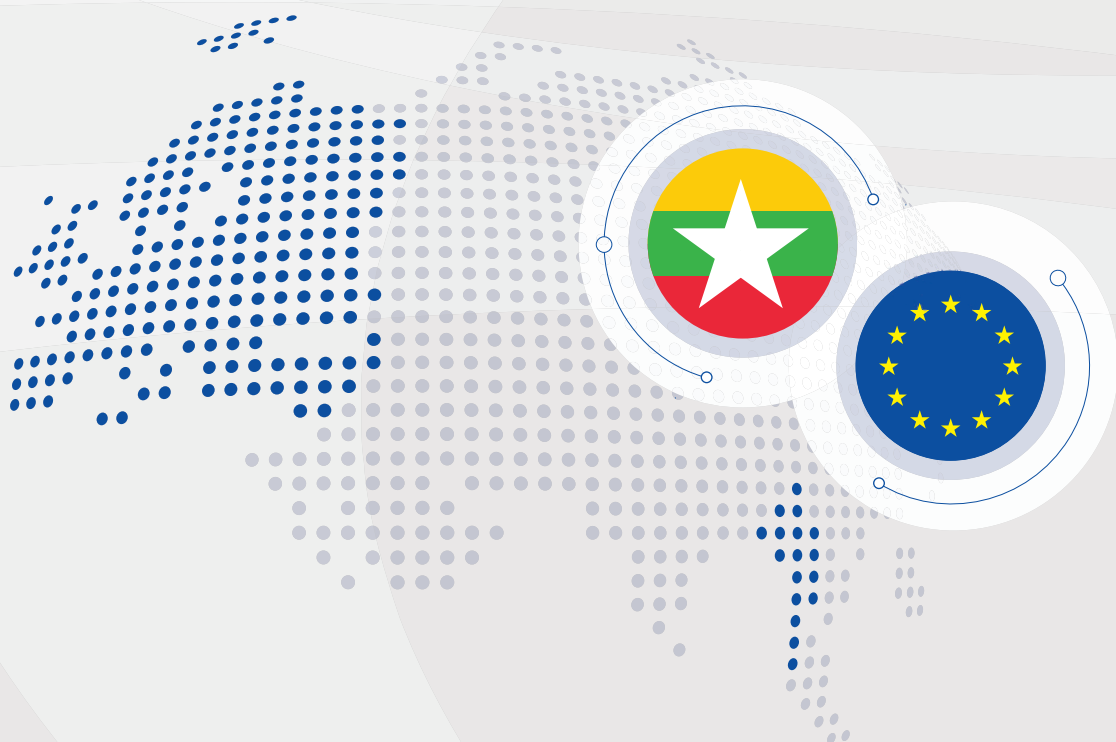


# White Book 2019

Trade & Investment Policy Recommendations



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**CCI FRANCE MYANMAR**



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## EUROPEAN CHAMBER OF COMMERCE IN MYANMAR



EuroCham serves as the voice of European business in Myanmar. Its main mission is to significantly increase the presence of European investment in the country and to improve the business climate by advocating for European industry interests with the government and organisations in Myanmar, as well as the ASEAN region and the EU.

With a strong, growing network of partners, EuroCham offers on-the-ground support to European businesses interested in commercial endeavours in Myanmar, whether in the form of advocacy, business services, research or networking.

EUROCHAMBRES (the largest umbrella chamber of Europe) and FMCCI: (France Myanmar Chamber of Commerce and Industry) set up EuroCham Myanmar with EU funding. In the meantime, EuroCham Myanmar has grown tremendously into widespread European representation on advocacy affairs and has also developed Memorandum of Understanding (MoU) with the chambers of Germany, Italy, Norway and the United Kingdom, including the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI).

A key instrument in EuroCham's advocacy work are Advocacy Groups which serve as a platform for information-sharing and discussion. Their main objectives are: (i) to promote transparency, compliance and rule of law for the further development of Myanmar, (ii) to provide the Myanmar authorities with relevant industry international know-how in order to improve the overall business environment and (iii) to strengthen relationships with other governmental agencies and bodies.

This White Book is the third edition of an annual publication by EuroCham Myanmar, identifying the year's focal business, trade and investment issues affecting EuroCham members, the business community and, in many cases, society at large.

Compiled from white papers drafted by EuroCham's advocacy groups, the White Book offers holistic and realistic recommendations to the heads of relevant ministries and departments of the Myanmar government, the Delegation of the European Union to Myanmar, ambassadors, consuls, and trade commissioners of the European member state missions in Myanmar, international, sectorial and partner organisations in Myanmar.

Yangon, June 2019

## EUROCHAM MYANMAR CHAIRMAN OF THE BOARD



It gives me great pleasure to present the Myanmar Trade and Investment Policy Recommendations White Book for 2019 on behalf of the EuroCham Myanmar Board of Directors, Advocacy Groups, EuroCham Myanmar's partner members and all other members. The White Book 2019 is the culmination of another year of advocacy work for EuroCham Myanmar which is coming up to its fifth year in operation in Myanmar.

Following a considerable expansion in the number of Advocacy Groups in the past two years, and an improvement in the economic circumstances for the nation, we are excited to present our seminal work and we thank all those involved in its production. EuroCham Myanmar has continued to prove itself as an effective avenue for European companies looking to establish themselves in Myanmar and our member base experienced sustained growth.

The expansion is testament to the ongoing opportunities that remain in this frontier market, and a reflection of the considerable advances that remain to be made in sectors such as agriculture, energy, infrastructure, digital technology and healthcare. Bringing about these changes is key in the democratic transition period currently ongoing in Myanmar and are the foundations of its economic development. There have been major improvements made, including the launch of an online company registration platform, enacting of intellectual property laws and adopting of the Myanmar Sustainable Development Plan.

While we welcome the government's efforts to improve the business climate during the 2018-19 period, it must be acknowledged that the country still faces many challenges, foremost with the ongoing crisis in Rakhine State. Myanmar occupies a special set of circumstance both politically and historically, however this further underscores the importance of the European Union's focus on a relationship of transparency and the pursuit of long-term, constructive dialogue.

Remaining committed to our core values of responsible business investment and sustainable development, this year we are launching the EuroCham Myanmar Responsible Business Initiative.

We believe our strengthened engagement with all the stakeholders and citizens of Myanmar will continue to contribute significantly to the successful economic transition of Myanmar.

David Levrat  
Chairman of EuroCham Myanmar

## EU AMBASSADOR TO MYANMAR



The European Union (EU) is at the forefront of the international community's reengagement with Myanmar as the country embarked on a process of reform towards democratisation, peace and socio-economic recovery. As a partner in Myanmar's transition, the EU is supporting the country and its people with the objective to help Myanmar develop into a peaceful and prosperous democracy with a functioning market economy.

As part of attaining this objective, we put a strong emphasis on trade and investment. Since 2011, the EU has progressively re-engaged with Myanmar in its trade and investment relations. In 2013, the EU lifted sanctions and reinstated unilateral trade privileges deriving from the EU Generalised Scheme of Preferences (GSP). Under the so-called "Everything But Arms" (EBA) treatment, exporters from Myanmar enjoy duty-free and quota-free access to a European

market of over 500 million consumers for all Myanmar products except for arms and ammunitions, and dual-use goods.

However, the GSP preferences are conditional upon compliance with international human rights and labour rights conventions. The crisis in Rakhine, reports of gross human rights violations in Rakhine State and elsewhere in the country as well as the humanitarian situation in many of these areas are extremely serious. The EU has therefore enhanced its engagement with the Myanmar government and intensified dialogue to ensure accountability for human rights violations and to find long-term solutions to structural issues in Rakhine State and other conflict affected areas, in line with the country's international commitments.

The European Chamber of Commerce (EuroCham) in Myanmar has played a defining role in trade and investment relations between the EU and Myanmar, as EuroCham functions as a link between European businesses and the Myanmar government for advocacy and issues related to trade and investment. The path to lasting economic development must go through sustainable business, and promoting transparent and responsible business conduct. European businesses have shared their best practices and international standards of doing business in the country which is thirsty for responsible trading partners. The people of Myanmar also value the quality of European goods and services, the integrity of European businesses, and the long-term commitment of European companies to the country.

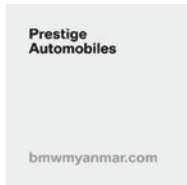
Against this backdrop, I invite you to explore EuroCham Myanmar's newest edition of its White Book 2019 *Trade & Investment Policy Recommendations*, outlining our European companies' recommendations to further improve the business climate in Myanmar. In the White Book, European businesses active in Myanmar share their knowledge and experiences related to the current trade and investment environment and take stock of progress since the last edition of 2018.

We hope that this White Book will be a useful tool to further develop strong and transparent economic relations between Europe and Myanmar. It is the joint statement of EuroCham's Advocacy Group member companies, which are investing and operating in an increasing number of industries in Myanmar.

Kristian Schmidt  
Ambassador of the European Union to Myanmar

# Thank you to our Partner Members!

## PLATINUM



## GOLD



## SILVER



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Myanmar language version

# FOREWORD: EUROCHAM MYANMAR RESPONSIBLE BUSINESS INITIATIVE







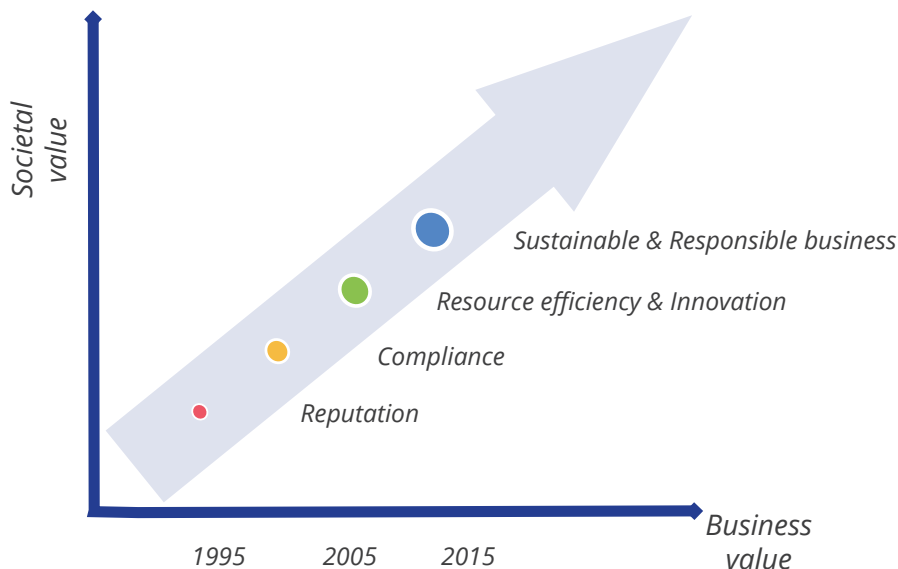
*Leading by example*

As a developing country that has recently opened up and is experiencing rapid growth, Myanmar has an immense set of needs which must be addressed. For the government, seeking to improve the welfare of citizens and the prosperity of the nation is a monumental task. By working closely with partner organisations and other stakeholders, the government may overcome these challenges.

Over the years, there have been a growing number of business organisations embracing the concept of Corporate Social Responsibility (CSR). Many have integrated CSR into their core business values, with an emphasis on sustainability and responsibility.

CSR is a complex subject. Over the last 20 years, the way businesses view CSR has evolved dramatically (see below).

## SCHEME #1: CSR DRIVERS' EVOLUTION



For investors and policymakers, greater transparency in business quickly proved to have the major advantage of improved risk control and an elevated sense of responsibility. CSR was seen as a way to mitigate potential negative impacts.

However, over time, business objectives on people, planet and profit have become more aligned: for example, saving energy is essential for both the planet's sustainability and the profitability of any operating business.

Assessing the risks within the value chain contributes to better managing the social and environmental impacts which both represent high risk for the reputation of a brand or a company; integrating CSR within the innovation process and engaging stakeholders allows the design of new products and services that generate sustainable long-term revenues. CSR is now viewed by the business community as a platform to unlock potential value.

We are convinced that good practices can only be spread based on their effectiveness and their impact. However, the velocity of its adhesion by others can only increase if the public authorities adopt CSR in its true form and let it play its role as an economic engine rather than a passive form of philanthropy. This will indisputably encourage more companies and create a chain reaction in the service of a prosperous and fair economy in the country.

According to an article published in the Harvard Business Review in 2011 by Porter and Kramer, shared value can be defined as “policies and operating practices that enhance the competitiveness of a company which simultaneously advance the economic and social conditions in the communities in which it operates. Shared value creation focuses on identifying and expanding the connections between societal and economic progress.” Creating shared value is in all likelihood the ultimate goal of every business: this is one of the key components of the CSR definition provided by the European Commission.

**EuroCham Myanmar members are committed to conducting business in a socially responsible way and fully endorse this definition.**

European companies have to comply with different laws, norms and standards covering a wide range of topics. A directive was published in 2016 in order to reinforce the transparency requirements for large European companies. This is an asset, especially for doing business in Myanmar. Transparency, responsibility, and strong corporate governance practices are key to building a solid and sustainable business environment.

Having a diverse cultural background in their home countries and being a driver for building peaceful, stable and fruitful relationships between member states, European companies have been the catalyst for positive change in Europe. It was not necessarily instantly successful, but companies adopted a trial-and-error approach which makes them stronger today.

European companies currently operating in Myanmar are particularly willing to share and transfer their practical experiences and knowledge in managing their business responsibly. Local businesses in the private sector can therefore benefit immediately from this undertaking by avoiding pitfalls and tapping into the various sectors’ international best practices.

EuroCham Myanmar identified the undeniable value of European responsible business practices in Myanmar and is encouraging the private sector to adopt responsible business behaviours through the creation of a CSR Advocacy Group in April 2017. This year, the promotion of responsible business will be taken to another level by evolving the CSR Advocacy Group into the EuroCham Myanmar Responsible Business Initiative (EMRBI).

The EMRBI is an ambitious platform that puts the promotion of best European responsible business practices and values as the chamber’s core value across all sectors. The fostering of responsible business will be implemented through every EuroCham Myanmar Advocacy Group to set responsible business benchmarks that are relevant to each sector. The EMRBI’s action plan will be executed by EuroCham Myanmar’s executive team with a high level of consultation from the Advisory Steering Committee comprised of responsible business experts. The action plan will be based on EuroCham Myanmar’s responsible business values which are:

- Share every member’s insights, views and best practices about responsible business;
- Promote their responsible and sustainable operations in Myanmar;
- Encourage a better integration of sustainability and responsibility in the daily business operations in Myanmar.

## DEVELOPMENTS SINCE 2018

EuroCham Myanmar maintains a positive outlook towards the development of responsible business practices in Myanmar. While the majority of local organisations active in the country still see CSR as a form of charity and philanthropy, a few pioneering local organisations have already incorporated CSR into their business models and have achieved strong recognition for their impact on society.

While a number of development priorities were highlighted to the government, responsible business was rarely part of the discussion. EuroCham Myanmar welcomed the **Myanmar Sustainable Development Plan (MSDP)** in August 2018. The MSDP provides a long-term vision for a peaceful, prosperous and democratic country. The EMRBI will strive to support the MSDP's core objectives, thereby supporting the government's implementation of the plan.

At EuroCham Myanmar, we are convinced that responsible business behaviours are needed for sustainable development and growth. We are proud that this ethos spans our organisation by sharing it with our members. All advocacy groups bear in mind the EMRBI mission when presenting their respective position papers in this year's White Book publication.

Together we put European companies at the forefront of responsible behaviours in Myanmar.

# BUSINESS CLIMATE



## INTRODUCTION

Following decades of military rule, Myanmar opened its borders to the rest of the world in 2011. Since then, the nation has sought to recover from half a century of isolation by implementing radical reforms to achieve political and economic liberalisation. The task remains colossal as the government plans to undergo the process of national reconciliation whilst transforming Myanmar into a stable and prosperous nation. To fulfil this mission, promoting economic growth has been key. As a result, reforms to encourage foreign direct investment (FDI), fight corruption and liberalise the agriculture, transport and telecommunication sectors were enacted.

The interest of foreign investors grew in April 2016 when the NLD (National League for Democracy) came into office, opening the path to a new and highly anticipated era of democratic rule. This political change granted the country preferential access to the EU and US markets through the “Everything But Arms” agreements.<sup>1</sup> Now, Myanmar can share with the world its many opportunities. Strategically located in the heart of Southeast Asia, the country is rich in natural resources and can rely on a young and dynamic population.

However, since 2018 the initial excitement of overseas investors has decreased despite the government’s recent reforms. According to EuroCham Myanmar’s 2018 Business Confidence Survey, 81% of 150 European companies interviewed rate the business environment as “poor” or “needing improvement” compared to 76% in 2017 and 67% in 2016. Indeed, many observers point out an unclear regulatory climate and a critical lack of infrastructure. Recently a resurgence of conflict in Rakhine State has severely tarnished the country’s image in the eyes of the international community. Many European investors (mainly from the garment sector) fear that this issue will strain Myanmar’s preferential access to the EU market.<sup>2</sup>

Alongside many investors, EuroCham Myanmar still believes in the stable recovery of the region through continuous economic development and increasing cooperation between Myanmar ethnic minorities and the government. Challenges such as poor healthcare, a mediocre education system and an urgent need to develop infrastructure needs to be addressed.

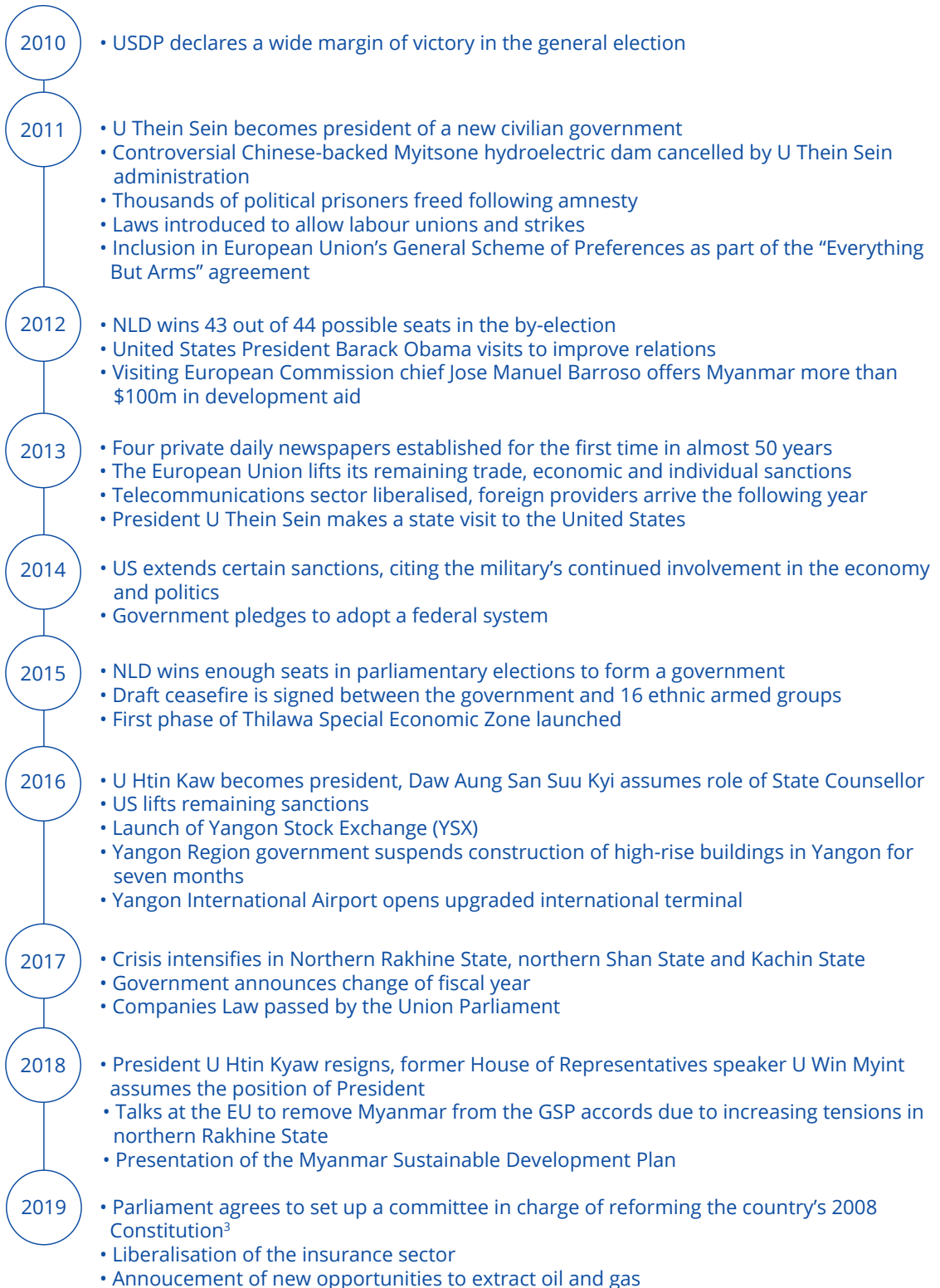
Nonetheless, many opportunities remain. Recently, thanks to the introduction of the new Companies Law in 2018, the government continues to open the economy to foreign investors. For instance, the on-going liberalisation of the insurance sector and the announcement of new opportunities to extract oil and gas are amongst the latest developments in the matter. EuroCham Myanmar hopes that further similar actions will be taken, by the ministries and their departments, to achieve good governance, create an effective public sector and improve the business environment.

In summary, emerging signs of a more economically-focused government have begun to appear, with the passage of several high profile and long-delayed laws, such as the Companies Act and the Condominium Bylaws. Furthermore, major progress—especially in energy, transportation, infrastructure and the insurance sector—are starting to come into realisation.

Myanmar is at a pivotal point in its reform process after a year of regulatory delays and waning investor confidence. A window of opportunity presents itself before the next election in 2020. Many investors and businesses are hoping that this year will bring greater clarity, transparency, and definitive government action.

<sup>1</sup> European Commission (2018)

<sup>2</sup> “GSP: the hidden iceberg to the Myanmar Crisis,” Ngu Wah Win, Myanmar Times, November 5, 2018. Retrieved from: <https://www.mmmtimes.com/news/gsp-hidden-iceberg-myanmar-crisis.html>



<sup>3</sup> "Constitutional reform in Myanmar: A move towards peace?" Skylar, L. ASEAN Today, February 7, 2019. Retrieved from: <https://www.aseantoday.com/2019/02/constitutional-reform-in-myanmar-a-move-towards-peace/>

## RECENT CHANGES IN THE LEGAL AND REGULATORY FRAMEWORK

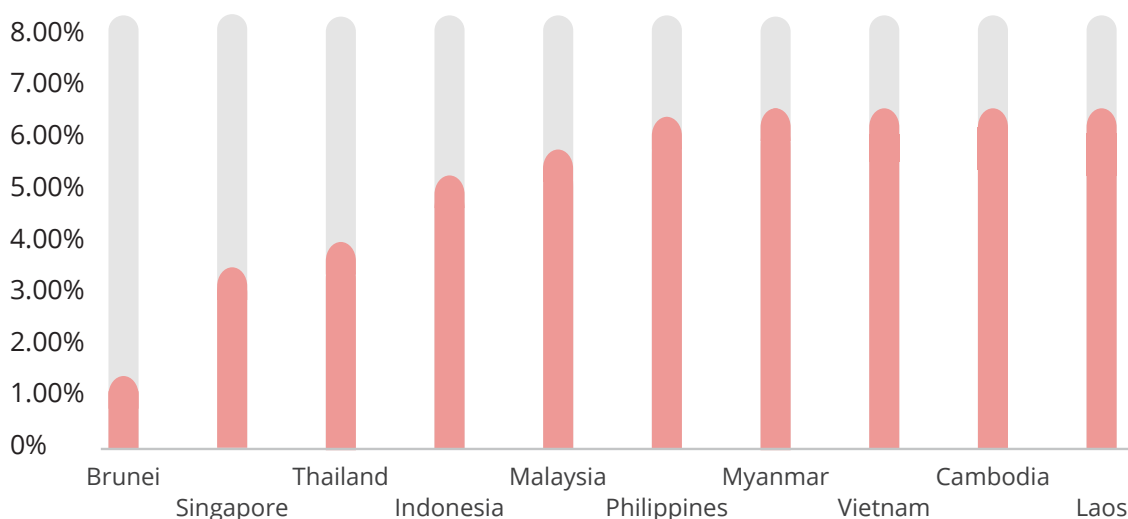
Law / Act	Explanation	Year of Enactment
ASEAN Comprehensive Investment Agreement	The ASEAN Comprehensive Investment Agreement supports a free, open, transparent and integrated investment regime in the ASEAN region in line with the goal of achieving an ASEAN Economic Community by 2015.	2012
Foreign Investment Law	The law opened up overseas ownership of business ventures and offered tax breaks. It allowed formation of joint ventures with a local partner and the lease of land from the state and authorised companies.	2012
Special Economic Zone Law	The law's main objectives are to encourage industrial investment to increase exports, foreign currency earnings, and employment opportunities. Foreign companies are permitted 100% ownership of entities within the Special Economic Zone.	2014
Arbitration Law	The law repeals and replaces the Myanmar Arbitration Act 1944 to settle domestic and international commercial disputes in a fair and effective manner by means of arbitration, and to ensure recognition and enforcement of foreign arbitral awards.	2016
Myanmar Investment Law	The law vastly simplifies the process for investment applications and offers a number of tax breaks, incentives, guarantees, rights and protections for business ventures set up in specially designated zones.	2016
Condominium Law	The law is a key piece of legislation to open the property market to foreign buyers and enable greater investment in the real estate market.	2016
Myanmar Companies Law	<p>The new Companies Law replaced the 1914 Companies Act. Under the new law, foreigners will be permitted to take up to a 35% stake in local companies.</p> <p>The act also encompasses a wide range of regulations which will affect local and international investors, including share transactions, dividends, reduction of initial capital and shareholder authorities</p>	2018
On-going liberalisation of the economy	<p>The following sectors were opened to foreign investors:</p> <ul style="list-style-type: none"> <li>- banking</li> <li>- retail</li> <li>- wholesale</li> <li>- education</li> </ul> <p>Although other reforms need to be initiated the current changes indicate that the government is willing to take the right path to sustainable development. This will allow Myanmar to regain a higher GDP growth rate by 2020/21, according to the Asian Development Bank.</p>	2018
Permission for foreign insurers to operate in Myanmar	In January 2019, the Ministry of Planning and Finance announced a partial liberalisation of the insurance market by granting licences to three foreign life insurers as wholly owned subsidiaries. <sup>4</sup> Other insurance licenses can be obtained for joint-local ventures	2019

<sup>4</sup> Republic of the Union of Myanmar Ministry of Planning and Finance (2019). Announcement No. (1/2019)

## OVERVIEW OF THE ECONOMY

Since 2011 and the vast political and economic reforms undertaken by its government, Myanmar remains one of the fastest growing economies in Southeast Asia. According to the Asian Development Bank, the country reached a 7.5% average gross domestic product (GDP) growth between 2012 and 2016.<sup>5</sup> This growth momentum was triggered by the massive influx of investments following the country's opening to the international community. Most foreign investors are attracted by Myanmar's strategic location, the abundance of natural resources and an attractive labour market. Myanmar's young population also presents various opportunities due to expected high income and consumption growths between 2015 and 2025.

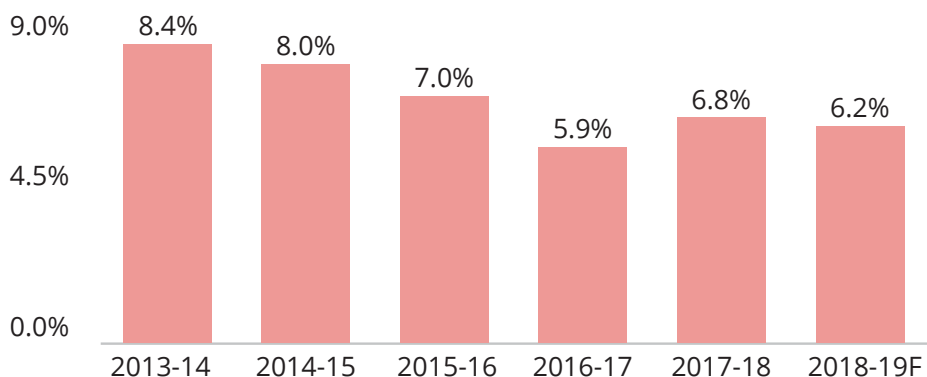
### GDP growth of the ASEAN Countries in 2017



Real GDP growth (Source: Asian Development Bank Key Indicators 2018)

After experiencing a 6.8% GDP growth in 2017/18, Myanmar is likely to show a more moderate 6.2% GDP growth in 2018/19 according to World Bank forecasts. The strong growth of agriculture and the sub-service sectors (mainly telecommunications) do not compensate for the slower growth in the manufacturing, construction and transportation sectors.<sup>6</sup>

### Myanmar GDP Growth (Annual%)



Real GDP growth (Source: World Bank's Myanmar Economic Monitor, December 2018)

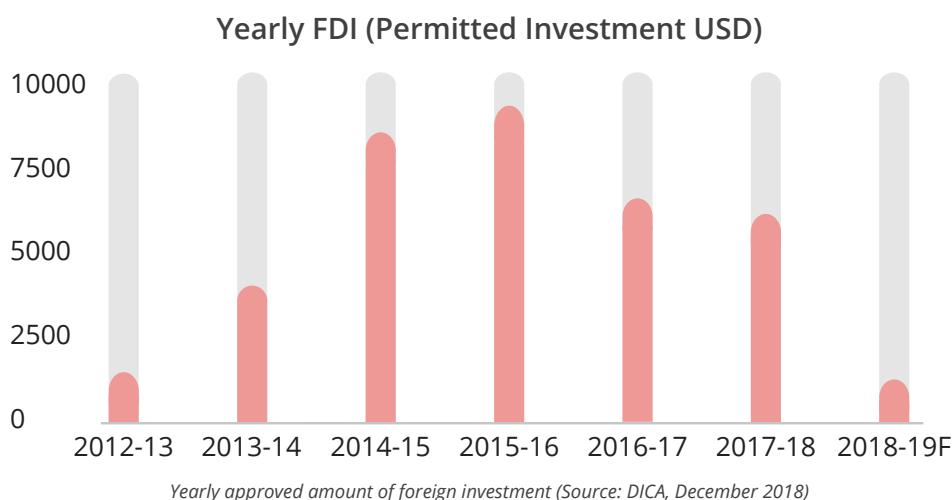
<sup>5</sup> "Myanmar – Gross domestic product in constant prices growth rate," World Data Atlas (2018). Retrieved from: <https://knoema.com/atlas/Myanmar/Real-GDP-growth>

<sup>6</sup> "Foreign trade investment and exchange rate," in Myanmar Economic Monitor, World Bank Group (2018).



Myanmar's macroeconomic environment was impacted by several factors. Firstly, between April and September 2018 the Myanmar Kyat (MMK) encountered an 18% depreciation facing the US Dollar (USD). This period of volatility ended in October with a stabilisation rate of 1550 MMK to 1 USD. The devaluation of the local currency increased the inflation rate that grew from 5.5% in 2017 to 8.8% in 2018. Subsequently, import costs for key products such as fuel, overseas-sourced foodstuffs, electronics and machinery rose. This caused a reduction of the household purchasing power, leading to a consumer behavioural change or more spending on durable items such as telecom services and devices.<sup>7</sup>

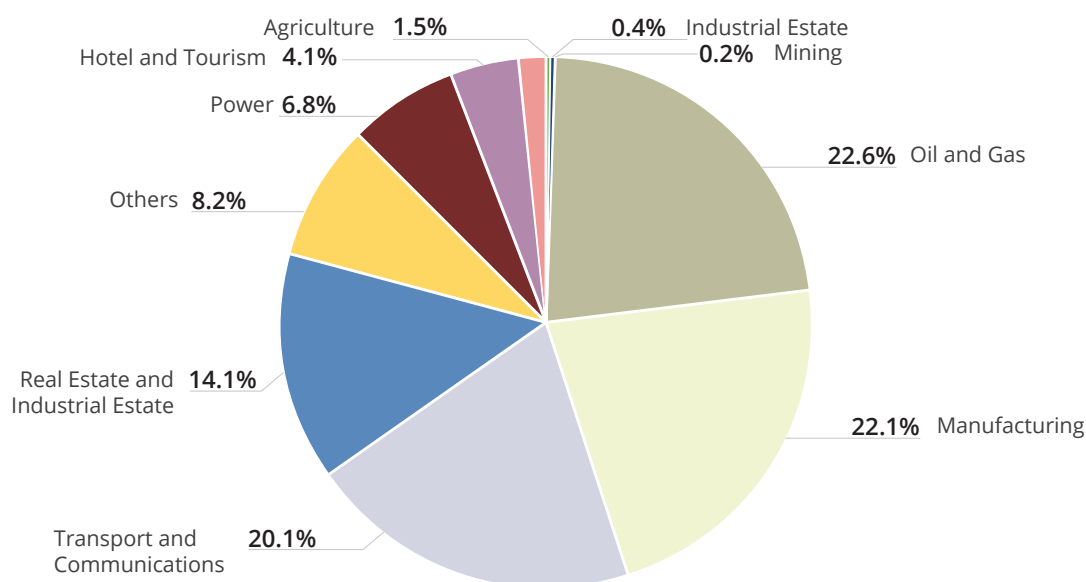
Myanmar's government relies mainly on FDI to finance account deficits. However, the growth of private foreign and domestic investments remained moderate between 2018 and 2019. The growth of FDI flows also decreased in 2018 as the Directorate of Investment and Company Administration (DICA) approved fewer FDI projects in 2017 (a 14% decrease compared to 2016). Future flows will also be impacted by a time lag due to the decrease of FDI commitments. Indeed, last year's devaluation of the Kyat causing increasing costs and less demand is to blame. However, many foreign investors also point out limited skilled labour, an uncertain regulatory environment and a weak reform momentum. Consequently, Myanmar was ranked 171st in the World's Bank Ease of Doing Business Index. Many investors also fear the impact of ongoing ethnic conflict highlighted by the Rakhine crisis leading the EU to threaten to remove Myanmar from its GSP.



To this day, the four largest sectors attracting FDI remain transport and communication, oil and gas, manufacturing and real and industrial estate. They account for approximately 80% of the FDI inflow between 2015 and 2018. Several key communications and oil and gas projects contributed to the large approval totals in 2014-15 and 2015-16.

<sup>7</sup> "Foreign trade investment and exchange rate," in *Myanmar Economic Monitor*, World Bank Group (2018).

