



White Book 2018

Trade & Investment Policy Recommendations



CO-FUNDED BY



EUROCHAM PARTNERS





EUROPEAN UNION

This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of EuroCham Myanmar and can in no way be taken to reflect the views of the European Union.

IMPLEMENTED BY



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 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 MoUs with the chambers of Germany, Italy, Norway and the UK, including with the Myanmar national chamber 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 second 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, sectoral and partner organisations in Myanmar.

Yangon, June 2018



EUROCHAM CHAIRMAN OF THE BOARD



On behalf of the EuroCham Board of Directors, Advocacy Groups, EuroCham's Partner Members and all other members, I am honoured to present you the White Book 2018 on Myanmar Trade & Investment Policy Recommendations. This White Book is the result of a large collaboration between our Advocacy Group member companies. As current investors and operators in a number of industries, they are eager to expand their businesses and contribute to Myanmar's economic development.

We are pleased to mention that the scope of our 2018 EuroCham policy recommendations has been widened, since the number of our sector-specific Advocacy Groups has more than doubled since 2017.

Hence, this White Book now covers recommendations of our newly-established Advocacy Groups on Agrobusiness, Anti-Illicit Trade, Automotive, Digital Innovation, Garment, Legal, Wine and Spirits, together with Construction and Infrastructure, CSR, Energy, Health and Logistics. We trust this new book will provide a broader perspective on Myanmar's current climate for European investors. We are also convinced that this growth of EuroCham is the best proof of the strong interest of European investors who have committed themselves to contribute to positive policy change in Myanmar.

The year 2017 was marked by several improvements in key areas, such as bureaucracy reforms and Intellectual Property Law, and we are pleased to acknowledge the government's ongoing commitment to taking concrete steps forward in sectors such as energy generation, construction, transportation and health, as well as in introducing better regulations and procedures, incentivising further investment.

2017 provided an opportunity for the EuroCham team and Advocacy Group partners to develop further their constructive cooperation with the Myanmar authorities, organising numerous policy dialogues and events in Naypyidaw and Yangon. Please let me take the opportunity to warmly thank all government officials who have met and worked with us.

Since the early days of its democratic transition, Myanmar has gone – and is still going – through a challenging journey. EuroCham will continue to work closely with the EU Delegation and the Myanmar authorities to help overcome these challenges in a way that is transparent and constructive.

I look forward to next year's White Book. I anticipate new challenges and new opportunities to come, but most importantly I trust Myanmar's ongoing achievements will lead to economic development, supporting both peace and overall prosperity.

Sincerely yours,

David Levrat
Chairman of EuroCham Myanmar

EU AMBASSADOR TO MYANMAR



Dear friends,

Myanmar is full of opportunities. As a partner in Myanmar's transition, the European Union is supporting this beautiful country and its people with the objective to help Myanmar develop into a peaceful and prosperous democracy with a functioning market economy. To this end, we engage politically for democracy, security, prosperity and equality.

We also offer financial assistance and technical expertise to foster development in key areas for a flourishing and just future: peace, education, agriculture, governance and human rights, to name just a few. Where people suffer the impact of conflict and natural disasters, the European Union also offers humanitarian assistance to the poorest and most vulnerable people in this country.

As part of attaining our political goal of a Myanmar better off, we also put a strong emphasis on trade and investment. The path to lasting economic development must go through sustainable business; promoting transparent and responsible commercial links is pivotal for Myanmar. Decent jobs for the many can only be created by sustainable businesses.

European businesses are already playing an important role, sharing their best practices and international standards of doing business in a country thirsty for responsible trading partners. As Europeans we know from experience that a functioning market is the driving force for sustainable development, and in turn for the consolidation of democracy.

Through the European Chamber of Commerce in Myanmar we support European companies interested or engaged in Myanmar. The chamber also functions as a link to the Myanmar government on advocacy and issues related to trade and investment. Although plenty has already been achieved, our businesses are keen to see further, rapid reform of the business environment. When deciding on trade and investment opportunities, European companies seek a level playing field, public administration free from corruption and a reform-minded government. Myanmar has great potential to make further headway in all these areas.

Against this backdrop, I am proud to introduce EuroCham Myanmar's initiative to develop the White Book 2018 Trade & Investment Policy Recommendations outlining our European companies' recommendation for the business climate in Myanmar. The White Book gathers knowledge and experience acquired by European businesses active in Myanmar on how the climate for trade and investments can be improved. It is also a stocktaking of progress since the last edition of 2017.

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

**Prestige
Automobiles**

bmwmyanmar.com



**Sheer
Driving Pleasure**



ACCOR HOTELS
Feel Welcome

GOLD

Carlsberg
Myanmar




FrieslandCampina



Global Technology Group

HEINEKEN
Myanmar



Luther.

MELIÀ
YANGON
MYANMAR

NOVOTEL
HOTELS & RESORTS
YANGON MAX

Roland
Berger




VDB | Loi

SILVER



archetype



**BRITISH AMERICAN
TOBACCO**



CONTROLUNION



DENTONS RODYK



DULWICH COLLEGE
(YANGON)

EXERA
Sectoring Myanmar



GRAND MALIBURI
HOTELS & RESORTS

Guston Ltd



Kempinski Hotel
Nay Pyi Taw

**MAERSK
LINE**

Meridien
HOTELS
YANGON KARA AYP



Möet & Chandon
V.V. SUTHER

Myanmar Business Promoters
MEMBER OF CBRECO

NOVOTEL
HOTELS & RESORTS
INLE LAKE

NTGM Ltd
WORLD TECHNOLOGY GROUP MYANMAR

Pernod Ricard

PHILIPS

Sullman

Royal HaskoningDHV
Enhancing society together



**Schneider
Electric**



SOFITEL
HOTELS & RESORTS

telenor



Yever

**RGK+Z&A
Group**

**ZUellig
PHARMA**

TABLE OF CONTENTS

1	Business Climate	8
2	2017 Policy Responses	18
3	General Recommendations and Concerns	25
4	Executive Summary	30
5	Methodology	36
6	Agrobusiness	38
7	Anti-illicit Trade	44
8	Automotive	49
9	Construction and Infrastructure	58
10	Corporate Social Responsibility (CSR)	64
11	Digital Innovation	71
12	Energy	77
13	Garment	85
14	Health	89
15	Legal	96
16	Logistics and Transportation	102
17	Wine and Spirits	108
18	Abbreviations and Acronyms	111
19	Acknowledgements	114
20	Disclaimer	114

