietnam
Band 2 – Corporate, M&A
Band 2 – Tech. Media, Telecom
Band 3 – Projects, Infra & Energy
Band 4 – Banking & Finance



Legal 500

Myanmar
Tier 1 – Corporate / M&A
Tier 1 – Projects
(including Energy)

Thailand
Tier 2 – Projects & Energy
Tier 3 – Real Estate, Construct.
Tier 3 – Banking & Finance
Tier 3 – Corporate / M&A.
Tier 3 – Restructuring & Insolvency
Tier 3 – TMT
Tier 4 – Tax

Vietnam
Tier 1 – Projects & Energy
Tier 1 – Tax
Tier 2 – TMT
Tier 2 – Corporate / M&A
Tier 3 – Banking & Finance

Maximizing Returns and Minimizing Risks in Rapid-Growth ASEAN Economies



Maximizing Returns and Minimizing Risks in Rapid-Growth ASEAN Economies



AGENDA

8:00 am	Welcome Remarks	Atty. Jude Ocampo, Partner, Ocampo & Suralvo Law Offices
8:10 am	Keynote	Mr. Eduardo Francisco, President, BDO Capital and Investment Corporation
8:25 am	Maximizing Returns and Minimizing Risks in your Investments in Myanmar, Vietnam and Indonesia	<ul style="list-style-type: none">▪ Mr. William Greenlee, Partner, DFDL Myanmar▪ Ms. Tran Thi Vu Hanh, Partner, DFDL Vietnam▪ Mr. Marcus Collins, Partner, DFDL Indonesia
9:55 am	Networking Break	

Maximizing Returns and Minimizing Risks in Rapid-Growth ASEAN Economies



AGENDA

10:15 am	Political Risk Insurance	Mr. Giovanni Vacchelli, Managing Director, Consortium Resources Ltd. Hong Kong, a MIGA Partner Company
10:45 am	Project Finance in the Mekong	Ms. Audray Souche, Partner, DFDL Thailand
11:15 am	Roundtable Discussion	<ul style="list-style-type: none">▪ Mr. Giovanni Vacchelli▪ Mr. Marcus Collins, Partner, DFDL Indonesia▪ Mr. Paolo Francisco, PhD, Executive Director, Asian Institute of Management Policy Center
12:25 am	Closing	Atty. Jude Ocampo, Partner, Ocampo & Suralvo Law Offices

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MAXIMIZING RETURNS AND MINIMIZING RISKS IN RAPID-GROWTH ASEAN ECONOMIES

FAIRMONT MAKATI

2 MARCH 2016



Maximizing Returns and Minimizing Risks in Rapid-Growth ASEAN Economies - Myanmar

William D. Greenlee, Jr., Partner, Managing Director, Myanmar
Fairmont Makati, Philippines

2 March 2016

1	General business and legal environment
2	Legal update
3	FDI opportunities
4	Special Economic Zones
5	Current challenges in investing in Myanmar
6	Post-election considerations and perspectives

1	General business and legal environment
2	Legal Update
3	FDI Opportunities
4	Special Economic Zones
5	Current challenges in investing in Myanmar
6	Post-Election Considerations and Perspectives

Foreign investment legal framework: Investment vehicles

- The general rule is that an investor “doing business” in Myanmar must have a legal presence in Myanmar.
- “Doing business” is not currently a defined legal term, but will be once the new Companies Law is passed.
- A legal presence in Myanmar can be:
 - 100% foreign owned company
 - Joint venture
 - Branch office
 - Representative office

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2014

- MIC issued Notification № 49/2014 (“**Notification 49/2014**”).
 - Lists sectors and types of business permitted under the FIL, many of which are subject to restrictions and conditions.
 - Replaces a Notification from 2013 and liberalizes more sectors to foreign investment.
 - Activities not described in any of the lists may be carried out via 100% foreign investment.
- MIC issued Notification № 50/2014 (“**Notification 50/2014**”).
 - Sectors and types of business permitted under the FIL which require an environmental impact assessment.
 - e.g. mining and mineral processing, manufacturing of pharmaceuticals, chemicals and pesticide, large scale wood-based industry, etc.

2014

- Electricity Law of 2014 (“EL”) opens entire power sector to private participation.
 - EL repeals former Electricity Law, 1984.
 - With approval of Union Government, permits to engage in all electricity related business can be issued to local and foreign privately owned companies.

- Ministry of National Planning and Economic Development Notification № 81/2014 (“Notification 81/2014”)
 - Thilawa Special Economic Zone
 - Procedure for obtaining investment permits, minimum capital requirements, application forms, etc.

2015

- **Ministry of Commerce Notification 20/2015**
 - Allows foreign car companies to establish a joint venture company under the Myanmar Companies Act with its local partner.
- **Ministry of Commerce Notification 96/2015**
 - Allows foreign owned companies in joint venture with Myanmar companies to import the following goods using foreign currencies: fertilizer, insemination seeds, pesticides, and hospital equipment.
- **Mining Law has been enacted on 24 December 2015**
 - Amendments mostly refer to the granting process of the relevant permits for foreign investors and facilitate international mining companies in entering the Myanmar mining sector.
 - Permits for small and medium production are issued by the Directorate of Mines with the approval of the Ministry of Mines.
 - A holder of any of mining permits must pay a royalty and other fees either by cash or via the mineral proportion. If cash, the royalty must be contributed in Myanmar currency.

2015

- The Ministry of Home Affairs issued Notification 1201/2015 referred to Anti money laundering rules on 11 September 2015
 - Rules for investigating money laundering and provides power to check bank accounts, cash flows and sources of financing.
 - Duties of the Central Board, the Financial Investigation Board and the committees involved in the anti-money laundering activities.

- Television and broadcasting law (Law 53/2015) was issued on 28 August 2015.
 - Liberalization of the television and broadcasting sector to private participation.
 - Foreign ownership allowed in joint venture with Myanmar citizens (30% foreigner and 70% Myanmar citizen).
 - Transmissions shall commence within one year after the obtainment of the license.
 - Terms of licenses:
 - Generally radio licenses last for 7 years while television licenses for 10 years
 - Broadcasting program distribution service business 15 years

2016

■ Financial Institutions Law 2016

- Sets out the powers of the Central Bank in relation to monitoring and control of financial institutions (these powers are very broad and can include the revocation of banking licenses for a wide range of reasons).
- The Law designates a large number of matters to be detailed in Rules (rules have not yet been published) such as E-Money, E-Banking and Mobile banking regulations.
- The Law also delegates a large amount of responsibility to the Central Bank.

The Anti-Corruption Rules 2016

- The Rules outline obligations of banks in response to an investigation, but do not create an obligation for proactive reporting of corruption suspicion.

■ 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.

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3.1

Oil & Gas

Latest developments:

- Myanmar Oil and Gas Enterprise (“**MOGE**”) requires that all PSCs must be signed by the offshore company which initially won the tender.
- MOGE has stated that no interest in the PSC may be transferred for a period of 1 year following the execution of the PSC (including affiliate companies).
- Under Notification 49/2014 certain service activities related to petroleum, natural gas and lubricants are listed as requiring a joint venture with the MOE.

3.2

Power



How will the new electricity law impact foreign investment? *(cont'd)*



- Electricity Law, 2014 (“EL”), opens entire power sector to private participation
- Project documents: MoA and BOT, PPA, Land Lease Agreement, and, if any, fuel supply agreement and JV agreement.
- Two ways to develop and operate a project: negotiated project or tendered project.
- Negotiated projects: private negotiation with authorities of the project documents.
- Tendered projects: after award of tender negotiation with authorities of the project documents.



- Numerous labor rights issues.
 - There is no single employment law in Myanmar, but a hodgepodge of laws.
- Weekly working hours: differs depending on business between 44 and 48 (i.e. factories or hotels) based on a 6 day working week.
- Overtime: allowed and paid up to twice the normal rate depending on business.
- Employer is required to pay at least minimum wage, as per **Notification 1/2015** of the **National Minimum Wage Committee**: 3,600 kyat (~US\$2.80) for an eight-hour day regardless of place and type of work. Minimum wage does not apply to small businesses that have 15 workers or fewer and family businesses

The Ministry of Labor, Employment and Social Security issued Notification 1/2015 on 31 August 2015.