## FDI by Sector (2015 - 2018)



Share of permitted FDI by sector (Source: DICA, October 2018)

In 2018 the World Bank's medium-term economic outlook predicted a recovery of the growth rate back to 6.6% by 2020/21.<sup>8</sup> The ongoing implementation of the Myanmar Companies Law and the liberalisation of the service, retail and wholesale sectors have already attracted foreign and domestic investments. However, many challenges remain along the path to creating a stable and attractive business climate. Throughout 2019, the government continues the reform process while enforcing the measures already taken. To create a sustainable and stable business environment, fulfilling national reconciliation is mandatory. This will also require improving human capital through investment in health and education. These government actions will be closely observed by current and future investors.

## SIGNIFICANT ECONOMIC REFORMS

### 2018

#### Liberalisation of the Education Sector

In April 2018, the Ministry of Commerce issued a notification allowing full foreign capital investments in the private education sector. The measure is designed to encourage foreign investors and education providers to respond to Myanmar's increasing demand for quality education.<sup>9</sup>

#### Liberalisation of the Retail and Wholesale Sector

A directive issued in May 2018 by the Ministry of Commerce allows wholly foreign-owned companies and joint ventures between foreign and local entities to carry out retail and wholesale businesses. Previously, these could only be operated by local companies and joint ventures and covered only a few selected industries. This reform will grant local consumers better access to technology and quality products. However, some restrictions will remain in order to protect the local small retail trade. Therefore, foreign investments in firms operating mini-markets, convenience stores and small-scale retailers will remain limited.<sup>10</sup>

<sup>8</sup> "Economic outlook and policy developments in Myanmar," *Economic Monitor*, World Bank Group (2018).

<sup>9</sup> "Myanmar Business Guide," PwC (2018). Retrieved from: <https://www.pwc.com/mm/en/publications/assets/myanmar-business-guide.pdf>

<sup>10</sup> "Myanmar opens up for foreign retailers and wholesalers," *Thiha Ko Ko and Chau T.*, May 14, 2018. Retrieved from: <https://www.mmmtimes.com/news/myanmar-opens-foreign-retailers-and-wholesalers.html>

## The Myanmar Credit Bureau Limited

In May 2018, the Central Bank of Myanmar issued a license to the Myanmar Credit Bureau Limited (MCBL). The country's first credit bureau was created as a joint venture with a Singaporean credit bureau. The MCBL's primary task is to collect information on borrowers in order to establish their debt profile for the benefit of lenders. This process will help the latter improve their risk assessment procedures by allowing them to better evaluate the credit worthiness of borrowers. Thanks to the credit bureau, small and medium enterprises (SMEs) without collateral will also be able to obtain financial services.<sup>11</sup>

## Liberalisation of the Service Sector

In 2018, the delivery and warehousing sectors were opened to foreign investors following the rapid development of e-commerce in the region. Seven express foreign and domestic delivery providers were granted permission to execute postal and parcel express delivery on a domestic and international scale. In June 2018, Myanmar's largest warehouse service provider, fully owned by a Japanese company, was launched in the Thilawa SEZ. The firm has already invested in the construction of a warehouse to support its supply chains.

## The Myanmar Sustainable Development Plan

In August 2018, the Ministry of Planning and Finance released the Myanmar Sustainable Development Plan (MSDP). The initiative is designed to connect and align the country's policies and institutions in order to find ways to commonly attain economic growth. This plan will be undertaken by targeting five priorities: the achievement of the national peace and reconciliation process; the pursuit of economic stability; the development of the private sector and the creation of new jobs; the improvement of the access to education and healthcare, and various projects to oversee natural resource management and guarantee environmental protection.

## The Myanmar Companies Law

The Myanmar Companies Law was put into effect in August 2018, replacing the 1914 Companies Act. This new law features a wide range of regulations and strongly contributes to opening the country up to foreign investors. One of its most important reforms allows foreign entities and individuals up to 35% ownership in local companies.

## Myanmar Companies Online (MyCO)

In August 2018, DICA launched MyCO, an online registration platform. It is required under the new Companies Law that all 50,000 local and 7,000 foreign companies<sup>12</sup> listed in Myanmar re-register via the website or by paper form. This process must be achieved before the end of 2019. Unlike traditional paperwork, online registration is free and always accessible. In the long term, the use of MyCO will eventually phase out the necessity to manually re-register when a company's license expires. This system also makes general information, such as the type of company and its registration date, publicly accessible.

## The Myanmar Investment Promotion Plan

In October 2018, the Myanmar Investment Commission (MIC) launched the Myanmar Investment Promotion Plan (MIPP). This will enable the country to attract over \$200 billion in investments from responsible and quality businesses during the next 20 years. By 2030 this project aims to make Myanmar a middle-income country by establishing fair and transparent investment systems. During the Invest Myanmar Summit 2019, the State Counsellor declared the implementation of the MIPP as one of the Government's top priorities. One of the first steps of this plan is the establishment of the Land Bank to resolve land usage matters by locating sites available for industrial activity and focusing on their development.

<sup>11</sup> "Central Bank issues license to Myanmar Credit Bureau," *Thiha Ko Ko, Myanmar Times*, May 22, 2018. Retrieved from: <https://www.mmmtimes.com/news/central-bank-issues-license-myanmar-credit-bureau.html>

<sup>12</sup> "Over 15,000 Companies have yet to register," *Zin Thu Tun, Myanmar Business Today*, January 25, 2019. Retrieved from: <https://www.mmbiztoday.com/articles/over-15000-companies-have-yet-re-register-through-online-registration-system>

## The Project Bank

In November 2018, the President's Office issued a notification regarding the establishment of the Project Bank by the Ministry of Planning and Finance. It is a centralised and publicly accessible database of key projects that will help the effective implementation of the MSDP's 251 strategic action plan points. It will also align the development objectives engaged by various policies and institutions, and establish a framework for public-private partnerships. The Project Bank will give private investors details they need to make informed decisions and to make relevant propositions instead of submitting random initiatives. Each project will be pre-screened by DICA, the Environmental Conservation Department and the relevant ministries in order to identify possible social and environmental issues. However, investors are currently requesting more details, as the effective accomplishment of the project remains the real challenge.<sup>13</sup>

## The Banking Sector

In November 2018, a directive issued by Myanmar's Central Bank allowed 13 overseas licensed banks to lend to domestic businesses in local and foreign currencies.<sup>14</sup> Before this reform, non-local banks were allowed to grant funds only to foreign clients in foreign currency. In February 2019, the Central Bank of Myanmar allowed local and foreign banks to charge up to 16% interest on loans without collateral. This directive will contribute to expanding the financial sector's operational base, as foreign lenders will be able to make larger investments.

## The Ministry of Investment and Foreign Economic Relations

This government entity was established in November 2018 and its mission is to promote Myanmar as an attractive investment destination. It will also act as a unique window for foreign investors undergoing various procedures. This will simplify the investment process by making it more rapid and less money-consuming.<sup>15</sup>

## 2019

## The Insurance Sector

Myanmar records the lowest rate of insurance penetration in the ASEAN region (for reference, life insurance represents 0.1% of GDP).<sup>16</sup> However, the growing national economy comports many opportunities for the foreign firms active in the sector. The national insurance market was once opened exclusively to local and state-owned companies.<sup>17</sup> In January 2019, the Ministry of Planning and Finance issued a statement authorising overseas life and non-life insurers to operate by forming a joint venture with a local firm. Currently only three life-insurance providers have been granted a licence that allows them to operate fully independently.

Various foreign insurers from 14 countries with 31 representative offices in Myanmar were previously waiting for the removal of all the restrictions to the sector. The slow pace of the liberalisation process caused Samsung life insurance to quit the Myanmar market in January 2019. Local firms have been active since they were granted licence to operate six years ago. However, many insurers believe that foreign competition should help the local industry provide better and more fairly priced products and services. The arrival of these companies will also bring the funds necessary to develop the government bond market. Indeed 30% of the capital required to obtain a licence will be used to finance these bonds.

13 P&F Ministry clarifies role of Project Bank in MSDP, Ministry of Planning and Finance (2018). Retrieved from: [https://www.myanmar.gov.mm/en/news-media/news/latest-news/-/asset\\_publisher/idasst354/content/p-f-ministry-clarifies-role-of-project-bank-in-ms-1](https://www.myanmar.gov.mm/en/news-media/news/latest-news/-/asset_publisher/idasst354/content/p-f-ministry-clarifies-role-of-project-bank-in-ms-1)

14 "Banking Sector to strengthen, support economy in 2019," Htin Lynn Aung, Myanmar Times, January 3, 2019. Retrieved from: <https://www.mmtimes.com/news/banking-sector-strengthen-support-economy-2019-experts.html>

15 "Creation of new ministry part of Myanmar's plan to incentivise FDI," Oxford Business Group, Myanmar Times, February 21, 2019. Retrieved from: <https://www.mmtimes.com/news/creation-new-ministry-part-myanmars-plan-incentivise-fdi.html>

16 "Insurance companies in Myanmar prepare for opening of local market," Oxford Business Group, 2018. Retrieved from: <https://oxfordbusinessgroup.com/overview/poised-expansion-insurers-prepare-opening-market>

17 "Insurance Market Liberalization for Foreign Entities in Myanmar," The Republic of the Union of Myanmar Ministry of Planning and Finance (2019). Retrieved from: [https://www.mopf.gov.mm/sites/default/files/upload\\_pdf/2019/01/Announcement%20E\\_0.pdf](https://www.mopf.gov.mm/sites/default/files/upload_pdf/2019/01/Announcement%20E_0.pdf)

## New Rounds of Bidding for Oil and Gas Blocks

In August 2018, the Ministry of Electricity and Energy (MOEE) announced new bidding rounds for 13 offshore and 18 onshore oil and gas blocks. The ministry planned to make the calling for these during the first and second quarters of 2019. This invitation to international tenders originated from the state-owned Myanmar Oil and Gas Enterprise. The previous initiative was launched in 2014. In 2018, there were 53 onshore oil and gas blocks listed in Myanmar, while 25 of them are operated by foreign companies in collaboration with the government. Some 51 offshore blocks were also counted, of which 38 are occupied by overseas companies. The remaining 31 blocks available for extraction are currently targeted by the bid.<sup>18</sup>

## The Consumer Protection Bill

In October 2018, the Ministry of Commerce issued a notification to the 2014 Consumer Protection Law. This amendment aims to guarantee consumer safety by requesting that labels be affixed on determined categories of products available on the local market. It is required that these labels mention the product's name, type, size, quantity and composition, all in the Myanmar language. Any violation will be met by sanctions ranging from six months in prison to a 5 to 200 million Kyats fine. Initially, the changes were meant to be implemented in the six months following the approbation of the law. Consequently, concerns arose among foreign importers due to the logistic and technical challenges it poses and mostly the resulting delay. The supply of various imported goods (such as high-end medicines) would have been jeopardised. Following an extensive lobbying campaign led by the American, British and European Chambers of Commerce the Assembly of the Union approved in February 2019, another amendment to the Consumer Protection Law was made. This new bill will give the companies a one-year provision after the enactment of the law to comply.

## OPPORTUNITIES FOR INVESTORS

Myanmar's wide range of assets continues to attract investors despite various challenges. Indeed, the country needs to improve or develop infrastructures to effectively harness these opportunities and adequately answer its citizens' needs. Nonetheless, European companies can, with their knowhow, help the country achieve sustainable development and generate prosperity.

## Natural Resources and Energy

Myanmar possesses abundant natural gas and fuel resources but this rich resource potential is still underdeveloped due to the lack of infrastructure and exploitation facilities. In 2019, the MOEE announced that 18 onshore and 13 offshore blocks would be opened for bidding. Currently foreign firms are only allowed to operate the downstream market, while upstream production is monopolised by local and state-owned companies. Regarding natural gas, the MOEE has established liquefied natural gas import schemes for the short term. These imports will tackle energy shortages before local gas is available.<sup>19</sup>

Electricity supplies also suffer from the same lack of infrastructure. By 2017, only 37% of the population had access to electricity (this figure drops to 20% in rural areas). Meanwhile 90% of the energy produced by hydroelectric dams built in Myanmar by Chinese and Thai firms are channelled to these two countries.<sup>20</sup> In 2018, the government acknowledged the need to strengthen the national power transmission networks. The National Electrification Plan supports this aim with a projected universal access to energy by 2030 and a new bidding round was announced by the MOEE. By January 2018, notices to proceed were issued for four major generation projects.

18 "Bidding for new oil and gas fields commence next year," Chan Mya Htwe, Myanmar Times. Accessed February 17, 2018. Retrieved from: <https://www.mmtimes.com/news/bidding-new-oil-and-gas-fields-commence-next-year.html>

19 Business Information Centre, Royal Thai Embassy (2018) Myanmar Economy 2018. Retrieved from: <http://www.thaibizmyanmar.com/docs/Non-Paper%20on%20Myanmar%20Economic%20in%202018.pdf>

20 "Myanmar: A Political Economy Analysis," Stokke K., Vakulchuk R., Overland I. (2018) Retrieved from: [https://reliefweb.int/sites/reliefweb.int/files/resources/Myanmar\\_-\\_A\\_Political\\_Economy\\_Analysis\\_-\\_Norwegian\\_Institute\\_of\\_International\\_Affairs\\_2018.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Myanmar_-_A_Political_Economy_Analysis_-_Norwegian_Institute_of_International_Affairs_2018.pdf)

## Strategic Location

Myanmar has a strong export potential due to its location between three large countries and regions: India, China and Southeast Asia. It has the possibility of becoming a regional hub, capable of reaching 40% of the world's population. However, to instigate this asset, large investments are required to develop the land routes and port infrastructure.

## Attractive Labour Market

Of the local population, 75% falls within working age and wages remain a decisive incentive for many companies establishing in Myanmar. This condition is mostly profitable to manufacturing which remains the sector with the highest growth rate in the country. However, most investors still point out a shortage of qualified and skilled labour outside Yangon.

## Growing Consumer Class

Increasing incomes have caused the rise of a new middle class and a growth in private consumption. The latter accounts for 50% of Myanmar's GDP and creates opportunities for investors from the manufacturing and the light industrial sectors. Due to inflation, consumer preferences have shifted towards the purchase of higher quality goods.

## Telecommunications

After the liberalisation of the sector in 2014, the authorities plan to provide inhabitants of urban and rural areas with better access to telecom services. This will require the extension of the fibre-optic cable network and the further installation of telecommunication towers. This infrastructure will support the Sharing Network Scheme,<sup>21</sup> as different operators will have to provide their services via the same cables.

## Improving Infrastructure

To attract investors and create a prosperous economic climate, the government realised the need to address the country's underdeveloped infrastructure. This will require extensive international investment and technical expertise.

Connectivity and accessibility for the country's residents needs to be increased, as currently there are only 220 km of roads per 1,000 km. In order to develop rural, urban and regional transport networks, Myanmar transport infrastructure requires new roads, bridges, waterways and an improved railway network. Projects have been submitted to renovate the 300 km of highways connecting the outlying areas to Yangon and more globally to the Greater Mekong region.<sup>22</sup> The bidding stage for the Yangon Ring Road and the planned Yangon Central Railway Station project began in 2019.<sup>23</sup> Furthermore, the development of the Myanmar-China Economic Corridor (MCEC), part of China's Belt and Road Initiative, aims to build a motorway linking India to China and cross several other countries in the region.<sup>24</sup>

<sup>21</sup> "Building an inclusive, integrated and connected Myanmar," Myanmar Infrastructure Summit (2018). Retrieved from: <http://www.myanmarinfrastructuresummit.com/>

<sup>22</sup> (Same as Reference 19)

<sup>23</sup> "Eight years needed to build Yangon railway station project," Chau, T., Myanmar Times, February 21, 2018. Retrieved from: <https://www.mmtimes.com/news/eight-years-needed-build-yangon-railway-station-project.html>

<sup>24</sup> "Myanmar is set to embrace Xi's Belt and Road Initiative," Williams, C. (2019). Retrieved from: <https://globalriskinsights.com/2019/01/myanmar-set-embrace-xis-belt-road-initiative/>

The government is presently preparing the development of new industrial centres. Public-private partnerships regarding projects for new industrial and logistic hubs are actively promoted while the Labour Law awaits future reforms<sup>25</sup> that will attract new investors. The new Construction Industry Development Law is also being prepared.<sup>26</sup> However special economic zones have already been constructed to encourage investments and increase exports. The latest to date is the Kyaukpyu deep-sea port (in Rakhine State), which is currently under construction and is one of the MCEC projects. The latter also includes the construction of the Kyaukpyu-Kunming high-speed railway, natural gas pipelines and a transportation hub in Dawei.<sup>27</sup>

In January 2019, the Ministry of Commerce confirmed the establishment of four mega projects<sup>28</sup> including the Myopa Industrial Park City in Mandalay Region, which has the highest value in the Project Data Bank. After completion, it will create over 33,700 jobs across various sectors such as in infrastructure, food and wood processing and banking and finance. Two other projects will be located in Yangon Region and will be known as the New Yangon City and the Yangon Smart District located 13 km from the capital's central business district. In Hlegu, a Korean company and the Department of Housing Development are cooperating to build the Eco Green City. The project should be completed by 2023 and consists of low-cost housing, a transportation terminal and shopping malls.

25 MCRB Welcomes Progress on Labour Law Reform, Myanmar Centre for Responsible Business (2018). Retrieved from: <https://www.myanmar-responsiblebusiness.org/news/labour-law-reform.html>

26 "Draft of Construction Industry Development Board completed," Soe Min Htike, Eleven Media, December 17, 2018. Retrieved from: <https://elevenmyanmar.com/news/draft-of-construction-industry-development-board-law-completed>

27 "Myanmar scales back Chinese-backed port project over debt fears," Reuters, August 2, 2018. Retrieved from: <https://www.theguardian.com/world/2018/aug/02/myanmar-scales-back-chinese-backed-port-project-over-debt-fears>

28 Ko, T. K. (2018) Ministry of Construction commits to four mega projects in 2018 (Online). <https://www.mmtimes.com/news/ministry-construction-commits-four-mega-projects-2018.html>

2018 POLICY RESPONSES





## Agrobusiness

### 1. Complete the process of revising the National Food Law.

#### PARTIALLY TACKLED

The Food and Drug Administration (FDA) department has been drafting a new National Food Law to replace the outdated 1997 National Food Law, and this draft is to be proposed to the Cabinet and subsequently tabled at the Parliament. We acknowledge the effort of the FDA and hope the new National Food Law would be adopted without any delay.

### 2. Enforce the finalisation of GAP (Good Agricultural Practices) guidelines, tied to domestically recognised standards.

#### SUBSTANTIALLY TACKLED

The Ministry of Agriculture, Livestock and Irrigation had finalised GAP guidelines and has been encouraging farmers to use its GAP protocol in cultivating staple and export crops since 2017. We are very pleased to learn that the GAP programme conducted by the ministry at Inle Lake, Shan State, received good feedback from the farmers.<sup>1</sup> At the same time, we strongly encourage the ministry to extend the project to other parts of the country.

### 3. Define clear responsibilities for local, regional and national governments with regard to land acquisition issues.

#### PARTIALLY TACKLED

The Ministry of Agriculture, Livestock and Irrigation received funding and technical assistance from the Asian Development Bank under the Climate-Friendly Agribusiness Value Chains Sector Project for contract lifecycle management (CLM). The ministry published the “Land Acquisition and Resettlement Framework” book in March 2018 providing specified mechanisms and procedures for settling land acquisition issues under the resettlement planning and implementation chapter with the details of compensations, entitlements and supports for the affected households. The project will be implemented by the ministry from 2018 to 2023.<sup>2</sup>

### 4. Encourage development of specialised financing programmes for small-scale farmers.

#### PARTIALLY TACKLED

We are pleased to learn that the government has been financing the small-scale farmers in cooperation with regional and international financing bodies. Under the auspice of the Ministry of Planning and Finance, the farmers are being financed through the Myanmar Economic Bank’s Two-Step Loan in cooperation with the Japan International Cooperation Agency (JICA) for the development of the agricultural sector and small and medium-sized enterprise (SME) sector.<sup>3</sup> There is another Two-Step Loan programme under the auspice of the Ministry of Agriculture, Livestock and Irrigation financing the farmers in terms of loans in cooperation with the World Bank and JICA through (Myanmar Agricultural Development Bank) MADB.<sup>4</sup> While appreciating these government efforts, we highlight the importance of paying careful attention to the farmers’ feedback in order to improve the effectiveness of the projects.

<sup>1</sup> “Move step by step to Good Agricultural Practices,” *Global New Light of Myanmar*, May 31, 2018. Retrieved from: <http://www.globalnewlightofmyanmar.com/move-step-step-good-agricultural-practices/>

<sup>2</sup> Asian Development Bank, *Myanmar: Climate-Friendly Agribusiness Value Chains Sector Project*, March 2018. Retrieved from: <https://www.adb.org/projects/48409-003/main>

<sup>3</sup> “Roundtable discussions on financing for the development of agricultural sector and SME sector in Myanmar,” *Global New Light of Myanmar*, October 22, 2018. Retrieved from <http://www.globalnewlightofmyanmar.com/roundtable-discussions-on-financing-for-the-development-of-agricultural-sector-and-smes-sector-in-myanmar/>

<sup>4</sup> Myanmar Agricultural Development Bank, *Two-Step Loan Project for Agriculture and Rural Development (Technical Assistance for ODA Loan) Project Completion Report*, March 2018.

## 5.Organise a conference with key stakeholders on how to improve access to finance for Myanmar farmers.

### PARTIALLY TACKLED

The government has not organised a conference of this kind. Yet we welcome the effort of the Ministry of Agriculture, Livestock and Irrigation that organised a Union level discussion in May 2018 for enhancing rural livelihoods and incomes project, inviting all respective associations.<sup>5</sup>

## 6.Establish a special committee which is in charge of cross-border trade issues to implement a controlled checking system at the borders together with applying a proper tax system.

### PARTIALLY TACKLED

Concerning illegal trade at the borders, prevention policies are being drafted and arrangements for implementation are being made in every state and region, according to the Minister of Finance and Planning. Under the instruction of the Union government, nine state and regional governments have started cracking down on illegal trade by forming special task forces.<sup>6</sup> The special task forces will curb illegal trade and conduct surprise checks with mobile teams at some main gates. Those special mobile teams will start operating in Kachin, Shan, Kayin and Mon states, and Tanintharyi Region calling for support from the private sector in the move. However, a new tax system has not been established yet.

## Anti-Illicit Trade

## 7.Improving surveillance and control of the main entry points by assessing illicit trade's scale and overall impact; increasing manpower at ports and borders; and further enhancing government-to-government cooperation.

### PARTIALLY TACKLED

In his address at the 21<sup>st</sup> regular meeting held on Nov. 19, 2018 between the Private Sector Development Committee (PSDC) and Myanmar entrepreneurs held at the Union of Myanmar Federation of Chamber of Commerce and Industry (UMFCCI), Vice President U Myint Swe mentioned that illegal imports through the border were threatening the existence of SMEs and the government had formed illegal trade control and prevention groups in nine regions and states where arrests have been made, but we are yet to see the impact of these groups.<sup>7</sup>

## 8.Developing enforcement legislation regarding illicit trade throughout the entire supply chain to align with international standards by establishing an inter-governmental enforcement committee whilst defining a coordinated mandate amongst law enforcement agencies.

### PARTIALLY TACKLED

The government had begun an organised crack-down on illegal border trade in Kachin, Shan, Mon, Kayah and Kayin states which border China and Thailand, after orders were given to the relevant ministries to establish special task forces for the purpose, Vice President U Myint Swe said at the UMFCCI on Aug. 24, 2018.<sup>8</sup> The government also announced through the state-owned media MRTV on Jan. 23, 2019 that it would take actions against special goods such as cigarettes, cheroots, wine and alcoholic drinks, which are not sealed with "Tax Paid" stickers. These illicit goods categories shall be seized by the authority, and the distributor shall be fined the equal value of the goods if they are imported ones. EuroCham Myanmar very much welcomes this move and we also urge the related authorities to extend such measures to all other items of illicit goods because a secure and safe way to report illicit trade for enforcement to follow up on has yet to be established.

<sup>5</sup> Myanmar Agricultural Development Bank, *Two-Step Loan Project for Agriculture and Rural Development (Technical Assistance for ODA Loan) Project Completion Report*, March 2018.

<sup>6</sup> The Ministry of Agriculture, Livestock and Irrigation, *a Union level discussion with all respective associations for enhancing rural livelihoods and incomes project*, May 3, 2018.

<sup>7</sup> President Office of Myanmar. Retrieved from <http://www.president-office.gov.mm/en/?q=briefing-room/news/2018/11/19/id-9133>

<sup>8</sup> "Govt calls for crack-down on illegal border trading," *Myanmar Times*, August 29, 2018. Retrieved from <https://www.mmtimes.com/news/govt-calls-crack-down-illegal-border-trading.html>

**9.Reducing illicit trade activities by establishing clear penalties such as the withdrawal of business licences or the prosecution of offenders, whilst at the same time raising awareness on illicit trade and its criminal consequences.**

#### PARTIALLY TACKLED

The Pyidaungsu Hluttaw (Assembly of the Union) approved the Consumer Protection Law in March 2019. The law requires a product's name, type, size, quantity and side effects to be included on all labels in the Myanmar language. Violations can be punished with imprisonment of six months to two years, a fine of 5 million kyats to 200 million kyats, or both. Although it is not an action aiming directly to crack down on illicit trade, we welcome this legislation since it could potentially become a powerful tool to take control of the import of illicit goods through borders. At the same time, we would like to highlight the importance of the government's strong enforcement of the regulation and its strengthened effort to promote public awareness on illicit trade and its consequences.

### Automotive

**10.Reduce the Road Registration Tax by at least 10% for vehicles below 2,000 cc.**

- (1)Reduce the Road Registration Tax for vehicles below 2,000 cc.
- (2)We recommend that the tax system on vehicles be based on emissions, rather than cc once the fuel quality is improved.

#### NO PROGRESS

**11.Transfer of ownership procedures and open Road Transport Administration Department (RTAD) offices in each capital city.**

- (1)One-stop service for new vehicle registration from the Government Registration Department.
- (2)Simplify the transfer of ownership.
- (3)Reduce the ownership transfer fee in order to encourage the new owner to re-register under his/her own name.
- (4)Transfer of ownership handled by another government department.
- (5)Clear information, together with the respective documents, available on the government website.
- (6)Open at least one or two RTAD offices in each state/region capital.
- (7)No need for new vehicles to be driven to the RTAD upon registration. This excludes used cars or re-registrations.

#### PARTIALLY TACKLED

During our discussion with the Customs Department in 2018, we learned that the Customs Department and RTAD had been discussing possibilities of one-stop service facilities.

**12.Create a clear distinction between completely built-up (CBU), semi-knocked down (SKD) and completely knocked down (CKD) operations, and foster a better-balanced system for taxation across those categories.**

- (1)Clearly defined policies and regulations between CBU, SKD and CKD.
- (2)More balanced taxation between CBU, SKD and CKD.
- (3)Limitation on SKD volume and registration (e.g. Yangon licence registration).
- (4)Promote free economy and fair competition.

#### NO PROGRESS

**13. In order to bring Myanmar into line with the best established international practices, we encourage a move to allow the storage of licenced items, not just non-licenced items.**

#### PARTIALLY TACKLED

The official procedure for bonded warehouses outside special economic zones (SEZs) has been drafted by the Customs Department although it is not clear if the draft will tackle the issue of licenced items. Numerous logistics companies have applied for bonded warehouses operation licences. So far only one company has received the licence. We welcome the move by the Ministry of Commerce (MOC) to initiate dialogue with Thilawa SEZ about licensed items to be stored in bond.

**14. Since it is not possible or practical to impose a requirement to upgrade safety equipment on all old vehicles, yearly checks of basic safety measures should be carried out by authorised workshops.**

- (1) To limit the number of old cars and carry out detailed vehicle inspection checks (tyres and wheels, lights, wipers and windscreen, brakes and eventual oil leaking) required yearly.
- (2) To allow certified and/or authorised workshops to check and issue the certificate.
- (3) Further encourage education programmes about road and vehicle safety, starting from childhood.
- (4) Support local activity programmes and/or township campaigns.

#### PARTIALLY TACKLED

According to the draft of the Yangon Vehicle Quote Certificate (YVQC), old vehicles are not allowed to be registered in Yangon.

**15. Roadmap for the implementation of Euro 4 and Euro 5, while increasing fuel quality.**

- (1) Clear roadmap on the implementation of Euro 4 and Euro 5.
- (2) Consistent quality check over fuel sold in retail distributors.
- (3) Improvements of fuel standards.

#### PARTIALLY TACKLED

The government has committed to implementing Euro 4 by 2022. The Ministry of Energy and Electricity (MOEE) committed itself in August 2018 to check the quality of fuel and lubricating oils every time they are imported. Starting from September 2018, distribution of fuel will only be allowed if they meet the set quality requirements.<sup>9</sup>

**16. Helmets, considering their importance, should not be subjected to taxation. International standards should be introduced as a matter of priority.**

- (1) No taxation on any motorcycle helmets.
- (2) Awareness campaigns to promote the use of helmets for road safety.
- (3) Strict law enforcement on helmet usage nationwide.
- (4) To set helmet standards to meet Economic Commission for Europe (ECE) R22-05 certification for Myanmar and allow imports only of those helmets respecting such standard. Indeed, ECE R22-05 is the most common helmet certification internationally and the most-up-to-date, required by over 50 countries worldwide.

#### SUBSTANTIALLY TACKLED

To reduce the number of deaths from traffic accidents in Myanmar, the government announced in January 2019 that it will begin making efforts to ensure that all motorcycle helmets meet international safety standards. Myanmar aims to halve the number of deaths from traffic accidents by 2020. To meet that goal, it has a plan to adopt UN Regulation 22 which sets safety requirements for helmets. After getting approval from the Cabinet, the regulation will be implemented by the Ministry of Transport and Communication (MOTC), and only helmets that meet international standards will be allowed to be imported.<sup>10</sup>

<sup>10</sup> "Govt seeks to raise quality of motorcycle helmets," *Myanmar Times*, January 16, 2019. Retrieved from: <https://www.mmmtimes.com/news/govt-seeks-raise-quality-motorcycle-helmets.html>

## Construction & Infrastructure

**17. Creation of a clear roadmap for the industry and a certification scheme; application and control of adequate measures and institutionalisation of self-regulating practices for companies in an effort to reduce government's burden.**

### PARTIALLY TACKLED

The roadmap for industry development has not been developed yet but EuroCham Myanmar acknowledges reforms introduced by the Yangon City Development Committee (YCDC) in 2018 as important initiatives to further strengthen institutionalisation of responsible construction practices. An information centre on construction permit applications was established by the YCDC in April 2018. Since September 2018, the YCDC has shared through its website [www.ycdc.gov.mm](http://www.ycdc.gov.mm) and MyanTrade's website [www.myantrade.org](http://www.myantrade.org), Standard Operating Procedures (SOP) for construction permit applications which include sample application forms and information on application processes, fees and timeline.<sup>11</sup> The new YCDC regulation in April 2018 requires all construction projects to employ only the engineers accredited by the Myanmar Architect Council (MAC) and the Myanmar Engineering Council (MEngC).

**18. Creation a national institute for certification of materials and implementation of rules and regulations.**

### PARTIALLY TACKLED

The Construction Industry Development Board Law was drafted in 2018 to establish a Construction Industry Development Board (CIDB) which will set standards for the construction industry, according to the Deputy Minister of Construction U Kyaw Lin, and the law will come into effect after the Union Parliament has approved it. The law will require the formation of township inspection teams to inspect construction management, safety, quality control, fire protection, etc.<sup>12</sup> Standardised regulations and specifications, such as the allowable height or whether a mezzanine floor can be built, will be set for the industry. This will also discourage developers from cutting corners to reduce costs and ensure projects are completed on time.

**19. Introducing safety and environmental measures including environmental impact analysis (EIA) in the permit stage, checking the quality of materials used and harmonising green building codes with international standards.**

### PARTIALLY TACKLED

According to the construction ministry, the Construction Industry Development Board Law will make sure that construction businesses across the country comply with international standards on safety, health and the environment. An official construction management manual setting norms for the industry will also be issued following the enactment of the law which is to be tabled at Parliament soon.<sup>13</sup>

**20. Encouraging the involvement of the public and private businesses in saving historical buildings by means of education programmes, tax incentives and establishing a government board dedicated to the preservation of architectural, structural and cultural heritage.**

### PARTIALLY TACKLED

A government board of this kind has not been established yet. However, the Myanmar Investment Commission (MIC) has asked Yangon Heritage Trust (YHT) to draft a proposed set of investment principles for places of heritage significance in Yangon. These principles would be considered by the MIC when they review an application which affects a heritage place. The principles are designed to ensure that Yangon's unique urban heritage is given proper consideration and is conserved during development projects.<sup>14</sup>

<sup>11</sup> Yangon City Development Committee. <https://www.ycdc.gov.mm/download.php?pdffile=Substract>

<sup>12</sup> Eleven Media. Retrieved from <https://news-eleven.com/article/62962>

<sup>13</sup> "Construction Board to be formed under New Law," ASEAN LIP, Aug. 22, 2018. Retrieved from <https://www.aseanlip.com/myanmar/construction/news/construction-board-to-be-formed-under-new-law/AL43302>

<sup>14</sup> Yangon Heritage Trust, Retrieved from <http://www.yangonheritagetrust.org/urban-heritage-planning>

**21. Developing a safety training scheme, followed by the foundation of a safety training institute.****NO PROGRESS****Digital Innovation****22. Enact a Digital Law without delay, alongside laws on data protection, digital privacy, intellectual property rights and e-commerce, protecting the rights of businesses and citizens.****PARTIALLY TACKLED**

The government announced in February 2019 its plans for open consultation on a cybersecurity policy and legislative framework to address the related issues of e-government, e-commerce and cybersecurity engaging with all stakeholders, including civil society, in the consultation process to make the forthcoming framework and law effective and rights-respecting.<sup>15</sup> Although the government has opened the call for consultation for the cybersecurity policy and legislative framework, it is important not to be stuck at the process of drafting and law-making.

**23. Develop digital ecosystems and infrastructure with support for local digital startups, incubation and financing platforms.****PARTIALLY TACKLED**

The Directorate of Industrial Supervision and Inspection of the Ministry of Industry launched the online registration system for industrial enterprises of any kind which use any type of power which is three horse-power or above and/or manpower of ten or more wage-earning workers, in January 2019 after testing the system for ten months.<sup>16</sup>

The private sector can register their company, search and access details of companies all over Myanmar, purchase official company documents and extracts online via Myanmar Companies Online (MyCO) since August 2018.<sup>17</sup>

The Digital Economy Development Committee (DEDC) published on Feb 26, 2019, the Myanmar Digital Economy Roadmap. The document seeks to enable digital transformation, digital government, digital trade and innovation to develop a digital economy across all sectors for inclusive and sustainable socio-economic development.