Myanmar language version

BUSINESS CLIMATE



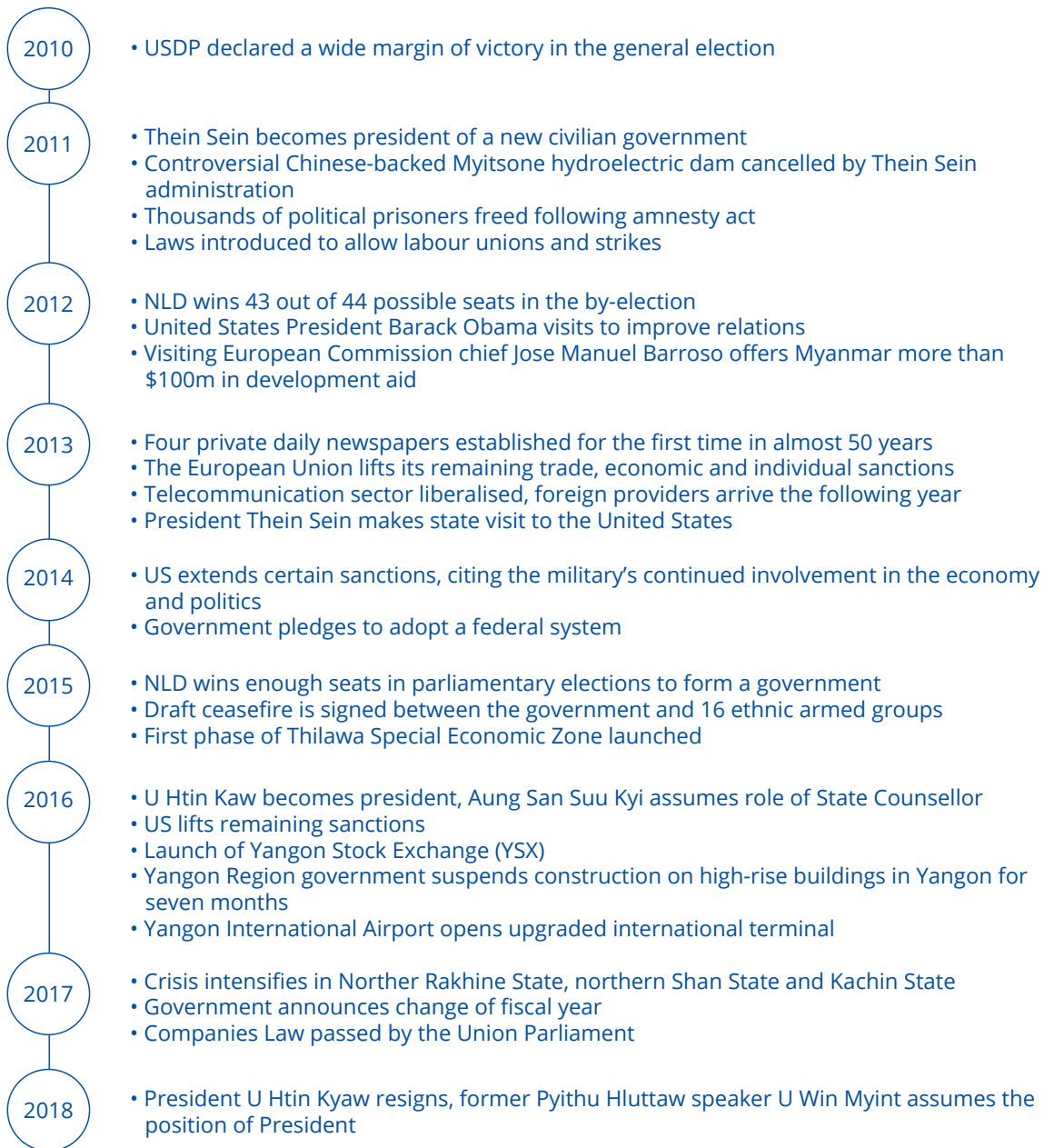
After decades of authoritarian rule, Myanmar is currently undergoing a process of political and economic liberalisation. Starting in 2011, the former military-backed government launched a series of dramatic political and economic reforms. These included floating the local currency, introducing new fiscal regulations, granting the central bank greater autonomy, opening the telecommunication sector to international firms, addressing governance and corruption issues, encouraging FDI and liberalising agriculture and trade.

The National League for Democracy (NLD), took office in April 2016, kindling the interest of investors who saw immense opportunity in the fast-growing economy and largely untapped market.

By 2018, the initial exuberance has waned slightly, as the country now seeks to navigate a complex set of regulatory, economic and social challenges. The realities of the transitional period and the slow pace of reform have gradually set in. The escalation of conflict in border regions is also significant and though geographically contained the crisis has had ripple effects throughout the wider economy due to perceived perceptions of risk.

The past six months have been marked by a series of conflict escalation in Myanmar's Rakhine state. As a consequence, the image of the country abroad and especially in Europe has suffered tremendously and has even impacted the attention that EU investors had a couple of years ago. EuroCham Myanmar and its members hope for a fast and stable recovery of the region and support all efforts to rebuild and reconcile the Rakhine region in a sustainable way. EuroCham Myanmar believes that one of the key elements to achieve the above stated objective is through continuous economic development, job creation and improved trade and investment.

Despite the challenges, business opportunities in Myanmar are still abundant and the critical need for outside investment remains. Furthermore, the recent approval of crucial legislation, such as the Myanmar Companies Law in late-2017, could signal the government's renewed attention to economic matters. Many in the business community are hopeful that 2018 will bring more concrete and unified directives across ministries and departments.



In late-2017, emerging signs of a more economically-focused government began to appear, with the passage of several high-profile and long-delayed laws, such as the Companies Act and the Condominium Bylaws. Furthermore, notable steps forward especially in energy and transportation infrastructure are starting to come to realisation.

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

RECENT CHANGES IN THE LEGAL AND REGULATORY FRAMEWORK

Myanmar began a new chapter in 2010. Since that time, many significant reforms have taken place on the regulatory front. Although the overall trajectory has tended to be positive, there is still confusion and inconsistency regarding implementation and enforcement of many of the government's new measures.

Summaries of the major changes are listed below:

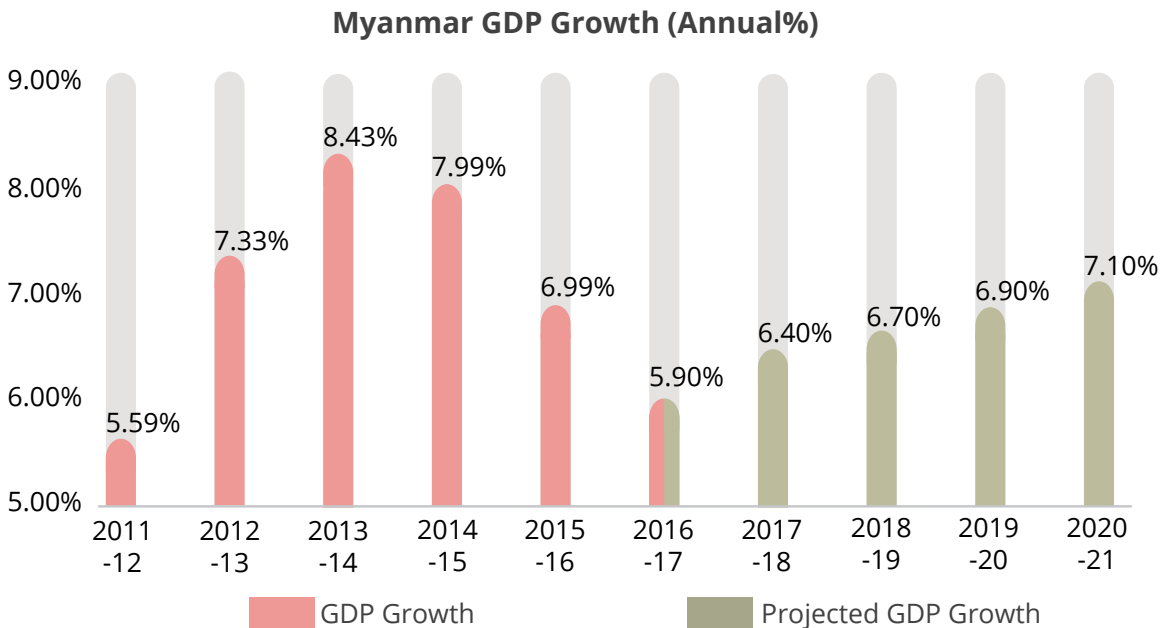
Law / Act	Explanation	Year of Enactment
ASEAN Comprehensive Investment Agreement	The ASEAN Comprehensive Investment Agreement supports a free, open, transparent and integrated investment regime in the ASEAN region in line with the goal of achieving an ASEAN Economic Community by 2015.	2012
Foreign Investment Law	The law opened up overseas ownership of business ventures and offered tax breaks. It allows formation of joint ventures with a local partner and the lease of land from the state and state 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 SEZ.	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 simplified the process for investment applications and offered 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	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. 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	2018

THE ECONOMY AT A GLANCE

Following decades of isolation and economic stagnation, Myanmar's economy is rapidly expanding.