- Employees and employers to enter into written employment contracts commencing from September 2015.
- Written contracts shall be signed also by employees working in small businesses (15 workers or fewer) and family businesses although not subject to the minimum wage. Contract shall include salary agreed.
- A standard employment contract (“**SEC**”) has been released. Ministry of Labor prescribed to sign contracts in the form of the SEC.
- The SEC refers to all employees (Myanmar and foreigners).
- Employment contracts shall be registered with the relevant Township Labor Office.
- In case parties decide to amend the SEC it is advisable to submit the contract to the relevant Township Labor Office for prior approval.
- Poses a problem to employers and employees who are wanting to offer more sophisticated working arrangements than are set out in the SEC.



3.4

Real Estate

Condominium Law has been enacted on 29 January 2016

- **Condominium** – a building constructed according to the Condominium Law (“CL”) as collectively owned high-rise apartment building with six floors or more on collectively owned registered land.
- Foreigners can buy up to 40% of apartments in a condominium. Foreign currency to purchase an apartment needs to be transferred from abroad.
- Condominiums can be built on land classified as “residential area”; must be of the type that allows transfer of ownership; and have an area of 20,000 square feet or more.
- Pre-existing condominiums or those in process of being constructed can be registered under the CL.
- Land must be registered as “collectively owned land” or can be State- owned land with government permission.
- Rights of Collective Owners: sell, gift, release, lease, exchange, mortgage, inheritance.

Issues

- Apartment owners have to vacate their apartments and the developer has to transfer the land after the lease is expires.
- Freehold land and grant land are more secure options.

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Special Economic Zones are important for foreign investors because they provide them an alternative way to enter Myanmar market with substantial additional benefits such as tax breaks, long land lease rights and better infrastructures.

Myanmar SEZ Rules of 2015

- a One-Stop Service Department shall be formed with the intent to approve and give permits for investments in SEZs, incorporate companies, issue entry visas, issue the relevant certificates of origin, collect taxes and duties, approve employment permits and/or permissions, give permissions for factory construction and other investments.
- Section 57 provides the minimum requirements for certain businesses which can be carried out within SEZs. As an example and amongst other requirements, the manufacturing businesses shall export minimum 75% of the total value of the manufactured goods. In this case, the minimum investment must be equal to USD 750,000.

SEZ Establishment

- The selected developer shall submit the detail development plan of SEZ establishment to the Management Committee within 6 months from the selected date.
- The Management Committee will issue the permit if the development plan is accepted. It will take about 2 and half months to get the permit.
- The developer can apply for the renewal of the permitted term. The developer have to report the development plan quarterly to the Committee.

Land Use Right

- The area of SEZ must be at least 1,000 hectare to maximum 20,500 hectare.
- The developer has no right to sell the land and shall give the land use right to other investors to operate their business.

Business Proposal/Approval

- The investor can directly apply for the investment permit with the detail particulars of the business to Management Committee.
- Management Committee will issue the permit within 30 days if it approves.

Permitted Business Types (among others)

- Trading.
- Infrastructure development business including housing, hotel and sale centers.
- Technology and design.
- Warehouse and logistic services businesses.
- Other services including consultancy.
- Construction and other related services.
- Transportation and related services.

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Joint Ventures with Myanmar partners

- Mandatory under Notification 49/2014 for, among others, the following businesses:
 - Manufacturing and domestic marketing, distribution and sale of cereal products and cereal related food products;
 - Manufacturing and domestic marketing of all kinds of confectionery;
 - Manufacturing and marketing of malt and malt liquors;
 - Manufacturing of purified drinking water;
 - Manufacturing and domestic marketing of plastic wares;
 - Manufacturing of rubber and rubber products;
 - Packaging;
 - Manufacturing and marketing of all kinds of paper
 - Processing of hides, skins and leathers of all kinds;
 - Manufacturing and marketing of solid, liquid, gaseous fuels and aerosol;
 - Manufacturing and marketing of oxidants and corrosive chemicals;
 - Small and medium scale production of electricity;
 - Development of international standard golf courses and resorts;
 - Development, sales and lease of residential apartments/condominiums; and
 - Development and sales of office/commercial buildings.

- Myanmar is a common law country, thus parties can negotiate the provisions to be inserted in the JV agreement.
- If foreigner has majority no problems in term of governance of company (directors will be elected by majority).
- If foreigner has minority negotiate a certain number of directors in the board and that certain matters be approved by the board with the consent of at least one director appointed by foreign co-venture.
- Lockup provisions as per international standards.
- Arbitration clause under international rules in a foreign venue.

Market entry challenges

- Myanmar has been open to foreign investments since 2012.
- Myanmar accepts contracts which include international standard clauses such as arbitration clauses.
- Foreigners can set up 100% foreign-owned companies to, among others, provide services in Myanmar.
- Such companies can be registered under DICA (Directorate of Investment and Companies Administration).
- Time frame to register a DICA company is about 4 months and capital requirement is \$50,000 (less than \$150,000 required for an MIC company).
- It can be more time-consuming to set up a joint venture company with a Myanmar partner.
- Two types of joint venture companies: mandatory MIC joint venture companies (as per Notification 49/2015) or voluntary wither MIC or DICA joint venture companies.

- Both mandatory or voluntary joint venture companies can be regulated with contracts that give comfort to the foreign co-venturer as international standard clauses are acceptable.
- Sectors in which a joint venture is required with the government could be more challenging due to the time frame required by the government to analyze and negotiate the contracts with the foreign partner.
- It is likely that new government will face this issue and enact new more foreign investment friendly laws: drafts of the new foreign investment law and the new companies act have already been released.

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- 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

Thank you



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Partner

Managing Director, Myanmar

Head of China Desk

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Maximizing Returns and Minimizing Risks in Rapid-Growth ASEAN Economies - Vietnam

Hanh Tran, Country Partner, DFDL Vietnam

Fairmont Makati, Philippines

2 March 2016

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Trans-Pacific Partnership Agreement (TPP)

4

Investment Protection

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Infrastructure Investment - Public-Private Partnerships (PPP)

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Tips On Doing Business In Vietnam

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Tips On Doing Business In Vietnam



- **The Law on Investment 2014 and Law on Enterprises 2015:**

267 activities are listed as conditional business activities & six sectors/activities for which business investment activities are prohibited;

- Investment Registration Certificate is 15 working days and business registration timeline is 3 working days!

- **Law on Housing and Law on Real Estate Business:**

Foreigners could buy apartments/villas in Vietnam and more scope of business for (foreign invested) real estate company!

MORE BUSINESS OPPORTUNITIES IN VIETNAM!