The Mandalay regional government launched a data centre on Jan 24, 2019, as part of its effort to implement an e-government system to observe the government's performance and access government services more easily and quickly.<sup>18</sup>

**24. Establish a digital innovation centre and consider the potential introduction of a digital ID.****PARTIALLY TACKLED**

The Yangon regional government in conjunction with local partners has established Seedspace Yangon, a startup hub and co-working space for technical entrepreneurs as part of the Yangon Innovation Centre. No progress has been realised in the development of a digital ID system.

<sup>15</sup> "3rd Digital Rights Forum Calls for Better Regulated Freer Safer Online Space," *Free Expression Myanmar*, January 22, 2019. Retrieved from: <http://freeexpressionmyanmar.org/3rd-digital-rights-forum-calls-for-better-regulated-freer-safer-online-space/>

<sup>16</sup> The Directorate of Industrial Supervision and Inspection, *Knowledge for Business Owner*, January 2019, Retrieved from: <http://disi.gov.mm/index.php/qna/ISRS.html>, <http://7daydaily.com/story/147233>

<sup>17</sup> Directorate of Investment and Company Administration, *Welcome to Myanmar Companies Online (MyCO)*, Retrieved from: <https://wwwmyco.dica.gov.mm/>

<sup>18</sup> "Mandalay moves closer to e-government with data centre," *The Myanmar Times*, 28 Jan 2019. Retrieved from: <https://www.mmtimes.com/news/mandalay-moves-closer-e-government-data-centre.html>

**25.Design a tax system that encourages the use and uptake of data services, including e-commerce.****PARTIALLY TACKLED**

The Pyidaungsu Hluttaw (Assembly of the Union) ratified in November 2018 the Association of Southeast Asian Nations (ASEAN) Agreement on E-commerce. The agreement seeks to facilitate cross-border e-commerce transactions and create an environment of trust and confidence in the use of e-commerce. The new deal encourages cooperation among ASEAN member states to help businesses, especially small and medium-sized enterprises, overcome obstacles and take advantage of electronic commerce.<sup>19</sup>

The government has included Strategy 2.3 “Increase domestic revenue mobilisation through a fair, efficient and transparent taxation system” under Goal 2 of Pillar 1 of the Myanmar Sustainable Development Plan (MSDP) which was issued in August 2018. Two of its sub-strategies under this are “Expand electronic payment systems throughout the country” and “Implement new information technology systems for registration, processing, accounting, and casework.”

**26.Raise the level of digital literacy among all civil servants, students and citizens.****PARTIALLY TACKLED**

The Lower House of Parliament approved on February 20, 2019, the proposal for adopting a digital literacy framework aimed at speeding up digital literacy in Myanmar.<sup>20</sup>

**Energy****27.Improve coordination and transparency in regulations in order to promote more efficient and effective project implementation.****PARTIALLY TACKLED**

On Oct. 2, 2018, the Ministry of Electricity and Energy (MOEE) published the draft of the “Law Relating to Petroleum Exploration, Drilling and Production” intended for both offshore and onshore activities. The draft includes the permit and licence issues, tender system and process, publicising of the ministry’s selected areas providing transparency to the extractive sector.<sup>21</sup> There are upcoming fresh bidding rounds for offshore and onshore oil and gas blocks during the first and second quarters of 2019<sup>22</sup> and the foreign-owned companies are welcomed and encouraged to coordinate with Myanmar companies aiming for the coordination among private sectors.

Moreover, the draft serves as a way of organising the sector, providing regulation (e.g both the private oil and gas companies of Myanmar- or foreign-owned may get involved only in cooperation with Myanma Oil and Gas Enterprise (MOGE)), the rights and obligations of a developer together with penalties, reserve fund for rehabilitation and environmental conservation, and a training fund for human resources development. In conclusion, EuroCham Myanmar is positive about the forward steps taken in terms of cooperation with other ministries and the recent improvements in EIA approvals.

**28.Formulate an updated and clear upstream legal framework together with streamlined environmental and social impact assessment (ESIA) approvals.****PARTIALLY TACKLED**

The bill on petroleum exploration, drilling, and production covers the upstream activities as well, which have been governed by the terms of the production-sharing contracts (PSCs). The draft legalises the practice of the MOGE, formalising the need to conduct tenders prior to awarding blocks. For the sake of the prevention of overlapping regulations, it is stated that the companies that have already executed a PSC will not be subject to the law.<sup>23</sup>

<sup>19</sup> “Myanmar parliament ratifies ASEAN e-commerce agreement,” *Xinhua*, November 16, 2018. Retrieved from: [http://www.xinhuanet.com/english/2018-11/16/c\\_137611143.htm](http://www.xinhuanet.com/english/2018-11/16/c_137611143.htm)

<sup>20</sup> “Lower House passes proposal for adopting digital literacy framework,” *Eleven Media*, February 21, 2019. Retrieved from: <https://elevenmyanmar.com/news/lower-house-passes-proposal-for-adopting-digital-literacy-framework>

<sup>21</sup> *Analysis of the Draft of the Law Relating to Petroleum Exploration, Drilling and Production*, Lincoln Legal Services (Myanmar) Limited, October 22 2018, Retrieved from: <https://www.lincolnmyanmar.com/wp-content/uploads/2018/10/Analysis-of-the-Draft-of-the-Law-Relating-to-Petroleum-Exploration-Drilling-and-Production.pdf>



Though the draft law serves as the legal framework, there is no visible activity of making the draft law with streamline ESIA approvals. The recently published Draft of Petroleum Law indicates the wish of the MOEE to address the matter, but the published draft has unfortunately introduced more uncertainties to an already unclear scenario. No engagement with the oil and gas upstream sector was promoted by MOEE during the drafting of the bill. Only recently the upstream operators have been able to engage with authorities and this will hopefully help to improve the bill for the benefit of all stakeholders. From EuroCham Myanmar, we regret the missed opportunity to mention the EIA process in the draft in which streamline regulations and related processes are still a high priority.

## 29. Increase focus on power and gas infrastructure solutions to address short and long-term objectives.

### PARTIALLY TACKLED

EuroCham Myanmar acknowledges the work of the government in tackling the problem of being under-electrified by allowing a number of liquefied natural gas (LNG), hydro and transportation infrastructure projects. On Jan. 30, 2018, the MOEE approved four large gas/LNG power projects. They are ongoing projects which include the Total & Siemens consortium developing a 1,230 MW gas-fired power plant at Kanbauk in Tanintharyi Region with a 48-month timeline; the Zhefu Group, Gunvor Group, and Supreme Group of Companies developing a 1,390 MW gas-fired power plant, an LNG-to-power project at Milaunggyaing in Ayeyarwady Region with a 42-month timeline; TTCL developing a 356 MW gas-fired power plant, LNG-to-power project at Ahlone in Yangon Region with a 28-month timeline; and Sinohydro and Supreme Trading developing a 135 MW gas-to-power project at Kyaukphyo with a 28-month timeline.<sup>24</sup> Moreover, the government approved an EDF 600 MW hydropower project at Shweli, and Shwe Taung/Kansai/Andritz below 200 MW hydropower project at Deedoke, Mandalay Region.<sup>25</sup> The announcement of the four LNG projects has been positive, but the regulatory, fiscal, and fee-collecting frameworks require a much larger engagement in order to see real progress on the LNG-to-power. Finally, energy generation requires a major upgrade of grid infrastructure in size, modernising, and modern control, particularly if renewable energies are further integrated. We believe that the potential domestic gas opportunities are undermined without any general gas pipeline plan.

## 30. Address the need for tariff reform and government support for more cost-competitive energy prices.

### NO PROGRESS

According to the MOEE, the government is once again discussing plans to raise electricity charges to partially offset widening losses from subsidising electricity tariffs. While no timeframe was given on exactly when this would happen, the deputy permanent secretary of the MOEE U Soe Myint noted that electricity prices would be hiked only for those among the population who would be able to afford it.<sup>26</sup>

There was an increase in electricity charges to generate and distribute water for businesses in Nay Pyi Taw from 100 kyats per unit to 220 kyats per unit, announced by the Naypyitaw City Development Committee on Jan. 15, 2019.<sup>27</sup> Besides the latter, this issue has not been tackled thoroughly. The tariff reform shall be socially viable, transparent and in a range that no subsidies are no longer required and contingencies for investment in new infrastructure are build up. At EuroCham Myanmar, we advocate for cost-competitive energy prices which will be sustainably beneficial for the country's development.

23 "Parliament to pass new law affecting upstream oil & gas sector," VDB / Loi, October 31, 2018. Retrieved from: <http://www.vdb-loi.com/mlw/parliament-to-pass-new-law-affecting-upstream-oil-gas-sector/>

24 "Myanmar somewhat unexpectedly signs 4 major LNG gas to power projects," VDB / Loi, January 31, 2018. Retrieved from : <http://www.vdb-loi.com/mlw/myanmar-somewhat-unexpectedly-signs-4-major-lng-gas-to-power-projects/>

25 "Energy and Infrastructure Market: Our Latest Insights," VDB / Loi, Oct. 31, 2018. Retrieved from: <http://www.vdb-loi.com/wp-content/uploads/2018/10/Energy-and-Infrastructure-Market-Our-Latest-Insights.pdf>

26 "Govt still mulling hike in electricity tariffs, explores solar options," Myanmar Times, August 13, 2018. Retrieved from: <https://www.mmtimes.com/news/govt-still-mulling-hike-electricity-tariffs-explores-solar-options.html>

27 Eleven Media Group, Jan. 16, 2019, Retrieved from: <https://news-eleven.com/article/71419>



### 31. Ramp up investment in renewable energy; develop a dedicated regulatory framework.

#### PARTIALLY TACKLED

The MOEE is aiming to generate 8% of the country's electricity through renewable sources of energy by 2021 with the improvement of up to 12% by 2025, by prioritising the development of solar energy, followed by wind energy. The solar power plant in Minu, Magway Region, will be finished in February 2019. Meanwhile, two more solar plants construction in Myingyan and Wundwin in Mandalay Region and a wind power project in Chaung Thar, Irrawaddy Region will be started. Furthermore, EuroCham Myanmar appreciates the MOEE's efforts in drafting a renewable energy law since September 2018 to develop the sector.

Renewables are a welcome part of the future energy mix. They bring independence from only one fuel source, possibilities for off-grid solutions, and flexibility in tariff structures. EuroCham Myanmar wants to advocate for the required framework to ensure an inflow of foreign direct investment (FDI) and proper Purchasing Power Parity (PPP) business models to finance this infrastructure (including grid modernisation).

## GARMENT

### 32. Labour Law Reform

#### PARTIALLY TACKLED

The government is progressing its labour law reform efforts in cooperation with social partners, the International Labour Organisation (ILO) and the governments of Denmark, the EU, Japan and the US, as evidenced by the holding of the Labour Rights Stakeholder Forum since 2015. The Third Labour Rights Stakeholder Forum, held on Jan. 17-18, 2018, saw the adoption of a five-point roadmap on labour law reform to set the agenda for discussions between employers, trade unions and the government.<sup>28</sup> Besides, the government had identified a number of immediate priorities for labour law reform, which it pursues in consultation with workers' and employers' organisations. Furthermore, the amendment to the Labour Dispute Settlement Law is currently being discussed at the Parliament. The ILO, together with the Myanmar Rule of Law Centres (ROLC) and the government have organised community forums on how to prevent and resolve labour disputes. While we recognise these efforts, it is also important to acknowledge that some important challenges are yet to be resolved. These challenges are highlighted in the Garment section.

### 33. Purchase of locally produced raw material should be exempt from tax in the same way as imported fabrics.

#### PARTIALLY TACKLED

We are pleased to note that the various cottons and silk cocoons shall not be levied commercial tax according to the Union Tax Law 2018 issued on March 30, 2018.<sup>29</sup> However, the problem has not been fully tackled since only a few raw materials benefit from the law.

### 34. Foreign companies should be permitted to import and sell fabrics in order to create more flexibility, make use of external sourcing expertise and make use of the benefits of purchasing larger volumes for the development of the sector.

#### PARTIALLY TACKLED

According to the Notification No. 25/2018 of the Ministry of Commerce issued on May 9, 2018, the retail/wholesale companies 100% foreign owned or in cooperation with locals, are allowed to sell products by applying for permission with the necessary documents.<sup>30</sup>

<sup>28</sup> "Preventing and solving labour disputes through community forums," *The International Labour Organization*, July 29, 2018. Retrieved from: [https://www.ilo.org/yanگون/press/WCMS\\_635706/lang-en/index.htm](https://www.ilo.org/yanگون/press/WCMS_635706/lang-en/index.htm)

<sup>29</sup> *Lincoln Legal Services (Myanmar), Union Tax Law 2018*. Retrieved from: <https://www.lincolnmyanmar.com/wp-content/uploads/2018/04/Union-Tax-Law-2018-.pdf>

<sup>30</sup> *Ministry of Commerce, Notifications, May 9, 2018*. Retrieved from: [https://www.commerce.gov.mm/sites/default/files/documents/2018/05/25-2018\(Whole%20Sale%20&%20Retail\).pdf](https://www.commerce.gov.mm/sites/default/files/documents/2018/05/25-2018(Whole%20Sale%20&%20Retail).pdf)

### 35. Create a dialogue around the localisation of the textiles industry and the actions required to ensure negative impacts are mitigated.

#### PARTIALLY TACKLED

Strategies to develop fundamental facilities for populations and industries are mentioned in the MSDP which was launched by the government in August 2018. These strategies include ones such as “Enable safe and equitable access to water and sanitation in ways that ensure environmental sustainability,” “Provide affordable and reliable energy to populations and industries via an appropriate energy generation mix,” “Improve land governance and sustainable management of resource-based industries ensuring our natural resources dividend benefits all our people,” and “Manage cities, towns, historical and cultural centres efficiently and sustainably.”

### 36. Need for relevant ministries together with manufacturers to set a long-term plan for skill enhancement and infrastructure development of the garment industry.

#### PARTIALLY TACKLED

Apart from the work with the ILO, the Myanmar Garment Manufacturers Association (MGMA) in cooperation with the government launched a training-of-trainers (TOT) programme for sewing operators and a technical training centre at Insein Government Technical Institute on Sept. 17, 2018.<sup>31</sup>

The ILO’s Garment Industry Project (ILO-GIP) has put in place training programmes for Myanmar apparel manufacturers, ranging from sexual and reproductive health to social dialogue, occupational health and safety and productivity giving recommendations and training on how to optimise operations, improve the know-how of all workers and ultimately boost productivity.<sup>32</sup>

The Ministry of Labour, Immigration and Population in cooperation with the Embassy of Denmark launched the Garment Occupational Safety and Health Guidebook on April 28, 2018.<sup>33</sup>

As part of the five-point Road Map for Labour Market Reform, resulting from the Third Labour Rights Stakeholder Forum, targeting tripartite actors in the labour market reform and industrial relations in the garment sector, the ILO kicked off the Myanmar Industrial Relations Lab (MIR Lab) on July 23, 2018 in Yangon. It includes representatives from the government, workers’ and employers’ organisations and its five industrial relations training modules will be delivered in Myanmar over the next 12 to 15 months expecting a more permanent industrial relations training mechanism to promote decent work practices in Myanmar.<sup>34</sup>

### 37. Further support the enforcement of the Environmental Conservation Law and make the implementation of good environmental management plans a priority.

#### PARTIALLY TACKLED

The MSDP has prioritised environmental conservation as a goal of its major pillar “People and Planet.” Strategies of the Pillar’s goal number five includes “Ensure a clean environment together with healthy and functioning ecosystems” and “Increase climate change resilience, reduce exposure to disasters and shocks while protecting livelihoods, and facilitate a shift to a low-carbon growth pathway.”

31 The Myanmar Garment Manufacturers Association, MGMA collaboration with AVE started launching TOT programme of sewing operator & technical training @ GTI, September 24, 2018. Retrieved from: <http://www.myanmargarments.org/2018/09/mgma-collaboration-with-ave-started-launching-tot-program-of-sewing-operator-technical-training-gti/>

32 “Myanmar apparel: ILO project helps factories to improve efficiency and productivity,” The International Labour Organization, December 11, 2018. Retrieved from: [https://www.ilo.org/yangon/press/WCMS\\_650536/lang--en/index.htm](https://www.ilo.org/yangon/press/WCMS_650536/lang--en/index.htm)

33 The Myanmar Garment Manufacturers Association, Garment Occupational Safety and Health Guidebook Launching, May 18, 2018. Retrieved from: <http://www.myanmargarments.org/2018/05/garment-occupational-safety-and-health-guidebook-launching/>

34 “ILO Lab opens up to promote sound industrial relations in the Myanmar garment sector,” The International Labour Organization, July 22, 2018. Retrieved from: [https://www.ilo.org/yangon/press/WCMS\\_635134/lang--en/index.htm](https://www.ilo.org/yangon/press/WCMS_635134/lang--en/index.htm)

## HEALTH

**38.Lifting the importation ban for foreign companies and abolishing No-Objection Certificate (NOC) policies will accelerate business growth and increase access to pharmaceutical products for patients.**

### NO PROGRESS

The EuroCham Health Advisory Group raised the matter with the Anti-Corruption Committee who agreed that the matter needed the attention of the Ministry of Health and Sports (MOHS) in order for it to be resolved. We believe the MOHS has directed the matter to the Myanmar Pharmaceutical & Medical Equipment Entrepreneurs' Association (MPMEEA) who may have de-prioritised the matter. To date, there appears to be little to no movement in resolving this practice.

**39.Moving to an annual national tender that follows a transparent and well-documented points-based system underpinning tender decisions and whereby products can be supplied on demand over the tender period.**

### PARTIALLY TACKLED

We are pleased to note that the Department of Medical Services will introduce several reforms in 2019 on tendering processes. We learned that it will adopt an open-tender system and is publicising the list of winning companies along with their bidding prices through the notice board of the department. It will also initiate a scoring system for technical information in the tender application forms. A short list of the bidders will also be announced, and the authority has made it clear to us that the tender officials will not engage in any type of informal negotiation on tender pricing with the bidders.

**40.Continue efforts to ensure the quality of pharmaceutical products by establishing laboratories to test drugs and imposing penalties on those who fail to meet minimum standard quality.**

### PARTIALLY TACKLED

We are pleased to learn that the FDA has been providing trainings on Good Pharmacy Practice to pharmacies throughout the country. We welcome the FDA's note of caution issued in January 2019 on the danger of mixing drugs illegally sold by small stores.

We also welcome the FDA's initiative in 2018 to employ mobile laboratory vans in different cities in order to test the quality of foods, drugs and cosmetics in the market. A training on Mobile Laboratory Van Operation for the FDA staff was organised in the FDA office building in Nay Pyi Taw on Sept. 24, 2018. In December 2018, the FDA headquarters handed 14 laboratory vans over to its branches in different states and regions of the country.

**41.Expedite the drafting process of the Intellectual Property Law, which will lead to ensuring patient safety, complying with international healthcare standards and increasing FDI.**

### PARTIALLY TACKLED

The Trademark Law, along with the Industrial Design Law, was passed into legislation by the Pyidaungsu Hluttaw (Union Parliament) on Jan. 30, 2019. This law will establish the framework for a comprehensive trademark registration system open to both foreign and domestic trademark owners, introducing criminal penalties for trademark infringement and counterfeiting, which range up to three years' imprisonment and a fine of 5 million kyats (approximately \$3,250). The effective date of the law has not been announced yet.

**42.Adopt the International Federation of Pharmaceutical Manufacturers Association's code of conduct, together with a local regulatory body monitoring ethical conduct, compliance and the interaction between healthcare professionals and organisations.**

### NO PROGRESS

Whilst the Anti-Corruption Commission has made a strategic partnership and a memorandum of understanding with the UMFCCL in order to develop the Industry Code of Conduct in respective industries under the umbrella of the UMFCCL, and some consultations were conducted between the government and relevant industry stakeholder groups to put in place an overarching Healthcare Industry Code of Conduct, no concrete, tangible progress has been realised. The EuroCham Health Advocacy Group also raised the issue at the meeting with MPMEEA.

## Legal and Tax

### 43. Expedite acceptance of both registration of lease agreements and security interest on land.

#### PARTIALLY TACKLED

The Online Records Department (ORD) had a technical study tour to India to understand the functioning of the Registration Office (India's ORD equivalent) there. Based on the visit, the ORD is already in the process of making their records digital throughout Myanmar. An international development finance institution is also in discussion with the ORD on reforms and is under diagnostic stages.

### 44. Protection for existing registered trademarks discourages early movers from market entry.

#### SUBSTANTIALLY TACKLED

The Trademark Law was passed by the Union Parliament of Myanmar (Pyidaungsu Htuttaw) on Jan. 24, 2019. Section 14 of the Law covers the relative grounds for rejecting a trademark application, and they include "the mark applied for registration is similar or identical to a well-known mark and identical or similar to the goods or services of such well-known mark and its use would deceive customers" and "the mark applied for registration is similar or identical to a well-known mark for different classes of goods or services but related to the well-known mark's goods and services, and its use would prejudice the interests of the well-known mark owner."

### 45. Strict enforcement of the law by the MIC before issuing an endorsement.

#### NO PROGRESS

## Logistics and Transportation

46. Allow the private logistics sector to partake in the National Logistics Master Plan Committee, with local and foreign companies. EuroCham Myanmar can, via its Logistics Advocacy Group or network, assist in finding the right committee members from this sector or partake directly.

#### NO PROGRESS

### 47. Unaligned, time consuming and non-transparent value assessment processes/import formalities.

#### PARTIALLY TACKLED

During our meeting with the Customs Department on Jan. 18, 2019, EuroCham Myanmar proposed to create a procedure where mistakes not committed on purpose (e.g. misunderstanding of regulations etc.) are not punished so harshly. The department promised to investigate the issue and agrees with our proposed solutions.

### 48. Availability of customs services.

#### PARTIALLY TACKLED

The Customs Department has finalised the Official Bonded Warehouse Procedures and is awaiting the approval of the cabinet to officially issue it.

49.To review its current process and allow carriers to settle payment as per contracted amount (not MPA-set tariff levels) directly to the terminal.

#### NO PROGRESS

### Wine and Spirit

50.Lift the ban on the import of foreign spirits by amending Order No. 5/98 of the Ministry of Commerce to create a legal, normalised environment for import, distribution, retail and to increase tax revenues collected by the government.

#### NO PROGRESS

51.Complement law enforcement efforts with market mechanisms to address the illicit trade and counterfeiting of spirit products that create revenue losses for the government and pose substantial health risks to consumers.

#### PARTIALLY TACKLED

The government announced that it would take actions against special goods such as cigarettes, cheroots, wine, and alcoholic drinks which are not sealed with “Tax Paid” stickers via state-owned media outlet MRTV on Jan. 23, 2019. The illicit goods categories shall be seized by the authorities, and the distributor shall be fined the equal value of the goods if they are imported.

The Consumer Protection Bill was tabled at the Parliament in July 2018, and it is to be passed by the Union Parliament in early 2019. In the bill, compared with the old Consumer Protection Law 2014, there is a duplication of responsibilities between the Central Committee for Consumer Protection, the Consumer Affairs Department and consumer dispute-resolution bodies at regional, state and district levels. It would allow police to open cases against suspected violators. Previously, action could only be taken when somebody filed a complaint.<sup>35</sup>

52.Enable foreign spirits companies to participate in the market and to undertake joint responsible drinking campaigns together with the government, industry and civil society to tackle drink driving, underage consumption and harmful drinking.

#### NO PROGRESS

There was no such campaign on responsible drinking initiated by the government during 2018. We note that the Brewers Association, comprising Myanmar and European beer manufacturers, launched Myanmar’s first responsible drinking campaign in April 2018.<sup>36</sup>

53.Bring Myanmar into compliance with its World Trade Organisation commitments.

#### PARTIALLY TACKLED

The Ministry of Commerce committed in March 2018 to implementing anti-dumping duties, countervailing duties and enact a Safeguard Law soon to protect local businesses and providing them with legal recourse during cross-border or bilateral disputes.<sup>37</sup>

<sup>35</sup> “‘Stronger’ Consumer Protection Law Submitted to Lower House,” *The Irrawaddy*, July 31, 2019. Retrieved from: <https://www.irrawaddy.com/news/burma/stronger-consumer-protection-law-submitted-lower-house.html>

<sup>36</sup> “Brewers association launches Myanmar’s first responsible drinking campaign,” *Myanmarmore*, April 6, 2018. Retrieved from: <https://www.myanmar.com/2018/04/brewers-association-launches-myanmars-first-responsible-drinking-campaign/>

<sup>37</sup> “Drafting of Myanmar E-Commerce Law in the works,” *Myanmar Times*, March 2, 2018, Retrieved from: <https://www.mmmtimes.com/news/drafting-myanmar-e-commerce-law-works.html>

**GENERAL RECOMMENDATIONS  
AND CONCERNS**



While Myanmar offers tremendous opportunities for investors, there are a few areas of concern that could potentially set back further development of the economy. As a partner to Myanmar's economic and democratic transition, EuroCham Myanmar wishes to take the opportunity to propose recommendations to the government to help tackle these issues.

## Tax Inefficiencies

### Issues:

Although tax reform has begun, European investors observing Myanmar believe that the tax culture needs improvement and encourage the government in its efforts to increase the country's tax take. Myanmar still has one of the lowest tax takes in the world and tax evasion is common due to a number of factors, including mostly a lack of available information, and a legacy of poor or non-existent law enforcement. Nonetheless, complex procedures continue to cost businesses additional resources—notably time and manpower. Improvements could be implemented to increase efficiency and streamline taxation processes.

Furthermore, the public has very limited knowledge and awareness of tax-related matters. A research conducted in 2018 by the Asia Foundation indicated that Myanmar's citizens have a generally poor understanding of the tax system. Almost 90% of respondents in the foundation's study wished more information were available on government taxation procedures and expenditures.<sup>1</sup>

The government has been active in implementing stricter measures to enforce the collection of taxes and reduce evasion. However, frequent changes to procedures and systems without prior notice or clear communication have added to taxpayers' burdens.

### Progress:

The Internal Revenue Department implemented a series of reforms to modernise tax administration. They include the change from the official assessment system to the self-assessment system (SAS) as a way to treat taxpayers more equally and to reduce corruption. The transition from commercial tax to value added tax (VAT) and the specific commodity tax (SCT) was also initiated.

To combat tax evasion, the government introduced certain enforcement measures such as penalty schemes. If a taxpayer is found to have concealed income or details in relation to income, it may fully disclose the facts within a specified time frame. A penalty equal to 50% (for corporate income tax) or 100% (for commercial tax) of the additional tax will be imposed. However, if the disclosure is incomplete or not made within the deadline, the taxpayer may be subject to prosecution. Concerning the compliance for individual tax payers, failure to file an income tax return while knowing that assessable income has been obtained is considered fraudulent intent. The subsequent penalties are the same as those for corporate tax and commercial tax purposes.

### Recommendations:

The primary objective is to embrace tax culture throughout the country. Campaigns could be designed to effectively enhance tax education and raise awareness on the importance of tax.

Further simplifying and streamlining procedures will optimise the tax collection system and minimise the use of resources by eliminating unnecessary steps. Cooperation between the Tax Office and taxpayers could also be enhanced. Indeed, prior notice regarding changes in procedures and systems would grant taxpayers more time to adapt to the new system.

Confusion regarding taxes could often be avoided by enhancing the conformity of domestic practices towards international accounting standards.

The government could continue to combat tax evasion by effectively enforcing the latest approved measures.

<sup>1</sup> "Attitudes Towards Taxation in Myanmar", Owen J., Htun H. M. (2018) Retrieved from: [https://asiafoundation.org/wp-content/uploads/2018/03/AttitudetowardstaxationMyanmar\\_Full-Report\\_English.pdf](https://asiafoundation.org/wp-content/uploads/2018/03/AttitudetowardstaxationMyanmar_Full-Report_English.pdf)



## Complex Bureaucratic Framework

### Issues:

Bureaucratic reforms in Myanmar face a number of unique challenges amid the country's ongoing democratic transition. Highly-centralised organisational structures, slow decision-making processes, general public distrust, residual redundant procedures, a generally low level of task delegation and division are factors that have often caused significant bottlenecks and delays for investors in Myanmar.

Poor coordination and a lack of well-defined directives shared between ministries and various levels of government have contributed to an overall lack of clarity. However, changes are underway and partners of EuroCham Myanmar are pleased to note that the government has made commendable steps toward transforming the sector.

### Progress:

As an initial step towards an e-Government system, the government established the e-Government Steering Committee and eight sub-committees in 2018. The committee has since been working on projects such as e-ID systems, a new technological law, the standardisation of the Unicode for the International Standard Organization (ISO), and the establishment of Information and Communications Technology (ICT) institutes.

Moreover, with financial support from the Asia Development Bank (ADB) along with local and foreign technical assistance, the government drafted the Myanmar e-Governance Master Plan. It is designed to be implemented through a public private partnership (PPP) system. To promote this plan the Computer Federation held the e-Government Conference & ICT Exhibition in October 2018 in cooperation with the government.

The Directorate of Investment and Company Administration (DICA) under the supervision of the Ministry of Planning and Finance, launched the Myanmar Companies Online (MyCO) in August 2018 as an online platform to register a company. This website allows interested parties to search and access details of companies active in Myanmar, and to purchase official company documents. In addition, the Mandalay City Development Committee in January 2018 launched the Online Data Centre for citizens who wish to monitor the government's performance and access its services.

The Ministry of Investment and Foreign Economic Relations has established the Land Bank and the Project Bank to give to the public and organisations access to the list of government projects and vacant lands owned by the ministries in the upcoming fiscal year<sup>2</sup>.

By these efforts, Myanmar jumped up in the e-Government Development Index (EGDI) from the 169th position to the 157th according to the 2018 UN e-Government Survey.

### Recommendations:

The heart of the problem in Myanmar is a misalignment between the challenges presented and the political/institutional capacity to navigate and address those challenges. Therefore, further step-by-step capacity development and targeted, practical small-scale solutions can contribute to bringing a greater operational efficiency.

Positive developments such as the transition from the government's current manual system to IT-oriented solutions have been initiated throughout 2018. These efforts should continue to be supported and funded by both the government and its partners.

It is also advised that government agencies start to delegate tasks to encourage more efficient processes. Although resistance to decentralisation is inevitable, empowering bureaucrats in the process could potentially increase their significant buy-in to new policies.

Hierarchical structures have led to mistrust and the inability of individuals to problem-solve. Key to the reform process is building trust and encouraging civil servants to engage in institutional transformation.

*27 Day Daily News, the Land Bank and Project Bank will be established, February 02 2019, Retrieved from: <http://7daydaily.com/story/148985>*



## Corporate Governance Requiring Further Improvement

### Issues:

The practice of good corporate governance in companies is still in its early stages. Most businesses fall short of corporate norms, lacking clearly delineated organisational structures, regulatory compliance mechanisms, sufficient shareholder protections, efficient operational procedures and transparent internal policies and practices.

The most recent Myanmar Centre for Responsible Business (MCRB) report on transparency in Myanmar enterprises found that the average score for a company in which the International Finance Corporation invests is 54%, compared to an average of 7% for domestic companies assessed in the report. The finding also indicates that better corporate governance attracts investment and partners.

When dealing with local businesses in Myanmar, foreign investors are often advised to take into consideration that the lack corporate governance could cause significant delays and slowdowns.

Improving corporate governance in Myanmar will be key to opening the door for increased foreign investment and developing a healthy capital market. Foreign investors seek partnerships with transparent, organised and responsibly-managed local companies.

### Progress:

The reform process has gained positive momentum with the recent establishment of the Myanmar Institute of Directors (MloD), which aims to promote responsible and effective corporate management. Furthermore, training opportunities and engagements are ongoing with events such as the January Workshop on Corporate Governance Assessment hosted by the Securities and Exchange Commission of Myanmar (SECM), the Yangon Stock Exchange (YSX), the Directorate of Investment and Company Administration (DICA) and the International Finance Corporation (IFC) in Yangon.

As a significant step in market reforms, to improve corporate governance standards and best practices in the country, the MloD was launched in 2018 as the first independent private sector-led organisation with support from the International Finance Corporation (IFC), Australia and the United Kingdom. MloD aims to advance board professionalism, promote business ethics and transparency, create networks between corporate leaders and stakeholders, and boost investor confidence in Myanmar's private sector<sup>3</sup>. The government enacted the Myanmar Companies Law as a corporate governance reform making local companies need to modernise their boards. MloD will have a leading role fulfilling a growing demand for high-quality directors with guidance<sup>4</sup>. For instance MloD is conducting learning series through one-day workshops known as the Corporate Governance Action Planning (CGAP). These allow companies to improve their performance, to increase their access to finance, and to foster a sustained growth.

### Recommendations:

The government could increase awareness on the importance of strong corporate governance and its benefits for businesses. It can also provide incentives to encourage private companies to operate transparently and responsibly.

Evidence suggests that many Myanmar companies are keen to improve their governance and disclosure, but they need guidance on how to best implement reforms. The Securities and Exchange Commission of Myanmar is well-placed to act in this capacity, although it needs resources and support from both the government and international partners

<sup>3</sup> Myanmar Institute of Directors, About MloD, Retrieved from: <http://myanmariod.com/>

<sup>4</sup> Myanmar Insider, Myanmar Launches Institute of Director, April 2018, Retrieved from: <http://www.myanmarinsider.com/myanmar-launches-institute-of-director/>

Laws that carry relevance to a business or industry could be translated and incorporated into, for instance, employee handbooks or standard operating procedure manuals. This would help ensure proper adhesion to regulations.

Collaborating with multilateral organisations to carry out capacity-building initiatives may be another way for the government to promote improved corporate governance. One recent example is the creation of the MIOD.

## Limited coverage of intellectual property (IP) laws

### Issue:

Until now one of the most threatening issues for European investors interested in Myanmar was the absence of strong IP laws. Despite the slow legal and regulatory progress, it is encouraging to see that the NLD administration is working to develop more comprehensive legislation to tackle IP issues.

### Progress:

The enactment of the new Trademark Law and the Industrial Design Law, which were discussed by the parliament since January 2018, occurred in January 2019<sup>5</sup>. It was followed by the approval of the Patent Bill in February 2019. The new Trademark Law grants priority and exhibition rights to applicants that have formerly registered their trademark or had it displayed in a member state of the Paris Convention and/or the World Trade Organisation (WTO). The application must also have been filed in Myanmar in the six months following the date of registration or exhibition.