Myanmar is ranked as one of the fastest growing economies. Its economy performed better in 2017/18 with a modest growth acceleration that partially reversed the deterioration experienced in 2016/17 (2017/18 GDP of 6.4% against 5.9% in 2016/17), according to the World Bank's May 2018 Myanmar Economic Monitor.

Given its low starting point, the country's high growth rate is expected to continue is likely to as it catches up with many of its regional neighbours. The general outlook from the World Bank put future GDP growth for 2018/19 at 6.8%. Other institutions such as the Asian Development Bank set their forecasts much higher for 2018/2019 at 7.2%.



GDP Annual Growth (Source: World Bank's Myanmar Economic Monitor, October 2017)

Whether growth will be sustainable, depends on the country's ability to create and maintain the necessary foundations for future growth. It essential that the government continue supporting the business environment, financing infrastructure investment, encouraging agricultural productivity, reforming the financial industry, and investing in the health and education of its labour force.

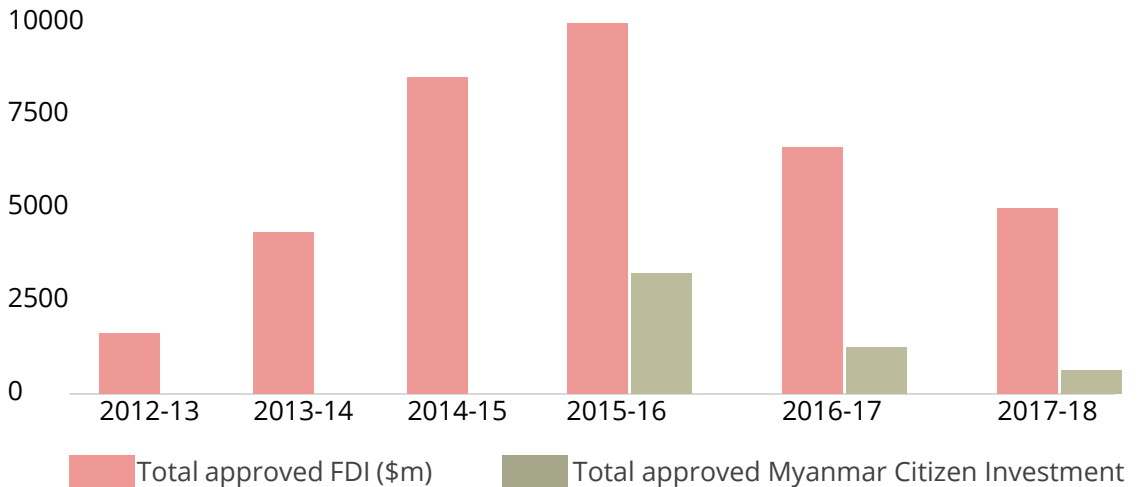
Myanmar has also seen substantial poverty reduction in recent years, with the World Bank estimating that poverty went from 37.5% in 2009/10 to 26.1% in 2015. These improvements are also shown in overall measures of well-being, with average household expenditures increasing by 15% over the decade.

Myanmar's economy has enormous potential. However, the country remains largely dependent on agriculture, with this sector contributing to around 25% of Myanmar's GDP. While there are pockets of rapid growth in industry and service sectors in cities around the country, economic growth in Myanmar's rural regions has remained stagnant and there is growing income inequality between rural and urban households.

FOREIGN INVESTMENT

Foreign investment also shows signs for potential growth, but is slowing, indicating a cautious investment community. The initial excitement created after the country began to liberalise in 2012 is wearing off, showing that though improvements have been made, investment in Myanmar is still challenging.

Yearly FDI (Permitted Investment USD)

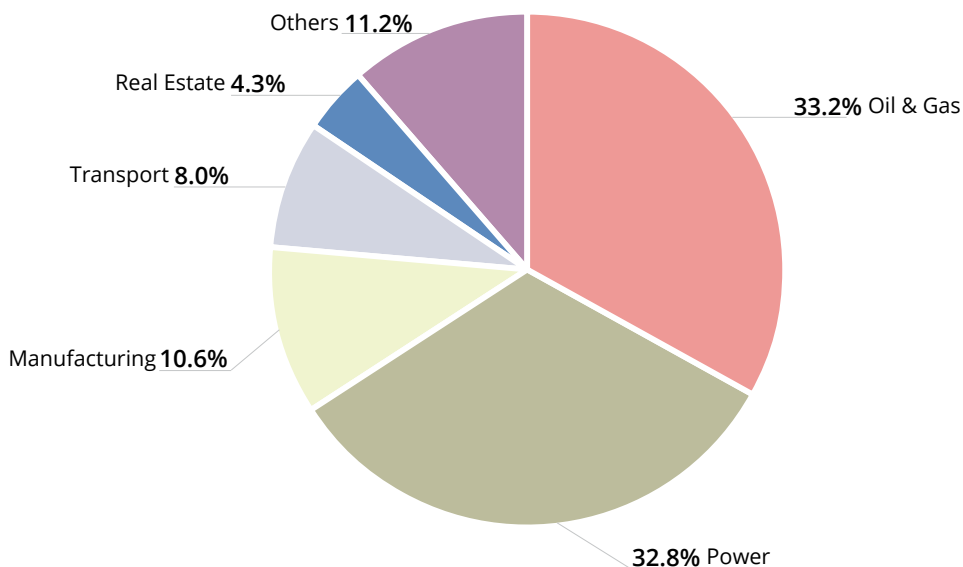


The above chart displays approved FDI and approved Myanmar citizens' investment since the democratic transition, with data from DICA. The figures include only approvals, and do not reflect actual investment flows. Of note, Myanmar citizens' investment figures are not available before 2015-16. (Source: DICA)

For sector specific investment, oil and gas sector investments have slowed for a number of reasons including weakening energy prices and the lack of new gas and petroleum fields being offered for development. Investment in the real estate and construction sector were also hampered by a slowing market and drastic government review of high-rise building projects in Yangon.

The following chart shows the sectors receiving the most FDI (in terms of permitted FDI) from 2015 to 2017. The country's three largest recipient sectors, oil & gas, power and manufacturing, account for 76.6% of the total approved FDI.

Share of FDI by Sector (2015 - 2017)



Source: Share of permitted FDI by sector (Source -DICA)

SIGNIFICANT ECONOMIC REFORMS

Financial sector

Although Myanmar's banking sector lags behind international standards, the government and CBM seem to be taking tentative steps to strengthen the financial sector. Almost all of the top 10 largest lenders have upgraded their core banking systems, and mobile and online banking has become commonplace. Some lenders have seen deposits rise more than 20% year-on-year, and there is huge growth potential given that around 80% of the population is estimated to be unbanked.

Despite the launch of the country's first stock exchange over two years ago, there are currently only five listings and limited trading volumes. The insurance sector, which was dominated by Myanmar Insurance company for decades is reforming, though the pace of change is slow. Many players see significant change in the financial sector in the years ahead, given the still nascent structure of the industry.

Energy

In the energy and electricity sectors, the government has made significant progress in the last year to address unmet demand. The downstream market is being opened to foreign companies, a process which was announced at the start of the 2017-18 financial year. Foreign firms are actively looking for opportunities in fuel distribution, and the sector is ripe for investment.

The upstream market continues to be slowed by low international energy prices. Several companies have recently dropped acreage won in the 2013 bidding rounds. However, the Ministry of Electricity and Energy has signalled a possible next bidding round, an opportunity eagerly awaited by foreign companies.