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6 Tips On Doing Business In Vietnam

- **New investment – a 2 step procedure**

- i. Application for an investment registration certificate, and
- ii. Application for an enterprise registration certificate

=> Be cautious as to the selection of the business activity (Vietnam Economic Branch codes/ CPC codes) and charter capital requirement

- **Mergers and acquisitions: depending on the nature of business activities of the target company but generally:**

- i. Prior consent from licensing authority for the acquisition of charter capital
- ii. Amendment to the enterprise registration certificate/application for an enterprise registration certificate
- iii. Application for an investment registration certificate

=> Be cautious in relation to the licensing procedure involved

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Trans-Pacific Partnership (TPP) Participating Countries

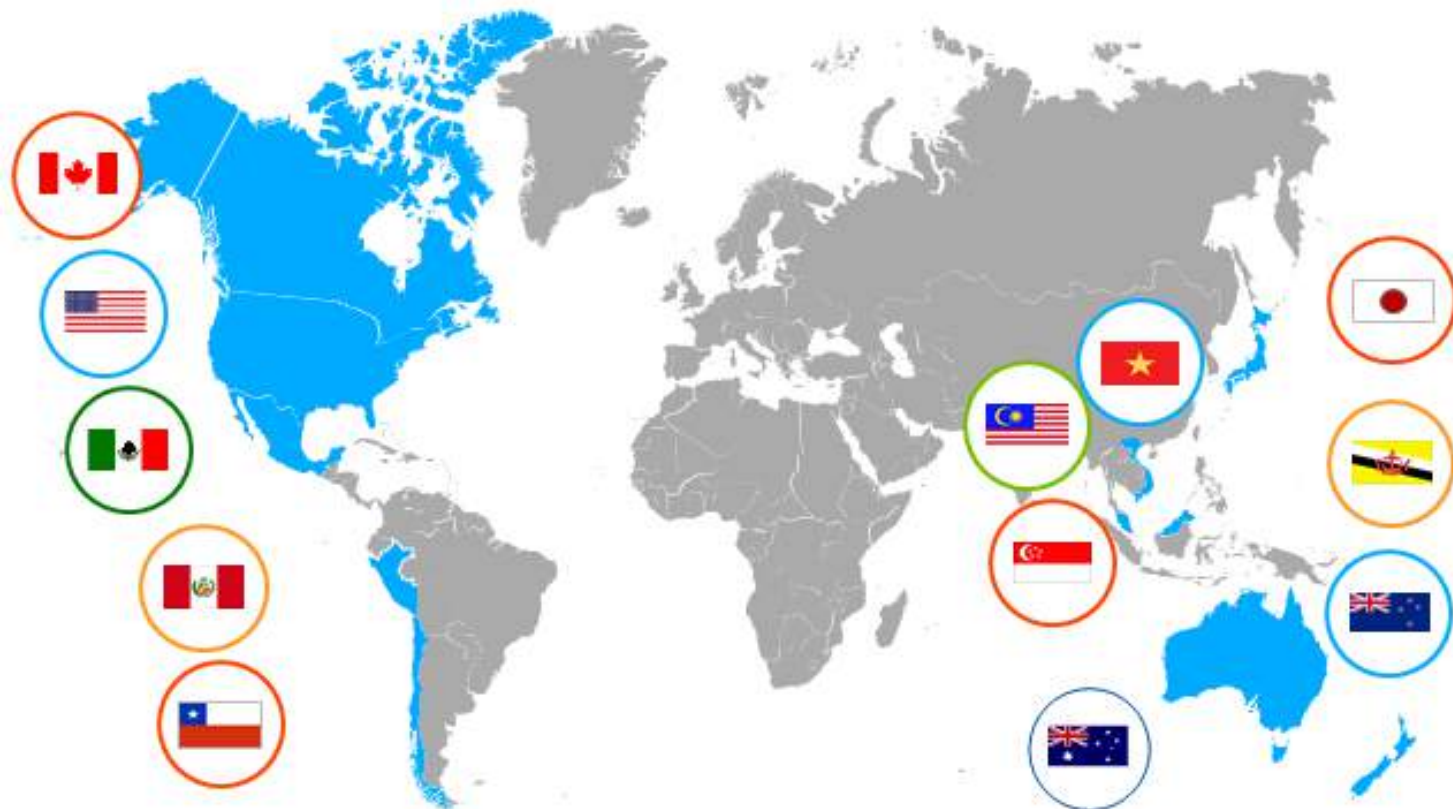


Image Source: descartes.com

12 members: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam and United States

- **TPP negotiations were concluded on 5 October 2015** in Atlanta, USA
- **All 12 states members have signed the TPP on 4 February 2016** in Auckland, New Zealand
- **Each TPP country needs to ratify the TPP.** Vietnam expects to submit the TPP for ratification by the National Assembly in 2016
(Based on media source)
- **The AmCham's statement** during the 2015 Annual Vietnam Business Forum stated that: **"TPP is a promise, not a reality!"**

- **Becoming part of a bigger supply chain**
- **New undertakings of Vietnam**
 - Labour (unions) & environment, freedom of cross border data flows
 - Level playing field for State Owned Enterprises' engaged in commercial competition
 - Binding investor – State dispute settlement
- **Promising sectors:** textile and garment sectors, seafood production, industrial zone developments, maritime transportation and logistics
- **TPP will not fix everything:** retail business is still subject to Economic Needs Test (ENT) and other logistics services will still be subject to various joint venture requirements and remaining restricted sectors: energy, finance, entertainment, media, etc.

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- Guarantees relating to ownership of assets (guarantees against government nationalization)
- Guarantees relating to business investment activities
- Guarantees relating to remittance of assets of foreign investors overseas
- Guarantees of the Government for a number of important projects
- Investment guarantees in event of changes in law
- Resolution of disputes in business investment activities

- International Conventions to which Vietnam is a member
 - Bern Convention
 - WTO laws (i.e., TRIPS)
- International Investment Agreement in force (IIAs)
 - Investment Agreement with the Philippines (since February 27, 1992)
 - Bilateral Investment Treaties, Free Trade Agreements, etc.
 - ✓ 16 IIAs are currently into force
 - ✓ 45 countries concluded and ratified BITs with Vietnam

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6 Tips On Doing Business In Vietnam

- **High demand for roads, power, ports, waste and water treatment, hospitals** and other public infrastructure for goods and services.
- **February 2015, the Government issued Decree № 15/2015/ND-CP** providing types of PPP arrangements in Vietnam (“Decree 15”)
- **Under Decree 15, PPPs are permitted in the following sectors:**
 - Infrastructure facilities in transport and other relevant services;
 - Lighting system; water supply system; drainage system; waste and wastewater collection and treatment systems; social housing, resettlement housing, cemetery;
 - Power plants, electric power transmission lines;
 - Infrastructure facilities in healthcare, education, vocational training, culture, sports and other relevant services; office buildings of state agencies;
 - Commercial infrastructure facilities, infrastructure facilities of science and technology, hydrometeorology, economic zones, industrial zones, high-tech parks, concentrated information technology park, and information technology applications;
 - Agricultural and rural infrastructure facilities, development services for connecting production with processing and sales of agricultural products; and
 - Other sectors as decided by the Prime Minister of the Government

- **Covers various sectors** : traffic works, energy infrastructure, urban infrastructure, industrial zone infrastructure, education and training infrastructure, medical infrastructure, etc.
- **35 of the 127 listed national projects** require to be developed under a PPP regime.
- **List to be updated from time to time by the Government** regarding sectors such as roads, urban infrastructure, energy, water supply and waste treatment sector.
- **Interesting avenue for foreign investors**, despite Government's clear established priorities some business considerations remain:
 - Technical and financial viability
 - Interesting return on investment (finance cost)

- **More forms of PPP projects are now available** (e.g., BOO, BTL, BLT and O&M);
- **Incentives in the tendering process to investors** with approved feasibility studies /project proposals;
- **Ability to choose foreign law as the governing law** in certain circumstances and international dispute resolution mechanisms; and
- **Government guarantees and other incentives:**
 - Certain projects may benefit from the government providing a foreign currency guarantee balance
 - Possible right to mortgage projects' assets and projects' rights

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6 Tips On Doing Business In Vietnam

- **Due diligence verification – partner check;** good understanding of the local partner's objectives and interests
- **Well drafted binding agreements:** joint-venture agreement, charter (articles of associates) of the company, dispute resolution by arbitration offshore to the extent possible (Singapore, Hong Kong etc)
- **Win-win situation with the local partners**
- **Good understanding of related parties to the local partner:** clients and suppliers and management within the company
- If the local partner is involved in the management of the company, corporate governance rules have to be well drafted and clearly understood by all parties

Thank you



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Maximizing Returns and Minimizing Risks in Rapid-Growth ASEAN Economies - Indonesia Investment Regime

Marcus Collins, Partner, Managing Director, DFDL Indonesia

Fairmont Makati, Philippines

2 March 2016

Who are we and what do we do?