### Recommendations:

Myanmar is one of the few countries in ASEAN that have not yet adopted extensive IP laws. European investors believe it is the primary role of the government to ensure the enforcement of the most recently approved IP laws. The enactment of further laws in this regard would also be welcomed. The existing regulations do not protect trademarks registered more than six months ago in member states of the Paris Convention and/or the WTO. But while the business community waits for this to occur, the creation of other recourse mechanisms directly addressing egregious intellectual property infringements would contribute to attracting even more investors in Myanmar.

## Infrastructure Needs

### Issue:

The need for increased investment in infrastructure is clear. In 2014, the World Bank estimated that Myanmar will require approximately \$20 billion in investment by 2030 in order to close the country's infrastructure gap. The challenges are significant and the government clearly needs to take further decisive action as the country requires more skilled workers. Demonstrating a greater willingness to allow international investment could improve the authorities' ability to conduct and finance large-scale projects.

Improved infrastructure should lower the cost and facilitate business activities in Myanmar, whether it is developing more reliable power infrastructure or constructing international-standard highways and railways. In order to attract more investment, the government needs to prioritise the implementation of reliable infrastructure. The development of the latter will require large capital input. Continued economic reform will play a major role in promoting European and other foreign investment.

<sup>5</sup> The Myanmar Times, Trademark Law and Industrial Design Law enacted, 04 February 2019, Retrieved from: <https://www.mmmtimes.com/news/trademark-law-and-industrial-design-law-enacted.html>

## Progress:

However, there have been few tangible improvements in the sector as of early 2019.

In Transport and Logistics, there are seven ongoing master plans: the National Transport Master Plan (MYT Plan) (2015-2040); the Master Plan for Arterial Roads Network Development (2015-2040); the Strategic Urban Development Master Plan of Greater Yangon (SUDP) (aiming for 2040); the Urban Transport Development Plan of the Greater Yangon (YUTRA) (2016-2040); the National Strategy for Rural Roads and Access (2016-2030); the National Export Strategy (2015-2019); and the National Logistics Master Plan (MY-L Plan)<sup>6</sup>. A total of 167 projects are included in the National Logistics Master Plan and among them 108 projects have already been identified in synergy with the National Transport Master Plan. The Japanese International Cooperation Agency (JICA) gave assistance on formulating master plans and infrastructure development through Official Development Assistance (ODA) loans and grant aid, to the SUDP, YUTRA, MYT Plan and MY-L Plan<sup>7</sup>.

The government announced during the Invest Myanmar Summit 2019 that it has prioritised 30 infrastructure projects to be implemented in future covering five port projects, two airport projects, two railway projects, seven highway road projects, one bridge project and one other project. The port projects at Bamaw, Pakokku, Magway, Kalaywa and Monywa are expected to be finalised by 2021. The railway projects include upgrading the Mandalay-Muse and Tamu-Kalay railways. The airports at Myauk-U and Thandwe will also be upgraded. The road projects will cover the Yangon-Mandalay Highway, the Yangon-Pathein Highway, Yangon inner roads and bypasses, the Naypyitaw-Kyauk Phyu Highway, the Mandalay-Htee Chaint-Muse Highway and the Myitkyina-Htee Chaint Highway. Five power production projects are planned. These cover a nationwide solar energy project, a gas power energy project in Yangon, hydropower projects in Mandalay Region and Kayin State, and a wind power project at Pathein in Irrawaddy Region.

## Recommendations:

Further regional master plans can be improved to encompass long-term infrastructure developments and planning.

A clearer framework for public-private partnerships could act as a catalyst for investment in infrastructure. The private sector would be further incentivised to invest in projects which, in turn, would help Myanmar reduce its significant infrastructure gap.

There is a strong need for international investment in infrastructure in Myanmar. The government will have to find ways to encourage and collaborate with international investors wary of the the risks of engaging in large-scale developments.

Partnering with multilateral lenders may help attract investment in infrastructure by mitigating risk for foreign investors and legitimising projects. The IFC-backed Myingyan combined-cycle gas turbine power plant and the forthcoming Yangon Elevated Expressway are prime examples of this.

## Training of Human Resources

### Issue:

Workforce development is another key issue to be addressed in parallel to those mentioned above. The government has recognised that the lack of skilled labour presents a major obstacle to attracting investment. Therefore, the authorities have increasingly cooperated with development partners towards implementing vocational training programmes. However, access to Technical and Vocational Education and Training (TVET) is still limited, with just 0.5% of upper secondary students enrolled in these programmes.

<sup>6</sup> Mr. Htike Htike, Deputy Director of Ministry of Transport and Communications, Status and Future Plan for National Logistics Master Plan, 30th November 2017, Retrieved from: <https://www.unescap.org/sites/default/files/Myanmar%20-%20Logistics.pdf>

<sup>7</sup> Mr. Masayuki KARASAWA, JICA's Commitment in Myanmar's Infrastructure Development Projects and Programmes, 20 March 2018, Retrieved from: [https://www.myanmarwaterportal.com/storage/eb/articles/522/plenaryaddress2-mr.masayukikarasawa\\_14134600.pdf](https://www.myanmarwaterportal.com/storage/eb/articles/522/plenaryaddress2-mr.masayukikarasawa_14134600.pdf)

## Progress:

According to the United Nations Children's Fund (UNICEF), the significant shortage of skilled workers is a reflection of Myanmar's high dropout rates. To strengthen the education system, the government introduced the National Education Sector Plan (NESP) which is Myanmar's new educational blueprint to bridge the skill gap<sup>8</sup>. The Ministry of Education has committed to achieving the NESP's goal statement by the end of the 2020-21 fiscal year.

The TVET system<sup>9</sup> is designed to equip its participants with the knowledge, skills and competencies to achieve their career aspiration and contribute to economic growth. To guarantee the quality and the effective implementation of this programme the education ministry enacted various initiatives including: the Technical and Vocational Education Council for the implementation and enforcement of policy framework; the TVET Task Force for quality assurance, the National Skills Standard Authority (NSSA), the National Skill Development Authority (NSDA), and the National Qualifications Framework (NQF)<sup>10</sup>.

## Recommendation:

Expanding access to TVET programmes and enforcing their effective implementation could be a solution to long-term human resource development. Subsequently these schemes would contribute to empowering more young people who cannot afford higher education and generate the skilled labour force needed for industrialisation and infrastructure projects.

8 The Myanmar Times, *In demand, skilled Myanmar workers*, 12 January 2017, Retrieved from: <https://www.mmtimes.com/special-features/231-educentre/24510-in-demand-skilled-myanmar-workers.html>

9 The Ministry of Education, *National Education Strategic Plan 2016-21 Summary*, Retrieved from: <http://www.tvetmyanmar.gov.mm/sites/default/files/NESP%20Summary%20--%20English%20--%20Final%20--%20Feb%2023.pdf>

10 The Ministry of Education, *National Education Strategic Plan 2016-21 Summary*, Retrieved from: <http://www.tvetmyanmar.gov.mm/sites/default/files/NESP%20Summary%20--%20English%20--%20Final%20--%20Feb%2023.pdf>

# EXECUTIVE SUMMARY



## Agrobusiness

- Publish clear GAP guidelines that are available online and at township level. Simplify access to the certification process and seek regional and international recognition of standards
- Establish a task force to enforce implementation of the National Food Law and GAP guidelines
- Establish a clear set of guidelines for foreign companies seeking to acquire land
- Establish a special committee in charge of cross-border trade issues
- Develop financial products to increase access to finance for farmers.

## Anti-Illicit Trade

- Measuring the size and the scale of the overall illicit trade environment
- Defining the necessary powers of law enforcement agencies
- Boost manpower resources at ports and border checkpoints
- Establish an enhanced government-to-government cooperation
- Public consultation to increase the level of transparency and improve regulatory quality
- National laws relating to illegal trade should be strengthened, regularly updated and reformed according to the progress and needs of the problem
- Thorough consultation with the private sector for a win-win situation for legitimate producers.

## Automotive

- Allow the registration of new imported vehicles in Yangon according to final draft of the Yangon Vehicle Quota Certificate (YVQC)
- Reconsider possible restrictions on imports of passenger cars with CIF value over \$100,000 according to WTO provisions
- Support the creation of a fair market in the automotive sector by aligning CIF value declared at customs by the parallel importers with what authorized importers and distributors declare for the same models
- Create one-stop centres between customs and RTAD to fasten the registration process for applicants and ensure professional inspections in an effort to bring Myanmar in line with international best practices
- Implement Thilawa's pilot project for storage of licensed items in bonded warehouses to save time when delivering products and improve the cash flow of local businesses
- Extend the Road Registration Tax to encompass both CBU and SKD importers.

## Construction and Infrastructure

- Elaborate on and finalise industry codes and regulations on design and material standards
- Implement solid policies and apply effective control measures and international standards to ensure the safety and quality within the construction sector
- Implement initiatives for the sustainable growth of the construction sector and the preservation of heritage buildings.

## Digital Innovation

- Promote the digital transition by shifting government services online, enact a strategy with the end goal of implementing a digital ID
- Support the private sector with a digital agenda that aims to streamline the registration process for new digital businesses and improve conditions that support e-commerce platforms
- Undertake more initiatives to raise the level of digital literacy among all civil servants, students and citizens.

## Energy

- Improve coordination between ministries and with the private sector in order to promote more efficient and effective project implementation.
- Address the need for a more transparent and updated tendering process.
- Reinforce the current generation equipment and effectively combine grid expansion with mini-grid implementation.
- Enable the appropriate foreign currency or mixed-currency payments and implement a set of sustainable tariff reforms.
- Develop a clear Legal Framework in the upstream sector while incentivising investments to unlock natural resources and renewable energies, namely, hydropower and solar energy.
- Revise Production Sharing Contracts, taxes, and the timing of Environmental Impact Assessments.

## Garment

- Labour Law reform process needs to be transparent and must take into account the tripartite mechanism to avoid any conflicts in the work place. We encourage new laws and regulations to be clear and provide the private sector with enough time to adjust their industrial systems accordingly. New and clear Labour Laws will offer certainty on how to operate as well as predictability for the industry, crucial for investments and growth of the sector
- Shift from a Cut-Make-Pack (CMP) system to a Free On Board (FOB) one to increase its vertical supply chain and develop a strong textile and components industry. An FOB system will not only significantly shorten lead times and increase flexibility but will also create more job opportunities and boost exports value. To do so, a concrete textile industry plan needs to be developed and stronger partnership between the private sector and government is essential.
- Invest in skills development by creating specific courses at different education levels. Myanmar's efficiency rate is considerably low, reflecting the lack of skills in the local labour force at many levels. While the garment sector is often considered to be a low-skilled industry, middle management and higher skills are also extremely important for the development of the sector and its competitiveness.

## Health

- Publish the scoring criteria prior to tender; combine or remove some of the steps of process; develop the systems and processes to coordinate the supply chain end-to-end from the central procurement to supplier; and implement an online portal to bring transparency to the tender process
- Develop a Globally Validated Healthcare Industry Code of Conduct
- Increase the level of consultation with more stakeholders to accelerate the pace of positive change in Myanmar and increase access to international quality healthcare products to patients.

## Legal and Tax

- Working on increasing transparency and the rule of law through the implementation of legislation and the issuance of licenses
- Put in place a notification or guideline prescribing a harmonised mechanism for dealing with the competition framework for the telecom sector as well as an effective merger control mechanism
- Provide a single, uniform definition of “foreign [owned/invested] company” as well as clear guidelines
- Despite improvements with the new Trademark Law of 2019, the re-registration process causes problems and well-known trademarks should be offered increased protection
- Update the current Stamp Act in order to address issues related to modern business transactions, especially on financing arrangements. Such reform of the Stamp Act could address uncertainties under the current act and increase the level of compliance by taxpayers
- The automatic application of tax treaty benefits under a relevant Double Tax Agreement (DTA) with Myanmar is in line with the practice of other countries with respect to granting relief under the DTA. An automatic application of treaty benefit would reduce the administrative burden of taxpayers in availing such tax exemption or relief
- Clarify the application of 5% commercial tax for equity investments in order to avoid undue advantage for investors who will be investing in land lease rights as a form of equity in a company
- Allow taxpayers to claim the excess tax paid for a type of tax (e.g. income tax/commercial tax specific goods tax) to offset against the tax payable due to another type of tax in order to ease the cash flow burden on the taxpayers
- Simplify the tax system and compliance procedures (e.g. addressing the complexity of recovering commercial input tax and abolishing the 2% advance income tax on import and export) would reduce the administrative and cash flow burden of taxpayers.

## Logistics and Infrastructure

- Shorten the time and cut the costs of the logistics activities. Allow logistics companies to operate efficiently by outlining who is involved in the decision-making process and making procedures, laws and regulations clear and available. This will boost the competitiveness of the local market, and Myanmar will become more attractive for investors



- Implement bonded warehouses and Container Freight Station (CFS) solutions to re-distribute cargo outbound/inbound activities from the main ports to bonded warehouses and CSFs to create a quicker system.
- We would like to request the Myanmar Port Authority to review its current process and allow carriers to settle payment as per contracted amount (not MPA-set tariff levels) directly to the terminal as an effort to avoid financial losses and eliminate delays in refunding appropriate payments

## Wine & Spirits

- Bring Myanmar into compliance with its WTO commitments
- Lift the ban on the import of foreign spirits by amending Order No. 5/98 of the Ministry of Commerce
- Create a legal, normalised environment for the import, distribution, retail and consumption of foreign spirits
- Significantly increase tax revenues collected by the government on the normalised import and retail of foreign spirits
- Complement law enforcement efforts with market mechanisms to address the illicit trade and counterfeiting in spirits products that create revenue losses for the government and pose substantial health risks to consumers
- Enable foreign spirits companies to participate in the market and to undertake joint responsible drinking campaigns together with the government, industry and civil society to tackle drink driving, underage consumption and harmful drinking.

METHODOLOGY



The third edition of EuroCham Myanmar's White Book has been developed through a close collaboration with stakeholders from each of the following industries: Agrobusiness, Anti-Illicit Trade, Automotive, Construction, Digital Innovation, Energy, Garment, Health, Legal, Logistics and Transportation and Wine and Spirits.

Each of the position papers has been developed following extensive consultation with every sector's industry stakeholders.

The Business Climate section presents an overview of the business environment in Myanmar. It has been developed with the intention of providing readers with an outline of the potential Myanmar offers—as well as highlighting challenges which could be barriers to doing business in the country.

While sector-specific issues are raised in each of the position papers, general challenges which could be of hindrance to businesses in all sectors have also been included.

The primary objective of the White Book is to assist the government in tackling these issues and ultimately achieving an investment-friendly business environment. For this purpose, the position papers highlight issues in each of the sectors and provide constructive recommendations for relevant government agencies.

The papers are structured as follows:

### Issue Description:

This section details the most pressing issues specific to the sector and their impacts on doing business.

### Potential Gains for Myanmar:

This provides an illustration of what the potential benefits are to the business environment, the economy and the country as a whole.

### Recommendations:

A presentation of measurable and attainable actions for effectively addressing the issues that were raised.

EuroCham Myanmar wishes to emphasise its ongoing commitment and willingness to actively engage with the government in implementing the recommendations brought forward. EuroCham Myanmar firmly believes that effective implementation of the recommendations will bring favourable benefits to Myanmar's promising business environment.

# AGROBUSINESS



## INTRODUCTION

Myanmar used to be a regional frontrunner in agriculture in terms of technology, quantity and quality of yield, and the way agriculture was institutionalised. Today, even though 70% of the population is active in the agriculture sector and 25% of Gross Domestic Product (GDP) is accounted for by the sector, the ratio of agriculture expenditure to agricultural GDP is only 1.4%. In the last 10 years, just 1.2% of total Foreign Direct Investment (FDI) was in the agricultural sector.

Agriculture is a crucial sector for Myanmar, both in terms of the development of the country from an economic perspective but also from a social perspective, to ensure that everyone has access to safe and affordable food. For these reasons, the EuroCham Agrobusiness Advocacy Group was set up in 2018. The goals of the EuroCham Agrobusiness Advocacy Group are twofold: the realisation of an environment in which agriculture can flourish sustainably on a national level from producer to consumer and creating opportunities on an international level.

In recent years in Myanmar, there has been a dramatic uptick in the demand for food in urban areas. At the same time, dietary diversification has begun, although it is still not sufficient to meet the needs of many people living in Myanmar.

Despite policies that still emphasise the priority of rice, farms have started to diversify their agricultural production, moving into non-rice food and industrial crops (which already account for 60% of farmed land in Myanmar) as well as into aquaculture and livestock production. Furthermore, rural labour shortages and constrained access to agricultural land do not favour the development of agriculture. International and cross-border trade on agri-food products is inhibited. Trade interventions and weak trade facilitation reduce returns to farmers, create food safety risks, social costs and an unfavourable environment for FDI.<sup>1</sup> Credit markets in agriculture are dysfunctional, with just 1-3 % of formal lending extended to agriculture. That said, financial products and services for agriculture are now developing.

Despite its challenges, there is huge potential for agriculture in Myanmar. The country has 12.3 million hectares of arable land, of which 5.7 million hectares (47%) still need to be cultivated. Farms in some areas have begun to intensify production with irrigation, improved seeds, fertiliser, and labour-saving herbicides and with the use of small-scale mechanisation. Rural-urban food supply chains, as well as some export supply chains, have started to develop. National and international bodies are investing in transport, storage, wholesale, processing, and agricultural services. With the combination of the development and emergence of modern retailers in the major cities and secondary cities and townships, the potential for growth is huge.

### Issue Description 1: Clear description of the Myanmar Good Agricultural Practices (GAP) certification process

The Association of South East Asian Nations (ASEAN) GAP has been in place in Myanmar since 2004-2005. The Handbook of Myanmar GAP guidelines for fresh produce was published in February 2014 by the Department of Agriculture (DOA) and the Ministry of Agriculture, Livestock and Irrigation (MOALI) and provides a general framework on the format of the GAP guidelines. Usually the guidelines consist of 19 elements: site selection; water; seeds and seedlings; fertilisers and supplements for soil fertility; agricultural and other chemicals; plant care; cultivation techniques; protection of weeds; irrigation; fertiliser application; agricultural tools and related materials; harvesting and post harvesting; storage and transportation; housing construction; controlling animals and pests; record keeping; traceability; training; evaluation procedure and hygiene and livelihood of the labourer.

In 2018, specific GAP guidelines were developed for 18 crops<sup>2</sup> and for seven of these crops GAP certificates were issued, although it is now possible to get GAP certificates for more crops if the producers can show that they follow the general GAP framework and if this is inspected and assessed by the DOA. However, producers need to be informed on those guidelines and trained, supported and inspected in the implementation of this, we recommend that human resources be made available in order to do so. Also, the guidelines are best connected to nationally recognised standards.

<sup>1</sup> Percentage (25%), obtained from World Bank, Myanmar Economic Monitor (2017). However, according to FAO, Myanmar at a Glance (n.d.), the agriculture sector contributes 37.8% of the GDP <http://www.fao.org/myanmar/fao-in-myanmar/myanmar/en/>.

<sup>2</sup> Information in this paragraph is largely derived from the National Economic and Social Advisory Council (NESAC), 2016, White Paper: A new vision for Myanmar's Agricultural Development; From Rice Bowl to Food Basket: Three pillars for modernising Myanmar's Agricultural and Food Sector.

At the moment, a clear process description (including a clear timeline) of how to obtain GAP certification is lacking. Furthermore, for the various processes (application, sampling and checking), different governmental levels are involved, which makes it challenging for coordination and understanding the process and responsibilities for each partner involved.

### Potential Gains:

Having specific procedures in place, which clearly describe all steps and responsible bodies involved in obtaining GAP certification, speeds up the process for producers getting their crops GAP certified. Which ultimately leads to more high-quality crops available for the Myanmar consumer. At the same time, harmonisation and benchmarking the national overarching GAP with other regional, international GAP standards will help the Myanmar GAP to achieve recognition, thus increasing the competitiveness and attractiveness of the standards.

### Recommendations:

We suggest describing the process (including required documents/templates and a timeline) on how to obtain GAP certification for fruit, vegetables and commodities. Together with this, develop a standard laboratory guideline per crop so that it is clear what the crop should be tested on. Distribute this process through DOA officers at township level and make it visible on the website of the DOA and MOALI. Appoint a larger role for DOA officers at township level as they are closer to the producers. At the same time, seek regional/international recognition of the overall Myanmar GAP standard through harmonisation and benchmarking.

*Having GAP guidelines in place is a great first step. We recommend clearly describing the process of how to obtain GAP certification as an important second step. Making this description available on websites and especially at township level makes it easier for the producer and service companies to get GAP certified. Finally, seek external recognition for Myanmar with regional/international standards.*

## Issue Description 2: A working task force (committee) to safeguard the effective implementation of the National Food Law and GAP guidelines

The National Food Law mentions the formation of the Board of Authority in order to carry out measures relating to food contained in the law. The functions and duties (10 in total) of the Board of Authority vary from laying down policies relating to the production, storage, distribution and sales of food, inspection, control and laboratory analysis of food until forming committees in respect of matters relating to expertise and determining the functions and duties of such committees. The Myanmar Food and Drug Board Authority (found under the Ministry of Health and Sport) and Food Standards Technical Committee under the National Standard Committee (found under the Ministry of Education) have been tasked with developing the Myanmar Food Standard. Myanmar has not formed a National Codex Committee yet but has extensive contact with the Codex Alimentarius Commission.

### Potential Gains:

Law enforcement and/or standardisation increases the production capacity of producers, provides protection of the health of consumers and at the same time enable fair practices in the exchange of goods and therefore eliminate barriers to trade.

### Recommendations:

Set up a task force and/or coordination body responsible for implementing, controlling and enforcing law, standards and guidelines. This task force is best formed with the coordination and participation of all related ministries and the different levels: national, regional, district and township level.

*Making laws effective can only be done by implementing, controlling and enforcing these laws. This can only happen when there is a task force in place which is held responsible for executing those tasks and in coordination and participation of all related ministries and the various governmental levels: national, regional, district and township.*

### Issue Description 3: Land Issues

Acquiring/leasing land is a real issue for foreign companies willing to invest in Myanmar, particularly for companies that need non-industrial land. There are many different types of land in Myanmar and for each type of land there is no clear set of legislation. Landownership status is not clear. Often it is challenging to find out who the land owner is and who is expected to prove ownership based on official documents. In relation to changing the land use purpose status, this can lead to very long, costly, non-transparent and complex procedures. And finally (but not only), different government levels have authority with regard to land acquisition. However, in many cases it is not clear which government level (local, regional or national) is authorised in a particular stage of the land acquiring process.

#### Potential Gains:

If land acquisition for foreign companies in Myanmar could become easier, it would reduce uncertainty, costs and time. It would create a more business-enabling environment for foreign companies active in the agricultural sector. Finally, for foreign companies, it would create a more attractive investment climate in Myanmar. Agricultural FDI is very important for the development of the economy and it will lead to innovation, more competition and higher employment levels.

#### Recommendations:

Create a clear set of guidelines for foreign companies active in the agriculture sector who are looking for land in Myanmar. This can be a kind of manual with steps that need to be followed, including contact information at every step, indications on how long each step will take and which input at which stage is expected from the foreign investor. Another option could be to create a transparent legislation with regards to land ownership. Finally, to define clear authorities between local, regional and national government levels with regard to land acquisition issues, so that it becomes clear which government level is responsible for which step of the process.

*Land issues are a hampering factor for FDI to start or continue investing in Myanmar although FDI is very important for the development of the economy. Land acquisition can be improved by creating a clear set of guidelines for foreign companies active in the agriculture sector who want to acquire land.*

### Issue Description 4: Trade

A number of goods, including agricultural products are traded illegally across the country's porous borders. As Myanmar shares borders with Bangladesh, China, India and Thailand, cross-border trade affects the local producers in all sectors. Poor law enforcement at the borders and a lack of resolving and tackling illicit industries has led to wide-scale illegal trade that could account for annual losses of up to half a trillion dollars—the equivalent of 20 times Myanmar's estimated total trade volume according to statistical data. The government lacks the capacity to monitor border trade, and customs officials have limited qualified human resources. There is no control on quality as products are not registered or properly controlled at customs (e.g. potentially dangerous substances). Tax is not being paid and this impacts the Myanmar economy and creates unfair competition for those who do pay taxes. Seasonal agriculture-related products are imported through cross border trade and this is leading to a drastic decline in prices. In the meantime, the production cost is high in the country so most of the producers/growers cannot compete with the imported prices and therefore face losses.

## Potential Gains:

Checking cross-border trade more thoroughly improves quality control on agro-inputs such as illegal fertilisers and pesticides. It will also decrease disease problems associated with imported goods. Moreover, it can control the free flow of imbalanced trade by applying a proper tax system and control price levels which can in turn protect domestic producers.

## Recommendations:

Initiate a special committee which has control over cross-border trade issues. Although there are existing departments working on cross-border trade, there is a lack of cooperation among them. This presents barriers to proper law enforcement.

*Illegal border trade is affecting the economy and local producers negatively. A special committee which is in charge of cross-border trade issues should tackle it with a controlled checking system at the borders together with applying a proper tax system.*

## Issue Description 5: Access to Finance

Farmers have very limited access to financing sources. All loans in Myanmar are provided based on collateral, which makes access to finance a big challenge for Myanmar farmers (both livestock and agriculture). Farmers usually do not have sufficient assets to provide as collateral, especially smaller farms, which constitute a big part of the Myanmar economy. For example, banks do not accept livestock as collateral with regard to loans, nor the houses in which these animals (poultry, swine, cattle) are raised. Banks only accept certain types of land as collateral. As a result, smaller farmers cannot finance their expansion plans, and cannot grow their business further, which leads to relatively high cost prices and eventually high consumer prices. Therefore, economies of scale are thus difficult to achieve. Inputs needed to farm successfully are normally too expensive to be covered through microfinance initiatives.

## Potential Gains:

Farmers with access to finance sources will be able to expand their business and contribute to the general development level of the country by creating jobs, producing agricultural products to feed the population, and by creating welfare and social mobility. The risk of imports of agriculture produce will be lower if Myanmar farmers can produce against more competitive cost prices because consumer prices will decrease. Access to finance will professionalise the agriculture and livestock sectors in Myanmar.

## Recommendations:

Encourage banks to develop specialised financing programs for smaller farmers. Set up cooperation programmes, partly subsidised, to encourage banks to provide more cashflow-based loans. Organise a conference on how to improve access to finance for Myanmar farmers, bringing together key stakeholders in Myanmar.

*Farmers have very limited access to sources of finance as loans are provided based on collateral. Developing financial products, particularly for smallholder farmers, could improve access for a large part of the population. This would contribute to the growth and professionalisation of the agriculture and livestock sector.*



# ANTI-ILLCIT TRADE



## INTRODUCTION

Illicit trade is a worldwide phenomenon with serious negative consequences on the economy, the environment and society. The Transnational Alliance to Combat Illicit Trade (TRACIT) called for Myanmar to urgently step up efforts to fight illicit trade during a conference hosted by EuroCham Myanmar in 2018. EuroCham Myanmar is very thankful for the government and the United Nations Office on Drugs and Crime's (UNODC's) support by participating in the AIT Forum 2018. The Global Index on Illicit Trade was produced by the Economist Intelligence Unit (EIU) and evaluates 84 countries on the extent to which they enable or prevent illicit trade. Myanmar ranks 82<sup>nd</sup> out of 84 countries (Iraq and Libya being the last), with an overall score of 23.0 (out of 100).

The significant areas of illicit trade activities include trafficking of persons, wildlife, narcotics, tobacco, alcohol and several categories of counterfeit goods including medicines, electronics and fashion. These criminal activities undermine good governance, the rule of law, public trust, human capital and public health, and they also deter foreign investment.

A more holistic view of the costs of illicit trade also takes into account its harmful impact on consumers, the environment, tax revenues and jobs.

Myanmar has a total of 17 border trade centres along its borders with China, Thailand, Bangladesh and India as well as sea trading routes over long coastal lines. These present significant challenges to the enforcement of laws regulating trade, especially as many of these border areas are affected by ethnic conflict and therefore are not under direct control of the government.

Although in recent years the government has launched initiatives like the Myanmar Automated Cargo Clearance System (MACCS) and the Accredited Economic Operator Programme (AEOP) with the objective of accelerating and securing general import-export processes, these programmes still have room to grow. A key factor for the success of these policies will be to ensure balance between economic promotion and compliance of regulation. Moreover, further efforts are needed when it comes to monitoring Free Trade Zones (FTZ), securing borders with sufficient manpower and strengthening law enforcement in these hotspots.

Enforcement beyond the entry ports, including in cities and trading towns, cannot be neglected in Myanmar, since much illicit trade is through informal routes. Similarly, we believe that using an integrated approach that tackles all levels of the supply chain (importers, distributors and sellers) equally, is the most effective way to combat illicit trade.

Expounding the fundamental characteristics of illicit trade and the economic context that has enabled it to grow, supports considerations of the policy options available to reduce it and helps inform priorities for tactical programmes to dismantle criminal networks.

EuroCham Myanmar and its stakeholders in the Anti-Illicit Trade Advocacy Group believe that combating illicit trade will ensure consumer safety, increase legitimate tax collection, prevent other criminal-related activities and signal to the international investment community that Myanmar can effectively manage and protect its domestic market.

The highlighted issue descriptions and recommendations are prepared to serve as a reference for further discussion to strengthen the enforcement of the rule of law and to encourage efforts to target illicit trade problems where they exist, from the perspective of the international private sector, with the government of Myanmar and its key advisors.

### Issue Description 1: Porous Borders

For geographical reasons, the borders of Myanmar are vast and porous and as such, difficult to police comprehensively. Inadequate or lack of control at such points allows smugglers to move illegal products in large volumes undetected. The situation is exacerbated by the lack of direct government control in many unofficial borders in the area. Enforcement at the official gates is below international standards and there is still a lot of room for improvement.

Another key issue is the availability of parallel products that come from border trade. These products, although they are genuine, non-counterfeit and produced by reputable pharmaceutical and consumers' goods companies, are imported illegally into the country without the permission of the intellectual property owner.

We recognise border control is a complex issue to solve, however, it is one of the main factors fuelling illicit trade.

## Potential Gains:

- Enhancing the surveillance and control at the main points of entry of goods into the country will help eliminate the illegal trading of illicit products—which are often counterfeit—and significantly reduce the risks of health consequences and the security implications through financing organised crime, including human and arms trafficking, as well as terrorism.
- Government revenue will be significantly increased by legal and measurable trade volumes.
- The availability of unsafe and disqualified goods will also be limited and consumers' rights and protection will be improved through transparent and disciplined interactions.

## Recommendations:

### • Increase manpower at ports and borders

Boost manpower resources at ports and border checkpoints to manage heavy movement of goods. Manpower should be rotated periodically to mitigate against complacency and/or corruption.

### • Enhance government-to-government cooperation

Establish enhanced government-to-government cooperation and network with neighbouring countries such as Bangladesh, China, India and Thailand to tackle cross-border smuggling and also to detect flow of illegal products through the borders. In Thailand, for example, the government is actively recording in its exports the transfer of goods which are illegal to import. Education on these products at the border gates between countries could be impactful.

## Issue Description 2: Barriers to Effective Enforcement

Combatting the growing illicit trade menace requires enhanced and persistent enforcement throughout the entire supply chain and, in particular, within the domestic market where such illegal goods are easily available and sold to consumers at the retail level.

Furthermore, the deterrent factor will prove more effective, with enhanced regulations to stamp out corruption that can undermine the enforcement of laws.

Measurable targets or key result targets are strong arguments to quantify the enforcement efforts taken by all relevant law enforcement agencies that have the power to act against illegal trade.

## Potential Gains:

- Harmonising enforcement actions related to customs, taxation and other fiscal matters will further encourage a level playing field and increase the economic benefit of a variety of legitimate businesses.
- The livelihoods of legitimate retailers, whose shops lie at the heart of communities, will be enhanced. Flow of genuine products distributed through legitimate channels will be reinforced, smuggling will become less profitable and bribery and corruption will also be discouraged.

## Recommendations:

### Strengthen coordination and collaboration between state and regional illicit trade taskforces

State and regional illicit trade taskforces need to coordinate and collaborate together with the private sector as well as law enforcement agencies such as border control, the police force and General Administration Offices in order to intensify monitoring and enforcement that will ensure continuous effective multipronged action. In the case of all state and regional illicit trade taskforces reporting to a national level steering committee, these actions could be spearheaded by the Union Government Office.

### Mandate law enforcement agencies

Defining the necessary powers of law enforcement agencies will significantly increase their enforcement actions. EuroCham Myanmar emphasises the priority to provide more resources in terms of manpower or equipment and allocate sufficient sources of funding for capacity building.

### Making use of international best practices

Many countries have effective enforcement procedures, such as seize-and-destroy procedures, that could serve as reference to develop further Myanmar's enforcement legislation against illicit trade. It will be critical, however, that these practices are not overcomplicated or become an administrative burden to carry out.

### Establish track and trace mechanism

For the purposes of further securing the supply chain and to assist in the investigation of illicit trade, it is necessary to establish a tracking and tracing regime, comprising state and regional tracking and tracing systems and a national information-sharing focal point to make enquiries and receive relevant information.

In participating in the tracking and tracing regime, the private sector could share and develop best practices for tracking and tracing systems including: (a) facilitation of the development, transfer and acquisition of improved tracking and tracing technology, including knowledge, skills, capacity and expertise; (b) support training and capacity-building programmes for parties that express such a need.

## Issue Description 3: High Price Differential

Myanmar is a highly price-sensitive market, whereby consumers make most of their decisions based on price. This gives illicit trade the opportunity to thrive, because illegal products can undercut locally produced products which pay their fair taxes. For example, illicit beer is 35% cheaper than locally produced beer.

In its search for tax collections to address government revenue, budget deficits, and other measures for the development of the country, the government looks first to increase taxes on legitimate players, noticeably fast-moving consumer goods and special goods. This does not necessarily result in increased tax revenues as the volume of legal, duty-paid products may reduce or even offset the gain from higher taxation rates, and it means the only winners are illegal traders as their products are even more price attractive.

The risk of smuggling, the purchasing power of local consumers, tax rates in neighbouring markets, and the ability and effectiveness of the tax authorities to widen the tax base and enforce compliance are hence the crucial elements to consider when implementing the relevant tax structure and rates. Failing to do so will enable high illegal trade and a decline in the volume of legitimate products.

## Potential Gains:

By tackling high price differential for many product categories, (ranging from pharmaceuticals, oil, electrical goods, cars, wine and spirits, mobile phones, perfumes, toothpaste, soaps, detergents, and even diapers), the unintended consequences such as the rapid growth of the illegal trade could be gradually penalised.