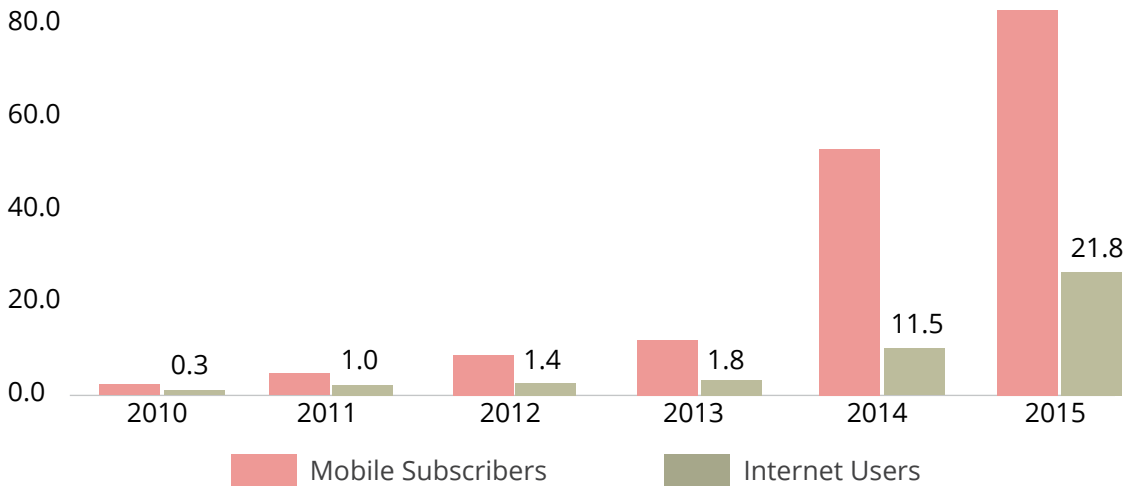
Electricity continues to be a major hurdle to doing business in Myanmar, but again progress has been made. "Notices to Proceed" were issued to four major generation projects in January 2018, including three LNG gas-to-power solutions. Still, the current government has not announced a new PPA since taking office, and Myanmar's electricity challenges remain large.

Telecommunications

Telecoms is one of Myanmar's recent success stories. Prior to the opening of the sector, Myanmar had one of the lowest rates of connectivity in the world and SIM cards cost as much as \$1,500. In 2013 the government began liberalizing the sector and invited foreign companies to bid in a tender for mobile licenses. Two foreign companies, Ooredoo and Telenor, were awarded licenses to operate in the market, which was once monopolised by the state-owned enterprise, Myanmar Post Telecommunications (MPT). Furthermore, MPT's Joint Operations Agreement with Japanese firm KDDI has resulted in the government owned entity competing strongly in the burgeoning market.

Mobile access and usage have since expanded rapidly, the International Telecommunication Union for 2015 indicate that 75% of the population are mobile users. The government also recently approved a fourth telecoms license for Mytel, a joint venture between Vietnam's Viettel and Myanmar's Star High Public Company.

Telecoms access (Per 100 citizens)

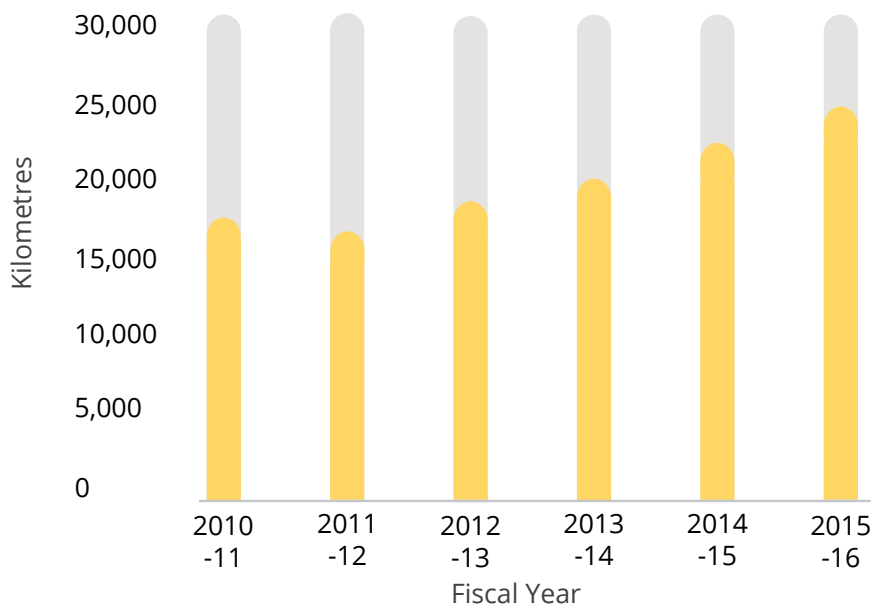


Source: International Telecommunication Union

Infrastructure

Although Myanmar's transport infrastructure continues to slowly improve, it is still beset by a wide array of challenges. Most fundamentally, Myanmar's varied geography present many challenges. Domestic transportation is primarily undertaken by road. However, many sections of the highway system are of poor-quality. A number of international donors such as the Asian Development Bank are heavily involved in the extension of road projects and have showed their continuing commitment in this area.

Asphalt Road in Myanmar



Source: Department of Highways

Further reforms are required. For example, the Yangon-Mandalay corridor is the busiest in the country, but at present large trucks are not able to take the most direct highway route.

The development of new airports and upgrades of existing airports are underway to serve an increasing number of passengers as well as to improve air cargo operations. However, many of these projects have experienced significant setbacks and a series of delays, primarily related to funding.

Although the country's rail and water transport systems also require significant improvement, there has been limited private sector in these areas. International organisations such as the Japan International Cooperation Agency (JICA) are currently the primary actors in renovation projects, including high-profile upgrades such as the Yangon Circular Railway improvement project. Similarly, Myanmar's inland water transport is an area with future growth potential and government support. In Yangon, the city's first water bus launched at the end of 2017, and expansion of the route is expected in the coming years.

OPPORTUNITIES FOR INVESTORS

Strategic location

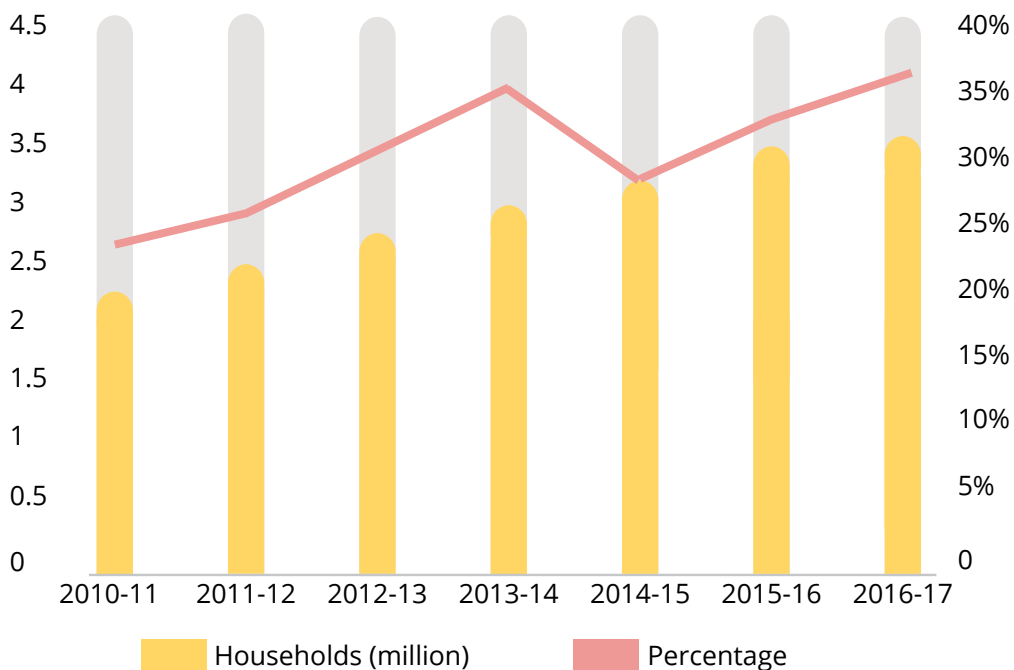
Myanmar's borders give direct access to China, India, Bangladesh, Laos and Thailand - around 40% of the world's population. There is potential for the country to become a major exporter in the region.

