

61 Companies Make the Shortlist for Offshore Oil and Gas Tender in Myanmar

Edwin Vanderbruggen, Paul Nikitopoulos and Nay Nwai Linn

The Ministry of Energy has recently announced the list of shortlisted bidders for Myanmar's offshore oil and gas tender 2013. In total, 61 companies prequalified, including Supermajors Shell, Exxon ConocoPhillips and Chevron.

The 61 shortlisted companies are divided up into 15 groups of 4 (and one of 5) in function of their meetings with the MOGE and the Energy Planning Department (EPD) in Nay Pyi Taw.

Who is shortlisted?

We see many of the oil companies that already have interests in Myanmar, such as PTTEP, Total, Daewoo and relative newcomers to Myanmar Nippon Oil, Jubilant and Woodside.

Supermajors Shell, Exxon, ConocoPhillips and Chevron/Unocal have been shortlisted as well, which may be particularly for the deep-water opportunities.

Australian oil companies are well represented with besides Woodside and ROC Oil, pre-qualifications for the likes of Hawkley, Transform Exploration Pty Ltd, Santos, Peak Oil & Gas Limited, Cue, Neon Energy and Titan Energy.

Besides Shell, Total and Statoil, the EU is on the list through Repsol (Spain), Berlanga and ENI (Italy).

The full list of the pre-qualified bidders for Myanmar's offshore bidding round is below this article.

ABOUT THE AUTHORS



Edwin Vanderbruggen is VDB Loi's partner responsible for Myanmar. Formerly with Loyens & Loeff and a partner at DFDL, he has 21 years of legal and tax experience, five years of which have been in relation to Myanmar. Edwin lives full-time in Yangon, where he leads a team of approximately 20 lawyers and tax advisors.

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ABOUT VDB LOI

VDB Loi is a leading law and tax advisory firm with more than 60 transactional lawyers and tax advisors across our offices in Cambodia, Indonesia, Laos, Myanmar, Vietnam and our liaison office in Singapore. We provide the highest quality solutions for transactions and taxation.

With approximately 20 lawyers and tax advisers on the ground in our offices in Yangon and Nay Pyi Taw, we are a leading advisory firm in Myanmar. www.vdb-loi.com

What is next?

We expect that each company will have about 1 hour meeting time with MOGE, to review data, and 1 hour with the EPD to discuss terms. In certain cases, particularly for the deep-water blocks we expect that there is little or no data to be reviewed. The Minister of Energy has earlier announced that “no negotiations” will be entertained with respect to the commercial terms of the Production Sharing Contracts.

Where are the local partners?

In Myanmar, foreign oil companies may bring in a local partner because they are required to, or for other reasons. In fact, for onshore blocks and for blocks on the shelf, a local partner is required according to the Ministry’s bidding announcements. However, the local partners are only required at the time of the bid, not at the time of prequalification. That is why there are hardly any Myanmar oil companies on the list of 61, although MPRL and Twinza did prequalify in and of themselves.

The FIL and the MIC’s Notification 1/2013 (which sets out a list of permitted activities for foreign investment) do not impose any foreign ownership restrictions for oil and gas exploration.

Nevertheless, the practice of the Ministry of Energy is to encourage, where possible, investment in this area on the basis of joint ventures between foreign and local investors.

According to Notification 11/2013 of the Ministry of National Planning and Economic Development, even in restricted sectors, up to 80% foreign ownership is allowed. This maximum threshold was confirmed recently in a vote taken by the Upper House of the National Assembly.

Local partner structures

In any scenario where more than one party holds an interest in a PSC, a joint operating agreement (JOA) will need to be prepared and concluded. The JOA must be reviewed and approved by the MOGE. In practice, the MOGE may have suggestions for certain key issues of the joint operation, such as decommissioning, operations by fewer than all parties, and accounting.

In the case of a PSC that is executed with one SPV where both the foreign partner and the local partner will be shareholders, a branch structure will prevent the local partner from holding any local shares. In other words, if one opts for a foreign SPV, the local partner would have to hold an interest in the PSC directly.

Do you need a locally registered presence?

Not all oil companies that are engaged in upstream oil and gas activity in Myanmar are immediately required to have a local presence. The picture that emerges from comparing catch-all provisions in the Myanmar Companies Act of 1914 (MCA) and the more recent Foreign Investment Law of 2012 (FIL) is not entirely clear. In practice, there are indeed requirements for a local presence, but these depend on the circumstances. The PSC will often set out a requirement, but one should be mindful not to generalize this provision to all situations.