## Recommendations:

### • Public consultation

Public consultation is one of the key regulatory tools employed to improve transparency, efficiency and effectiveness of regulation and improved accountability arrangements.

Public consultation increases the level of transparency and it may help to improve regulatory quality by:

- Bringing into the discussion the expertise, perspectives, and ideas for alternative actions of those directly affected;
- Helping regulators to balance opposing interests;
- Identifying unintended effects and practical problems;
- Providing a quality check on the administration's assessment of costs and benefits;
- Identifying interactions between regulations from various parts of government.

### • Broadening tax base

Currently, significant portions of national consumption are not included in the tax base, through deductions, exclusions, and other preferential tax treatment. Broadening the tax base and using the revenues to adjust marginal tax rates is one of the most promising paradigms for tax reform. It would not only simplify the tax code and remove unfair preferences but would also create substantial economic growth.

### • Long-term approach to tax policy with moderate and gradual increases

There are a range of factors which the government needs to consider when deciding on increasing taxation, including affordability of goods and price sensitivity of consumers.

Any sudden, significant increase in consumer price would drive price-stretched consumers to switch down to low-priced illegal goods. This would adversely affect government revenue as consumption would shift away from the legitimate tax-paying manufacturers to the low-priced illicit sector.

High price differentials with neighbours could also encourage cross-border shopping, consequently disrupting the country's revenue.

Even if tax rates are at, or beyond, the tax revenue maximising point, moderate and gradual tax rate increasing in line with economic growth could lead to higher tax revenues as the tax revenue maximising position will tend to increase in line with consumer incomes.

It is proposed that the government also considers key factors such as inflation, household income and revenue expectations and budget plan to review the taxation strategies and approach holistically.

## Issue Description 4: Weak Penalties

The risk of interdiction, severity of the penalties and sanctions applied to trade in illicit products and the degree to which penalties and sanctions are applied, are factors that we would like to advocate for regarding illegal trade activities.

Criminals trading illicit products are undeterred by the weak penalties in place, which are often both light in nature and not fully deployed.

## Potential Gains:

Establishing clear penalties would help in addressing the root motivation of illicit actors, thereby lowering the incentive to commit illegal acts, while at the same time improving transparency amongst customs officials.

## Recommendations:

### • Promote the rule of law

National laws relating to illegal trade should be strengthened, regularly updated and reformed according to the progress and needs of the problem. The present multilateral agreements need to be strengthened and resilient to internal as well as external turbulences. The most effective action can be taken at regional levels, as the agreements are flexible to the needs of each region. Therefore, the more multilateral and regional agreement will show robustness if worked upon through better cooperation, information sharing and strictly adhering to embargoes imposed on various regions.

### • Increase fines/penalties or charge offenders in court

Impose an increased fine or prosecution of offenders in courts if offenders are caught with illegal products. While it is more arduous to prosecute an offender in court, a prosecution adds to disruption of their illegal business.

### • Raise public awareness on the risks of illicit trade

Myanmar has one of the biggest buyer bases for illegally traded products in Southeast Asia, partly due to the lack of awareness on the risks of illicit products from the public and government officials. A public campaign by the government on illicit trade and its criminal consequences would be impactful.

### • Set up special complaint centre

Illicit trade is a vital source of revenue for transnational crime networks and terrorist organisations, an important aspect that attracts far less attention than it should. A special complaint centre is suggested to be established to gather information and intelligence on helping protect the legitimate businesses and generate revenue of greatest importance to Myanmar.

The complaint centre could provide the public with a reliable and convenient reporting mechanism to submit information to the law enforcement agencies concerning suspected illegal activities and to develop alliances with law enforcement and industry partners. The informer should be provided with safe and secure means of reporting illegal activities. Due to the sensitivity and danger, informers cannot give names without adequate protection from the authorities. Information could then be analysed and disseminated for investigative and intelligence purposes for law enforcement and for public awareness.

## Issue Description 5: Burdensome Policy and Regulations

The availability of policy and legal approaches to monitoring and preventing illicit trade is critical. Whilst regulations can be created and used to help reduce illicit trade, EuroCham Myanmar recommends them to be thoroughly thought through and not add extra burden to the local producers.

For example, labelling is not a solution to illicit trade. Whilst this is a helpful measure for consumers, and widely supported by all legitimate manufacturers, the implementation of such new rules needs to take into consideration the impact and reasonable timeline of local producers.

## Potential Gains:

If there is good consultation with the private sector before creating new regulations, there can be a win-win outcome for legitimate producers and the government.

## Recommendations:

### • Private sector partnerships

Initiate private sector partnerships to leverage effectiveness of government regulations including: developing and deploying technology solutions; enhancing cooperation and sharing solutions through consultation; and expanding the knowledge base.

Industry associations and/or chambers of commerce in Myanmar are prime partners for intensifying working relationships between business and the government.

### • Illicit trade environmental and economic impact assessment

Measuring the size and scale of the overall illicit trade environment through structured scope of assessments by third party agencies and organisations. References could be made on UNODC's Cross Border Trading Zones and Gates; the Central Statistics Office's (CSO's) Trade Volumes & Statistics; UN Comtrade; International Monetary Fund's (IMF's) Direction of Trade Statistics (DOTS) and the World Trade Organisation's (WTO's) Trademap.

Engagement with the World Customs Organisation, WTO, Europol, the Organisation for Economic Co-operation and Development, the International Criminal Court, and the European Anti-Fraud Office (OLAF) including via an industry advisory group will further enhance the global network of taskforce to address the issues.

AUTOMOTIVE





## INTRODUCTION

Established in November 2017, the Automotive Advocacy Group stands among the leading authorised importers and distributors of automotive brands with headquarters in Europe. As a result, this group seeks to provide the Myanmar government with constructive policy recommendations, based on the international experience and know-how of its members. European brands are by far the world's largest investors in automotive research and development (R&D), spending €54 billion on innovation each year. That is almost three times the amount spent by the United States (€18.5 billion). Moreover, the European automotive industry directly employs 2,501,787 people and more than 10 million people in Europe, if we consider indirect employers.

The automotive population in Myanmar is still relatively small with 20 vehicles per 1000 citizens,<sup>1</sup> and the demand for new, safe and green vehicles is expected to grow in the coming years. The automotive group welcomes the commitment made by the government in 2018 to implement new policies related to motorcycle helmet standards and emission standards. But the success of sustainable growth of the automotive industry in Myanmar partially depends on several issues this group identifies as priorities for 2019. Yangon is the market hub for automotive brands, therefore we advise the competent government bodies to address the enduring issue related to the registration of imported vehicles in the city. Restrictive measures on imports, which may not be in line with the World Trade Organization (WTO), are making European brands—worldwide leaders in the automotive sector—more reluctant to invest in Myanmar. Finally, the future of the automotive industry in Myanmar should be properly discussed in 2019 by involving all parties, including local associations, non-government organisations and chambers of commerce.

The recommendations in the automotive section of the White Book 2019 are in line with the EU-ASEAN Business Council “Automotive Industry in ASEAN: Towards an increased global role & enhanced safety; October 2017”.<sup>2</sup>

### Issue Description 1: Registration in Yangon

Authorised importers and distributors are not allowed to register imported vehicles in Yangon since April 2016 when the government suspended the parking recommendation system in Yangon to reduce traffic congestion and free up parking space. In December 2017, the government proposed to implement the Yangon Vehicle Quota Certificate (YVQC) as a solution to the current situation, but no decision has been made so far. As a consequence, not only are businesses being forced to reconsider their investments and commitment in Myanmar, but the government is also losing a remarkable amount of revenue that could be invested in improving road infrastructure and public transport.

#### Potential Gains:

- Attract more foreign direct investment (FDI) from leading European automotive brands;
- Promote market fairness among automotive brands with showrooms in Yangon;
- Collect more revenue thanks to the implementation of the YVQC system;
- Monitor the number of vehicles registering in Yangon, both Completely-Built-Up (CBU) and Semi-Knocked-Down (SKD).

#### Recommendations:

- Allow the registration of new imported vehicles by implementing the Yangon Vehicle Quota Certificate (YVQC)

<sup>1</sup> CEIC Data, 2017. Available at: <https://www.ceicdata.com/en/myanmar/motor-vehicle-statistics>

<sup>2</sup> “Automotive Industry in ASEAN: Towards an increased global role & enhanced safety,” EU-ASEAN Business Council, October 2017. Available at: [https://docs.wixstatic.com/ugd/63371b\\_eaf099dad3774a749e7dde16e6413392.pdf](https://docs.wixstatic.com/ugd/63371b_eaf099dad3774a749e7dde16e6413392.pdf)

*Allow the registration of new imported vehicles in Yangon according to the final draft of the Yangon Vehicle Quota Certificate (YVQC).*

## Issue Description 2: Restriction on imports of passenger cars with a CIF value over \$100,000

The importation of luxury passenger cars with a cost, insurance and freight (CIF) value over \$100,000 was stopped in the last quarter of 2018. This decision is affecting European brands targeting a key segment of European automotive manufactures. Moreover, no evidence or written notification was offered to explain the restriction.

Article XII, 1 of the General Agreement on Tariffs and Trade (GATT 1947) under the WTO allows a contracting party to restrict imports under specific and severe circumstances to safeguard external financial position and balance of payments. Such restrictions on imports must be limited in time and eliminated once the conditions to justify their institution no longer exist (Art. XII, 2, b).

### Potential Gains:

- Avoid the possible infringement of WTO provisions
- Importation of luxury passenger cars provides the government with a remarkable amount of revenue. According to EuroCham Myanmar's simulation, five units with a CIF value over \$100,000 were sold in 2018 by authorised importers and distributors of European brands

CC Category	Tot. Sales (unit)	Tot. Tax <sup>3</sup>	Tot. Income Tax	Tot. CIF	Tot. Income Tax + (Tot. Tax-CIF)
Total	5	\$943,192	\$228,499	-\$597,857	\$573,834

- Revenues from luxury vehicles could boost funding for road infrastructures (e.g. parking areas and crossovers) and public transport

### Recommendations:

- Issue an official notification explaining the reasons leading to the restricting of the importation of vehicles with CIF value over \$100,000, and under what circumstances the restriction will be removed
- Allow the importation of vehicles with CIF value over \$100,000 in order to expand, rather than contract, international trade.

*Reconsider possible restrictions on imports of passenger cars with CIF value over \$100,000 according to WTO provisions.*

## Issue Description 3: Parallel Importers

Although Myanmar has undertaken important reforms to limit vehicles legally imported from another country through channels other than the authorised distribution system,<sup>4</sup> further steps are required to eradicate unfair competition and provide better services to customers. The main concern remains the CIF value declared at customs, which is not based on the strict criteria authorised importers and distributors must comply with, and therefore might lead to unfair practices by parallel importers. Moreover, the lack of warranties and after sale services means purchasers of vehicles have no guarantees and cannot claim any compensation if the product fails to meet standards of quality and performance.

<sup>3</sup> Tot. Tax = Custom Duty + Special Good Tax + Commercial Tax + Road Registration Tax

<sup>4</sup> Automotive Policy 2015

## Potential Gains:

- Promote market fairness in the automotive sector
- Customer safety and satisfaction: safety recalls, warranty, spare parts availability
- Better impact on economy/employment: technological transfer, trained workforce
- Myanmar's reputation improves to attract more FDI

## Recommendations:

- Match the CIF value declared at customs by parallel importers with the value declared by authorised importers and distributors for the same model
- We recommend both authorised and parallel importers provide warranty and after sales services
- Minimum requirements for workshop (e.g. safety tools: wheel alignment, lifts).

*Support the creation of a fair market in the automotive sector by aligning CIF value declared at customs by the parallel importers with what authorised importers and distributors declare for the same models.*

## Issue Description 4: Registration and Inspection

There are only three cities where vehicles can be registered (Yangon, Mandalay and Naypyidaw), meaning car owners and dealers from other cities in Myanmar need to drive or tow vehicles all the way to one of three places where the registration is possible. Moreover, the vehicle needs to return to the Road Transportation Administration Department (RTAD) within three years of the first registration to renew the licence, and then every two years.

There are two main issues under the current system:

- High risk for dealers driving the car, increase cost of transport, long queue at the RTAD as the vehicle physically needs to be there.
- The vehicle's review is more of a visual inspection and there is no real safety check (brake, light, suspension, etc.) or emissions checks (exhaust emissions, oil leakage, etc.).

## Potential Gains:

The RTAD offices in Yangon, Mandalay and Naypyidaw will have fewer applications to deal with, enabling a speedier registration process for applicants outside authorised importers and dealers. Staff from the RTAD could be relocated to inspect and monitor third parties which are responsible for issuing certificates of inspection. Moreover, fees could be collected by the RTAD to allow third parties to carry out inspections. Finally, third parties could ensure professional inspections thanks to up-to-date technologies and machinery, in line with international best practises.

## Recommendations:

- **First registration:** Authorised importers and dealers could be allowed to register new vehicles without the need to drive or tow each unit to the RTAD in Yangon, Mandalay or Naypyidaw. It can be achieved by creating one-stop centres between customs and RTAD at the ports of arrival. All documents could be provided by authorised importers and dealers including pictures, as required by RTAD procedure, and pencil print of both the Vehicle Identification Number (VIN) and engine numbers. The reintroduction of magnetic sensors could be considered as well.

- **Inspection:** Prior to renewing the registration of each vehicle, owners need to provide a valid certificate of inspection. Third parties, including authorised dealers and appointed workshops, could be entitled to issue such certificates upon receiving authorisation from the RTAD.

*Create one-stop centres between customs and the RTAD to speed up the registration process for applicants and ensure professional inspections in an effort to bring Myanmar in line with international best practices.*

## Issue Description 5: Licensed Items in Bonded Warehouses

The Thilawa Special Economic Zone (SEZ) Management Committee has a list of notices and instructions which are available publicly. According to the instruction of SEZ Warehousing (No.5/2016), Cargos Held on Account and Deposited Cargos can be stored in Free Zone Warehouses.<sup>5</sup> There is no instruction which pertains to licensed items. It follows that, under the current framework, there is no such instruction or notice which restricts, or allows, licensed items to be stored in bond in the warehouses in Thilawa SEZ. However, in practice only non-licensed items (e.g. replacement parts) can be stored in bond.

### Potential Gains:

- The Thilawa pilot project can help customs to learn about possible issues related to bonded warehouses and licensed items, allowing for the necessary steps to be taken on time before the national procedure is in place.
- By allowing licensed items to be stored in bond the possibility of false disclosures before customs significantly reduces.
- Importers will benefit from having a supplier's stock within Myanmar close to the local consumer, which will reduce the lead time required to deliver the products. Additionally, such a setup can greatly improve the cash flow of local businesses by partially paying the applicable tariffs and duties in line with the demand from the local consumers.

### Recommendations:

- To launch a pilot project in Thilawa by allowing licensed items to be stored in bond.
- To address issues related to licensed items when discussing the new procedure for bonded warehouses in Myanmar.
- To consider the list of recommendations as presented by the EuroCham Logistic Advocacy Group (Issue 3).

*Implement the Thilawa pilot project for storage of licensed items in bonded warehouses to save time in delivering products and to improve the cash flow of local businesses.*

## Issue Description 6: Road registration tax

The remarkable discrepancy in taxes between CBU and SKD vehicles is leading more brands to invest in manufacturers to reassemble vehicles in Myanmar. Seven new SKD licence applications were approved in February 2019 by the Myanmar Investment Commission (MIC). Besides the significant loss in revenue for Myanmar by having fewer CBU imported vehicles, in the coming years, a larger number of vehicles driven in Yangon and other cities are going to be SKD models. Under the current tax system, however, the Road Registration Tax burden completely lies on CBU units, which are less in number by far.

<sup>5</sup> Available at <http://www.myanmarthilawa.gov.mm/laws-and-regulations>

Tax table for CBU units:

Engine Power	Customs Duty	Special Goods Tax	Commercial Tax	Road Registration Tax (Based on 83.33% x CIF)
1350cc below	30%	0%	5%	30%
1351cc – 1500cc	30%	0%	5%	50%
1501cc – 2000cc	30%	10%	5%	50%
2001cc – 4000cc	40%	30%	5%	80%
4001cc – 5000cc	40%	50%	5%	80%
5001cc above	40%	50%	5%	120%

Tax table for SKD:

Engine Power	Customs Duty	Commercial Tax	Road Registration Tax	Registration Fees
1500cc below	5%*	5%	0%	200,000 MMK
1501cc – 2000cc	5%*	5%	0%	200,000 MMK
2001cc – 4000cc	5%*	5%	0%	200,000 MMK
4001cc above	5%*	5%	0%	200,000 MMK

\*Taxation for SKD Component Parts. Please note the value is 0% if the Component Parts are imported within ASEAN.

## Potential Gains:

- Increase revenue for the government by creating more demand for CBU vehicles, while raising taxes for SKD units.
- More public investment in road infrastructure and public transport.
- Encourage manufacturers to move from SKD to CKD.
- Encourage a more sustainable growth of the automotive industry in Myanmar, based on long-term goals rather than quick-wins.
- Simplify the tax system for Road Registration Tax.

## Recommendations:

- Change the Road Registration Tax to involve both CBU and SKD importers.

Road Registration Tax (Based on 88% x CIF)	Below 2,000cc	20%
	Above 2,001cc	30%

*Extend the Road Registration Tax to encompass both CBU and SKD importers*

# CONSTRUCTION AND INFRASTRUCTURE



## INTRODUCTION

The EuroCham Myanmar Construction and Infrastructure Advocacy Group (EMCIAG) was created in September 2016 and it has recently drawn up the third position paper since its formation. The EMCIAG represents several leading European companies committed to working closely with the Myanmar government and local business organisations to improve conditions in the construction industry, making Myanmar a more attractive prospect for foreign direct investment (FDI). The members are key actors in the construction industry, one of the main drivers of economic and social growth and prosperity.

This is especially important for Myanmar and its ambition to develop the economy in a safe, cost-efficient, and environmentally sustainable way. To achieve those results, a fruitful relationship between the private and public sector is essential. EuroCham Myanmar seeks to strengthen its relationship with the Myanmar government in order to provide support in accomplishing economic development goals.

The EMCIAG's mission is to provide the Myanmar government and relevant stakeholders with a holistic overview of the sector's challenges, and to make recommendations on how best to overcome these to ensure a prosperous and well-structured future for the industry. Since the release of last year's position paper, stakeholders including the government have taken steps to improve the construction industry. However, the sheer size and complexity of the industry means that changes are slow to be adopted and implemented.

### Issue Description 1: Design Standards

Design standards will have a major impact on how Myanmar will achieve its construction potential in the future. At present, Myanmar's construction industry is governed by a set of rules and regulations which does not lend itself to clear standards or effective enforcement. In addition to this, the lack of cooperation between regulatory bodies and enforcement actors is hindering the construction sector's potential.

After meetings with figures involved in developing and expanding the most recent set of industry codes and standards it became clear that, while an important headway has been made, there is further work to be done. There was unanimous agreement that the lack of standards' enforcement during the construction process presents a major challenge to the industry.

### Potential Gains:

- The adherence to rigorous standards and regulations increases the level of safety and quality of life for both construction workers and the people of Myanmar.
- The enforcement of standards and the implementation of a clear roadmap should empower stakeholders to further develop the sector.
- Centralised registration of construction actors, companies, engineers and third-party providers is of the utmost importance.
- Delivering professional training and establishing clear, enforceable standards generates benefits across the board.
- The enforcement of standards will bring quality to the construction sector: quality is a synonym of long-lasting building and infrastructure and therefore a way to achieve cost-effectiveness.

### Recommendations:

- The Construction and Infrastructure Advocacy Group Members recommend a clear roadmap outlining targets and objectives for the construction sector to be developed. By defining where the industry stands at present, it will allow the creation of a realistic and attainable development framework for the future.

- There is a pressing need for an industry certification scheme, with an emphasis on clear delineation of authority and the areas of responsibility for concerned parties. This will maximise compliance and elucidate obligations to industry players.
- A clear, up-to-date and well-maintained register of construction actors could be established and regarded as a living record.
- Understanding the need for enforcement of rules and regulations is of crucial importance for the government.
- To reduce the burden on the government it is recommended that industry self-regulating practices—i.e. quality assurances or permits—are institutionalised. Instead of the government being involved in the full top-down process, it will prove more efficient and effective if the companies are committed and held liable for their own projects as in other countries, where self-regulation has proven successful. The Eurocham Myanmar Construction and Infrastructure Advocacy Group (EMCIAG) wants to recognise the government ministries' role in industry oversight while warning them about the challenges of becoming mired in minutiae.
- It is recommended that translation of codes and regulations be clear and not leave room for creative interpretation.

*Creating a realistic and attainable development framework for the construction sector; enforcing standards and regulations as i.e. a certification scheme and a living registry record of construction actors.*

## Issue Description 2: Material Standards

With the boom of the construction industry, the sector recommends an active role from the government to ensure the safety of its population by enforcing clear construction laws and standards. Although there are some laws in place that already set out rules and regulations for the construction industry, they are often poorly understood and not implemented. A lack of formal regulation and enforcement, combined with financial pressure and misinformation, has opened the market to counterfeit or low-standard construction materials which pose serious safety concerns. The lack of proper intellectual property rights and enforcement also deters foreign suppliers from entering the Myanmar market.

### Potential Gains:

- The enforcement of laws and standards for stringent controls and measures on the construction industry provides safety assurances for workers and the population at large. A clear roadmap will undeniably help stakeholders move in the right direction to achieve targets set for the industry.
- With established laws and standards in place, investor confidence will rise. Complying with standards will improve building sustainability, and curb excessive energy consumption. The government has showed interest in improving industry standards, demonstrating commitment through the setting up of calibration and measurement laboratories. This action is viewed as an encouraging first step.

### Recommendations:

- Understanding the importance of enforcing rules and regulations is crucial for the government, which has the capacity to introduce effective control measures. We recommend the creation of a national institute for the certification of materials, which should be tested and certified according to the Myanmar national standards. This would help to avoid non-compliant materials being used in construction. We advocate for the implementation of a strict customs policy in order to prevent non-compliant materials from entering Myanmar territory.



*Enforcing laws for and standards to ensure safety at the workplace and quality of the construction infrastructure; preventing non-compliant materials from entering the market in Myanmar.*

### Issue Description 3: Balancing Growth and the Environment

Development will always have an impact on the environment. The design of the buildings and infrastructure, materials used, and construction techniques deployed do not always fully take into account environmental concerns and impacts.

The construction industry is a key sector in Myanmar's race toward development. EMCIAG recommends balancing the thirst for rapid construction of new public and private buildings and infrastructure facilities against considerations of sustainability. Yangon has experienced detrimental effects from building developments due to the rapid expansion of the construction industry and the lack of consideration given to environmental issues. These could potentially grow into significant problems if not tackled effectively. Pollution and energy wastage during the life cycle of construction projects is just one common issue.

Myanmar has taken steps toward green construction by including environmental requirements in the Myanmar National Building Code. However, the enforcement of such requirements might prove to be another hindrance to the government's efforts. One positive development noted by the EMCIAG is the incorporation of the ASEAN Institute for Green Economy (AIGE), with its secretariat in Yangon.

#### Potential Gains:

- In a country vulnerable to climate change and natural disasters, the EMCIAG recommends giving serious thought to the environmental side of infrastructure and construction developments. Construction-related problems such as pollution, energy and water waste can be addressed with a view toward sustainable operations. To do so will have the flow-on benefit of better preserving the environment.

#### Recommendations:

- The government is the actor balancing the need for growth with the wellbeing of the environment. The potential environmental impacts of an infrastructure could be laid out with an environmental impact assessment (EIA) at the permit stage, including the materials to be used, but most importantly, assessing the potential impacts on the environment and the corrective measures proposed to mitigate them.
- As the government has made ambitious plans, it is of crucial importance to set measures on the materials and techniques used so that quality and environmental impacts are not compromised.
- Compliance should lead to certification: one of the actions that should be taken is clarifying the green building codes and linking them to international standards. This will allow both local and foreign projects to be certified across the board.

*Requiring a holistic approach in the construction sector; setting measures for quality and compliance with international standards; sustainably addressing pollution, energy and water waste in the construction sector.*

## Issue Description 4: Preservation of Heritage

The fast-paced growth of cities poses a threat to heritage structures. Although there are organisations such as the Yangon Heritage Trust which work on preserving historical sites in Yangon, the EMCIAG shares its concerns with regard to natural attractions, as well as religious and cultural heritage sites.

Heritage buildings are rarely economical to renovate, so the preference has been for developers to construct new buildings. These often encroach on heritage sites.

### Potential Gains:

- With increased efforts to preserve heritage, the city will be more attractive to its people and visitors.
- With an adequate system in place which encourages the general public to preserve heritage, it can be an inclusive process. Heritage buildings are a significant drawcard for tourism, another key growth industry.

### Recommendations:

- The EMCIAG recommends intensifying the efforts of the government to preserve the soul of Myanmar's cities.
- Moreover, a positive preservation of heritage will come with increased involvement of third-party stakeholders. The government might step up programmes that encourage the general public's active participation in the preservation of heritage sites and ensure that they benefit from it. The items listed below are some of the measures proposed to the government:
  - o Formation of a government entity or a body that can advise the public on heritage-related matters. This entity could potentially be the focal point that advises the public on the kinds of actions that can be taken for the preservation of heritage sites.
  - o Implement schemes and initiatives that encourage the preservation of heritage buildings, such as tax incentives for preserving buildings that are over 100 years old.

*Increasing the efforts to preserve heritage by involving third-party stakeholders; implementing schemes and initiatives such as tax incentives for preserving heritage buildings.*

## Issue Description 5: Enforcing Construction Safety

Construction sites are becoming larger and more complex, which entails greater environmental, health and safety risks for workers and local communities.

Proper mitigation measures may often be seen as voluntary, costly and time-consuming by those in the construction industry. Government-level intervention is required to change this culture of non-compliance. To that end, the government has issued a draft law to govern safety matters at construction sites, which we all hope will enhance the safety of the working environment.

Crucially, inadequate standards on education and certification schemes, as well as shortages of qualified personnel, has the potential to undermine implementation and enforcement of the law. This, again, requires preferential attention.

### Potential Gains:

- Reinforcing measures to ensure construction safety could help build a positive image for companies operating in the sector. Compliance with international safety standards will promote collaborations between local organisations and foreign enterprises.

## Recommendations:

- Alongside the implementation of the new law, the government could perhaps step up efforts to create an institute for training and certifying safety personnel. This will enable self-regulation, which could be an effective tool for reducing the burden on government. As a first step, a professional safety training scheme could be developed on a national scale.

*Setting construction safety measures and ensuring the compliance of international safety standards; developing a professional safety training scheme.*

# DIGITAL INNOVATION



## INTRODUCTION: MYANMAR'S DIGITAL TRANSFORMATION

Despite its relatively recent introduction to mobile technology, Myanmar has been quick to adjust to the digitalised world it now finds itself in, reflected in smartphone penetration rates comparable to many other nations in the Southeast Asia region. Moreover, Myanmar is one of only a few countries to achieve a mobile-first status where mobile technology has preceded exposure to laptops and computers. These circumstances, and the speed of this shift mean that there are still significant knowledge gaps. Bridging this gap is necessary for Myanmar to realise its full potential as a modern day nation-state and promises to bring with it multiple socio-economic advances across all sectors of government, society and the economy.

The rise of data-driven technology and innovations have revolutionised the way in which services are provided and received. Information can be collected and collated in such a way that products can be offered to individuals in a highly personalised manner. This digital transformation offers opportunities for all stakeholders including government institutions, development organisations, nonprofits and for-profit private sector parties and all citizens of Myanmar.

The government has taken some important steps, announcing in February 2019 its plans for open consultation on a cybersecurity policy and legislative framework to address the related issues of e-government, e-commerce and cybersecurity engaging with all stakeholders, including civil society, on the consultation process to make the forthcoming framework and law effective and rights-respecting. While it is encouraging to see that the government has opened the call for consultation for cybersecurity policy and legislative framework, it is imperative that action is not to stuck at the process of drafting and law-making.

This paper aims to lay out the top three possible areas in which Myanmar could greatly benefit from the achieved digital penetration. Where applicable, case studies will be provided as benchmarks, highlighting how other countries have been able to adapt to similar conditions and challenges that confront Myanmar. These issues go to the heart of Myanmar's digital transformation as no progress can be made if there is no trust in digital technology, the private sector isn't supported or if the population doesn't have the necessary literacy to utilise the available technology.

### Issue Description 1: Leading by example—Government Services and Legislation

Exposure to and trust in digital technology are core foundations of a digital transformation that need to take place if Myanmar wishes to fully realise its potential. The world is being transformed by new technologies, which are redefining customer expectations, enabling businesses to meet these new expectations, and changing the way people live and work. Internet usage in Myanmar is highly concentrated around social media and Facebook is used interchangeably with internet browsing. Trust in the use of online services is particularly low. Services such as online banking and shopping are still very much in their infancy.

The government can play an active role in promoting the diversification of digital services and can position itself to be at the receiving end of the resulting benefits. The adoption of digital technologies will provide inclusive and sustainable socio-economic development across all states and regions as targeted by the government's 12-point economic policy steered by the Digital Economy Development Committee (DEDC).

First of all, the implementation of digital government services could strengthen trust. Examples of such digital services could be a digital identification (ID), online audit and tax registration, visa and passport applications and government schooling registration. Not only would this provide transparency and better services, it would also support the digital literacy of people.

Secondly, the government could protect its people by creating a legislative framework for consumer protection laws. This will support building a reliable and accountable ecosystem of the private digital sector.

Finally, the government could set an example by employing a professional communication strategy across their digital channels, managing the communication platforms of both government institutions and their officials to only send out reliable, curated content.

## Potential Gain:

Introducing the population to something such as the digital ID system could be an initial step in bridging the gap of distrust and unfamiliarity with digital tools such as online payments and banking. This would have the added benefit of promoting digital literacy on a large scale, increase the visibility of government services and support the expectations of citizens toward a culture of transparency.

## Recommendations:

- Trust in digital services and e-commerce can be significantly improved if the government takes a leading approach in the implementation of digital services. We advise the government to lead by example and implement digital government services, provide the necessary legislative measures and proper digital communication.
- Taking the above proposed measures would convey to citizens that digital services are reliable, easy and trustworthy, supporting a shift in perceptions. Such actions should be undertaken in conjunction with consumer protection laws that reassure end users of their rights and avenues to pursue any disputes.

### Case Study: India's Aadhaar ID system

Created in 2009 by the Indian government, the Aadhaar biometric identification system is a randomly generated 12-digit ID number which is used in the provision of a number of government services. As of March 2019, the system is being used by 1.23 billion citizens, information is open and available to the public and biometric details do not record information such as caste, religion, income, health or geography.

The benefits of such a system are numerous: the number can be used throughout the country making it easier for citizens who relocate and migrant workers. Aadhaar also streamlines the targeted delivery of services and gives the government data regarding beneficiaries. Most importantly, the system promotes transparency and good governance, as information is open and accessible online.

The system requires only minimal information from the user but offers various applications including:

- Provision of unemployment/welfare benefits
- Biometric attendance for government employees
- Verification in application for government services
- Police checks
- Voter identification
- Land management
- Food and fuel subsidies

It has the additional benefit of introducing people to the concept of a bank account as well as being able to access this bank account as government subsidies and payments are linked with an Aadhaar affiliated bank account nominated by the user.

The roll out of such a service can be staggered and future application can be added on or modified as the uptake with the system progresses. This has been the case in India as services have been expanded to include the filing of taxes and the purchasing of train tickets as well as the ability to conduct bank transfers.

## Issue Description 2: Supporting a Digital Transformation in the Private Sector

The huge growth in internet penetration offers a unique opportunity for Myanmar to build a whole new industry on top of the more traditional industries like producing raw materials and garments, for example. Enabling the growth of a digital economy would require initiatives that tackle various shortcomings that inhibit growth.

From a logistics point of view, the delivery of online services is impeded by long delivery times resulting from poor quality roads and highways. The lack of formal postal addresses, particularly in smaller villages and towns, also severely affects the ability for e-commerce to expand into regions outside of Mandalay and Yangon. The dominant system of cash-on-delivery burdens sellers and logistics companies, as the recipient needs to be physically present when goods are exchanged.

Finally, several case studies from around the world have shown that there are various circumstantial reasons why cities become tech hubs: cheap rent, beneficial tax systems, ease of company registration and low costs for skilled labour are important factors for startups large and small to choose a location. All these factors can be greatly supported by governments, as proven by studies of Lisbon, Berlin and Tel Aviv. (See case study below.)

The government has shown collaboration in facilitating several disruptive digital services. Great examples which are currently in operation in Myanmar are ride-sharing and food delivery services. Both streamline the user experience and mitigate issues such as bargaining and communication. This results in an improvement for the consumer, as safety and ease of use are improved.

### Case Study: Successful Overseas Strategies

Following the global financial crisis, Portugal found itself in dire economic circumstances and required an EU-funded bailout. Ten years later, it has been able to make use of some of the negative consequences and channel them into net positives which have fostered its startup scene so that now, Lisbon, Portugal's capital, ranks alongside London, Amsterdam and Berlin as one of the most attractive destinations for new startups. There have been a number of factors which have been credited with Lisbon's success which can be identified as important in supporting a healthy digital ecosystem:

- Affordable/competitive rent—should be accessible if situated in hubs outside the centre of the city
- Supportive tax structure
- Fast and reliable internet infrastructure
- Access to financing
- Coordination and collaboration between other startups
- Attracting talent domestically and overseas—also important to keep skilled workers
- Positioning itself at the centre of the tech scene by hosting technology conferences
- Government support co-financing startups
- Proficiency in English—the language of the tech startup scene
- Competitive labour costs

### Potential Gain:

Providing a more supportive structure for the startup community through sector-specific investment, financing and subsidies would strengthen the growth of the domestic startup community and would also begin the process of transformation needed to attract talent into Myanmar.

### Recommendations:

- We recommend a digital agenda formulated in conjunction with accelerators, the local startup community and international investors. The registration process for digital businesses should be streamlined by decreasing capital requirements, registration fees and paperwork. Tax incentives could be provided for eligible information and communication technology (ICT) businesses, whose innovations can then be showcased on a national and regional stage.
- Digital agenda from local governments could be topics to further explore in partnership with accelerators and early-stage or later-stage startups.
- Enforce the use of Unicode nationally for all device manufacturers and software developers.

## Issue Description 3: Improving Overall Digital Literacy in Myanmar

The aforementioned issues and their solutions cannot function without a population that is digitally competent and engaged with the internet. However, data usage statistics suggest that there is a focus on consumption of social media (predominantly Facebook), and a lack of understanding of other services that could facilitate and improve people's lives.