Given its strategic location, many observers have suggested that Myanmar could become a major trade hub at the crossroads of Asia. A large caveat remains whether Myanmar can attract the enormous amount of investment needed to create viable land routes and port infrastructure to take advantage of its location.

Abundant resources

Myanmar is a vast market with abundant resources offering huge growth potential for investors. Energy and electricity have undeniable potential in Myanmar. Many of the country's onshore and offshore blocks are un- or underexplored, and the introduction of new technology such as shale production offers exciting opportunities. Despite its abundant energy resources, Myanmar still has low electricity and electricity usage rates. The Ministry of Electricity and Energy estimates that around 65% of the population or around 35 million people lack access to reliable electricity.

Electrification



Source: MoEE

Still, the sector must grapple with low global prices as companies move projects forward. Electricity, meanwhile, is a priority area for the country. It has been hindered by slow progress and delayed approvals, but positive signs are emerging that could lead to improvements this fiscal year. A reduction of tariff rates would make the electricity generation and distribution market more attractive for investors and lead to an overall increase in electrification.

Myanmar also has a significant endowment of precious and semi-precious stones. According to some estimates, Myanmar accounts for 90% of the world's jade production and is one of the top producers of precious gems.

The country also has a favourable climate for agriculture and was once known as the rice bowl of Asia, before its output fell in line with socialist area reform policies.

Attractive labour market

Myanmar has a young population, with a labour force that is likely to remain a positive contributor to growth for the foreseeable future. The majority of the population falls within working age, and some estimates put this number at around 75% of the population.

Myanmar also offers investors the opportunity to benefit from a large pool of labour at low costs. However, investors often face a shortage of qualified, skilled labour, particularly outside of Yangon. Rapid urbanisation is taking place within the country, with rural workers moving to Yangon, and smaller cities including Mandalay, Taunggyi, Mawlamyine and the capital of Myanmar, Nay Pyi Taw.

Infrastructure gradually improving

Within the infrastructure sector, there is both a critical need for international investment and technical expertise. Although uncertainty exists, there are significant opportunities in the country's underdeveloped infrastructure.

Improvements have been slow, with few foreign investors being attracted to this area of the market, but there have been some success stories in recent years. For example, the liberalization of the telecommunications industry saw an unprecedented expansion of mobile penetration rates from less than 10% in 2012 to over 75% today. Special Economic Zones have also been recently introduced, with construction in Thilawa beginning in 2013. The aim of these zones is to encourage industrial investments and increase exports.

Finance

The country's banking system is in a process of liberalisation, however a lack of access to credit is a key strain on the Myanmar economy. An inability for international banks to directly facilitate loans makes it difficult to fund major projects, particularly while local banks struggle to meet international operational standards and are weighed down by non-performing loans.

Commitment to economic development and support of development partners

Myanmar's economy remains one of the fastest growing in the region, with a projected growth rate between 6-7%. Economic development remains a key initiative of the NLD Government with the continued support of an array of international bodies for the time being.

Despite being embroiled in political controversies, the NLD sees economic development as a key factor in the peace process. The lack of clear medium-term economic goals suggests that the government is still finding its feet while trying to balance growing the economy with bringing peace to Myanmar.

Growing consumer class

Strong private consumption continues to be a defining aspect of Myanmar's trading activities and economic performance. Private consumption continues to rise and now accounts for nearly 50% of Myanmar GDP. The robust rise of a consumer class signals promising opportunities for investors in manufacturing and light industrial sectors.

2017 POLICY RESPONSES



In the section '2017 Policy Responses' EuroCham monitors and evaluates the progress of its recommendations which were made in 2017 by consulting data sources such as government websites, existing government monitoring systems, databases of investment consultant firms and reliable state-owned and private media bulletins. In addition, EuroCham ranks the process of the government's implementations of recommendations using three-coloured traffic light system. Indicators employed to assess the recommendations include issuance of legal and regulatory frameworks, liberalised or modernised procedures being introduced, prioritization of the government policy making bodies and public and stakeholder opinions on the government's actions.

CONSTRUCTION AND INFRASTRUCTURE

1. To ensure construction companies act in compliance with rules and regulations by implementing self-regulating practices, reinforced by random checks and outlining a clear certification scheme:

PARTIALLY TACKLED

- To streamline standards of construction projects and strengthen industry initiatives, the Myanmar government has already approved the Myanmar National Building Code as the benchmark for all types of new buildings. The Code not only defines standard procedures for construction enterprises but also authorises officials to enter premises at reasonable times to carry out inspections.
- The Yangon City Development Committee (YCDC) is cooperating with the line ministries in the development of construction standards and regulations. Licence deposits have been increased from K5 million (US\$4500) to K20 million (\$18,000) for small contractors, and from K20 million (\$18,000) to K50 million (\$45,000) for larger operators. Any type of construction project requires the contractor to get a licence before the initial process of construction. Other laws in the construction sector from Myanmar's colonial past are also being targeted for review, while city masterplans aim to ensure proper zoning of areas for industrial, commercial or residential use.¹

2. Introduce measures for safety and environmental protection by including EIAs in the permit stage, checking the quality of materials used and structuring green building codes to align with international standards:

PARTIALLY TACKLED

- In January 2018, the Ministry of Natural Resources and Environmental Conservation (MONREC) started issuing its first Environmental Compliance Certificate (ECC) which confirms that the investor's Environmental and Social Impact Assessment is in compliance with the requirements of the Law on Environmental Conservation (LEC).² The company which receives the ECC is to implement its project in accordance with the conditions attached to the ECC and including the Environmental Management Plan (EMP), within the timeframe set by the ministry.

1. Oxford Business Group, *Improving regulations and standards for Myanmar's construction sector*. Retrieved from: <https://oxfordbusinessgroup.com/overview/nuts-and-bolts-construction-industry-expanding-apace-myanmar-turning-its-attention-building>
 2. VDB Loi, *MONREC issues first ever Environmental Compliance Certificate*. Retrieved on January 31, 2018 from: <http://www.vdb-loi.com/mlw/monrec-issues-first-ever-environmental-compliance-certificate/>

3. To select the most promising masterplan out of existing ones on the basis of quality and sustainability and inclusion for city residents from all strata of society:

PARTIALLY TACKLED

- The Yangon Region Government is reviewing master plans for development of Yangon City drafted by the Japan International Cooperation Agency (JICA) and other agencies in order to adopt one as a roadmap. The drafting of JICA's master plan started in 2012, and the new government began to scrutinise it in the middle of 2016. Among 41 priority projects under the Strategic Urban Development part of the 2040 plan, there are suggestions for bus modernisation, traffic management and safety management, transit-oriented development, and strengthening of the Yangon Region Transport Authority (YRTA). According to the regional Minister for Electricity, Industry and Transportation Daw Nilar Kyaw, the Yangon Region Government was in discussions with JICA, KOICA, France's Agence Française de Développement and the UK's Department for International Development (DFID) in its effort to amalgamate various proposed projects into a single Yangon 2040 Master Plan.³

4. To further encourage the involvement of public and private organisations in saving historical buildings by means of education programs, tax incentives and a government board dedicated to preservation of architectural, structural and cultural heritage of those buildings:

PARTIALLY TACKLED

- We are pleased to witness that the Yangon Heritage Trust (YHT) persuaded some local owners not to replace their historical buildings with modern housing projects, while educating them about the historical value of those heritage in the long run. Recently, in cooperation with the Yangon City Development Committee (YCDC) and Royal Philips Corporation, YHT has been installing blue plaques to educate people about Yangon's rich architectural heritage. With the assistance of New Zealand, YHT undertook a project that aims to understand what Yangon residents value in their local environment through direct consultation. The program is led by YHT with the support of YCDC, to study local residents' opinions on the city they call home.⁴

5. Developing a safety training scheme, followed by the creation of a safety training institute:

NO PROGRESS

ENERGY

6. All-inclusive meetings and discussion to march toward effectively streamlined procedures, accessible modes of providing feedbacks, sustaining and reinforcing improved coordination with regular trainings for government officials:

SUBSTANTIALLY TACKLED

- We appreciate that the Ministry of Electricity and Energy (MoEE) has been inviting more and more relevant stakeholders to energy and power sector discussions. The Ministry is organising coordination meetings with its Sector Coordination Group on Energy and Electric Power. Those meetings are normally joined by departmental heads from MOEE, delegates from foreign embassies, government ministries and development partner agencies and financial organisations.