Under general Myanmar law, both are possible, but it is advisable to verify carefully the common practices and expectations of the authorities in terms of upstream oil and gas. Furthermore, consideration should be given to the impact of each option on the wider structure. There is no hard and fast rule as to which form is more suitable.

Many of the factors to consider when choosing between a branch or a subsidiary relate to the tax structure of each option. Although branches are normally subject to 35% income tax rather than the general rate of 25%, this difference does not actually play out in practice in view of the concessionary rates that are granted to oil and gas exploration and production. Nevertheless, other key differences with regard to Myanmar tax implications remain.

One should also take into account the international tax implications. For example, foreign tax credit rules will normally distinguish between income that is derived from branches and income from dividends on shares. Accordingly, the net effect in the home country of the farminee or operator may be quite different depending on whether the oil company has setup a branch or a subsidiary in Myanmar.

Cost recovery and royalty calculation

With respect to any development and production area, expenses relating to exploration, development and production operations are recoverable from available petroleum (net of royalty paid in kind) up to a ceiling/limit, which may vary from PSC to PSC. Under the standard terms and conditions of PSC the maximum cost recovery rate (ranging from 50% to 70%) is based on the depth of the water and whether the PSC is for an onshore block, offshore block or deep water block.

All budgeted exploration costs are recoverable from available petroleum, except for any interest expenses incurred to finance exploration activities and other items that are designated as non-recoverable in the accounting Annex to the PSC.

“Available petroleum” is petroleum produced and saved and not used in the petroleum operations. The cost can be recovered in the quarter in which it was incurred.

The royalty rate may vary from PSC to PSC. Under the standard terms of conditions, the rate is 12.5% of available petroleum.

Available petroleum that is not taken for purposes of paying for royalty or not taken as cost petroleum, will be allocated between the MOGE and the contractor (Profit Petroleum Allocation). The Profit Petroleum Allocation may vary from PSC to PSC, but are based on several factors, including water depth, crude oil, natural gas and whether the PSC is for an onshore block, offshore block or deep water block.

Data fees

Data fees are determined in accordance with the PSC, but in practice, the fees are set at a fixed amount. If the data fees are not cost recoverable, then they will be deductible for CIT purposes.

Training fees

Training fees are determined in accordance with the PSC. Under the standard terms and conditions of PSC the fees range from US\$25,000 to US\$50,000 during the exploration period and US\$50,000 to US\$100,000 during the development period, depending on whether the PSC is for an onshore block, offshore block or deepwater block. If the training fees are not cost recoverable, then they will be deductible for CIT purposes.

Production and signature bonuses

Production bonuses are determined in accordance with the PSC, and may vary based on whether the PSC is for an onshore block, offshore block or deepwater block. Usually, production bonuses are not cost recoverable but they will be deductible for CIT purposes.

Signature bonuses are determined in accordance with the PSC. In practice they are a fixed amount per production target. Signature bonuses are not deductible for CIT purposes, but are capitalized instead.

For more information on this subject matter, contact: Edwin Vanderbruggen, Partner, VDB Loi edwin@vdb-loi.com