Shortcomings in the skills of Myanmar's digital workforce has created challenges for local and international employers and investors. It has resulted in time-consuming shadowing work and costly retaining of computer science and engineering talent. This requirement is significantly beyond the training requirement for similar graduates in other countries, making Myanmar's digital workforce less competitive, and spurring imports of skilled labor. Development of digital services in both the private and public sector has been slowed as a result, while the quality of some locally produced services has been below international standards.

Digital literacy also still remains poor although minor improvements have been made in terms of broadening the range of websites and services people in Myanmar use. What this creates is a population who are quick to succumb to the lure of clickbait news articles and a lack of critical thinking when confronted by hate speech and fake news.

### Potential Gains:

- There is an opportunity to strengthen the backbone of the digital economy through incorporating digital skills in education policy, developing an ICT curriculum and by raising the digital capabilities of education policymakers, teachers and lecturers.
- Both supply and demand skill issues can be addressed by collectively raising the level of digital literacy. Therefore, it will be necessary to make active contributions towards improving the level of digital skills, replacing rote learning with creative thinking, supplementing academic lecturing with practical self-earning, investing in modern, functional ICT equipment and grid connections for schools and universities nationwide.

### Recommendations:

- To the government, we recommend that all civil servants, starting at senior level, receive digital literacy training to increase familiarity with modern ICT. There should be a priority for training education policymakers, schoolteachers and lecturers who will be nurturing future digital workforces and digital consumers of a digital Myanmar.
- In schools, student-centric learning, digital literacy, and Science, Technology, Engineering and Mathematics (STEM) should be a fundamental tenet of 21st-century education policies and embedded in the middle and high school curriculum.
- The digital literacy curriculum in particular could cover mobile and computer digital skills and a digital mindset (using internet productively, avoiding hate speech and detecting fake news). In preparation for a digital economy, high school students should receive basic programming skills using Scratch or similar programming training tools to prepare students for the 21st century digital economy. We recommend the government also consider partnering with suitable parties while ensuring a transparent and impactful implementation.
- All universities would greatly benefit from being equipped with a grid connection, functioning ICT labs and high-speed fiber internet while university curriculums should include online research to prepare students to find information online efficiently in their future employment. Computer universities should promote computer science programmes such as modern web and mobile app-focused coding and design thinking skills. Additionally, partnerships should be considered with international university and companies to upgrade the quality and content of courses. Furthermore, computing degrees should include computer science internships and industrial attachments, so students are ready for employment.



- For citizens already out of school or university, vocational digital literacy qualifications could be made available at schools and training centres nationwide. The government may also consider partnering with established computer training centres to provide the said vocational qualification. For citizens that do not want official qualifications, the government should incentivise and support the establishment of digital literacy training centers.

ENERGY



## INTRODUCTION

Access to energy is a key enabler on the road to inclusive economic and social growth. Myanmar benefits from significant natural gas and renewable energy resources. This unique combination gives reason to hope for a promising long-term energy outlook for the country. However, most of Myanmar's energy potential remains untapped and as of today the country is still one of the least electrified in the world. The government is now actively addressing this issue, which is even more critical considering the ever-growing residential and industrial demand. Myanmar has indeed set an ambitious target of achieving universal access to energy by 2030 through its National Electrification Plan (NEP).

In order to achieve this goal, it is fair to believe that international capital and expertise will need to play an important role. Keeping a positive momentum is therefore essential to consolidate present and encourage future foreign direct investment (FDI) in the country.

In 2018, the EuroCham Energy Advocacy Group (EEAG) built upon its constructive and mutually beneficial dialogue with the Myanmar government. The EEAG is more committed than ever to strengthening its cooperation in this regard and is ready to further contribute to the development of the energy sector so that the Myanmar population can reap the benefits they deserve. In this respect, the group looks forward to addressing in greater detail the following key topics with all stakeholders during the course of 2019.

### Issue Description 1: Coordination and Transparency in Regulation and Procedures

One of the main concerns for private companies operating in the energy sector is the level of coordination among three relevant ministries, the Ministry of Electricity and Energy, the Ministry of Finance and Planning and the Ministry of Natural Resources and Environmental Conservation. The level of communication and coordination between these regulatory bodies remains below the requirements of current energy projects and does not encourage future activities.

Indeed, navigating between norms and regulations belonging to different ministries has a negative impact on investors' sentiment, both for companies that are willing to enter the Myanmar market and for those already present in the country.

Moreover, a cross-sector bottleneck for energy developers is identified in the lack of clarity in tendering procedures and in the inability to satisfy requests from multiple projects. Despite the ministries' eagerness to improve, tendering procedures remain lengthy, unclear and struggle to meet the new demands of a fast-paced expanding sector, resulting in significant costs for energy developers. Similarly, the current power development framework does not allow for the most efficient use of limited time and resources. If not addressed with great determination, this issue could irrevocably harm Myanmar's energy outlook.

### Potential Immediate Gains and Recommendations:

Increased coordination among relevant ministries would result in a better understanding and application of existing regulatory process, leading to a more efficient and rapid project implementation process. Myanmar's journey towards total electrification would benefit from faster and simpler implementation of energy projects, while maintaining high social and environmental standards. Therefore, EuroCham Myanmar makes the following recommendations:

- Regular inter-ministry meetings, with the presence of private sector representatives, would improve communication and knowledge-sharing among energy-associated ministries and their main departments. This would also enhance regulatory activities to better identify and tackle contradictory laws and regulations. These meetings should be aimed at pinpointing bottlenecks affecting the private sector's investments and attaining streamlined processes, more efficient alignments, faster implementations, and more open and competitive tenders (see long term gains). Moreover, internal governance procedures should be reviewed and updated to improve the interaction and efficiency of relevant ministries in running regulatory activities.

- Consequently, delegations from private companies should be invited to attend these meetings on a regular basis to contribute to attaining mutually beneficial solutions and to strengthen the relationship between energy developers and Myanmar's government.
- The power development framework must be amended to enable parallel timelines and activities on technical, commercial, environmental and social aspects. This would reflect the holistic approach of power project development and implementation.

## Potential Long-term Gains and Recommendations:

- Legislation stability and clear policies are the only effective way to guarantee the medium and long-term execution of projects. Uncertainties discourage investors and add a significant reputational economic risk to the country.
- A more transparent and updated tendering process and better coordination between ministries would facilitate investors' perception of who-does-what, guaranteeing more streamlined procedures for the benefit of all the parties involved.
- The whole tendering procedure could be streamlined in order to generate greater efficiency. EuroCham Myanmar suggests that a ministerial body be formed composed of expert personnel, entirely dedicated to evaluating tenders, awarding contracts and optimising tender rules and processes. Moreover, this new government body should be willing to meet with the private sector to discuss issues, explore practical win-win solutions and outline correct procedures.
- A newly created inter-ministerial coordination body would require the implementation of dedicated training sessions aimed at fostering enhanced communication between different ministries on energy-related topics and at improving the efficiency of the new government body.

*Increase coordination between the Ministry of Electricity and Energy, the Ministry of Finance and Planning, the Ministry of Natural Resources and Environmental Conservation and the private sector to enhance and contribute to more efficient project implementation.*

## Issue Description 2: Energy Infrastructure, Energy Pricing, and Payment Support

Myanmar is well placed to develop an efficient low-carbon energy system balancing the advantages of natural gas and renewables to power economic growth. However, the country currently lacks the required energy infrastructures to support such growth. Two top priorities require urgent action: the improvement of the ageing and overloaded transmission network, and the further development of and investment in the gas pipeline network and related infrastructures.

The national power grid today only reaches 42% of the population. Furthermore, its current state results in significant power line losses as well as making it challenging to integrate intermittent renewable energy.

A lack of access to modern energy solutions often results in households having to rely on inefficient, unhealthy and hazardous alternative fuels such as diesel.

On the other hand, Myanmar is highly reliant on gas exports for government revenue. Gas exports are Myanmar's top commodity. In the 2017-2018 fiscal year (FY) it was worth some \$3.37 billion, according to the commerce ministry, accounting for 25% of total export revenue. While Myanmar is keen to utilise more gas domestically, there are no obvious short-term substitutes for the revenues earned through exports to Thailand and China. This will likely lead Myanmar to keep a balanced approach between gas exports and domestic use.

Although the size of the domestic market is growing, Myanmar has limited options for generating additional electricity, especially in the short term. The percentage of gas dedicated to the domestic market is around 20%, mostly owing to contractual obligations to Thailand and China. In future, however, it is expected that discovered gas and yet-to-be discovered gas—especially in the deep ocean—will be used to meet increasing domestic energy demand; therefore, it is essential to plan and develop or reinforce the necessary infrastructures to enhance domestic gas use in the country, as well as guarantee adequate domestic gas sale prices and foreign currency payments.

In this context, liquefied natural gas (LNG) imports might be an adequate source of predictable, short-term supply for Myanmar gas-fired power plants and enable the country to balance the needs of the domestic market and export revenue generation.

## Energy Pricing and Payment Support

Whilst it is understood that the benefits of electrification hinge on its affordability, the current level of subsidies not only damage public finances and hamper efforts to add generation capacity, they also make it very challenging for the government to expand the national grid and connect the 65% of the population that still do not have access to electricity. These subsidies are indeed financially unsustainable and are incompatible with the ambitious electrification plan Myanmar has set out.

Furthermore, low electricity tariffs do not encourage consumers to adopt energy-saving practices. They also twist the incentives for investing in infrastructure upgrades with the direct consequence of suppressing the quality of power generation and supply.

Beyond the level of subsidies itself, another important matter to address is the currency in which energy payments are made. It is widely accepted that internationally financed projects need access to foreign currency and foreign currency indexation. Indeed, the financing of large infrastructure projects is still today primarily in USD, and so as long as there is no currency derivative market for the Myanmar Kyat, it is very challenging for international investments to be deployed without foreign currency payments.

Finally, the government has a crucial role to play in providing energy payment support. Whilst there was some form of sovereign undertaking for the Myingyan Combined-Cycle Gas Turbine (CCGT) power project, the government has been reluctant to replicate this elsewhere. However, for as long as tariff reform has not resulted in a financially self-sustainable national off-taker, developers and lenders will continue to need additional assurances.

## Potential Immediate Gains and Recommendations:

- More effectively combining grid expansion with mini-grid implementation will enable the population to receive electricity more reliably, efficiently and cost effectively.
  - This involves power grid expansion efforts to be ramped up and prioritised along with the further implementation of mini-grids in remote areas for which grid expansion is too costly and will take too long.
- Reduced power line losses will reduce the burden on the existing power supply base.
- Continue reinforcement of current generation equipment, increasing thermal efficiencies of thermal plants and operating efficiency of renewable plants including hydropower.
- Foreign or mixed-currency payments will enable an optimised risk allocation between the public and private sector.
  - Allow foreign currency tariffs on a more regular basis or foreign-indexed local currency tariffs.
- Introduce a tariff scheme where foreign currency is paid whilst senior debt remains outstanding and before switching to local currency.
- Another alternative is to have a multi-currency tariff with foreign currency for capital investment recovery and local currency for local taxes and operational expenditure.

- Add extra tariff levels or implement bigger increases for some customers such as industrial or urban residential customers whilst leaving untouched those that apply to low-income consumers.
- To introduce government support in the short term will lower the perceived risk of investing in energy projects and thereby reduce the tariffs required by investors. It is recommended that a contractual undertaking should be provided by the Ministry of Electricity and Energy guaranteeing the payment obligations of the Electric Power Generation Enterprise. Moreover, it is also recommended to be accompanied by both a letter of acknowledgement from the Ministry of Planning and Finance and a favourable legal opinion from the office of the Attorney General.

## Potential Long-term Gains and Recommendations:

- Most of Myanmar's gas infrastructure needs to be rebuilt or upgraded. The EuroCham Energy Advocacy Group considers the further expansion of gas infrastructure a high priority. Availability of natural gas along with last mile connectivity through pipeline networks to cities and villages can further be a key enabler for industrial development. EuroCham's Energy Advocacy Group supports and encourages the government in its effort to introduce reforms to stimulate FDI in energy infrastructures. One limiting factor is the import costs driven by tax and duties and which raises the LPG price to a level which is uncompetitive to diesel. Our suggestion is to review this practice and to develop gas pipelines that enable supplying domestic gas to power stations and industries, which can also contribute to allow cheaper import of LPG and reduce the expensive and less environmentally friendly diesel consumption. Clear and strong regulations need, however, to be developed to mitigate the high cost of supply and storage.
- In terms of energy pricing, due to the politically sensitive nature of increasing tariffs, increases are recommended to be implemented on a socially viable, transparent, and incremental basis to make them more acceptable for the public.
  - o Increasing energy tariff levels will make investments in energy infrastructure more attractive financially and promote energy-saving behaviour.
  - o Introducing time-of-day tariffs—which charge more for electricity consumed during peak hours—will help to spread use around time, thereby helping supply match demand.
- Another option which might make for a more long-term solution would be for the Ministry of Planning and Finance to issue a Sovereign Guarantee as per the Public Debt Management Law of 2016. This guarantee could cover payment obligations as well as the obligations of convertibility and transferability of foreign currency to other jurisdictions.

*Combining grid expansion with mini-grid implementation, together with reducing power line losses and reinforcing the current generation equipment; reducing the perceived risk of investing in energy projects by allowing foreign or mixed-currency payments and facilitating legal and contractual support.*

## Issue Description 3: Upstream and Renewable Energy

### A clear legal framework for the upstream sector

The Republic of the Union of Myanmar is the sole owner of all natural resources and has the right to develop, extract, exploit and utilise these resources in the interest of all the national groups. Investors generally enter into production sharing contracts (PSCs) issued by Myanma Oil and Gas Enterprise (MOGE) under the State-Owned Economic Enterprises Law 1989. The terms and conditions of these “self-containing” contracts govern the exploration and production process as long as they are not contrary to other laws in force.

The Investment Law, Foreign Investments Rules and the Myanmar Investment Commission (MIC) Notifications are accounted for in the process of approving terms and conditions of the PSCs. However, other legislations regulate the oil and gas sector in Myanmar, and this gives rise to unsatisfactory clashes of principles.

A new Petroleum Law has been drafted and is currently under review by the Hluttaw Energy & Electricity Development Committee (EEDC), but a recent preliminary assessment by the private industry sector has raised several questions about the effectiveness of the proposed legislation in streamlining the upstream process and in improving the attractiveness for foreign companies to invest in the country.

### **Revision of PSCs and taxes to incentivise investments to unlock natural resources**

Myanmar has some of the toughest PSCs in the world. A World Bank benchmark of fiscal terms showed that Myanmar PSCs in general carry a government take of more than 80% and do not compete with other provinces of similar risks and rewards. Such terms adversely affect the commerciality of low to medium size discoveries or marginal fields.

Additionally, the Ministry of Finance and Planning have added commercial tax (5% on sales recoverable) and special goods tax (8% on sales not recoverable) to gas sales in Myanmar. Consequently, gas is threatened to be priced out of the local market and if this added burden is not passed to the consumer, the government take for sizable development prospects would exceed 100%.

High product taxes discourage investments and are highly counter-productive for the government since the gas is far more valuable to the country as a fuel for industrial development and growth, than as a source of direct tax revenues. Natural gas has no value if harsh fiscal terms limit or impede exploration activities, which inherently hold significant risks of finding hydrocarbons in frontier basin like the deep-water offshore of Myanmar, and ultimately prevents development of discovered resources.

### **Timing of environmental impact assessment (EIA) approval**

EIA Regulation (2015) foresees that Environmental Conservation Department (ECD), as part of the Ministry of Natural Resources and Environmental Conservation (MONREC), grant the environmental authorisation for a project, or reject it, within an established timeframe (up to a maximum of 90 working days).

These timeframes are consistently not met, and EIA review times longer than one year are common in the energy and electricity sector. This uncertainty over the time to obtain the Environmental Compliance Certificate (ECC) has a serious impact on operators' ability to plan cost-efficiently, initiate the necessary investment commitments and ensure timely and safe execution of the projects as per PSCs working commitments.

### **Renewable energy**

Myanmar has significant renewable energy potential, with particularly attractive hydropower and solar energy resources. Hydropower is a long-proven clean energy technology which Myanmar is familiar with, currently accounting for approximately 60% of the country's total installed capacity. Still, this is just a small fraction of the nationwide potential. With the recent promising developments in the space of gas-to-power projects and in order to have a mixed and sustainable balance of energy supply, it is recommended that the government shifts its attention to adding more hydropower capacity, particularly considering the inherently long lead times involved.

More attention to solar energy is recommended, as this is an as-of-yet untapped resource in Myanmar. Solar power plants can be developed on a centralised utility scale as well as on a more decentralised basis such as on industrial rooftops or as part of an off-grid solution in remote areas. Three grid-connected solar power purchase agreements (PPAs) have thus far been signed, but with tariffs that are significantly higher than what can be achieved today in the sector. The industrial and mini-grid space is starting to take off but overall the solar power sector is still in its infancy in Myanmar.

A substantial increase in the share of renewables in the energy mix can have a strong and positive impact on the country's ability to satisfy the ever-growing thirst for energy both at industrial and residential level.

Along with increases in renewable energy like solar and wind, the need for a modern state-of-the-art grid is required (see also Issue Description 2 above). A digital and modern state-of-the-art grid control will have a tremendous positive effect when levelling and aligning power demand with power supply, leading to a much more homogenised and efficient use of installed capacity over time and seasons.

## Potential Immediate Gains and Recommendations:

- The revision and improvement of fiscal/taxation terms of PSCs and the government's take will encourage exploration and investment on current PSCs, which may unlock natural gas resources in a short-term scenario.
- Fulfilment of the legislative timeframe for EIA approval would allow operators to rely on consistent project schedules permitting timely execution of work commitments and overall cost savings.
- Shortlist the most promising hydropower projects from an impact mitigation and economic perspective, with a particular focus in regions that are in need of significant infrastructure development. Provide flexibility to prioritised projects in order to fast-track development and implementation and procure the necessary commercial comfort to prioritised projects in order to secure the operators' commitment to completion.
- Whilst hydropower has always been a relatively cheap source of electricity, the same can now be said for solar with prices dropping in the last few years. Solar power plants, with their very short construction periods, could respond quickly to Myanmar's power needs.
- Establish a dedicated regulatory framework for both grid-connected and smaller-scale solar projects.

## Potential Long-term Gains and Recommendations:

- Apply standardised project documentation such as concession agreements and PPAs for hydropower projects, with certain key commercial terms being addressed at an earlier stage in the development process considering the significant investment risk borne by the private sector.
- Defining a clear and comprehensive upstream legal framework which homogenises all the existing laws and regulations in line with government energy policies, would improve the efficiency and response of regulatory bodies, encouraging FDI in the sector.
- A competitive investment climate for the upstream oil and gas industry in Myanmar will contribute to the country's economic development agenda. A fair revision of PSC fiscal terms would increase the attractiveness of Myanmar contracts with respect to other countries and favour the exploration and development of gas discoveries, avoiding current operators relinquishing PSC blocks in an early stage with no exploration drilling activity performed.
- A more efficient process could be introduced in respect of the EIA procedure to de-bottleneck the current situation and accelerate the intermediate steps. A possible improvement could be the secondment of MOGE oil and gas experts or independent external experts to ECD to assist with technical advice and the review of reports.
- It is recommended that industry review and comment is finalised for the present draft Petroleum Law.
- Hydropower and solar can be developed in a sustainable manner, and if planned properly, with minimal social and environmental impact. Moreover, they complement each other when it comes to managing seasonality as well as peak and off-peak production. With lifetimes often of over fifty years, hydropower plants represent long-term solutions for Myanmar in providing stable and renewable electricity.
- Hydropower and solar power plants can be either grid-connected or installed in remote areas, providing power directly to commercial and industrial customers, alleviating grid loads and deficiencies.

*Revising and improving the fiscal and taxation terms of PSCs; adhering to the legislative timeframe for EIAs; providing flexibility for fast-track and implementation of hydropower projects; establishing a regulatory framework for both grid-connected and smaller-scale solar projects.*



GARMENT

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## INTRODUCTION

The garment sector represents Myanmar's second-largest export sector after mineral fuels (including oil) and has seen a tremendous growth at a rate of 25% per year over the past five years. The total export value for the sector in 2018 was approximately \$2.7 billion. The garment sector is known to create employment for people who, under other circumstances, would face difficulties entering the formal labour market. Today the industry is estimated to employ around 450,000 workers, 93% of which are women, predominately migrating from rural areas to Yangon. In 2012, it was estimated 110,000 women were employed in the garment sector.

It has also been assessed that 85% of the workers send back a minimum of 50% of their total earnings in remittances to their families, amounting to a minimum of \$62 per worker per month (figures from 2017). Estimates have shown that 20% of the women employed in the industry today are of non-Bamar ethnicity, indicating that there are opportunities for the industry to engage in activities for increased tolerance between different ethnic groups.

The government has an ambitious plan for the industry and is targeting an export value of \$10 billion by 2020, which would directly create additional employment in the sector and in supporting industries. Efforts have been made by the government to support this industry, and the Myanmar Garment Manufacturers Association (MGMA) has set out an ambitious strategy to help these plans materialise. External support to develop and promote the industry has been given by the donor community, which has led to significant improvements in various areas.

*Made in Myanmar* garment exports to the European Union (EU) by European companies represent the main driver of the extraordinary growth of the industry recorded in the recent years. The Everything But Arms (EBA) scheme, a trade agreement allowing Myanmar "full duty-free and quota-free access to the EU Single Market for all products (except arms and armaments)",<sup>1</sup> has been the main driver for the development of the garment sector. An eventual withdrawal of the EBA by the EU, due to the current human rights situation, would have severe negative consequences on the industry leading to a considerable fall in export value and a substantial cut in employment, affecting hundreds of thousands of women who are currently engaged in the sector. Hence, as a Garment Advocacy Group we strongly recommend the government to cooperate with the EU to maintain the EBA status in Myanmar.

### Issue Description 1: Labour Law Reform

We recognise that there is an ongoing commitment to reform various labour laws, such as the Labour Organisation Law, the Labour Disputes Settlement Law, as well as the new Occupational Safety and Health Law. This work is being done through a tri-partite consultation mechanism involving the government, employer associations and trade unions, and supported by the International Labour Organisation (ILO). We also understand that it requires time to bring in all relevant stakeholders in order to foster a sense of common ownership over the process and its outcomes.

Nevertheless, the industry faces various challenges arising, in part, from (i) a lack of clarity surrounding the legal framework and its interpretations, (ii) scarcity of transparency in the decision-making process and (iii) the failure to allow sufficient time for the private sector for adjustments of the industry systems in view of new regulations. Therefore, there have been significant delays in implementing new policies, such as the New Minimum Wage, resulting in conflicts in the workplace. In addition, recommendations, developed and proposed by the tripartite dialogue mechanism are not always fully recognised, creating further instability within the industrial relations. For example, the practice of the Arbitration Body within the Labour Disputes process has been amended without consulting thoroughly the tripartite stakeholders, resulting in individual cases not having practical and economical access to arbitration.

The consequence has been an increase in the number of conflicts and strike actions. This is causing significant disruptions and loss of productivity in the sector, as well as having negative impact on the reputation of the industry.

<sup>1</sup> *Everything But Arms*, European Commission Trade Helpdesk. Retrieved from: <http://trade.ec.europa.eu/tradehelp/everything-arms>

## Potential Gains:

Clear labour laws, strong and appropriate implementation, and an efficient disputes settlement mechanism will help create stability in the labour market, where conflicts and disruptions to production can be more easily avoided. This offers certainty on how to operate as well as predictability for the industry, crucial for investments and growth. Recognising the recommendations of the tripartite dialogue forum creates acceptance and ownership which strengthens the implementation of new policies.

## Recommendations:

- The Labour Organisation Law could provide more clarity on (i) rules of engagement, (ii) how Freedom of Association shall be protected, and (iii) how industrial dialogue and collective bargaining shall be carried out. Currently, the lack of clear guidance is often the cause of many conflicts and unequivocal laws and regulations will avoid the necessity of involving Township Conciliation or Arbitration Body for each single arbitration case. In turn, it will also reduce pressure on these institutions. Furthermore, we also recommend the law enable employer and worker organisations to form at sectoral level in a more expedient way, therefore allowing industrial relations to mature more quickly.
- We suggest the Labour Disputes Settlement Law provide an efficient and economically possible way for each individual case to have access to arbitration. This is crucial to avoid unrest and strike actions. We encourage the Arbitration Body to continue to hear individual cases, as per previous practice. Otherwise, it could be considered to establish other designated institutions or accessible courts with the same judicial power as the Arbitration Council, as alternative solution.
- A clear definition of the process and legal status of collective bargaining needs to be added in the Labour Organisation Law. This could include: (i) identification of who has the legal right to engage in collective bargaining, (ii) the way collective bargaining agreements can be made not only at a workplace level, but also on a sectoral and national level, and (iii) how they will be enforced.
- The next revision of the minimum wage by the National Minimum Wage Committee needs to follow a process that is transparent and based on open data. In addition, we stress the importance of implementing a system for an annual revision of the minimum wage, which takes inflation into account. This will not only make the market more stable but also predictable, a crucial feature to attract investments. Furthermore, the market must be given enough time between when a decision is made and a new wage level comes into effect, in order to revise the pay systems accordingly.
- We suggest that the Occupational Health and Safety Law is passed to ensure competency, compliance and better Occupational Safety and Health (OSH) management in the workplace, as well as establishing a process for workers and management to come together to make improvements through the establishment of health and safety committees.

*It is recommended that Labour Law Reform carries on in a transparent way and considering the tri-partite mechanism to avoid any conflicts in the work place. We encourage new laws and regulations to be clear, and provide the private sector with enough time to adjust their industrial systems accordingly. New and clear labour laws will offer certainty on how to operate as well as predictability for the industry, crucial for investments and growth of the sector.*

## Issue Description 2: Development of the textile sector

We still strongly believe that it would be beneficial for Myanmar to create a vertical supply chain by further developing a supporting textile and components industry, and hence further strengthen the growing garment industry and become less dependent on imports. However, the legal framework needs to be reformed to allow a vertical supply chain expansion within the country. A prime example of this is the move from a Cut-Make-Pack (CMP) system to a Free On Board (FOB) model. The current legal framework supports the CMP system, but this must be addressed to reflect the industry shift toward FOB.

Furthermore, textiles and components manufacturing are dependent on reliable electricity supply and access to water. Hence, there is a need to have robust and open discussions about (i) where the facilities can be located, (ii) what the specific needs are in terms of water and electricity, and (iii) additional supporting infrastructure. It is also important to assess the environmental and social impacts, ensuring the needs of local communities and the health of ecosystems are taken into consideration.

We are pleased to understand that the Ministry of Industry (MOI) is developing the National Textile Policy and is also promoting the development of the textile industry by suggesting the creation of industrial clusters. Having a proper industrial zone would allow the creation of water effluent treatment plants for shared use, secure reliable electricity supply and ensure appropriate road transport for incoming and outgoing material. Hence, a proper and clear industrial plan is deemed necessary for the creation of such industrial clusters.

We also believe that the private sector, both in terms of overseas investors and international buyers (main market players in creating the demand of the industry), needs to be directly involved to ensure a successful development of the textile sector. International companies are always updated about the current and the future market demands and hence can assist local authorities to create a supporting environment and conditions for the development of an international competitive textile industry. This will allow to support the growing export-oriented garment industry. We also understand that the government is open to collaborate with the private sector, as indicated in the Myanmar Sustainable Development Plan (MSDP) issued by the government in 2018.<sup>2</sup> Hence, as an industry advisory group, we are eager to have an ongoing dialogue on this topic and will gladly share our knowledge and expertise on international best practices.

In conclusion, it is important to make a distinction between the local textile industry supporting the local garment manufacturers for the local market and the textile industry needed to support the growing export-oriented garment industry. The needs and demands of the two textile industries are, to a substantial extent, different, hence a one-size-fits-all approach must be avoided.

### Potential Gains:

Having a vertical supply chain will significantly shorten lead times and increase flexibility, necessary requirements to increase the competitiveness of the Myanmar's garment sector in the global market. The FOB model will not only create job opportunities, but would also generate higher value-added products which, in turn, will generate higher export earnings and foster greater industry resilience to market fluctuations. In a long term prospective, a well-developed textile sector will also create the condition to integrate a cotton production in the industry, adding further value to the local economy.

### Recommendations:

- We encourage the purchase of locally produced raw material to be exempt from tax in the same way as imported fabrics.
- Create a dialogue around the localisation of the textiles industry and the actions required to ensure negative impacts are mitigated.

2 Myanmar Sustainable Development Plan (2018 – 2030), Ministry of Planning and Finance, 2018. Retrieved from: [http://themimu.info/sites/themimu.info/files/documents/Core\\_Doc\\_Myanmar\\_Sustainable\\_Development\\_Plan\\_2018\\_-\\_2030\\_Aug2018.pdf](http://themimu.info/sites/themimu.info/files/documents/Core_Doc_Myanmar_Sustainable_Development_Plan_2018_-_2030_Aug2018.pdf)

- Increase dialogue and collaboration with the private sector for the development of the industry, as also recommended in the MSDP.
- Further support the enforcement of the Environmental Conservation Law and make the implementation of good Environmental Management Plans a priority.
- Create a swifter process for giving required permits to companies investing in the textile industry.
- Make a clear distinction in the National Textile Policy between a textile industry supplying the local traditional garment industry and a textile industry geared towards the export-oriented industry. Hence avoiding a one-size-fits-all approach.
- We also recommend following both of the EuroCham Myanmar Logistics Advocacy Group's recommendations for the creation of a clear and strategic infrastructure plan and the development of new procedures/ rules/regulations.

*Myanmar needs to shift from a CMP system to an FOB one to increase its vertical supply chain and develop a strong textile and components industry. An FOB system will not only significantly shorten lead times and increase flexibility but will also create more job opportunities and boost exports value. To do so, a concrete textile industry plan needs to be developed and stronger partnership between the private sector and government is essential.*

### Issue Description 3: Skill Enhancement

The garment sector, being one of the fastest growing sectors in Myanmar, has attracted many workers coming from different parts of the country. Most of this labour force was previously engaged in other industries, such as agriculture and light industry, hence lacking the required skills and experience to work in the sector. In the same way, there is a substantial deficiency in middle management skills, making garment factories hire staff from overseas. While there is a general perception that the garment sector is a low-skilled industry, middle management skills are also extremely important for the sector (around 10-12% of the workforce needs these skills). Hence, we stress the importance of investing in the education system to create a highly-skilled labour force.

We appreciate that some vocational training centres for skill enhancement have been already established, however, they mostly focus on lower/middle skills capacity building. Middle management level education centres are still missing in Myanmar.

Furthermore, we are also pleased to see that the Ministry of Labour, Immigration and Population (MOLIP) is developing competency standards for Garment Cutting Room Operator, Garment Quality Control Operator and Finishing Operator. The plan is to assess 3,360 workers for level 1 and level 2 Garment Sewing Machine Operator within the 2018-2019 fiscal year. Currently, there are 12 accredited Assessment Centres, including Myanmar Garment Human Resource Development Centre, Aung Myin Hmu Garment Training Centre and other factory training centres. However, these centres are led by private sector and donor initiatives, not by government authorities.

### Potential Gains:

The efficiency rate in Myanmar is much lower compared to other competing markets. For example, Cambodia has an efficiency rate of 49%. Myanmar's is, on average, around 35%. Skill enhancement would make it possible for Myanmar to close this efficiency gap.

Stronger local middle management labour will help local factories to improve competence, efficiency, and productivity. Garment production companies will not be forced to employ workers from abroad for higher skilled position. Furthermore, higher education of Garment Technologist and Textile Engineer can lead the change from CMP to FOB and further sustain garment sector in Myanmar.

## Recommendations:

- Establish vocational courses, such as: night schools, weekend schools, and training centres. These programmes could focus on skill development involving operator level skill training, sewing machine operator, and Cutting Room Operator, for example. We also recommend the government (i) continue to developing occupational competency standards and vocational training curriculum, (ii) develop training centre in different regions, and (iii) expand the training capacity and hence involve more workers.
- Establish garment training schools at high school level (2- to 3-year course). We recommend a wider range of curriculum including pattern making, garment design, mechanism, line management and garment techniques. This extensive programme will allow local graduates to work at a middle management level in garment factories.
- Create specific academic courses for Garment Technologist at university level (3- to 5-year course). We encourage the programme to include English, engineering math/physics, electrical engineering, textile fibre, fabric production technology, garment design, pattern, garment technology, merchandising and export/logistics. Local graduates can then work either at a managerial level in the garment factories, as garment sector developer for the government, or in local or international brands buying offices.
- Create specific academic courses for Textile Engineering at university level (3- to 5-year course). This type of programme already exists in some universities in Myanmar, however there is a lack of interest from new students. To change the garment sector from pure CMP to FOB, the country will need more specialists with textile engineering background.

*Myanmar's efficiency rate is considerably low, reflecting the lack of skills in the local labour force at many levels. While the garment sector is often considered to be a low-skill industry, middle management and higher skills are also extremely important for the development of the sector and its competitiveness. Therefore, we recommend the government to invest in skills development by creating specific courses at different education levels.*

HEALTH

14

## INTRODUCTION

The mission of EuroCham's Health Advocacy Group is to work with the Myanmar government and other key stakeholders to continuously improve healthcare solutions for Myanmar's citizens. In this proposal paper we address two specific challenges and opportunities for 2019. If these are met, this will accelerate the rate at which longer-term goals are achieved. They are:

1. Tender transparency
2. Requirement of globally validated healthcare industry code of conduct

We are confident that, through collaboration with the relevant ministries, key bottlenecks and issues holding back the development of the healthcare sector can be tackled. This will bring benefits to all the stakeholders involved—first and foremost the population of Myanmar.

### Myanmar Healthcare — Our Vision

Myanmar has an exciting opportunity to leapfrog other countries in the development of its healthcare system. Through careful strategizing, planning and implementation, Myanmar might one day become a regional leader in healthcare. The Myanmar government's goal is to provide Universal Health Coverage by 2030. EuroCham Myanmar wholeheartedly supports this goal and will partner and support all relevant stakeholders to help achieve this.

Achieving universal healthcare will require a robust policy and regulatory framework, dedicated focus on clinical development via focused investments in technology, infrastructure and skills development, and the provision of good quality medical products.

Ensuring that the people of Myanmar have access to high-quality medical and pharmaceutical products at affordable prices can be achieved by implementing international quality standards (e.g. Good Manufacturing Practice—Pharmaceutical Inspection Co-operation Scheme and bioequivalence standards for pharmaceuticals, Conformité Européenne (CE) standards or similar for medical devices). By leveraging these internationally recognised quality and regulatory standards, Myanmar can maintain swift access to the newest technologies and begin to develop a robust local industry exporting to the rest of the world.