3. Myanmar Times, JICA updates 2040 plan for Yangon development. Retrieved on January 4, 2017 from: <https://www.mmtimes.com/business/24405-jica-updates-2040-plan-for-yangon-development.html>

4. Yangon Heritage Trust, Advocacy and Public Engagement. Retrieved from: <http://www.yangonheritagetrust.org/advocacy-and-public-engagement>

- During the EuroCham Energy Advocacy Group's meeting with the Union Minister of Electricity and Energy and Director Generals in February 2018, the Union Minister addressed the necessity for regularly holding policy dialogues, and suggested the MoEE and the EuroCham Advocacy Group organise similar discussions quarterly.

7. Regular appraisal of procedures to ensure their adaptability whilst also acknowledging environmental issues by appointing experts to perform impartial assessment of oil and gas projects' impact on environment:

PARTIALLY TACKLED

- During his meeting with our EuroCham Advocacy Group, the Union Minister of Electricity and Energy has confirmed that the Ministry is developing a clear energy master plan. It is updated annually, and the Ministry aims to develop the plan to be implementable at the final stage.
- A new approval process for electricity generation projects is under preparation as the government's first step of reform its regulatory processes. The new procedure will replace the classic Memorandum of Agreement format with a unilateral letter committing the government to the project, namely a Notice to Proceed.⁵ On many occasions, the government also acknowledges the approval process for power projects takes too long. As development partners and stakeholders increasingly complain about stalled approvals and lengthy departmental procedures, the MOEE has reformed the approval process while giving the go-ahead to several large gas/LNG-to-power projects.

8. Establish a clean energy department tasked with promoting the country's potential in the clean energy sector, especially for solar power:

PARTIALLY TACKLED

- A department on clean energy has not been established yet. However, we acknowledge with appreciation the government's shift of focus toward electrification through renewable energy sources such as hydropower and solar power, aiming to generate 20 to 40% of electricity consumed nationwide from renewable sources. The government's aim is to increase electricity production from the present 2500 MW to 30,000 MW by 2030. In February 2018, the Ministry of Electricity and Energy embarked on a 170MW solar power project in Minbu. The first phase of a planned 220MW solar PV plant is also underway. Myanmar has the capacity to generate a potential 46,000 MW from hydropower sources, but only 3221 MW has currently been developed. To meet the power demand, the government is working on plans for 47 hydropower projects with a total installed capacity of 41721 MW by means of FDI on JV/BOT basic.⁶

9. In addition to tariff hikes among heavy users, identify entry barriers facing Independent Power Producers (IPPs), and implementing measures to remove these:

PARTIALLY TACKLED

- At the coordination meeting on electricity and energy held in February 2018, the Union Minister of Electricity and Energy has already reaffirmed his intention to initiate measures to identify and tackle barriers that investors might be facing in the sector. As a move toward the liberalisation of approval processes, the ministry has already given its go-ahead to build some large Gas/LNG power projects.

5.VDB Loi, From "Moa" To "Ntp": How Myanmar Is Streamlining The Power Project Approval Process. Retrieved on January 30, 2018 from: <http://www.vdb-loi.com/wp-content/uploads/2018/01/>

6.Ministry of Electricity and Energy. Retrieved on January 11, 2018 from: [http://www.moe.gov.mm/mm/userfile/role_of_hydropowe_Paper_\(11-1-18\)2.pdf](http://www.moe.gov.mm/mm/userfile/role_of_hydropowe_Paper_(11-1-18)2.pdf)

10. Building gas pipeline infrastructure and developing a roadmap to guide how to ration out natural gas among different applications to maximise economic growth:

PARTIALLY TACKLED

- Although there has not been any visible improvement in the gas pipeline infrastructures during 2017, we would like to welcome the government's strong focus on the popularisation of LPG gas by offering licences to distributor companies for the import, storage and distribution of LPG. Through cheap access to the gas, it aims to reduce the use of firewood in households and thus effectively reduce the consumption of electricity for cooking. 400,000 households now consume LPG imported through sea and land routes. By 2020, one million households are expected to be consuming LPG.

HEALTH

11. Ensuring patient safety by monitoring of Parallel Trade, Counterfeit and Substandard Drugs:

PARTIALLY TACKLED

- We recognise the initiatives and the strong investment in additional resources by the MoHS, in particular within the FDA, aimed at reducing the number of Parallel Trade and Counterfeit Medicines sold in Myanmar. We support Operation Pangea and are pleased to see the scope of the operation growing since 2015, and commend the hiring of qualified full-time resources in larger cities. The FDA increased the number of its branches in more than 30 districts in 2017 to monitor and control unregistered and fake drugs, cosmetics and food products in the market, and conducted a series of surprise inspections at Yangon drugstores as a measure to crack down on fake, substandard and expired drugs. During 2017, the FDA examined 1778 types of medicine and filed 25 cases (as of September 2017).⁷
- The FDA launched a reporting application for Android and iOS users in January 2017, called the Drug Safety Network. With the help of this application, physicians and pharmacists can instantly report suspected adverse drug reactions to the FDA.

12. Ensuring easier access to data on diagnosis and treatment, curriculum incorporating patient safety materials, and infection control units in every hospital:

PARTIALLY TACKLED

- Through the official website of the Ministry of Health and Sports, the government has shared guidelines and standard operating procedures (SOPs) for infection control. These materials include Patient Safety in Hospital Care, and Standard Operating Procedures for human rabies prophylaxis, seasonal influenza, pneumonia and tuberculosis. Publications and reports on health knowledge, healthcare management and diagnosis have been uploaded to the website.

13. Maintenance of medical equipment, beginning with developing a transparent after-sales service policy, and aiming to have capable biomedical engineers who are to support the policy on the ground:

NO PROGRESS

⁷Eleven Media, FDA busts Yangon drugstores. Retrieved on September 20, 2017 from: <http://www.elevenmyanmar.com/local/11673>

14. Simplifying the registration process by standardising registration forms and requirements:

PARTIALLY TACKLED

- We acknowledge the work and investment of the FDA in 2017, leading to a long list of Drug Approvals in September 2017. We are pleased to learn that in February 2018 the FDA issued a new 'Drug Registration Guideline' in English, in which an e-submission system has been introduced. When fully functional, the system will enable users to submit applications online. The guideline also shares detailed procedures on how to submit online applications through the FDA link. We believe further progress can be made by streamlining processes, and further adaptation of ACTD guidelines.