FULL LIST OF PRE-QUALIFIED COMPANIES MYANMAR OFFSHORE BIDDING ROUND 2013

DATE (GROUP)	SR. No.	COMPANY NAME	COUNTRY
15.7.2013 (Group 1)	1	ONGC Videsh Limited	India
	2	Petrovietnam Exploration Production Corporation Ltd.	Vietnam
	3	MPRL E & P Re. Ltd.	Myanmar
	4	PTTEP South Asia Limited (PTTEP SA) / PTT Exploration and Production Public Company Limited (PTTEP)	Myanmar
16.7.2013 (Group 2)	1	Oil India Limited	India
	2	BG Asia Pacific Pte. Limited	Singapore
	3	UNOCAL Myanmar Offshore Co., Ltd./Chevron Thailand Exploration & Production Ltd.	Thailand
	4	Petroliam Nasional Berhad/Petronas Carigali Myanmar Inc.	Malaysia
17.7.2013 (Group 3)	1	Jubilant Offshore Drilling Pvt. Ltd. (JODPL)	India
	2	RH Petrogas Limited	Singapore
	3	Newfield Peninsula Malaysia Inc.	Malaysia
	4	CNPC International Ltd.	China
23.7.2013 (Group 4)	1	Kairiki Energy Limited	Australia
	2	Cairn India Limited	India
	3	Brunei National Petroleum Co., Sendirian Berhad	Brunei
	4	Total E&P Activites Petrolieres/Total E&P Myanmar	France
24.7.2013 (Group 5)	1	Hawkey Oil and Gas Limited	Australia
	2	GAIL (India) Limited	India
	3	KrisEnergy (Asia) Ltd.	Singapore
	4	Daewoo International Corp.	South Korea
25.7.2013 (Group 6)	1	Transform Exploration Pty Ltd	Australia
	2	Santos	Australia
	3	Reliance Industries Limited Petroleum E&P	India
	4	Ocean Star Energy Ltd.	Indonesia
29.7.2013 (Group 7)	1	Tap Oil Limited	Australia
	2	Shell Myanmar Energy Pte. Ltd.	Singapore
	3	Mercator Petroleum Limited and Oilmax Energy Pvt. Ltd.	India

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DATE (GROUP)	SR. No.	COMPANY NAME	COUNTRY
	4	Northern Gulf Petroleum Pte. Ltd.	Thailand/Singapore
30.7.2013 (Group 8)	1	Woodside Energy (Myanmar) Pte. Ltd.	Singapore
	2	Cue Energy Resources Limited	Australia
	3	Korea Gas Corporation	South Korea
	4	JX Nippon Oil & Gas Exploration Corporation	Japan
31.7.2013 (Group 9)	1	Transcontinental Resources Group	Australia
	2	Peak Oil & Gas Limited	Australia
	3	Korea National Oil Corporation	South Korea
	4	JGC Corporation	Japan
1.8.2013 (Group 10)	1	Roc Oil Company Limited	Australia
	2	Twinza Oil (Asia) Limited	Myanmar
	3	Neon Energy Limited	Australia
	4	ConocoPhillips Myanmar E&P Pte. Ltd./ConocoPhillips Asia Ventures Pte. Ltd.	Singapore
5.8.2013 (Group 11)	1	Azimuth Limited	UK
	2	Berlanga Holding B.V.	Netherlands
	3	Statoil	Netherlands
	4	Repsol Exploration, S.A.	Spain
6.8.2013 (Group 12)	1	Titan Energy Limited	Australia
	2	Esso Exploration International Ltd./ExxonMobil Exploration International Limited	USA
	3	Heritage oil Plc	UK
	4	Dragon Oil (International) Limited	UAE
7.8.2013 (Group 13)	1	Murphy Asia Oil Co., Ltd.	Malaysia
	2	Premier Oil A Limited/ Premier Oil B Limited/ Premier Oil Far East Ltd (Singapore Branch)	Singapore
	3	Husky Energy International Corporation	China
	4	Navitas Petroleum Limited (A Delek Group Company)	Israel

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DATE (GROUP)	SR. NO.	COMPANY NAME	COUNTRY
8.8.2013 (Group 14)	1	Osprey Petroleum Co., Inc./ Hashoo Group, Inc.	USA
	2	Ophir Energy PIC	UK
	3	Lundin Petroleum AB	Switzerland/Malaysia
	4	Eni Myanmar B.V.	Netherlands
12.8.2013 (Group 15)	1	Hess Corporation/Hess New Ventures	USA/Malaysia
	2	Coastal Energy Company	USA
	3	Anadarko International O&G Company	USA
	4	Stetson Oil & Gas Ltd.	Canada
	5	Grey Fox International Corp	USA
Total	61 companies		

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Partners



Jean Loi

Jean Loi is widely recognized as one of the region's most experienced tax specialists. She was formerly a tax partner with PricewaterhouseCoopers in Southeast Asia. Jean is a highly successful tax advisor with a CPA background. She works on major projects throughout Southeast Asia, dividing her time between Yangon and the rest of the region, but she lives in Yangon.



Edwin Vanderbruggen

Edwin was formerly with Loyens & Loeff and a partner at DFDL. He has 21 years of experience as a lawyer, academic and government advisor, including five years of experience on Myanmar tax and investment issues. Edwin has advised oil companies, distributors, property funds, and private equity funds on making investments in Myanmar. He lives full-time in Yangon.