### Issue Description 1: Tender Transparency

A substantial portion of the total budget of the Ministry of Health and Sports (MOHS) is spent on the procurement of pharmaceuticals, medical devices and other capital equipment. Much of this spend is allocated through public tender processes.

Following the recent Presidential Notification No. 1/2017 on the strengthening of government procurement, the MOHS has adapted its procurement approach. We have seen progress this past year through better delineation of the tender content from the financial negotiation (i.e. Envelope A and B approach) which results in more rigorous checking of the specification of the tendered solution. The harmonised scoring system applied by both clinic and administrator is a good step forward in bringing objective assessment. The commitment to publish the final tender decision supported by the scored criteria and price is an important step forward.

### Potential Gains:

- Providing transparency by publishing the scoring criteria prior to the tender will enhance competitiveness and subsequently improve the negotiation position of the MOHS.
- Developing the systems and processes to coordinate the supply chain end-to-end from the central procurement to supplier, hospital and patient would drive efficiency for the MOHS on a number of fronts including closer matching of supply and demand, purchasing economies, quality and cash flow.



- Publicising of the MOHS's tender leveraging IT platform via online portal would be a great step forward in tender transparency and convenience for all stakeholders involved in tender management.

## Recommendations:

- Encourage the MOHS to publish the scoring criteria prior to the tender. Additionally, encourage stricter adherence to “knock-out” criteria in the tender to exclude vendors that do not meet key boundary condition of the tendered solution by the MOHS.
- Streamline the tender process by combining or removing some of the steps (e.g. combine document completeness with technical check).
- Progress in the demand pooling, especially for pharmaceuticals, across the health system, ideally driving the central procurement by demand data throughout the year, rather than a single delivery.
- Develop the MOHS systems and processes to coordinate the supply chain end-to-end from the central procurement to supplier, hospital and patient which may potentially include demand forecasting and demand planning framework between central procurement and individual public hospital in order to (i) prevent stock shortages and inventory overloading and (ii) perform inventory management in a more effective and efficient way, ultimately resulting in the most efficient usage of the public healthcare budget for the benefit of patients.
- Implement an online portal where (i) invitation for tender bidding of pharmaceutical products and medical devices and equipment and (ii) announcement of tender winning products can be made.

*Publish the scoring criteria prior to the tender, combine or remove some of the steps of the process, develop the systems and processes to coordinate the supply chain end-to-end from central procurement to supplier and implement an online portal to bring transparency to the tender process.*

## Issue Description 2: Requirement of Globally Validated Healthcare Industry Code of Conduct

It is a basic patient right that a healthcare practitioner prescribes a treatment with one principle in mind: the best possible health outcome for that patient. Unfortunately, this basic principle is often at jeopardy due to a bias of the healthcare practitioner created by unethical sales and marketing practices of pharmaceutical and medical device companies.

Unethical practices in sales and marketing to healthcare practitioners include gifts, entertainment and other benefits provided to healthcare practitioners (including doctors, tender committees, hospitals procurement departments, pharmacists and nurses) with the underlying motive to directly or indirectly influence the decision of these healthcare professionals.

Unethical gifts, entertainment and benefits vary widely, sometimes these are clear acts of corruption such as free leisure trips for doctors or financial kickbacks to procurement departments. Nonetheless, often they are more discrete in nature, for example, a donation to a hospital can also be unethical if the expectation of the donor is that the donation will lead to a favourable business position for the donor in the future. The healthcare industry remains one of the higher risk industries from an anti-bribery/anti-corruption standpoint, taking up 27.3% of the total enforcement cases in the US on violation of the Foreign Corrupt Practices Act by the US Department of Justice and Securities Exchange Commission.<sup>1</sup>

<sup>1</sup> “FCPA Enforcement and Anti-Corruption Developments: 2017 Year in Review,” Paul Weiss, January 19, 2018. Retrieved from: <https://www.paulweiss.com/practices/litigation/anti-corruption-fcpa/publications/fcpa-enforcement-and-anti-corruption-developments-2017-year-in-review?id=25839>

In Myanmar, there are also a variety of alleged unethical practices in sales and marketing activities that can undermine the decision making of healthcare professionals. This results in choosing ill-suited diagnostic and treatment options for patients with different diseases and socio-economic backgrounds. Therefore, it is extremely important that a robust code of ethics be established in Myanmar to provide clear guidelines on the interactions between healthcare professionals and healthcare companies.

In 2018, the Anti-Corruption Commission tasked Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) to provide industry codes of conduct, including for the healthcare industry. We strongly embrace this directive and believe that this provides an opportunity for Myanmar to catapult into a globally proven code of conduct framework embraced by countries all over the world, as well as business leaders in the pharmaceutical and medical devices industries. The code of ethical conduct principles governed by the International Federation of Pharmaceutical Manufacturers & Association (IFPMA) and the Asia Pacific Medical Technology Association (APACMed) has also been adopted and formalised in majority of the countries in Asia Pacific.

## Potential Gains:

Having an internationally recognised code of conduct, along with regulations to control interaction between healthcare professionals and the healthcare industry will build more trust and confidence on the local healthcare community and healthcare facilities for the public with the following advantages:

- Improvements of health and wellbeing of the entire population which will have positive impact on
  - (1) the development index of the nation, such as due to a lengthened life expectancy
  - (2) a healthier workforce to build the nation
  - (3) reducing the financial burden and socio-economic catastrophe resulting from illnesses such as cancer
- Maximisation of reliability on the local healthcare industry in synergy with the health ministry's efforts in upgrading the healthcare infrastructure and capability of healthcare professionals which will lead to a reduction of outbound medical tourism, saving foreign currency efflux. In addition, it will be a great benefit to patients, ensuring international healthcare standards are readily available to them within Myanmar.
- It will allow for fair competition within the healthcare industry and lower risk for compliance-sensitive multinational companies, likely leading to a more favourable environment for foreign investment in the healthcare sector. It could induce an increase in the establishment of multinational pharmaceutical companies and the establishment of more international hospitals positively

## Recommendations:

Through collaboration, strategic partnership and technical exchange with industry associations such as EuroCham's Healthcare Advocacy Group, the MOHS may consider the following:

- For the pharmaceutical industry, adopt the IFPMA Code of Conduct. The IFPMA Code of Conduct is the most internationally recognised healthcare industry code of conduct adopted by global governments and pharmaceutical companies all over the world. The IFPMA Code of Conduct has proven to adequately

*Develop a globally validated healthcare industry code of conduct*

protect compliance standards and therefore patients' rights whilst being practical and in line with business needs. We therefore suggest that the IFPMA Code of Conduct be adopted as a foundation for the Myanmar Pharmaceutical Industry Code of Conduct. This would ensure practices in Myanmar are aligned with the best practices in other markets. For the medical device industry, adopt the APACMED code of conduct. The APACMED Code of Conduct is a regional code of conduct underwritten by the majority of the large medical device companies active in Myanmar.

### Issue Description 3: Regulatory Turbulence

Pharmaceutical and medical device companies have developed complex quality procedures to ensure the safety and efficiency of the products they produce and sell meet the highest standards expected internationally. Any change requires lengthy investigation, vetting and administration to ensure such changes are safe for consumers and meet regulatory requirements. A stable, progressive, regulatory system is needed for the healthcare environment to develop and flourish in Myanmar. The year 2018 was marked with significant regulatory turbulence which will be addressed here.

In late 2018, the Ministry of Commerce announced the enforcement of a consumer protection law that was passed in 2014. Six months' notice was provided requiring all consumer facing foods, medical devices, pharmaceuticals, etc. to have Myanmar language labelling. International healthcare companies require a minimum of six months to implement labelling changes, with all labelling changes requiring Food and Drug Administration (FDA) approval which takes an additional 4-6 months. The subsequent concern raised by many international suppliers and numerous meetings between representative bodies and government bodies was a clear indication that the change process followed was insufficient.

There are a number of other improvements awaiting endorsement and implementation that affect healthcare in 2019. This includes matters related to the medical device registration, changes regarding the requirements for a No Objection Certificate (NOC) and others.

The EuroCham Health Advisory Group is supportive of the amending of the medical device registration laws to reflect standardisation according to ASEAN guidelines. However, it is requested that the FDA engages with medical device suppliers and distributors to ensure the change management implementation is smooth in order to prevent from the shortage of stock such as (i) setting a sufficient grace period of the implementation and (ii) interim measures to be able to import the affected products during the transition period.

Regarding the NOC, it remains an obstacle to free trade and EuroCham Myanmar continues to advocate for its removal as this will positively impact patient choice, foreign investment and drug prices.

Another regulatory issue that requires attention is the MOHS decision to ban the registration of a number of products from overseas companies such as paracetamol and cough and cold medicines. Whilst this list is transparently provided by the FDA, there is doubt whether such a ban on new registrations, allegedly because there are many products already registered, is in line with global and regional trade agreements such as World Trade Organisation (WTO). The FDA's responsibility is to ensure the products registered are safe, effective and meet minimum quality standards. Banning products from registration because there are already too many on the market does little for patient safety and prevents competition or the availability of potentially newer higher quality products.

One area of regulatory process requiring further definition is the need for samples to be provided as part of a regulatory submission. Ambiguity around the quantity required and the need for such samples is unclear when regulatory submissions include the formulation, stability data, certificate of analysis and in the case of products of original research, the clinical trial data. A small quantity allowing the testing of products against the certificate of analysis is supported, however the quantity required is small.

In any event where there is a change in the legal framework and procedures, we kindly request that the implementing bodies seek constructive consultation from a number of representative bodies to ensure the changes and implementation are well considered and achieve the right outcomes which can only be achieved through alignment between relevant stakeholder groups and the proper change management planning and process.

## Potential Gains:

Healthcare companies globally focus on ensuring that the products supplied are safe, effective and meet internationally recognized standards. Optimising the efficiency of their supply chains, regulatory processes and market access allows more patients to benefit from the increasing number of products available. It is in all stakeholders' interests to ensure the legal and regulatory framework in Myanmar is both progressive and timely. Any significant changes which affect multiple stakeholders within and outside the government require purposeful consultation with the stakeholders to ensure the problems and the solutions are understood and a clear implementation process is agreed.

## Recommendations:

- Encourage the government to increase the level of consultation with representative bodies to ensure the right progress is made.
- Encourage the MOHS to proactively consult with medical device manufacturers and distributors regarding the implementation of the new regulatory framework for devices. Encourage MOHS to clarify the requirements of samples required for regulatory submissions and the intended purpose.
- Encourage the MOHS to abolish NOC policies. Current NOC policies (undocumented) prevent the process of fair competition. This issue will be resolved when the MOHS takes the lead to consult with all stakeholders (including the EuroCham Health Advisory Group, the American Chamber of Commerce in Myanmar, etc.).

*Increasing the level of consultation with more stakeholders will accelerate the pace of positive change in Myanmar and increase access to international quality healthcare products to patients.*

LEGAL AND TAX

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## INTRODUCTION

EuroCham Myanmar's Legal Advocacy Group was established in November 2017 due to the strong desire and commitment of its members in helping the Myanmar government to improve the legal framework. The European legal firms, who joined together under the umbrella of the European Chamber of Commerce in Myanmar (EuroCham Myanmar) in this remarkable effort, are among the world's leading advisors in this sector, with an extensive knowledge of doing business in ASEAN and Myanmar. This group and the know-how of its members constitute an important resource for private and institutional players, providing timely and valuable advice and support to European investors.

The legal group has undergone many changes since the publication of the 2018 White Book, taking an even more proactive role, seeking to offer increased support to other advocacy groups within EuroCham Myanmar. The group has changed its name to Legal and Tax Advocacy Group, now covering two very important aspects for European companies.

For the EuroCham Myanmar White Book 2019, the group addresses a wide array of topics of high importance to European companies and investors coming to Myanmar, or that are already on the ground, and that would also benefit Myanmar if the authorities were to tackle these issues. Investors and companies still face several challenges in the country, such as land property rights problems for foreign investors, uncertainties on the existing competition framework, uncertainty regarding which legal regime is applicable to companies with foreign ownership, and a lack of protection in some areas for well-known trademarks.

The following issues, together with their respective recommendations and potential gains, were drafted in accordance with the mandate and objectives of the EuroCham Myanmar Legal and Tax Advocacy Group.

## LEGAL CHAPTER

### Issue Description 1: Rule of Law and Transparency in Administrative Procedures

Despite improvements in the ongoing reform process of Myanmar's legal system, the current state of the rule of law as well as the overall transparency and legal compliance of administrative procedures remain major challenges for investors in Myanmar. While Myanmar's parliamentary legislative process has significantly improved in recent years, showing increased and more structured public consultation, the issuance and implementation of subsidiary legislation and administrative rules, regulations and notifications can be improved in terms of transparency and compliance with the rule of law.

Another main obstacle in the reform process is the long delay in the establishment of supervising authorities and issuance of administrative subsidiary legislation which are necessary for the enforcement of statutory laws. Examples include the Competition Law 2015 and the Arbitration Law 2016, which have not been yet fully implemented.

Furthermore, the application of statutory laws and subsidiary legislation by the administrative authorities could use more transparency, strengthening the rule of law and the integrity in the process so to avoid deterring foreign investments. Administrative procedures are implemented through internal circulars and instructions, which are often not publicly available in time and again fail to comply with the respective governing laws. Such obstacles and the common discrepancy between statutory laws and their administrative implementation remain of great concern for foreign investors. Examples are internal policies concerning the interpretation of statutory laws, affecting daily operations of investors such as the approval of foreign investments, the issuance of business licences and the application of Myanmar's internal revenue laws.

Particularly the abundant difficulties concerning the issuance of business and operative licences causes delays or even cancellation of foreign investments. Numerous licences are in practice not issued at all or issued only to Myanmar citizens and in respect of the activities of citizen-owned companies, often in contradiction with the Myanmar Investment Law 2016 and Notification 15/2017 of the Myanmar Investment Commission. Examples include licences for road transportation, contractors, recruitment agencies, real estate agencies, video businesses and movie theatres as well as travel agencies.

Furthermore, the administrative practice of licences being issued to citizens (basically Myanmar citizens) only, rather than corporate entities, results in uncertainty and insecurity for foreign investments.

### Potential Gains:

- Transparency and rule of law ensuring a reliable and attractive legal environment for foreign investments.
- Less unofficial red tape and more integrity in the process so to increase investor confidence.

### Recommendations:

- More transparency through proper announcement of any legally binding subsidiary legislation in the gazette.
- Implementation of subsidiary legislation in accordance with the Myanmar Investment Law 2016 and the respective governing laws.
- Issuance of licences in accordance with the foreign-ownership restrictions stipulated in the Myanmar Investment Law 2016 and Notification 15/2017 of the Myanmar Investment Commission
- Issuance of licences to corporate entities.

*The current state of rule of law presents some major challenges for investors. Increasing transparency and the rule of law through the implementation of legislation and the issuance of licences could help increase the attractiveness of the legal environment and reduce red tape and increase integrity in the process.*

## Issue Description 2: Competition Law and Existing Regulations

The Competition Law (CL) was enforced in 2017 and the Competition Commission (CC) was formed in 2018. With the coming into force of the new law, uncertainties on the existing competition framework in Myanmar (especially with respect to telecoms) and its applicability have become an issue.

The Competition Rules of the Telecommunications Law (TCR) gave wide-ranging powers to the Post and Telecommunications Department (PTD) to exercise exclusive jurisdiction to review anticompetitive conduct and agreements in the telecommunications sector. Alternatively, provisions of the CL (which was enforced after the TCR) provide that notwithstanding any existing laws, matters relating to competition must be carried out in accordance with the CL itself (giving exclusive jurisdiction to the CC). Moreover, the lack of regulations on merger control which would thereby set the threshold based on market share, revenue, investment, number of shares and assets derived for such acquisition or mergers is another cause for concern among investors.

For conflicting provisions in the TCR and the CL, we are unclear on which legislative provision would prevail over the other. Additionally, we observe that the scope of operations of the PTD under the TCR and the CC under the CL seem to be coinciding with each other with both sets of legislations giving primacy to itself.

In so far as the CC has not yet come up with any notification on merger control and/or thresholds, the law cannot be interpreted in its entirety.

### Potential Gains:

The here recommended steps will further reduce the considerably visible legal issues surrounding the competition framework and increase the investors' confidence. This would also project the developing economy of Myanmar on the international front as a country conducive to good business.

## Recommendations:

Considering the increasing foreign investment and the need for Myanmar to solve existing legal issues, the MTC, in alliance with the Ministry of Commerce (MOC), could consider issuing a notification or a guideline prescribing a harmonised mechanism for dealing with the competition framework for the telecom sector. Further, the CC could expedite the process of issuing the merger thresholds/limits in order to have an effective merger control mechanism in place to not only reduce the apprehension among existing investors, but also to bolster future investments.

*Uncertainties on the existing competition framework and its applicability constitute an area of concern. A notification or guideline prescribing a harmonised mechanism for dealing with the competition framework for the telecom sector as well as an effective merger control mechanism could be put into place. That would further reduce legal problems regarding the competition framework, increase investors' confidence and it would project an image of Myanmar as a country conducive to good business.*

## Issue Description 3: Foreign Ownership Rights

There are several conflicting definitions of the term “Foreign [owned] Company” in various laws and regulations, which result in confusion and a lack of certainty regarding which legal regime is applicable to companies with foreign ownership in various different cases.

Under the 2017 Myanmar Company Law (MCL), a “Foreign [owned] Company” is defined as a company in which more than 35% of the capital is owned by a foreign entity. Under the Myanmar Company Act 1914 (MCA), recently repealed by the MCL, the definition was stricter, as only one foreign-owned share was enough for the company to be considered “foreign.” The MCL therefore seems to be more flexible and tended to open activities to foreigners, as they could invest up to 35% of the capital of a company which would still be considered a local company by law.

The 1987 Transfer of Immoveable Property Law, which prohibits foreigners or foreign-owned companies from owning real estate or to sign a lease of more than one year, provides its own definition of a foreign-owned company as follows, based on majority ownership: “a company or partnership organisation whose administration and control is not vested in the hands of the citizens of the Union or whose major interest or shares are not held by citizens of the Union.”

However, it seems that in practice the Myanmar authorities continue to apply the old definition provided in the MCA, with a simple one-foreign-share requirement, despite the fact that the MCA has been repealed. The 35% foreign ownership threshold provided in the MCL does not seem to be recognised in practice. We notice that Article 464 of the MCL states that it shall not affect any provision of the Transfer of Immoveable Property Law, which implies that the majority ownership criteria shall prevail over the 35% threshold provided in the MCL.

The competing definitions of a foreign-owned company under Myanmar law, as outlined above, result in legal uncertainty. A foreign investor who wishes to acquire shares in an existing company faces many difficulties. Indeed, depending of the definition used, the company may or may not become foreign-owned as a result of the foreign investor's acquisition. Different criteria may be applied depending on the business activity of the company, the potential licence needed or the ownership of real estate.

## Potential Gains:

The right of ownership and more generally the right to rent are matters that affect every foreign investor. Legal certainty in these areas is essential to enable foreign investors to commit to any long-term investment in the country. The current situation, which does not allow foreign investors to rent real estate for more than one year, is synonymous with risk and insecurity. Clarifying and improving foreign ownership and lease rights would provide more protection to foreign investors and facilitate



and sustain foreign investment in Myanmar as well as eventually bringing more foreign investment into the country. The purchase of shares in a local entity would be reinvigorated. The confidence of foreign investors would be restored as their rights would be clear and assured under the law.

## Recommendations:

- Provide a single, uniform definition of foreign (owned/invested) entities across all legal instruments.
- Issue guidelines on the regime applicable to such entities or create a common one.
- Issue guidelines regarding the regime applicable to the assets and rights of an entity becoming a foreign invested entity.

*Conflicting definitions of the term “foreign (owned/invested) company” result in confusion regarding which legal regime is applicable to companies with foreign ownership. A single, uniform definition could be provided as well as clear guidelines. This would bring more protection to foreign investors, facilitate investment and restore confidence among foreign investors.*

## Issue Description 4: Trademark Law 2019

The new Trademark Law 2019 was enacted by the Pyidaungsu Hluttaw (the Assembly of the Union) on Jan. 30, 2019. The change in the regulatory framework on trademark registration has been in the works since 2014.

This is a much-welcomed move. Foreign investors have been anticipating a more comprehensive and effective intellectual property protection regime in Myanmar to make the market conducive for foreign investors and brands to enter, as well as to facilitate the transfer of technology and know-how.

One of the key changes to the trademark registration regime is the shift from a “first-to-use” model to a “first-to-register” model. This is in line with the Paris Convention and the terms of Trade Related Aspects of Intellectual Property Rights. With this shift, all existing trademarks (that have been registered in Myanmar under the previous governing legislation, the Copyright Act 1914) are required to be re-registered.

We set out below the treatment of the following trademarks under the new Trademark Law:

- Trademarks that have been registered in Myanmar under the “first-to-use” regime
- Internationally registered trademarks that have not been able to register in Myanmar (for various reasons, including not satisfying the “use” requirement under the “first-to-use” regime)

### Existing Trademarks registered in Myanmar

In light of the shift to the “first-to-register” regime, all existing trademarks (that have been registered in Myanmar under the previous governing legislation, the Registration Act 1909) are required to be re-registered in accordance with Article 93 of the Trademark Law. There is no automatic conversion for existing trademarks.

It is expected that there will be a three-to-six-month transitional period for owners of trademarks registered under the previous regime to re-register their marks.

Pursuant to enquiries and consultations with the Deed Registration Office, we understand that rules and notifications relating to implementation of the Trademark Law, including the transition of existing trademarks registered in Myanmar (which are expected to have priority rights), will be issued in the coming months.

## Internationally registered Trademarks

Articles 31 to 33 of the Trademark Law 2019 provide for a priority right to be granted to marks registered in member states of the Paris Convention or the World Trade Organisation.

A priority right is granted to trademark owners seeking to register their mark in Myanmar within six months of (a) their application to register the same mark in a member state of the Paris Convention or the World Trade Organisation; or (b) the exhibition of the same mark in an international exhibition of any member state of the Paris Convention or the World Trade Organisation (provided that the exhibition priority right shall not exceed the period of priority right commencing from the day of trademark application set out in (a)).

The priority right under (b) is applicable for marks that have been exhibited in member states of the Paris Convention or the World Trade Organisation but has yet to commence application for trademark registration in those states.

### Potential Gains:

A comprehensive trademark registration regime can offer adequate intellectual property rights protection to businesses, especially established brands and international market leaders. This will make the Myanmar market a conducive one for established brands and market leaders to enter. It will also encourage creativity growth and brand cultivation, with intellectual property recognised and valued, and rights adequately protected.

### Recommendations:

The priority right granted to internationally registered trademarks appear to be very limited as it only protects trademarks that have been recently registered in member states of the Paris Convention or the World Trade Organisation (i.e. within the past six months). No protection is offered to well-known trademarks that would have been registered in member states more than six months ago. To promote development and growth of the Myanmar economy, Myanmar must encourage inflow of products and technology by offering some degree of protection to make the business environment conducive for foreign investors, in particular the international market leaders, which will most likely own well-known trademarks.

*The new Trademark Law 2019 is a much-welcomed move. One of the key changes is the shift from a "first-to-use" model to a "first-to-register" one. Despite improvements, the re-registration process causes problems and well-known trademarks could be offered increased protection.*

## TAX CHAPTER

### Issue Description 1: Reforming the Stamp Act and simplifying the payment process

The Stamp Act of 1899 has not been subject to significant reform since it was introduced 120 years ago. As a consequence, there are provisions under the act and related schedule that are considered outdated and inconsistent with modern business practices.

Firstly, considerable uncertainty remains as to the applicable stamp duty on certain instruments. This seems to be the case for loan documents without any form of security.

Secondly, a wide range of instruments are subject to insignificant amounts of stamp duty. We believe the resources required for both taxpayers and tax authorities to administer the high volume of instruments that are subject to such insignificant stamp duties make this a very inefficient means for the Myanmar government to collect such taxes.

Thirdly, there is an inconsistent approach as to the timing of stamp duty payments. Under the act,

stamp duty is due before or upon execution of a document within Myanmar. If the document is executed overseas, the deadline is three months upon bringing the document into the country. For documents executed within Myanmar, some tax officers accept the stamping (without penalty) within one month from the signing date although this is not uniformly applied across all tax offices. Meanwhile, for documents executed outside of Myanmar, some tax officers consider the three-month rule based on the signing date of the agreement even though the taxpayer has presented the document of first delivery to Myanmar (e.g., through a courier slip). In some cases, tax officers will even request for the consularisation of the document in the Myanmar Embassy where it was signed, even if this requirement is not stated in the act or related guidelines. Under both scenarios, the taxpayer is required to physically present the instrument to the tax authorities to be affixed with stamp duty.

Fourthly, penalties for late payment of stamp duty remains at ten times the applicable level of duty. Although it had been initially proposed to reduce the penalty to three times the tax due, this was not implemented when the act was recently amended in 2017. This penalty is a prohibitive and excessive cost that represents an unfair burden on the taxpayer.

Fifthly, the terms “loan” and “financing” are not defined in the act. In such a case, usually those terms could be given their ordinary meaning as understood in the business context. Experience from dealing with stamp officers shows that there can be inconsistencies in the classification of such documents. Loan agreements could fall under many categories with vastly different consequences in terms of rate. They could be classified as bond or an agreement or memorandum of agreement where the rates vary accordingly.

Lastly, there is no appeal process under the act and no proper recourse is provided to the taxpayer in cases of dispute.

## Potential Gains:

The proposed reforms to the Stamp Act would help the Myanmar government to consider modern business transactions that are not covered by the current act. Furthermore, addressing the above issues would provide clarity on the proper stamp duty applicable to certain transactions and would encourage more compliance from taxpayers.

## Recommendations:

We recommend that the Ministry of Planning and Finance consider the following:

- Revise Schedule 1 and relevant sections of the Stamp Act in order to limit uncertainties on the application of stamp duty. Ensure that internal guidelines and policies of the Internal Revenue Department are in conformity with laws and notifications, and that such guidelines are made public.
- Re-assess the application of stamp duties on loan instruments where high levels of duty further restrict access to finance. Remove the application of stamp duty on instruments where the compliance and collections resources required are disproportionate to the benefits and duty collected.
- Reconsider the manner of stamp duty payments by amending the act to formally allow the taxpayer to affix duty to the document within one month after the signing date. Provide clear guidelines on the requirements for the stamping of offshore contracts in Myanmar. Reconsider the use of multiple adhesive stamps for the stamping of instruments.
- Review and revise the stamp duty regime on loan and financing documents in order to facilitate financial markets. The stamp duty regime on financing documents could be transparent and internal guidelines that seemingly contradict published law, as we understand exist, could be amended. There could also be clarity in the act as to whether unsecured intercompany loans are dutiable. Reduce penalties and introduce an appeal process for controversies in accordance with the provisions of the Revenue Appellate Tribunal Law.

*The current Stamp Act requires updating in order to address issues related to modern business transactions, especially on financing arrangements. Such reform of the Stamp Act could address uncertainties under the current act and increase the level of compliance by taxpayers.*

## Issue Description 2: Clear guidelines for accessing tax treaty benefits in Myanmar

Myanmar has Double Taxation Agreements (DTA) in force and effect with eight countries: India, the Lao PDR, Malaysia, Singapore, South Korea, Thailand, the United Kingdom, and Vietnam. However, tax exemptions and relief under the DTA are not automatically applied in Myanmar and are granted at the discretion of the Internal Revenue Department (IRD). To obtain relief under the treaty, the taxpayer must apply for a confirmatory ruling with the IRD before availing of any tax treaty benefit.

Currently, there is no formal procedure to apply for tax treaty relief. Normally, the non-resident taxpayer seeking such an exemption or relief under a relevant DTA with Myanmar must provide a Certificate of Residency (COR) issued in the country of its residence. Aside from the COR, the non-resident taxpayer must also apply for a ruling request addressed to the IRD and must submit other documentation such as contracts and receipts to support the payments made.

In some cases, the Myanmar tax authorities generally recommend reporting the withheld tax first, then seeking a ruling on whether a refund will be available or not. However, obtaining refunds is often difficult and may take months or even years to resolve.

### Potential Gains:

Given that a tax treaty is an agreement that provides for a uniform treatment of a taxable event between agreeing countries, the provisions stated therein could be applied in Myanmar with less administrative procedures required on the part of the taxpayer. The automatic application of tax treaty benefits under a relevant DTA with Myanmar is in line with the practice of other countries with respect to granting tax relief. Further, this would help in reducing the administrative burden on taxpayers and would help foreign investors in terms of structuring their business or transactions in Myanmar.

### Recommendations:

We recommend that the Ministry of Planning and Finance consider the following:

- Issue a separate notice or guideline on the procedures to obtain tax treaty benefits under a relevant DTA with Myanmar.
- Consider automatic conferral of tax treaty benefits provided that the non-resident has secured a COR from its country of residence (which has an existing DTA with Myanmar). In this case, the IRD may follow a notification procedure whereby a taxpayer will only make a notification with respect to DTA relief that it will be applying without the requirement of securing the approval from the IRD before availing of such benefits. However, if a request for a ruling from the IRD is still necessary, suggest that the application will be limited to certain types of transactions only and will not be applicable on all types of payments to non-residents.

*The automatic application of tax treaty benefits under a relevant DTA with Myanmar is in line with the practice of other countries with respect to granting relief under the DTA. This would help in reducing the administrative burden on taxpayers and would help investors to properly structure their business in Myanmar.*

## Issue Description 3: Capitalisation of a lease as a form of investment not to be subject to Commercial Tax

The IRD in its Interpretation Statement No. 6/2018 dated Dec. 26, 2018 clarified that payments for purchases of goods and services that are settled in forms other than cash (e.g., non-cash or payment in kind) are also subject to 5% Commercial Tax (CT). This is meant to address that the 5% CT is due on sale of goods and services even though the payment is made in non-cash form.

In the Interpretation Statement, the IRD provided an example that if a company leases out a property and the other company pays the former in the form of shares, the payment could be subject to 5% CT. However, this creates confusion for taxpayers as the example provided is for an investment in a company and not merely for regular sales of goods and services in the ordinary course of business.

Payments in consideration for equity (or shares) in a company should not be subject to 5% CT. An investment in kind is not a sale transaction and is not under the scope of service income under the CT Law. Furthermore, an investor should not be treated similar to a service provider as the payment is for an equity consideration (in the form of shares) in a company and not as a means of providing services. Note that imposing 5% CT on this kind of transaction would result in undue advantage for all investors who use their land lease rights as a form of equity in a company.

### Potential Gains:

Clarifying the CT treatment on such transactions would promote equal treatment for investors who would be contributing cash or non-cash assets (in the form of property) into a company.

### Recommendations:

We recommend that the Ministry of Planning and Finance issue clarification with respect to the CT treatment for payments made in the form of shares (equity investment).

*The imposition of 5% commercial tax for equity investments would result in undue advantage for investors who will be investing land lease rights as a form of equity in a company.*

## Issue Description 4: Offsetting excess tax to ease the cash flow burden on the taxpayers

Income tax, commercial tax and specific goods tax collections by the IRD are governed under three different tax laws, namely Income Tax Law, Commercial Tax Law and Specific Goods Tax Law. In this regard, any excess tax paid for a type of tax during a financial year cannot be offset against the tax payable due to another type of tax. In current practice, the tax refund process is generally time-consuming resulting in cash flow burden on taxpayers.

### Potential Gains:

Allowing offsetting excess tax paid for a type of tax against the tax payable due to another type of tax would not affect the tax revenue and collection of the IRD, and yet this would reduce administrative burden and compliance costs of both the IRD and taxpayers.

### Recommendations:

We recommend that the Ministry of Planning and Finance introduce specific provisions in the relevant tax legislation for allowing taxpayers who have excess tax paid for a type of tax to offset against the tax payable due to another type of tax.

*Taxpayers could be allowed to claim the excess tax paid for a type of tax (e.g. income tax/commercial tax/specific goods tax) to offset against the tax payable due to another type of tax (e.g. income tax/commercial tax/specific goods tax) in order to ease the cash flow burden on the taxpayers.*

## Issue Description 5: Simplifying the tax system (e.g. commercial tax) and abolishing or significantly simplifying certain taxes

The tax system in Myanmar is overly complex and does not encourage compliance. One of many examples is the 2% advance income tax requirement on imports and exports of goods. These advance income taxes cause considerable administrative problems and are a real cash flow disadvantage for companies in a tax holiday or ongoing loss position.

Another example is the commercial tax regime. Offsetting input tax against output tax is currently cumbersome and a time-consuming administrative procedure.

### Potential Gains:

Abolishing the 2% advance income tax on import and export will help to ease the cash flow burden on taxpayers and help boost the country's export market. Exports give a boost to a country's economy by way of improving the balance of payments as they bring in foreign exchange and add to the Gross Domestic Product (GDP). An emerging country like Myanmar significantly needs to improve upon its export potential which could be achieved by incentivising exports.

Simplifying the commercial tax compliance requirements and input tax offsetting procedures will not affect the tax revenue and collection of the government from the taxpayers, but this will reduce administrative burden and compliance costs of both the IRD and taxpayers. This would also allow companies to use readily available indirect tax software to automate their tax compliance and payment systems and processes as well as facilitating automation by the IRD.

### Recommendations:

We recommend that the Ministry of Planning and Finance consider the following:

- Abolish the 2% advance income taxes on imports and exports of goods.
- Simplify the commercial input tax offsetting mechanism and procedures so that taxpayers obtain the offset based on invoices received from suppliers. This is in line with the value added tax (VAT)/ Goods and Services Tax (GST) systems in place in many countries in the world. The number of calculations and returns, 17 in all per annum, can also be reduced in line with the move to a broad-based consumption tax.

*The tax system in Myanmar is overly complex and does not encourage compliance. Simplifying the tax system and compliance procedures (e.g. addressing the complexity of recovering commercial input tax and abolishing the 2% advance income tax on import and export) would reduce the administrative and cash flow burden of taxpayers.*

## Issue Description 6: Hindrance to exports

The IRD in its Interpretation Statement No. 1/ 2019 dated Jan. 16, 2019, states that the export sales of specific goods that are not subject to specific goods tax (SGT) will be regarded as SGT-exempt supply as opposed to zero-rated supply and therefore offsetting of SGT input will not be allowed. Another example is the Cut-Make-Pack (CMP) businesses where the CT exemption applies to only the materials imported but not to the materials sourced locally. Furthermore, no CT input is allowed given that CMP revenue is exempt from CT output. The inability to claim SGT and CT input on export sales will increase the cost of production of specific goods and CMP products in Myanmar which could hamper the country's export potential.