LOGISTICS AND TRANSPORT

15. A broad infrastructure plan encompassing a deep-sea port for the Delta region and a dedicated Special Economic Zone nearby, from which well-connected roads branch out to key cities:

PARTIALLY TACKLED

- Our members positively report on the government's pursuit of potential coastal areas which can be developed into new sea ports. A feasibility study was carried out to establish an industrial zone and deep-sea port along the coastline of Ayeyarwady Region near its capital of Patheingyi, and the government is compiling an assessment on this port and industrial zone proposal. Related meetings are being organised between the regional government and the companies which proposed the projects.⁸

16. Implementation of WTO's GATT transaction value concept for most imports into Myanmar while also adopting specific alternative methods of WTO for remaining types of goods:

PARTIALLY TACKLED

- The major purpose of this recommendation is to advocate the government's action to address the existing, non-transparent valuation process. In this regard, we welcome the Customs Department's issuance of 'Procedures on Customs Valuation' in September 2017, which adopts the General Agreement on Customs and Trade of the World Trade Organisation to calculate the customs value. On the other hand, we should also highlight the need for closer cooperation among the stakeholder parties (including customs authorities, importers and customs brokers) to successfully implement this transaction value concept.⁹

8. Myanmar Times, Proposed port and highway to align Ayeyarwady with Belt and Road. Retrieved on September 14, 2017 from: <https://www.mmtimes.com/news/proposed-port-and-highway-align-ayeyarwady-belt-and-road.html>

9. Customs Department, Myanmar. Retrieved on September 14, 2017 from: [https://www.myanmarcustoms.gov.mm/pdf/Notification%2091%20-2017%20\(Translation%20to%20English\).pdf](https://www.myanmarcustoms.gov.mm/pdf/Notification%2091%20-2017%20(Translation%20to%20English).pdf)

17. Appointing experts with valuable experience in transaction value systems at customs to train all stakeholders in import and export procedures:

NO PROGRESS

18. Extending the operation hours of customs to all day and night with no closing hours:

PARTIALLY TACKLED

- An additional two operating hours (upon the request of the importer) has been allowed by the Customs Department.

19. Making the customs clearance process to happen sooner by allowing containers to gate-in before clearance check:

NO PROGRESS

**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. EuroCham Myanmar wishes to take the opportunity to propose recommendations to the government to help tackle these issues.

Tax inefficiencies

Although tax reform has begun, European investors looking at Myanmar believe the tax culture needs improvement and that the government should continue 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, chief among which are a lack of available information, and a legacy of poor or non-existent enforcement.

Progress has been made in recent months, with technological upgrades to standard bookkeeping procedures being one encouraging sign. In February 2018, the Internal Revenue Department upgraded its manual bookkeeping procedures to a computerised system in order to target systemic corruption among officials. It also aims to reduce unnecessary delays in tax payment registration and streamline payment procedures with the Myanmar Economic Bank.

The Union Tax Law 2018 came into force in April 2018. This law permits a ministry to use its own ordinary budget while tax system reform is underway, and to initiate an incentives scheme for public service personnel who manage to collect revenues in an efficient manner.

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.

Research conducted by the Asia Foundation found that Myanmar's citizens have a generally poor understanding of the tax system. Almost 90% of respondents in the foundation's recent study wished more information were available on government taxation procedures and expenditures.¹

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 has put an additional burden on taxpayers.

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.

Additionally, 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. Changes in procedures and systems should only take place with prior notice, while also allowing time for the taxpayers to adapt to the new system.

There should be conformity to International Accounting Standards in domestic practices to avoid confusion. Moreover, the government could look to combat tax evasion by introducing effective enforcement measures such as penalty schemes.

Bureaucracy slows down processes

Excessive bureaucracy has been a longstanding issue in both the public and private sectors in many countries. Bureaucratic reform in Myanmar faces a number of unique challenges, with the country's democratic transition still in its nascent stage.

Highly-centralised organisational structures, slow decision-making processes, general public distrust, residual redundant procedures and a generally low level of task delegation and division are factors that have often caused significant bottlenecks and delays for investors in Myanmar.

¹James Owen and Hay Mahn Htun, *Attitudes Towards Taxation in Myanmar: Insights from Urban Citizens*, The Asia Foundation, March 2018.

Poor coordination and a lack of well-defined directives shared between ministries and various levels of government has contributed to an overall lack of clarity.

However, changes are underway and partners of EuroCham are pleased to note the government has made commendable steps toward transforming the sector.

An e-Government conference took place in November 2017 under the guidance of the Computer Science Development Council, chaired by the Union Minister of the Ministry of Transport and Communications, as an initial step to shift the existing manual operating systems used by government toward modern IT-oriented solutions.

Additionally, the Union Civil Service Board (UCSB) in collaboration with the United Nations Development Programme (UNDP) launched the Myanmar Civil Service Reform Strategic Action Plan 2017-2020 in July 2017.

The Action Plan aims to support the government as it formalises a holistic vision for civil service reform. It outlines a results-oriented plan of action to serve as a strategy document for establishing a modern and competent civil service.

The plan focuses on four major areas: New civil service governance, merit-based and performance-driven culture and systems, people-centered civil service leadership and capacity development, and transparency and accountability in civil service.

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, step-by-step capacity development and targeted, practical small-scale solutions can bring about greater operational efficiency.

Positive developments such as the transition from the government's current manual system to IT-oriented systems 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, bureaucrats should be empowered in the process and have 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.

The stakes are high, but successful change is possible. In recent months, the government seems to have been taking tentative steps in the right direction and laying the foundations for further positive development.

Corporate governance practice still has room for improvement

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 local partners with transparent, organised and responsibly-managed companies.

The reform process has gained positive momentum with the recent establishment of the Myanmar Institute of Directors, which aims to promote responsible and effective corporate management.

Furthermore, training opportunities and engagement are ongoing with events such as the January Workshop on Corporate Governance Assessment hosted by the Securities and Exchange Commission of Myanmar (SECM), Yangon Stock Exchange (YSX), the Directorate of Investment and Company Administration (DICA) and the International Finance Corporation (IFC) in Yangon.

Nevertheless, 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 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 of corporate governance could cause significant delays and slowdowns.

Recommendations:

The government could increase awareness about the importance of strong corporate governance and how it benefits 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 need guidance on how to best implement reforms. The Securities and Exchange Commission of Myanmar is well-placed to act in this capacity, though it needs resources and support from both the government and international partners.

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 go some way to ensuring regulations are properly adhered to.

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 IFC's work with the Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI).

In early 2016, the multilateral and UMFCCI agreed to carry out a training program for numerous local companies facing a range of corporate governance issues. The program included a workshop for lecturers teaching business ethics classes in Myanmar, with a view to instilling corporate governance best practices in young professionals who may lead the private sector in future decades.

Intellectual property laws not in place

One of the most threatening issues for investors in Europe looking at Myanmar is the absence of strong intellectual property laws. Despite the slow progress, it is encouraging to see that the NLD administration is working to develop more comprehensive legislation to tackle intellectual property issues.

In the third quarter of 2017, the government published a Copyright Bill, Trademark Bill, Industrial Design Bill and Patents Bill, marking the first development in the sphere of intellectual property during the new administration. These bills were tabled by the Minister for Education at the parliament in January 2018. The discussion on enacting the bills is expected to start soon.

To attract outside investment, the government should continue to expand the enforcement and scope of newly proposed and enacted property laws.

Recommendations:

Once IP laws are in place, European investors believe it is the primary role of the government to ensure the enforcement of these laws. The enactment of Myanmar's first IP laws would be welcome, but while the business community waits for this to occur, there should be some mechanism installed for recourse in cases of egregious intellectual property infringement.

Infrastructure needs

The need for increased investment in infrastructure is clear. In 2014, the World Bank estimated that Myanmar will require approximately US\$20 billion in investment by 2030 in order to close the country's infrastructure gap.

However, there have been few tangible improvements in the sector as of early 2018.

The challenges are significant, and the government clearly needs to take further decisive action. The country requires more workers with the technical skill and capacity to carry out projects. Similarly, the government must demonstrate a greater willingness to allow international investment in order to finance large-scale projects.