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Paul is a US attorney with 15 years of experience, and was formerly with Clifford Chance and O'Melveny & Myers. He holds an MBA from Cambridge University and a J.D. from Duke University. He has extensive experience in providing integrated solutions for M&A and private equity transactions. He lives full-time in Yangon.



U Myo Nyunt

U Myo Nyunt is an advocate to the Supreme Court of Myanmar and one of Myanmar's most distinguished senior lawyers. He is the former Director of the Supreme Court and Appellate Judge, and a noted author on Myanmar law. He is a member of the Bar Council, and a member of the board of editors of the Myanmar Law Review.



May May Kyi

May directs our licensing team, focusing primarily on investment permits, operating licenses and import/export licensing. In addition, her practice areas include customs duties, customs valuation, compliance and company establishment. She holds a bachelor's degree in Commerce from the Institute of Economics, University of Yangon.



Yumi Ishimoto

Moto has 20 years of experience working in Southeast Asia as an administrator, auditor and accountant, including several years with PricewaterhouseCoopers as a senior auditor, where she worked with a broad cross-section of organizations and industries. Moto heads the Japanese desk of our firm, dividing her time between Cambodia and Yangon.

Some of our Managers, Consultants and Associates



Cynthia Herman

Cynthia, living in Yangon, is a Chartered Accountant and a member of the Institute of Chartered Accountants of Scotland. She also holds a Master's in Mechanical Engineering with Business Finance (University College London, UK). Her experience in mining, oil & gas and utilities audits and management accounting are a major asset to VDB Loi.



Adam Mcbeth

Adam Mcbeth is a US attorney with a J.D. from St. John's University and an LL.M. from NYU. Adam has experience in assisting clients in Myanmar with the legal structuring of power generation projects, real estate, telecommunications and oil and gas transactions. He lives full-time in Yangon.



Ngwe Lin Myat Chit

Lin holds a Bachelor's in Commerce from the University of Newcastle, Australia. She formerly worked with a global audit and advisory firm, where she was based overseas for a number of years. At VDB Loi, Lin advises clients on tax structuring, licensing, general regulatory and customs duty issues. She has worked on major projects in the FMCG sector, oil and gas, power and health/life sciences.



Marla Bu

Marla is an American of Burmese descent with a degree in law from the College of Law of England and Wales and a bachelor's degree from Fordham University in New York. She has seven years of experience with the United Nations and law firms in New York, where she worked on commercial and civil legal matters and prepared briefs on Myanmar law. She lives in Yangon.



Chaw Nandar Aung

Chaw has built up a comprehensive knowledge of taxation, including calculation of tax liabilities, preparation of tax returns, and in particular, the tax clearance and audit process. She holds a Bachelor's degree and has a diploma in Accounting. She also has an extensive knowledge of company establishment and investment licensing.



Kyi Naing

Kyi Naing is a Myanmar-qualified lawyer with seven years of experience, most recently with DFDL in Myanmar. Experienced in cross-border legal issues, he has assisted international clients with their investment projects in Myanmar, and advised on a wide range of corporate and commercial issues.



Nay Nwai Linn

Nay has six years of experience in tax, accounting and corporate compliance working for international enterprises in Myanmar. She liaises with various authorities on licensing issues, and is an accomplished corporate tax advisor. Nay holds a bachelor's degree from Yangon University.



Aung Myat Thu

Aung Myat Thu advises on corporate establishment and investment licensing. He has extensive experience liaising with Government offices, especially for the Directorate of Investment and Company Administration, the Myanmar Investment Commission, and the Trade Department.

Senior lawyers with Myanmar experience not based in-country



Huy C. Luu

Huy is a tax lawyer with a J.D. from Hofstra University and an LL.M. in taxation from Georgetown University. After practicing with Latham & Watkins and Ernst & Young in the US, he came to Southeast Asia in 2008. Huy combines his international tax expertise with a detailed knowledge of tax and laws in Southeast Asia. Huy has worked on Myanmar projects in oil & gas, FMCG, mining, and oilfield services. He is based in Vietnam.



Chris Muessel

Chris is one of Southeast Asia's most experienced foreign lawyers. As a Baker & McKenzie lawyer, he advised MNCs on a broad range of legal matters. As a partner with the US firm Duane Morris LLP, Chris headed the firm's Ho Chi Minh City office, and later undertook partnership roles with Watson Farley & Williams and Rajah & Tann. He is based in Cambodia and Singapore. Chris has overseen Myanmar due diligence and M&A projects.