### Recommendations:

We recommend that the Ministry of Planning and Finance allow (i) zero rating to be applied to export sales and input tax credit to be available relating to zero-rated supplies, (ii) commercial tax exemptions to be applied to CMP businesses for their local purchases of materials for the use of manufacturing.

*Myanmar may improve its export potential by allowing SGT and CT for export sales and extending the CT exemption to CMP businesses for materials sourced locally.*

# LOGISTICS AND TRANSPORTATION





## INTRODUCTION

Myanmar, being positioned between China and India, and sharing borders with Bangladesh, Laos, and Thailand, offers a great competitive geographical advantage. Additionally, the long coastline provides naval access in proximity to one of the world's most strategic water passages, the Strait of Malacca, the narrow shipping passage between Malaysia and Indonesia. Furthermore, the 3,020 km riverine system gives Myanmar a further natural option for transportation. Hence, given its geographical position, Myanmar has the potential to become the heart of Asian logistics. However, it is necessary that the government not only promotes the development of infrastructure, such as deep-sea ports, roads and railways, but also eases the logistics activities by developing new and clear official procedures, regulations and laws.

It is extremely important to develop a well-functioning infrastructure system not only for import/export activities, but also to ease the movement of goods domestically. Improving ports, airports, roads and railways will both make Myanmar more attractive for investments and promote a more homogenous growth within the country. The following section provides an overview of the current infrastructure situation.

Currently, most of the import/export activities are performed through the main two port areas in Yangon. The largest is Myanmar International Terminal Thilawa, used mostly for containerised cargo, roll-on/roll-off (RORO) ships for the transport of cars and break-bulk vessels. This port is located 16 km from downtown Yangon and 16 km from Yangon River Bay and is in proximity of the Thilawa Special Economic Zone, developed by a Japanese joint venture.

The International Terminal Thilawa consists of Myanmar International Terminal Thilawa (MITT), Myanmar Integrated Port Limited (MIPL), Port of Thilawa Terminal (PTT), Wilmar Myanmar Thilawa Port Terminal Limited, International Bulk Terminal Thilawa (IBTT)—the construction of which is to be complete in April 2019—and Thilawa Multipurpose International Terminal (TMIT) to be in operation in April 2019.

The second area is the Yangon City Terminal which covers the following five terminals: The Myanmar Terminal (TMT), Ahlone International Port Terminal (AIPT), Myanmar Industrial Port (MIP), Asia World Port Terminal (AWPT) & Htee Tan Port Terminal (HPT) and Sule Pagoda Wharf (SPW).

We have not seen any substantial improvements in the development of other ports, such as Dawei and Mandalay. Dawei port could bring great benefits to the lower Myanmar region. Being only five hours from Bangkok, it will become a low-cost export opportunity for Myanmar fish or other marine products, agricultural products or products manufactured and/or assembled at the new special economic zone (SEZ) or nearby regions. Furthermore, it has the potential to become one of the most important logistics hubs in the region, offering the opportunity to neighbouring countries to bypass the Strait of Malacca.

The Ministry of Transport and Communications in 2011 proposed the construction of eight dry port locations. While the dry ports at Ywar Thar Gyi in Yangon and Myitnge at Mandalay have been completed, we have not seen any progress for the other proposed locations (Monywa, Mawlamyine, Bago, Pyay, Tamu and Muse).

The Yangon International Airport was expanded and modernised and the three terminals have a capacity to handle 20 million passengers annually. On the contrary, Hanthawaddy International Airport, near Bago, is still under evaluation and no progress has been recorded in the past year.

The main commercial land border, the crossing between Myanmar (Myawaddy) and Thailand (Mae Sot), has undergone major upgrades, with a new large and modern bridge, as well as new state of the art customs facilities on both sides of the border bridge. The new border facility is expected to open between April and August 2019, once adequate training has been completed. The old customs facility, 7 km inside the Myanmar border, will still be in function until further notice. It will be mainly used by not-cleared cargo, which are kept at the multiple transit warehouses in the area.

There have been talks about the renewal and upgrades of multiple highways and expressways, such as the Yangon-Mandalay Expressway and the Yangon-Pathein Highway. In addition, the following projects will ease the transport of goods both domestically and cross-border:

- The Mandalay-Muse highway will improve road connection between China and Myanmar.
- A new road linking southern Sagaing Region with India.
- The Myotha Industrial City project will connect the Myotha Industrial Zone in Mandalay with Mandalay International Airport and the Yangon-Mandalay Expressway.
- The Yangon elevated expressway will ease access to downtown Yangon, Yangon International Airport, Mingalardon Industrial Park and the Yangon-Mandalay Expressway.

Myanmar Railways currently have 5,400 km of tracks and small-scale upgrades are currently being done across Myanmar. Part of these upgrades include the linking of the Myanmar International Terminal Thilawa with the new Yangon Dry Ports. Upgrades have also been carried out for the improvement of the connection between the Yangon Dry Ports with other destinations in Myanmar, particularly with the Mandalay Dry Port. This will enable lower costs for the transport of cargo to Mandalay and upper Myanmar. Furthermore, plans for building a new rail line, connecting Mandalay and Muse near the Chinese border were launched in late 2018 and studies are currently being carried out.

The logistics sector is important as it supports all sectors of the economy, eases trade, reduces cost of doing business and contributes to enhanced productivity and efficiency of the economy. However, a clear and strategic infrastructure plan needs to be developed with a long-term vision and all the stakeholders need to be involved and consulted, including private sector representatives, experts, and neighbouring countries. The Logistics Advocacy Group offers its international knowledge and expertise to assist the government in developing new strategies and plan regarding the logistics activities in the country, both in terms of infrastructure plans and new procedures, rules and regulations.

## Issue Description 1: Unaligned, time-consuming and non-transparent value assessment processes and import formalities

According to the World Bank's Trading Across Borders report, Myanmar ranks 168th globally,<sup>1</sup> highlighting the difficulties faced by companies in logistics activities in the country, as well as with neighbouring countries. We have not witnessed any significant improvements on the issues raised last year. Import and export procedures are still considerably lengthy and complicated, the system is not yet fully automatic, and the hard copy mechanism creates great delays. In addition, there are too many parties involved in the decision-making process, and it is often unclear who has the power to make decisions. Furthermore, procedures, laws and regulations are often either unclear or unavailable, making it difficult for logistics companies to operate.

In more detail, the following issues contribute in delaying the process:

- If a Form D is provided, the shipper can input value under Free on Board (FOB) purchasing conditions only because the form is pre-printed. On the other hand, if goods show Ex-Factory terms in the commercial invoice, the valuation process is interrupted, hence causing great delays.
- If an insurance policy is not provided during the normal customs process (e.g. because the importer has not covered insurance on purpose or has an open global insurance), the corresponding import file is always sent to the valuation group for a full assessment, which causes delays ranging from two weeks to one month.
- While sales contracts are issued for the total quantity of the order, shipments are often done for a partial quantity. This represents a problem for custom officers who demand for the contract to show the exact quantity of the shipment. This leads to further delays since a new sales contract showing just the quantity shipped needs to be issued for custom procedures.

<sup>1</sup> "Trading Across Borders," World Bank Group, 2018. Retrieved from: <http://www.doingbusiness.org/en/data/exploretopics/trading-across-borders>

- The valuation process for goods like vehicles and motorcycles is even lengthier (more than one month).
- Last year, customs introduced a system which allows to clarify and confirm the customs Harmonized System (HS) classification code in advance, within 30 days of the request. While this time has not always been met, 30 days is, in any case, too long.
- The time for the Myanmar Investment Commission's (MIC's) Shipment-by-Shipment process, which consists of (i) an MIC approval application process with the Ministry of Commerce (MOC) in Yangon and (ii) the commercial tax exemption process with Ministry of Finance (MOF) at MIC Yangon still takes too much time.
- In addition, according to the new customs rules, all shipments with an MIC tax exemption or a Form D are automatically assigned to the "red channel," slowing the cargo release even further.

In general, a great number of issues arise due to discrepancies between customs procedures (through MOF) and import licence applications (through MOC). For example, while MOC procedures only accept Cost, Insurance and Freight (CIF) conditions, the custom department procedures are less restrictive and accept FOB or Ex-Works prices as well. On the other hand, customs require a breakdown of the corresponding shipment and hence a longer customs valuation process. Not only are rules and regulations inconsistent, but generally they are also not transparent. Furthermore, requesting an appointment with the customs office to clarify certain issues can be done only through an official application letter to the head office, even for authorised customs brokers (Yellow Card holders). The average waiting time to obtain an appointment is two or more weeks, resulting in further delays for custom procedures.

## Potential Gains:

Shorter supply chain, faster clearances, reduction of official and unofficial costs, positive impact on port congestion, higher confidence of foreign investors, greater ease of doing business. In general, shortening the time and cutting the costs of the logistics activities will boost the competitiveness of the local market and Myanmar will become more attractive for investors.

## Recommendations:

- Speed up implementation of paperless/electronic processes of the Myanmar Automated Cargo Clearance System (MACCS) system to shorten lead times and reduce face to face contact with officials.
- Introduce a systematic and efficient process involving less approval and decision-making tiers of officials who can make prompt decisions.
- Introduce a One Stop Service for shipments under MIC, based on the SEZ model (See Section 11 (L) of the Myanmar SEZ Law).
- Upload all customs rules and regulations issued in the past and currently effective on the customs website (initially in Myanmar language, later in English too). The website should also be continuously updated with new rules and regulations.
- Increase head-count in the Customs Department. Reassign officers from less busy divisions to overworked divisions (e.g. valuation).

*Import and export procedures are still considerably lengthy and complicated and the system is not yet fully automatic. There are too many parties involved in the decision-making process and it is often unclear who has the power to make decisions. Furthermore, procedures, laws and regulations are often either unclear or unavailable, making it difficult for logistics companies to operate. Shortening the time and cutting the costs of the logistics activities will boost the competitiveness of the local market and Myanmar will become more attractive for investors.*

## Issue Description 2: Availability of customs services vs. transport sector

Myanmar customs at the Yangon ports and border points with Thailand and China are only open during regular daytime office hours. Over-time is possible, but limited, depending on the location.

The limited availability of customs clearance creates interruptions for the cargo transport sector in Myanmar, resulting in trucks spending more time waiting for the cargo to be cleared than driving. Over-night and over-day costs due to delays, red channels and other delaying factors are too common and result in added costs for forwarders and losses for trucking companies, hence reducing the profitability of this sector.

Furthermore, these delays create a 'bottle-neck' and traffic jam situation near custom clearance areas. Yangon downtown ports well represent this situation seen through the combination of limited customs accessibility, the truck driving ban and operating restrictions (trucks can only operate between 11 a.m. and 3 p.m.). Furthermore, emissions from old, poorly maintained container trucks worsen this issue and pose major health implications. On average, a truck, operating between warehouses in the greater Yangon area and the downtown ports, can do 12 to 15 trips per month, compared to, for example, 60+ trips per month per truck operating in Bangkok and Ho Chi Minh City.

As highlighted in the previous issue, internal communication has not yet been utilised to its full potential, hence making the process even slower. If this could be put fully in place, MACCS would enable a more seamless automated and less bureaucratic customs clearance process and free up customs staff for other duties or work other shifts, covering more hours and wider opening times, ideally 24/7 at the ports and borders.

### Potential Gains:

- The combination of automation, single point of contact (one signature) and fast processing of files, will reduce the workload and free up customs resources for usage of longer customs opening hours, eventually leading to a 24/7 operation where needed.
- The above, if implemented at the downtown ports of Yangon and Myawaddy, will reduce traffic congestion and enable better fleet usage (less trucks on the road). This could reduce the number of trucks on the road in Yangon alone by up to two thirds for handling containers, leading to lower costs and hence enabling the truck owners to replace the old, polluting, unsafe right-hand trucks with new, safe and modern left-hand ones.
- Reduce traffic congestion and avoid bottle-neck situations in downtown Yangon
- Keep container trucks running and not parked or waiting, increasing the productivity of each truck
- Reduce incidents on the road

### Recommendations:

- Speed up implementation of the paperless/electronic processes of MACCS system.
- Reduce bureaucracy, give more responsibility to customs front desk staff, and create a single point of contact for logistics companies.
- Create container freight stations (CFS) solutions in and around Yangon, with custom clearance facilities in house (Refer to Issue 3).
- Establish a system for fast pre-cleared container drop off.

*The limited availability for customs clearance creates interruptions for the cargo transport sector in Myanmar, resulting in trucks spending more time waiting for the cargo to be cleared than driving. Over-night and over-day costs due to delays, red channels and other delaying factors are too common and result in added costs for forwarders and losses for trucking companies, hence reducing the profitability of this sector. As a solution, we suggest a combination of automation, more responsibility to custom front desk staff and fast processing system of files.*

### Issue Description 3: Bonded Warehouses and CFS

Allowing for bonded warehouses and CFSs in strategic areas has been a long ongoing process. Recently the government approved a scheme for three types of bonded/CFS facilities (public, private and manufacturing). As per March 2019, no licence for bonded warehouses or CFSs has been issued. Currently, bonded solutions exist in Thilawa SEZ, but are under a slightly different scheme, according to the Thilawa SEZ committee. Before bonded and CFS licences can be issued the set of guidelines, procedures and routines, bonded/CFS facilities operations need to be in place. Furthermore, we suggest training of customs staff to be completed and provision of enough resources. It is also unclear which ministry (or customs department) is involved in this process.

#### Potential Gains:

- Due to the nature of the cargo flow in and out of Myanmar, in particular garment exports, the new bonded warehouses and dry ports with CFS solutions can greatly reduce the custom clearance workload of the downtown and other ports.
- Faster processing of cargo at the ports, just drop-off of containers.
- Less use of overtime for all involved parties.
- Customs officials have a better control, since they are located close to where CFS cargo are loaded, hence they can monitor all the activities.
- Trucking can be done at different times and one truck can handle multiple pick-ups and drop-offs in a day.

#### Recommendations:

The implementation of bonded warehouses and CFS solutions outside the SEZs and ports is the optimal solution for this issue and can be easily realised. Both import and export activities will benefit a great deal. Considerable quantities of imported goods will be able to proceed directly to the bonded warehouse and hence avoiding being trapped at the ports. On the other hand, export goods will be able to be cleared at the CFS facilities and therefore by-passing custom activities at the port, avoiding the creation of a bottle-neck situation.

The Logistics Advocacy Group is aware that the government is working on bonded warehouse and CFS procedures, but it also feels the process or progress can be helped. The advisory group stands ready to assist in order to ensure these procedures can be quickly implemented.

#### Some Recommendations Include:

- Encourage MIC/customs to swiftly process and issue bonded and CFS licences to strategic locations with large volumes of outgoing and/or incoming cargo.
- When the CFS and bonded warehouse come into operation, a “drop-off” solution at the ports could be put in place to allow containers to be dropped off in minimum time.
- Seek assistance for developing and implementing the required set of procedures and guidelines for decentralised customs clearance services for incoming and outgoing cargo (CFS/bonded).
- Ensure adequate hiring and training of customs officers for these new CFS/bonded warehouses. This offer a fresh start with less non-compliance handling.
- Allow laden containers to be lifted off at the export area before finishing export customer clearance in order to release trucks/trailers. If the container is in the red channel, customs officer will come to the export area to inspect the cargo inside containers.

- We advise that an outline of service fees and pricing be made available as these are still unclear for the bonded/CFS operators.
- Authorise more senior staff with the right to sign final documents for import or exports—in particular at the Thai and China borders.
- Collaborate with the private sector, given their experience not only internationally but also regionally.

*The implementation of bonded warehouses and CFS solutions will bring about great benefits to Myanmar logistics activities. On one side, a considerable quantity of imported goods will be able to proceed directly to the bonded warehouse and hence avoid being trapped at the ports. On the other, export goods will be able to be cleared at the CFS facilities and therefore bypass custom activities at the port, avoiding the creation of a bottle-neck situation. In general, this will re-distribute cargo outbound/inbound activities from the main ports to bonded warehouses and CFS solution, creating a swifter and quicker system.*

## Issue Description 4: Advance Payment for Terminal Usage

The advance payment procedure for terminal usage still represents an issue for shipping liners companies. The payment rule has not been yet modified nor amended. According to current rules, carriers must perform an advance payment to the Shipping Agency Department of the Myanmar Port Authority (MPA) to use these city terminals.

This process is extremely inconvenient and costly as finances must go through multiple parties with significant delays before appropriate refunds are sorted. This is negatively impacting both terminals and carriers due to the complicated processes involved as well as big loss of finances locked for many months in the process. This process is unreasonable and is rarely practiced in any other terminals around the world, as carriers will settle the amount that is owed directly to terminal without a middle party or at an artificially high amount.

As highlighted in Issue Description 2, value assessment processes and important formalities already take a great amount of time during logistics activities. In addition, the transaction costs for logistic procedures are considerably higher compared to neighbouring countries, as also shown in the World Bank's 2019 Ease of Doing Business ranking.<sup>2</sup> Therefore, we strongly advocate to cut unnecessary costs and lengthy procedures, to develop a more competitive and well-functioning logistics system, and, ultimately, attract more foreign investments.

### Potential Gains:

By allowing payments to go directly from carrier to terminal, this will lift Myanmar's processes to international standards. This new way of working will increase efficiency, helping to save time and costs for all parties. This will also make Myanmar more attractive for investments by logistics companies due to more simple and standard processes. Furthermore, cutting lead times and costs will also attract investments from industries which heavily rely on transportation (e.g. exporters to Europe).

### Recommendations:

We would like to request the MPA to review its current process and allow carriers to settle payment as per contracted amount (not MPA-set tariff levels) directly to the terminal. Any Shipping Agency Department fees can be settled directly from carrier to the department as well.

<sup>2</sup> "Trading Across Borders," World Bank Group, 2018. Retrieved from: <http://www.doingbusiness.org/en/data/exploretopics/trading-across-borders>

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WINE AND SPIRITS





## INTRODUCTION

EuroCham Myanmar, together with leading European wine and spirits companies, teamed up to create the Wine & Spirits Advocacy Group in September 2017. The ambition of this group is to provide support and recommendations to the Myanmar government in its efforts to promote the rule of law and the development of a modern and responsible wine and spirits industry that contributes to the nation's economy.

The demand for foreign spirits in Myanmar was conservatively estimated to be around 500,000 nine-litre cases in 2018 by the International Wine & Spirits Record (IWSR).<sup>1</sup> This demand is currently met primarily through non-taxable channels and illicit stock. Imports of foreign spirits, except for duty-free channels and the small duty paid luxury hotels channel, are officially banned since 1998 (Order No. 8/2013 of the Ministry of Commerce). The ban encourages widespread illicit trading and directly linked corruption and prevents Myanmar of much-needed tax revenue. The ban also contravenes Myanmar's commitments to the World Trade Organisation (WTO).

A disproportionately high total tax burden on imported spirits further encourages distribution through non-paid tax channels, eroding government tax revenues and fostering illicit trade. Furthermore, there are currently no clear technical regulations in Myanmar for foreign spirits. Product definition and standards, production regulation, labelling requirements and traceability measures are still lacking, posing health risks to Myanmar consumers who cannot be sure of the source or quality of foreign branded products.

### Issue Description 1: Bans of the direct import of foreign spirits in Myanmar under Notification 8/2013

Order No. 8/2013 of the Ministry of Commerce, which imposes a ban on direct imports of foreign spirits, is ineffective: foreign spirits are widely found in various on-premises and off-premises venues, outside of the select luxury hotels and duty-free licence holders that are, at present, the sole authorised importers of foreign spirits. The bulk of foreign spirits in Myanmar are currently supplied through illicit channels—principally smuggling across the Thai border and leakage from the duty-free channel.

Recent steps by the Yangon Regional Government to enforce the ban by preventing the sale of foreign spirits has demonstrated the inefficacy of the current ban. Ad hoc enforcement disrupted business for retailers, hoteliers, restaurant owners and bartenders and consumers alike while proving ineffective due to the challenge of enforcement and the sheer size of the market.

Myanmar's government is losing out on a significant opportunity to collect tax revenue on the sale of foreign spirits because the demand for foreign spirits is currently primarily met through non-tax paid channels and illicit stock. Whilst precise figures pertaining to illicit trade levels are difficult to estimate, anecdotal reporting and discussions with Ministry of Commerce officials indicate that as much as \$200 million worth of alcoholic beverages may be making their way into Myanmar each year. An industry study on potential tax revenue by Australia's Charles Sturt University estimated the loss in tax revenue in 2016 to be at least \$22 million.<sup>2</sup> Today, this sum is likely to be even higher, as Myanmar's economy continues to grow and the country sees a greater demand for foreign products.

Illegal imports with no tax paid are sold at low prices, which is detrimental to both the Myanmar government and the domestic industry. Anecdotal evidence indicates that well-known international Scotch whisky brands can be found on the black market at prices lower than locally-produced, market-leading whisky brands.

The current ban effectively incentivises the illicit trade of foreign spirits, sustaining a "shadow economy." Charles Sturt University estimates that more than 90% of imported spirits found in Myanmar are smuggled. Shadow operators who are involved in smuggling and the sale of counterfeit products take advantage of Myanmar's porous border. Smuggling activities funnel illegal income into the hands of networks which are often linked to criminal organisations. This illegal yet lucrative business undermines the government's efforts to strengthen the rule of law and fuels corruption. Smugglers also have significant influence at borders, which prevent legitimate bodies and regulators from trying to enforce regulations.

<sup>1</sup> International Wine & Spirits Record, Global Database, 2018. Retrieved from: <https://www.theiwsr.com/>

<sup>2</sup> Charles Sturt University tax model results presented in tax seminar in 2017.

In the absence of legally imported products on the market, counterfeit products further create a serious public health risks to local consumers and visiting tourists. In a recent Food and Drug Authority (FDA) post-market surveillance sample, nearly 20% of sampled spirits have methanol concentrations above the limit that is safe for human consumption.

The trade in smuggled spirits fuels the growth of unlicensed retailers, inhibits the growth of legal retail channels and incentivises the continued disregard for the ban on foreign spirits. While five-star hotels have the option of legally importing spirits, Myanmar's other hoteliers face significant difficulties. This often pushes them to engage in illicit trade if they wish to satisfy tourists' expectations and desire for familiar, quality spirits brands. Currently, most retailers and restaurant owners are unable to stock foreign spirits through legal channels, thereby lowering consumer experiences. As a result, these operators often feel forced to turn to illicit stocks for their supply, which generates legal risks for them and creates potential public health risks for both domestic and foreign consumers.

## Potential Gains:

- Significantly increase in tax revenues collected by the government on the normalised import and retail of foreign spirits.
- Promote the rule of law by creating a legalised environment for the import, distribution, retail and consumption of foreign spirits.
- Complement law enforcement efforts with market mechanisms to address the illicit trade and counterfeiting of spirits.
- Curb substantial health risks to tourists and consumers by giving them access to legitimate and safe products at a consistent price.
- Demonstrate that Myanmar is taking active steps to move against illicit trade to improve the business climate, while also moving towards complying with its WTO commitments.
- Gain access to international best practices and enable foreign companies to participate in the market and to undertake joint responsible drinking campaigns together with the government, domestic industry and civil society to tackle underage consumption and harmful use of alcohol, drawing on their established global experience.

## Recommendations:

We encourage the Myanmar government to lift the ban on the import of foreign spirits by amending Order No. 8/2013 of the Ministry of Commerce and update the liquor licensing regime accordingly. Opening the foreign spirits market, coupled with a clear, effective and controlled system for licensing and the appointment of exclusive distributors (similar to recent wine sector reforms) would promote legal trade and enable retailers and consumers to buy legitimate products from tax-paid channels. The normalisation of wine imports in 2015 improved transparency and this positive step forward can serve as a guide to the government and private sector alike in moving toward legalising the import of foreign spirits.

In order to ensure that the local spirits industry remains competitive in a liberalised market, the government could consider a gradual opening of the market for foreign spirits. This would ensure that the legitimate interests of all local producers do not face a significant immediate disruptive impact. In addition, imports could initially be limited to a number of ports, or even allowed only at a single point of entry, to ensure the proper collection of duties and full compliance with all new regulations.

The industry appreciated the recent workshop "Combatting illicit trade on spirits market in Myanmar" organized by the UK Department of International Trade in January 2019. As shared during the workshop, the industry recommends the opening of the spirits market in Myanmar with proper transition mechanisms, fair taxation and conditions attached to protect local producers.

## Issue Description 2: Large illicit trade due to high tax burden and lacking standards and labelling

The current ad valorem tax structure prevalent for foreign spirits legally imported by hotels leads to a high retail price in Myanmar and provides incentives to suppliers in illicit channels. At the same time, this disproportionately high ad valorem tax creates an enforcement issue with the Myanmar Customs Department when it comes to the valuation of goods, as customs agents often fear that importers under-declare the value of imported goods. The combination of this high taxation and lack of enforcement has led to the flourishing of smuggling and illicit trade. Myanmar ranked 82<sup>nd</sup> out of 84 countries—followed only by Iraq and Libya—in the Global Illicit Trade Environment Index 2018 compiled by the Economist Intelligence Unit (EIU). In the absence of clear technical regulation on foreign spirits, Myanmar consumers could find it hard to ensure source or quality of spirits products in the market.

### Potential Gains:

- Boost government revenue by promoting the tax-paid importation and retail channel.
- Reduce smuggling and illicit trade by establishing a fair and transparent tax structure which reduces the price gap between goods sourced via tax-paid channels and non-tax paid channels.
- Leverage on international best practices to improve standards and labelling requirements and ensure traceable and quality-assured products are in the market.

### Recommendations:

- We encourage the government to introduce a specific excise tax component for imported spirits, as many of them now fall into tier 16 and are subject to ad valorem tax. The specific tax rates model adopted for domestically-produced spirits, which also takes into account the value of goods with a tier system, is a good basis to work upon. A specific tax structure consisting of a fixed amount per litre would help avoid disputes on goods valuation between customs, importers and retailers.
- We encourage the government to maintain the current import duties for imported foreign spirits, which is already very high, as an increase could negate efforts to curb illicit trade through the opening of the market.
- We also encourage a concerted effort by all industry players and the authorities to work hand in hand to ensure enforceability and monitoring. This would ensure a high level of compliance, which would benefit the country through the proper collection of tax revenues from all spirits products and brands sold on the domestic market.
- We encourage an anti-dumping law, a countervailing law and other safeguard laws to be put in place as soon as possible to afford the same protection to the local industry as in other countries that are members of the WTO.
- We encourage the government to develop or adopt technical and labelling requirements for wine and spirits products with reference to international best practices, standards such as those set in the Codex Alimentarius, regulations of the major countries where wine and spirits are produced for local consumption and exported (including to Myanmar) such as the EU, the US, Australia, New-Zealand etc. and the International Organisation of Vine and Wine (OIV). For example, we understand that the Ministry of Health is reviewing and revising the National Food Law. We respectfully recommend broader stakeholders' consultation in order to develop an effective regulatory framework that is consistent with international best practices to ensure food safety and promote consumers' interests.

## ABBREVIATIONS AND ACRONYMS

<b>AEOP</b>	Accredited Economic Operator Program
<b>AIGE</b>	ASEAN Institute for Green Economy
<b>AIPT</b>	Ahlong International Port Terminal
<b>APACMed</b>	Asia Pacific Medical Technology Association
<b>ASEAN</b>	Association of South East Asian Nations
<b>AWPT</b>	Asia World Port Terminal
<b>CBM</b>	Central Bank of Myanmar
<b>CBU</b>	Completely-Built-Up
<b>CC</b>	Competition Commission
<b>CCGT</b>	Combined Cycle Gas Turbines
<b>CE</b>	Conformité Européenne
<b>CFS</b>	Container Freight Station
<b>CIDB</b>	Construction Industry Development Board
<b>CIDBL</b>	Construction Industry Development Board Law
<b>CIF</b>	Cost, Insurance and Freight
<b>CL</b>	Competition Law
<b>CLM</b>	Cambodia, Laos and Myanmar
<b>CMP</b>	Cut-Make-Pack
<b>CSO</b>	Central Statistical Organisation
<b>CSR</b>	Corporate Social Responsibility
<b>CSV</b>	Creating Shared Value
<b>CT</b>	Commercial Tax
<b>DEDC</b>	Digital Economy Development Committee
<b>DICA</b>	Directorate of Investment and Company Administration
<b>DOA</b>	Department of Agriculture
<b>DOTS</b>	Direction of Trade Statistics
<b>E&amp;P</b>	Exploration and Production
<b>EBA</b>	Everything But Arms
<b>ECC</b>	Environmental Compliance Certificate
<b>ECD</b>	Environmental Conservation Department
<b>ECE</b>	Economic Commission for Europe
<b>EEAG</b>	EuroCham Energy Advocacy Group
<b>EEDC</b>	Energy & Electricity Development Committee
<b>EIA</b>	Environment Impact Assessment
<b>EIU</b>	Economic Intelligence Unit
<b>EMCIAG</b>	EuroCham Myanmar Construction and Infrastructure Advocacy Group
<b>EMRBI</b>	EuroCham Myanmar Responsible Business Initiative
<b>ESIA</b>	Environmental and Social Impact Assessment
<b>EU</b>	European Union
<b>EUROPOL</b>	European Union Agency for Law Enforcement Cooperation

<b>FDA</b>	Food and Drug Administration
<b>FDI</b>	Foreign Direct Investment
<b>FOB</b>	Free On Board
<b>FTZ</b>	Free Trade Zone
<b>FY</b>	Fiscal Year
<b>GAP</b>	Good Agricultural Practices
<b>GATT</b>	General Agreement on Tariffs and Trade
<b>GDP</b>	Gross Domestic Product
<b>GIP</b>	Garment Industry Project
<b>GIZ</b>	Internationale Zusammenarbeit GmbH
<b>GMP</b>	Good Manufacturing Practice
<b>GSP</b>	Generalised Scheme of Preferences
<b>GST</b>	Goods and Service Tax
<b>HPT</b>	Htee Tan Port Terminal
<b>HS</b>	Harmonised System
<b>IBTT</b>	International Bulk Terminal Thilawa
<b>ICC</b>	International Criminal Court
<b>ICT</b>	Information and Communications Technology
<b>ID</b>	Identification
<b>IFPMA</b>	International Federation of Pharmaceutical Manufacturers & Association
<b>ILO</b>	International Labour Organisation
<b>IMF</b>	International Monetary Fund
<b>IRD</b>	International Revenue Department
<b>IWSR</b>	International Wine & Spirits Record
<b>LNG</b>	Liquified Natural Gas
<b>LPG</b>	Liquified Petroleum Gas
<b>LRD</b>	Land Registration Department
<b>MAC</b>	Myanmar Architect Council
<b>MACCS</b>	Myanmar Automated Cargo Clearance System
<b>MADB</b>	Myanmar Agricultural Development Bank
<b>MCA</b>	Myanmar Company Act
<b>MCBL</b>	Myanmar Credit Bureau Limited
<b>MCEC</b>	Myanmar-China Economic Corridor
<b>MCL</b>	Myanmar Company Law
<b>MCRB</b>	Myanmar Centre for Responsible Business
<b>MEngC</b>	Myanmar Engineering Council
<b>MGHRDC</b>	Myanmar Garment Resource Development Centre
<b>MGMA</b>	Myanmar Garment Manufacturers Association
<b>MIC</b>	Myanmar Investment Commission
<b>MIP</b>	Myanmar Industrial Port
<b>MIPL</b>	Myanmar Integrated Port Limited
<b>MIPP</b>	Myanmar Investment Promotion Plan

<b>MIR</b>	Myanmar Industrial Relations
<b>MITT</b>	Myanmar International Terminal Thilawa
<b>MMK</b>	Myanmar Kyat
<b>MOALI</b>	Ministry of Agriculture, Livestock and Irrigation
<b>MOC</b>	Ministry of Commerce
<b>MOEE</b>	Ministry of Energy and Electricity
<b>MOGE</b>	Myanma Oil and Gas Enterprise
<b>MOHS</b>	Ministry of Health and Sports
<b>MOI</b>	Ministry of Industry
<b>MOIFER</b>	Ministry of Investment and Foreign Economic Relations
<b>MOLIP</b>	Ministry of Labour, Immigration and Population
<b>MONREC</b>	Ministry of Natural Resources and Environmental Conservation
<b>MOPF</b>	Ministry of Planning and Finance
<b>MOTC</b>	Ministry of Transport and Communication
<b>MPA</b>	Myanmar Port Authority
<b>MSDP</b>	Myanmar Sustainable Development Plan
<b>MyCO</b>	Myanmar Companies Online
<b>NLD</b>	National League for Democracy
<b>NOC</b>	National Occupational Classification
<b>NOC</b>	No Objection Certificate
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OIV</b>	Organisation of Vine and Wine
<b>OLAF</b>	European Anti-Fraud Office
<b>ORD</b>	Office of Registration of Deeds
<b>OSH</b>	Occupational Safety and Health
<b>PICS</b>	Pharmaceutical Inspection Co-Operation Scheme
<b>PPA</b>	Power Purchase Agreement
<b>PPP</b>	Purchasing Power Parity
<b>PSC</b>	Production-Sharing Contracts
<b>PSDC</b>	Private Sector Development Committee
<b>PTD</b>	Department of Post and Telecommunications
<b>PTT</b>	Port of Thilawa Terminal
<b>R&amp;D</b>	Research & Development
<b>ROLC</b>	Myanmar Rule of Law Centres
<b>RORO</b>	Roll-On/Roll-Off
<b>RTAD</b>	Road & Transport Administration Department
<b>SEZ</b>	Special Economic Zone
<b>SKD</b>	Semi-Knocked-Down
<b>SOP</b>	Standard Operating Procedures
<b>SPW</b>	Sule Pagoda Wharf
<b>STEM</b>	Science, Technology, Engineering and Maths
<b>TCR</b>	Rules of Telecommunications Law

<b>TIPRL</b>	Transfer of Immoveable Property Law
<b>TMIT</b>	Thilawa Multipurpose International Terminal
<b>TMT</b>	The Myanmar Terminal
<b>TOT</b>	Training of Trainers
<b>TRACIT</b>	Transnational Alliance to Combat Illicit Trade
<b>UMFCCI</b>	Union of Myanmar Federation of Chamber of Commerce and Industry
<b>UN</b>	United Nations
<b>US</b>	United States of America
<b>USD</b>	United States Dollar
<b>USDP</b>	Union Solidarity and Development Party
<b>VAT</b>	Value-Added Tax
<b>VIN</b>	Vehicle Identification Number
<b>WCO</b>	World Customs Organisation
<b>WTO</b>	World Trade Organisation
<b>YHT</b>	Yangon Heritage Trust
<b>YSX</b>	Yangon Stock Exchange
<b>YVQC</b>	Yangon Vehicle Quote Certificate

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## DISCLAIMER

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