- DFDL and Mataram have been associated firms for the past 4 years.
- We at DFDL and Mataram work seamlessly as a team.
- Our team includes more than 10 experienced Indonesian lawyers and one Dutch/US lawyer with more than 26 years experience working in SE Asia including Indonesia.
- Members of our team are based in both Jakarta and Singapore;
- We advice on all types of FDI and are also engaged by clients in commercial litigation and arbitration matters.
- One of our (regional) strengths is in the area of infrastructure (power, water, waste, transportation) and related finance.

Indonesia's Potentials



Source: McKinsey Global Institute

Do you realize?.... The Similarities



- Both countries were occupied by foreign naval powers: Spain and the Netherlands for hundreds of years;
- Both countries gained independence shortly after the 2nd world war;
- Similar language;
- Authoritarian regimes during the 1960-1980's followed by democratic awakening;
- First presidents in modern history who are deemed true people's and "clean" presidents serve right now: Noynoy and Joko;
- The 2 largest archipelago's in the world;
- Both located on the "ring of fire";
- Both countries suffer from muslim insurgents.
- Both countries have well integrated and successful Chinese ethnic immigrants.

Investment Priority Sectors

Power Generation	35 GW new projects	7 GW projects in the pipeline			
Labor-intensive Industry	Textile	Food & Beverages	Furniture	Toys	
Import-substitution Industry	Chemical & Pharmaceutical	Iron & Steel			
Export-oriented Industry	Electronics	CPO & Derivatives	Wood Products, Pulp & Paper	Automotive	
	Machineries	Rubber Products	Fish & Derivatives	Shrimp	
Downstream Industry Of Natural Resources	Cacao	Sugar	Smelter		
Maritime	Shipping	Ship Building	Sea Ports	Cold Storage	ICT for Maritime
Tourism	Strategic Tourism Areas	MICE			

Source: Indonesia Investment Coordinating Board

Infrastructure Development Project Plans 2015-2019



Road: **2,650 Km**
Toll road: **1,000 Km**
Road maintenance: **46,770 Km**



Airport: **15**
Airplane for pioneer service: **20 units**
Airport development for cargo: **6 locations**



Sea port: **24**
Ship for pioneer good transportation: **26 ships**
Ship for cattle transportation: **2 ships**
Ship for pioneer services: **500 units**



Railway track (Java, Sumatera, Sulawesi and Kalimantan): **3,258 km**
Intercity railway track: **2,159 km**
City railway track: **1,099 km**



Port for crossing line: **60 locations**
Ship for pioneer crossing line: **50 units**



BRT development: **29 cities**
Urban mass rapid transit development: **6 in metropolitan areas and 17 in big cities**

Source: BKPM

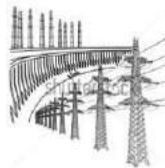
Project Plans 2015-2019



Dam: **49 dams and 33 hydropower**

Building/improving irrigation network: **1 million ha**

Rehabilitation of immigration network: **3 million ha**



Oil Refinery: **2 units (2x300,000 barrels)**

Floating Storage Regasification Unit (FSRU): **5 locations**

Urban household gas network: **90,000 households network**

Natural Gas Fueling Station: **75 units**

Electricity Generation: **35,000 MW**

Natural Gas: **600,000 of fishermen**



Broadband Coverage: **100% urban/rural**

E-government Index: **3.4 (scale of 4)**

E-procurement, e-health, e-education, and e-logistic cs development



Social rented house: **5,257 twin blocks (515,711 households)**

Subsidy of social housing: **5.5 households**



Development of urban clean water coverage: **21.4 million households (268,680 liter/second)**

Development of rural clean water coverage: **11.1 million households (22,647 rural)**



Development community-based waste water treatment: **227 urban/rural**

development centre-based wasted water treatment: **430 urban/rural**

Development sanitary, landfill for solid waste disposal facilities: **341 urban/rural**

Development 3R facilities: **294 urban/rural**

Reduction of watershed in urban areas: **22,500ha**

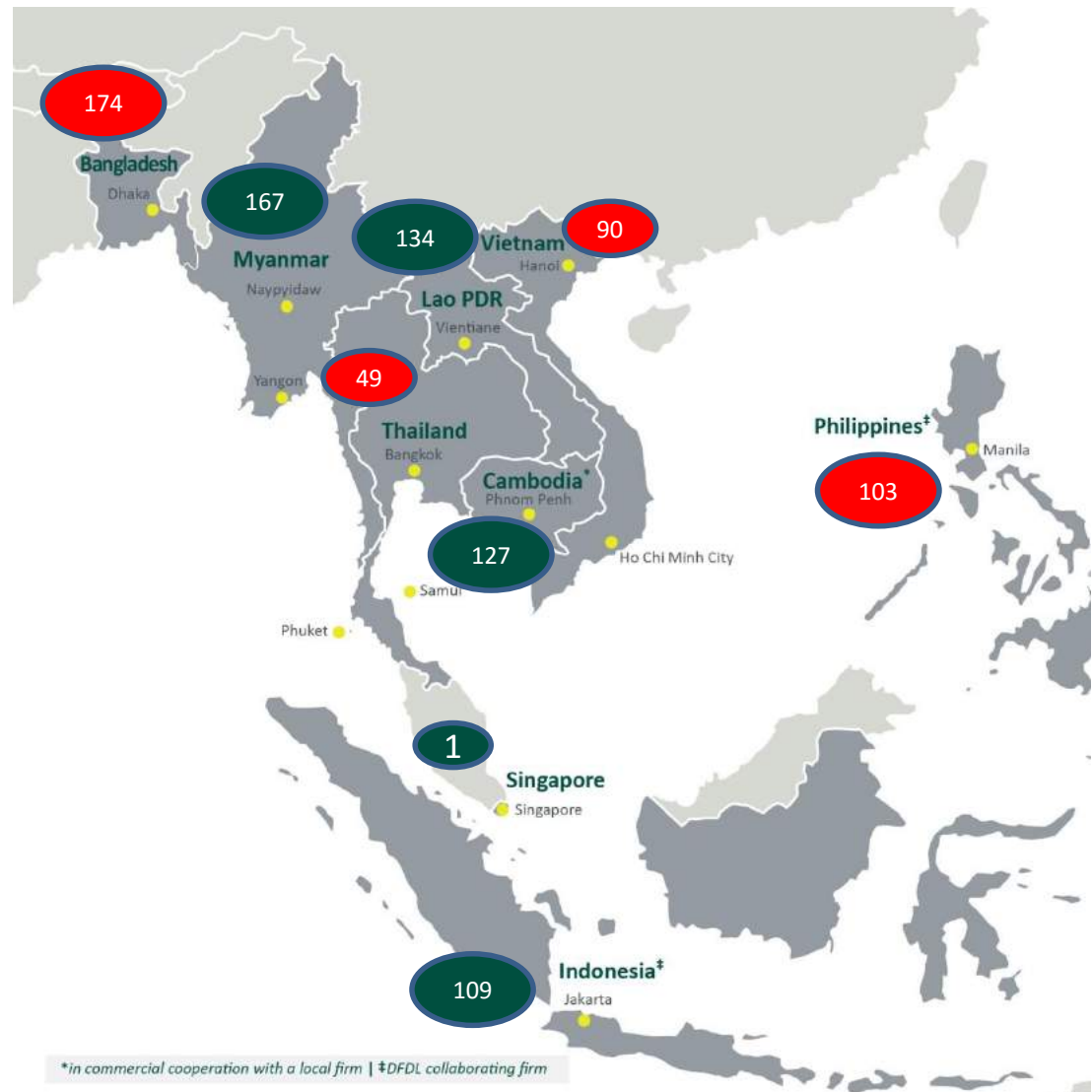
- Here too are similarities.
- Both countries inherited some important aspects of civil law of their former occupiers.
- Philippines is unique in that it also borrowed many aspects of common law as a consequence of the US occupation.
- Indonesia's legal and court systems follow entirely the civil law tradition.
- Indonesia is party to the New York Convention.
- Sadly, corruption is still prevalent and decisions can be erratic and inconsistent.
- Enforcing arbitral awards can be time consuming.

- The list of businesses in Indonesia which are closed and conditionally open for foreign investment
- Current investment negative list: effective on 24 April 2014 (Presidential Regulation No. 39 of 2014)
- The New Negative Investment List will be issued within May/June.
- Basic understanding: Businesses which are not mentioned shall be *wholly* open for foreign investment
- Policies of Indonesia Investment Coordinating Board (“**BKPM**”)

Ease of Doing Business

Economy	2016	2015	Change
Singapore	1	1	0
Thailand	49	26	↓ 23
Vietnam	90	78	↓ 12
Philippines	103	95	↓ 8
Indonesia	109	114	↑ 5
Cambodia	127	135	↑ 8
Lao PDR	134	148	↑ 14
Myanmar	167	177	↑ 10
Bangladesh	174	173	↓ 1

Source: World Bank - Doing Business 2016



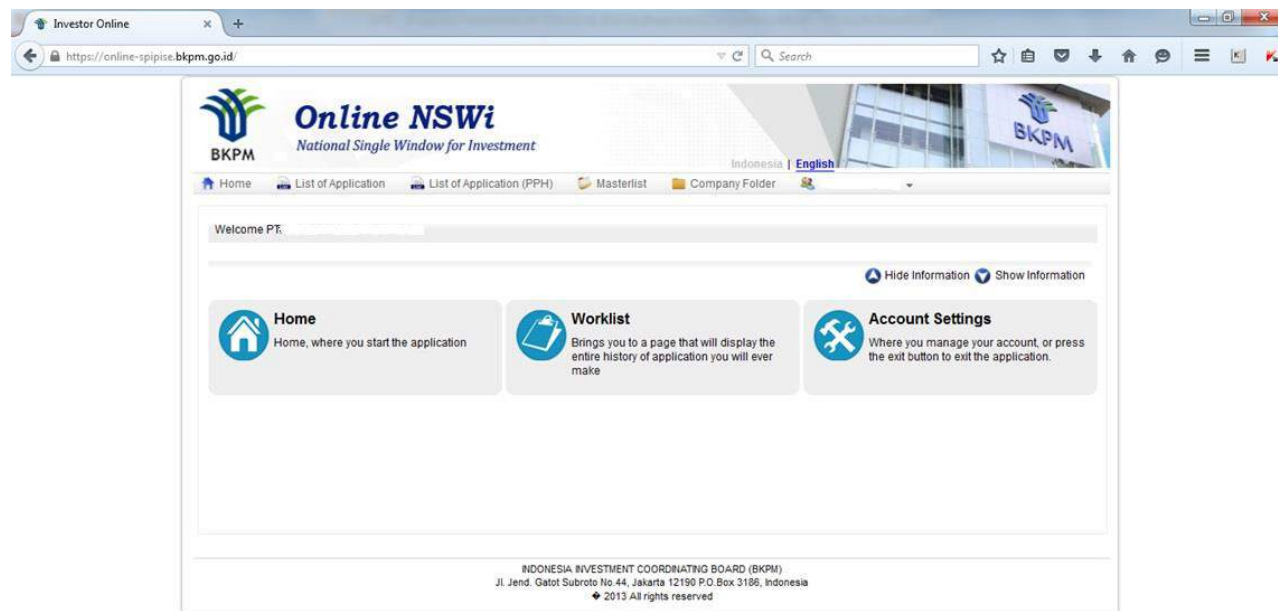
- **Bureaucracy** is a major stumbling block to FDI.
- Presidential Regulation No. 97 of 2014: One stop integrated service for foreign investment at BKPM (*PTSP Pusat*)
- Presidential Instruction No. 4 of 2015: 23 ministries and agencies to coordinate with BKPM on
 - Delegation of their authority to issue licences and non-licences to BKPM by 31 December 2015 and
 - Temporary placement of their officials at BKPM until the integrated licencing online system is accomplished

- Current delegations of authority to BKPM: around 181 licences (<http://spmdashboard.bkpm.go.id/bkpm/perizinan-kl.html>, <http://spmdashboard.bkpm.go.id/bkpm/perizinan-online.html>)

- Samples of licences being delegated to BKPM:
 - Ministry of Trade: import identification number, representative office license, direct sale business licence
 - Ministry of Energy and Mineral Resources: electrical power supply business licence, electrical power supporting service business licence, oil and gas registered certificate
 - Ministry of Industry: various industrial business licences

- Online application system at BKPM (Online SPIPISE)

<https://online-spipise.bkpm.go.id>


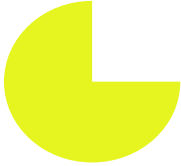





“Indonesia announces the 10th Economic Package on 11 February 2016”

- ✓ Opening up 35 sectors for 100% foreign ownership
- ✓ Increased stakes in currently restricted economic activities
- ✓ Amended Negative Investment List is being discussed and will be published in several months.
- ✓ The amendments can be made by presidential decree and do **not** require any parliamentary or other approvals.

Current Negative Investment List

 <p>CURRENTLY CLOSED 100% FOR FOREIGN INVESTORS</p>	<ol style="list-style-type: none"> 1. RETAIL INDUSTRY 2. E-COMMERCE (not listed as such but in practice closed) 3. THE CRUMB RUBBER INDUSTRY 4. PRODUCTION OF FILM– closed for non-ASEAN 5. ELECTRICAL UTILISATION AND INSTALLATION 6. PLATFORM OIL AND GAS CONSTRUCTION 7. ONSHORE/ON LAND OIL DRILLING 8. PASSENGER LAND TRANSPORT ON SCHEDULED ROUTES
 <p>CURRENTLY OPEN PARTLY</p>	<ol style="list-style-type: none"> 1. COLD STORAGE (33% in certain provinces) 2. TELECOMMUNICATION NETWORK PROVIDER (65%) 3. LEASING (85%) 4. PHARMACEUTICAL INDUSTRY (85%) 5. HEALTH CARE (67%) 6. POWER PLANT <10MW (67%) (less then 1 MW closed) 7. TREATMENT OF NON-HAZARDOUS WASTE (95%) 8. DRINKING WATER BUSINESS (95%)
 <p>CURRENTLY OPEN 100%</p>	<ol style="list-style-type: none"> 1. IMPORT 2. ELECTRICITY DISTRIBUTION (under PPP concession) 3. POWER PLANT TRANSMISSION 4. POWER PLANT >10MW 5. FISHERIES INTEGRATED WITH PROCESSING

Proposed New Negative Investment List



FULL OWNERSHIP

- cold storage
- sports centers
- film processing labs
- crumb rubber industry
- warehousing
- tourism
- e-commerce with a marketplace value above Rp 100 billion
- toll road operators
- telecom device certification
- non-hazardous waste management
- manufacturing of pharmaceutical raw materials
- restaurant

95% OWNERSHIP

- 7 sectors including plantation firms with more than 25 hectares of land integrated with a processing plant

85% OWNERSHIP

- Leasing company

67% OWNERSHIP

- Distribution and warehousing
- health care
- job training
- travel bureaus
- golf course developers
- flight logistics supporting businesses,
- private museums,
- catering,
- convention center and exhibition,
- consulting and construction businesses with contract values above Rp 10 billion,
- fixed telecommunication network operation and mobile telecommunication network operation

51% OWNERSHIP

- natural tourism management

49% OWNERSHIP

- acupuncture,
- In-land transportation
- high voltage electric installation. -

“This is your opportunity to invest!”

President Joko Widodo, APEC 2015

Thank you



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Partner
Managing Director, Indonesia

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**MAXIMIZING RETURNS AND MINIMIZING RISKS
IN RAPID-GROWTH ASEAN ECONOMIES**

FAIRMONT MAKATI

2 MARCH 2016



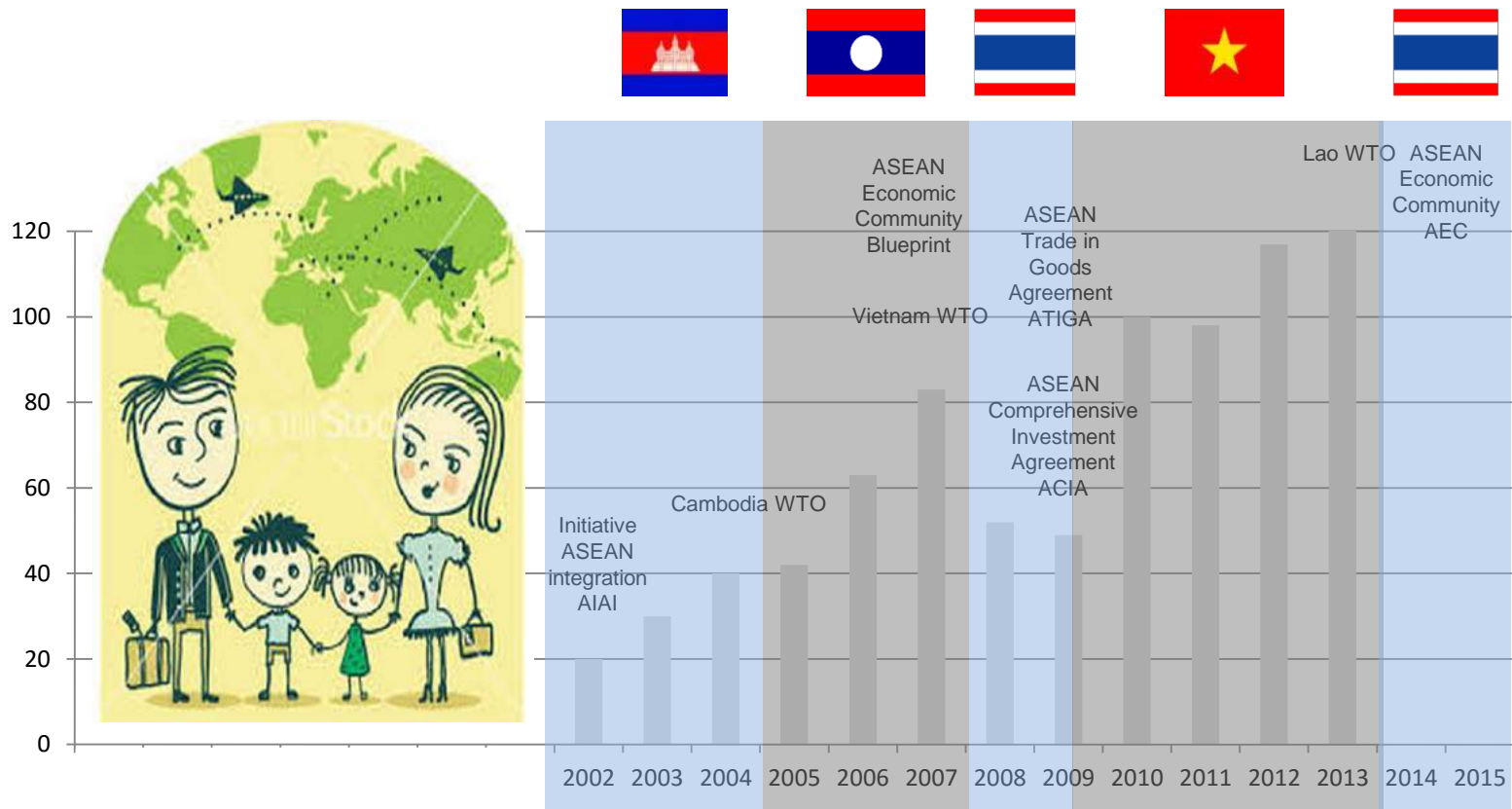
CRL Hong Kong



Project Finance in the Mekong Region : Peculiarities and Trends

Audray Souche, Partner, DFDL Thailand
Fairmont Makati, Philippines
2 March 2016

Slices of Life - Regional background



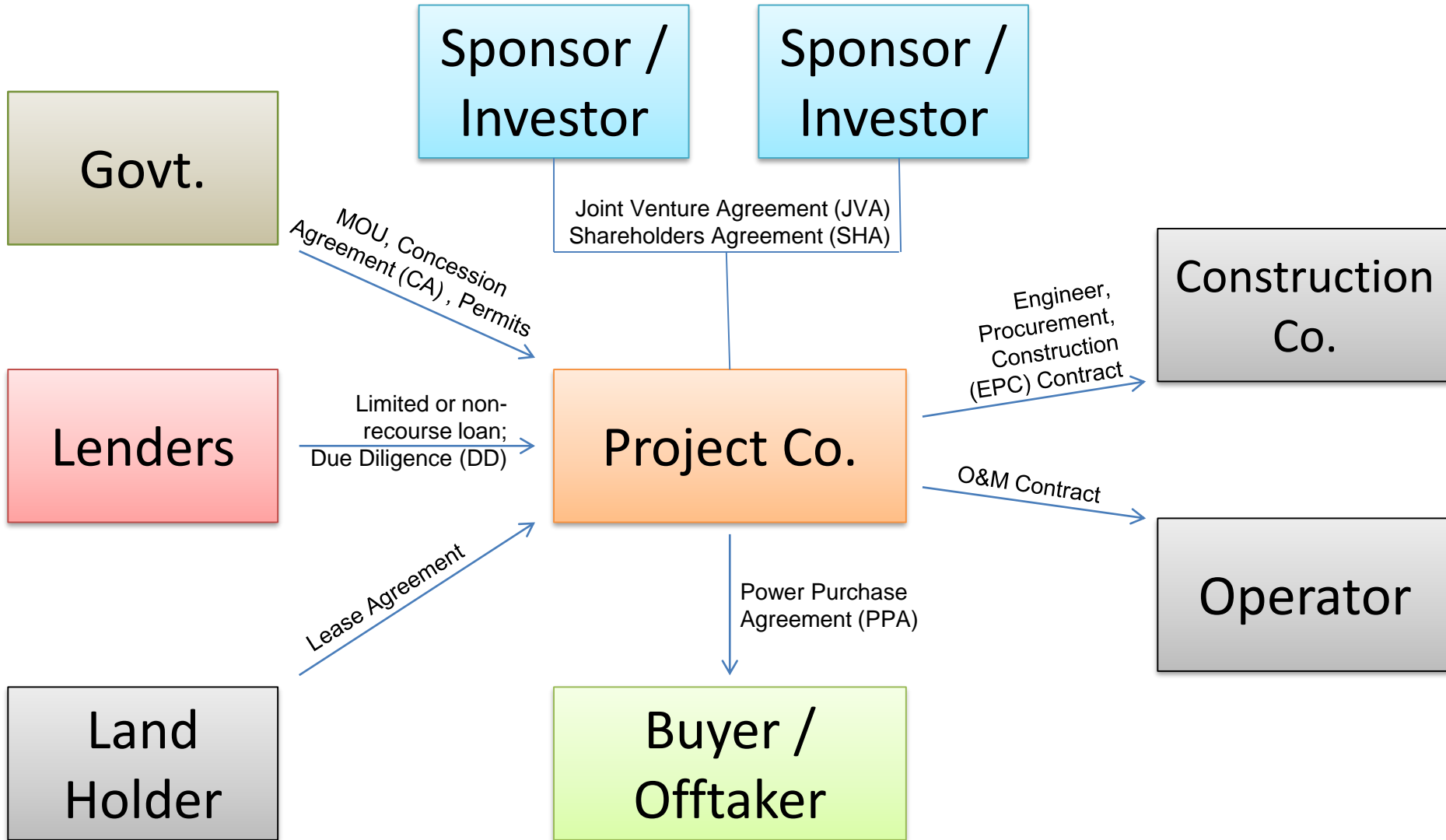
“The financing of a long-term infrastructure, industrial projects and public services based upon a non-recourse or limited recourse financial structure where project debt and equity used to finance the project are paid back from the cash-flow generated by the project.”

- International Project Finance Association (IPFA)

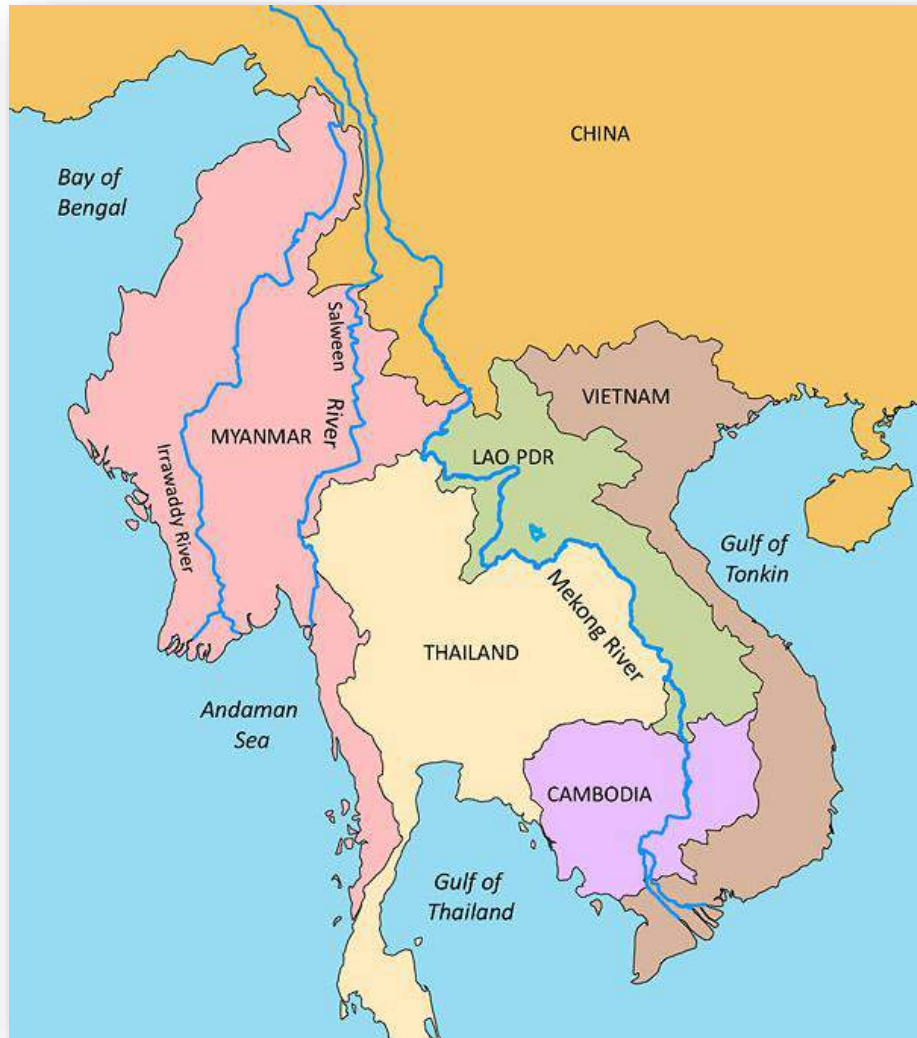
1. Central pillar: Project Company “housing” all project assets
2. All cash-flow based
3. Fundamental principle: risk should be allocated to the project proponent that is best able to control such risk



Project Finance Model



Mekong Region



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

1. Investment promotion laws : Promoted infrastructure and energy projects
2. Laws and regulations to govern concessions and PPPs setting forth key protection principles for Lenders
3. New developments in Myanmar on dispute resolution - The Arbitration Law of 2016 + NYC accession, now fully implemented
4. Secured transactions laws and security registration systems in place in all CLMV
5. Permitted foreign insurance or re-insurance
6. Progressive standardization of Project Documents and Precedents
7. Direct agreements, Ministry of Justice/Attorney General's legal opinions

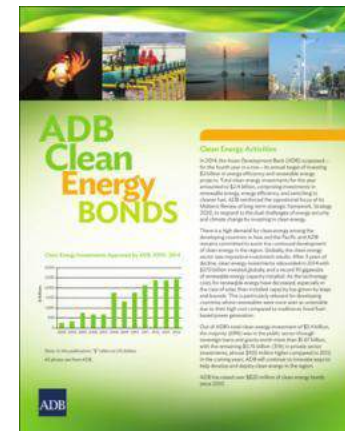
- Project/ Tariff economics: ***must work***—must be market orientated!
- Take-or-Pay/ Minimum Payments: ***Cannot be relied on!*** No need for power, payments unlikely.
- Transmission Line completion: Do not ***assume!*** Project may need to construct on its own.
- Governmental Guarantee: ***Ability to pay?*** Cannot be relied on.



- Be careful not to plan for a ***too tight*** Closing Schedule: Lenders need time for DD and credit committees
- ***Project Permits Lacking***: Never assume that key permits can be pushed to Conditions Subsequent
- Equity Funding ***not in place***: ***All*** shareholders must fully fund or provide guarantees or LCs by Financial Close
- ***Lender-imposed*** requirements: KYC documentation; notarisation of Project and Finance Documents; stringent World Bank/IFC/ Equator Principles E&S requirements

- ***Gvt Shareholder?***
- Project Sponsor to ***“assist”*** in gvt equity financing
- ***IPO***: EdL Gen IPO model
- ***LC***: project lenders requirement if gvt equity not funded
- ***Gvt share pledge***
- IFI/BFI debt financing: may **not** be available
- ***Dividend financed*** shares: Lao PDR mining projects
- ***Tax & Royalty financed*** shares? set-offs of taxes/ royalties ***difficult*** and subject to heavy approval
- ***Free shares/ carried interest*** : Not standard (only in Myanmar)

- PF models account for approx. \$14b/year in SE Asia investment, almost exclusively for economic infrastructure and energy projects.
- Progressive shift from international finance for export to regional finance for domestic projects; but international banks seem to have come back.
- ADB looking to green bonds and project bonds as complementary source of infrastructure finance in future.
- Increasing interest in alternative Islamic Finance, particularly Indonesia and Myanmar (DMTC)



Lao Example

Trends/ Events	<i>Private Sector Power Investment Begins</i>	<i>Asian Financial Crisis</i>	<i>Re-Start of Private Sector Power Investment</i>	<i>Transition Phase</i>	<i>Acceleration of Sector</i>
Years	1994-1998	1997-2002	2002-2005	2007-2010	2011-2014
Projects /Financial Close	Theun Hinboun (1998) Houay Ho (1998)	Hongsa and NT2 projects stall	NT2 (2005)	Theun Hinboun Expansion (2008) Nam Lik 1-2 (2009) NN5(2009) Hongsa (2010)	Xayaburi (2012) Nam Ou 1 (2013) XPXN (2014) NN1 (2014) NN2 (2014) Nam Lik 1 (2014)
Key Features	EGAT PPA/ IFIs limited recourse	Financing dries up	EGAT PPA/ IFIs limited recourse	EGAT PPAs/ EDL PPAs EDL PPA recourse financing	EGAT PPAs/ EDL PPAs Thai and Chinese lenders

Case Study (Laos): Xe-Pian Xe-Namnoy Power

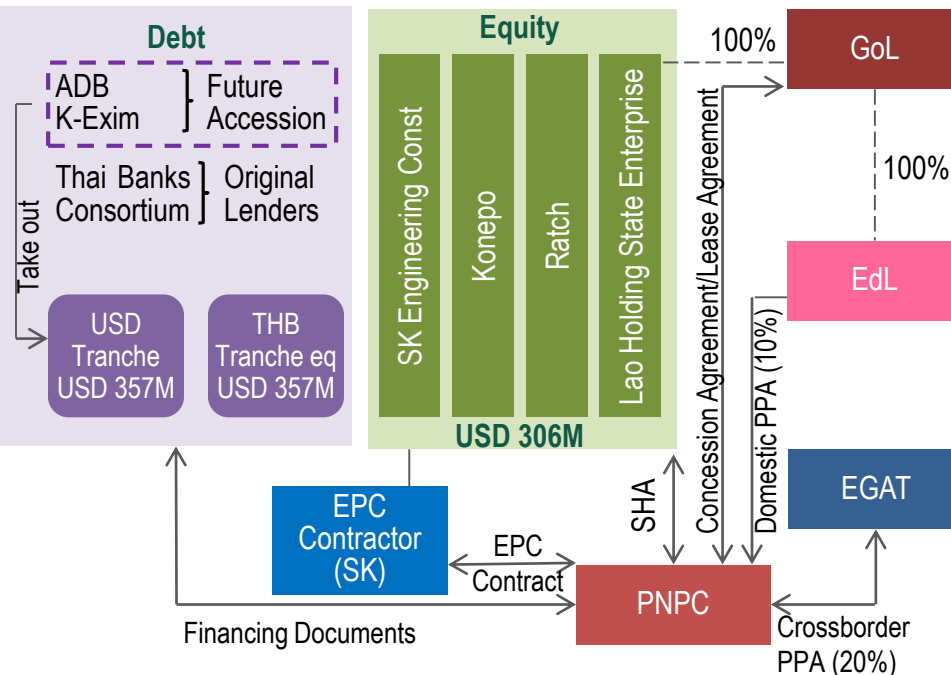
Financing Type: Thai banks
Size: USD 1.02 billion

Challenges

- First Thai financing to non-Thai exclusive investment
- FOREX risk as Thai Banks finance
- Flexibility: Structure permitting post-closing accession by multilateral lenders
- Account structure - change of central bank policy on requirement for equity subscription on domestic bank account

Security structure

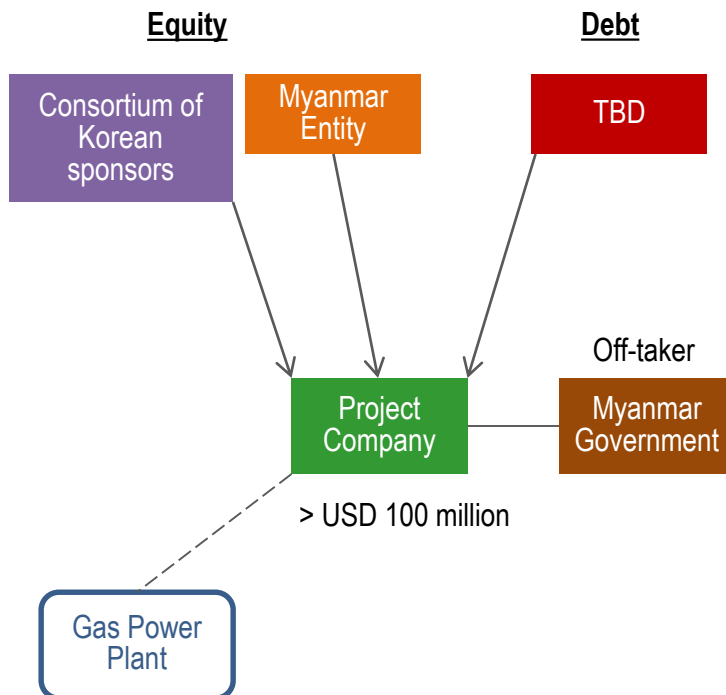
- Stand-alone Lao Law security interests over distinct categories of Project Assets situated in Laos
- Thai Law assignment of EGAT PPA, Thai Pledge of Collateral Accounts, etc.
- English Law assignments of each English Law Project Document and Backstop English Law debenture, etc.



Case Study (Myanmar): Gas Power Plant

Financing Type: IFIs
Size: USD 100 million +

Structure of the project



Challenges

- No previous true project finance precedent in Myanmar
- Difficult to securitize loan
- Difficult to obtain sovereign guarantees
- Difficult negotiation with gov. (Ministry of Electric Power, Myanmar Electricity Power Enterprise)
 - Experience/expertise with documentation
 - No model documentation or gov. policy on IPPs, etc.

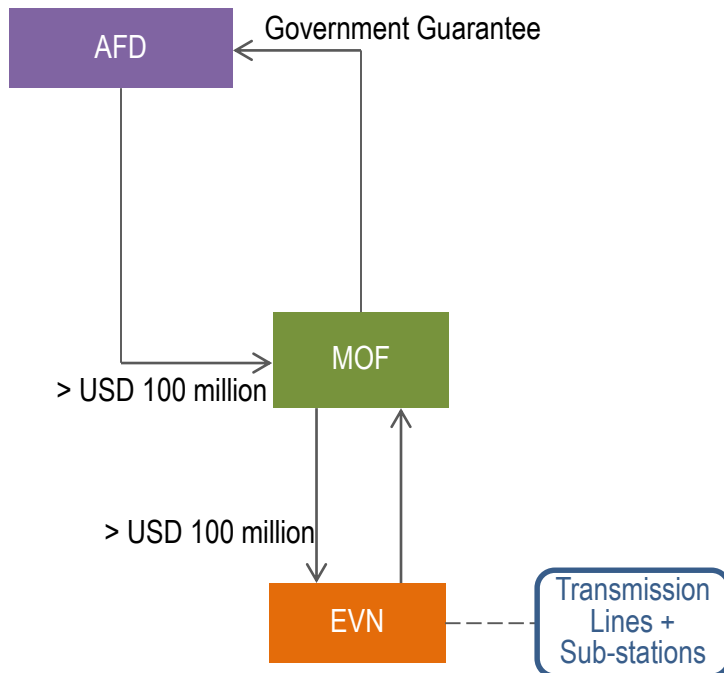
Anticipated security structure

- Mortgage on long term lease
- Share pledge

Case Study (Vietnam (1)): Transmission Line

Financing Type: Agence Française de Développement (IFI)
Size: USD 100 million +

Structure of the project



Challenges

- No major challenge – loan to the government

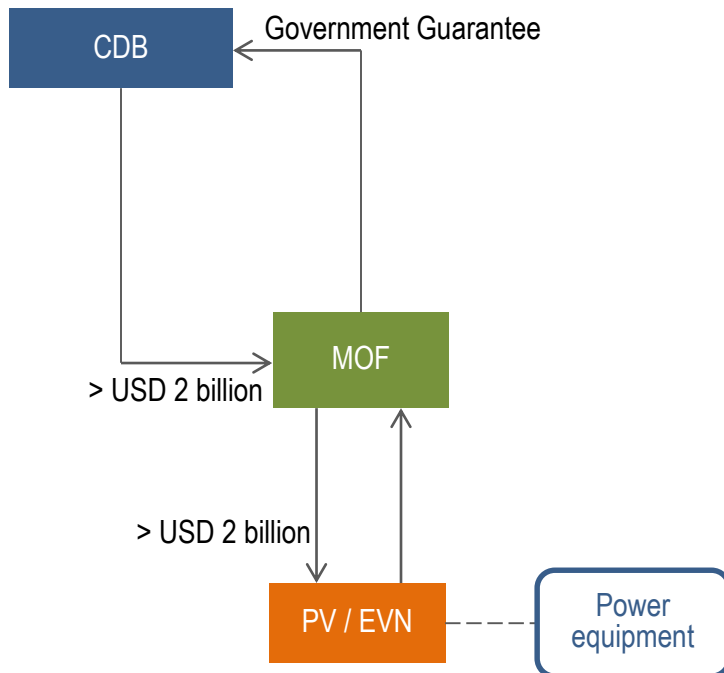
Security structure

- No security

Case Study (Vietnam (2)): Thermal Power Plants & Equipment

Financing Type: Chinese Development Bank
Size: USD 2 billion +

Structure of the project



Challenges

- No major challenge – loan to the government

Security structure

- No security

Thank you



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Excellence · Creativity · Trust

Since 1994



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