Improved infrastructure should lower the cost and improve the ease of doing business 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.

Infrastructure development will require large capital input. Continued economic reform will help promote European and other foreign investment.

Recommendations:

Regional master plans can be better developed 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 must 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

Another key issue to be addressed in parallel to those mentioned above is that of workforce development. The government has recognised the lack of skilled labour presents a major obstacle to attracting investment, and it has increasingly been seen to cooperate with development partners on vocational training programs. However, access to Technical and Vocational Education and Training (TVET) is still limited, with just 0.5% of upper secondary students enrolled in TVET programs.²

Recommendations:

Expanding access to TVET programs could be a solution to long-term human resource development, empowering more young people who cannot afford higher education and generating the skilled labour force needed for industrialisation and infrastructure projects.

² *Multi-dimensional Review of Myanmar: Volume 2. In-depth Analysis and Recommendations, OECD Development Pathways, 2014.*

EXECUTIVE SUMMARY



4

Myanmar offers tremendous opportunities to investors with the potential for lucrative benefits, however challenges remain for investors in a number of areas. These barriers/bottlenecks need to be addressed effectively so that Myanmar offers an investment-friendly business climate for prospective investors who are keen to establish their presence in Myanmar. While there are general challenges relevant to all sectors, sector-specific challenges remain.

Through these position papers, EuroCham aims to highlight the main obstacles in the relevant sectors and makes recommendations to the government with the aim to maximise the potential economic development of these sectors. As the members of each advocacy group have been working extensively in the relevant sectors, their knowledge, international expertise and practical experience could be a major contribution towards making positive changes in these industries.

While most of the recommendations are made to the government with the intention of streamlining and optimizing existing processes, EuroCham and its member companies stand ready to be involved.

The following is a summary of the policy recommendations endorsed by the twelve Advocacy Groups for the year of 2018.

Agrobusiness

- Complete the process of revising the National Food Law
- Enforce the finalisation of GAP (Good Agricultural Practices) guidelines, tied to domestically recognised standards
- Define clear responsibilities for local, regional and national government with regard to land acquisition issues
- Encourage development of specialised financing programs for small-scale farmers
- Organise a conference with key stakeholders on how to improve access to finance for Myanmar farmers

Anti-Illicit Trade

- Carry out an illicit trade environmental and economic impact assessment
- Establish an intergovernmental enforcement committee at a regional or state level
- Ensure a coordinated mandate amongst law enforcement agencies
- Increase manpower at ports and border control areas
- Review taxation mechanisms for addressing illegal trade
- Imposing increased fines or other punitive measures for offenders caught with illegal products

Automotive

- Reduce the Road Registration Tax for vehicles below 2000cc
- Open at least one Registration Transport Administration Department (RTAD) office in each capital city
- Reduce the ownership transfer fees to incentivise compliance
- Clearly define policies and regulations between CBU, SKD and CKD

- Balance taxation between CBU, SKD and CKD
- Limit SKD volume and registration
- Change regulations to allow licensed goods to be stored in bonded facilities
- Limit use of old cars
- Conduct detailed vehicle inspection checks for basic safety requirements (e.g. tyres, brakes, lights, wipers)
- Develop roadmap for implementation of Euro 4 and Euro 5
- Implement fuel standards and improve fuel quality
- Eliminate taxation on all motorcycle helmets
- Ensure helmets meet ECE R22-05 certification standards nationwide

Construction

- Elaborate on and finalise industry codes and regulations on design and material standards
- Implement solid policies and apply effective control measures to ensure the safety of the population
- Strike a balance between growth of the construction industry and environmental preservation

Corporate Social Responsibility (CSR)

- Developing a clear roadmap for navigating rightful practices of CSR in Myanmar with the involvement of all stakeholders
- Advocating the avoidance of regulations requiring mandatory spending on CSR and instead encourage any initiative that allows a positive spin creating sustainable shared value
- Raising awareness and knowledge on a business-oriented approach of CSR
- Promoting good corporate governance as an initial step towards CSR
- Sharing experience with Myanmar Business Leaders and Policy Makers by reporting progress and results on a yearly basis
- Enhancing collaboration between the public and private sectors to create connections and synergies amongst them

Digital Innovation

- 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
- Develop digital ecosystems and infrastructure with support for local digital startups, incubation and financing platforms
- Establish a digital innovation centre and consider the potential introduction of a digital ID

- Design a tax system that encourages use and uptake of data services, including e-commerce
- Raise the level of digital literacy among all civil servants, students and citizens

Energy

- Improve coordination and transparency in regulations in order to promote more efficient and effective project implementation
- Formulate an updated and clear upstream legal framework together with streamlined ESIA approvals
- Increase focus on power and gas infrastructure solutions to address short- and long-term objectives
- Address need for tariff reform and government support for more cost-competitive energy prices
- Ramp up investment in renewable energy, develop a dedicated regulatory framework

Garments

- The Labour Organisation Law should include more clarity on rules of engagement for industrial dialogue and collective bargaining, to provide the social parties better instructions on 'how' it should be carried out
- Purchase of locally produced raw material should be exempt from tax in the same way as imported fabrics
- Foreign companies should be permitted to import and sell fabrics in order to create more flexibility, make use of external sourcing expertise and to make use of the benefits of purchasing larger volumes for the development of the sector
- Create a dialogue around the localization of the textiles industry and the actions required to ensure negative impacts are mitigated
- Need for relevant ministries together with manufactures to set a long-term plan for skill enhancement of the garment industry

Health

- Lift the import ban for foreign pharmaceutical companies and abolish No Objection Certificate policies
- Establish a points-based national tender system whereby products can be supplied on demand annually
- Continue to crack down on counterfeit and parallel imports to ensure the quality of pharmaceutical products
- Expedite the drafting process for the Intellectual Property law
- Develop an updated Code of Conduct with an independent enforcement body

Legal

- MoALI should issue a notification or an internal guideline directing the ORD/LRD to accept the registration of lease agreements establishing the leasehold rights of a foreign investor
- Attorney General's Office should issue a notification providing a casement for registration of the lease agreements which have exceeded the time limitation stated under the Registration Law
- Amend the DTL to introduce a temporary six-month priority protection period for existing Myanmar "registered" trademarks from a first to file application, and Foreign trademarks registered in Paris Convention or WTO member states
- Myanmar Investment Commission (MIC) should request exactly – not more or less – the documents and information required under the Myanmar Investment Law 2016 and the Myanmar Investment Rules 2017, before the issuance of an Endorsement
- MIC should issue further guidelines on application and assessment procedures, by making them available to the general public, while ensuring transparency in its processes and predictability for investors

Logistics and Transportation

- Continue with National Logistics Master plan committee, include local and foreign companies
- Allow carriers to settle payment as per contracted amount (not MPA set tariff levels) directly to terminal
- Allow Shipping Agency Department Fees to be settled directly from carrier to Shipping Agency Department
- Encourage MIC/Customs to swiftly process and issue Bonded and CFS licenses to strategic locations
- Put 24-hour "drop-off" facilities in at the ports
- Look to decentralise customs clearance services for incoming and outgoing cargo (CFS/Bonded)
- Ensure adequate hiring and training of customs officers for these new CFS/Bonded warehouses
- Authorise senior staff to sign final documents for import or exports (in particular at the borders with Thailand and China)
- Customs:
 - Increase manpower
 - Establish transparent guidelines
 - Provide adequate training for customs officers
 - Increase focus on PCA (Post Customs Audit)
 - Further expand use of MACCS to increase efficiency and reduce face-to-face contact with officials
 - Introduce a systematic and efficient process for MIC approval and commercial tax exemption processes – ideally a one-stop service

Wine & Spirits

- Lift 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
- Bring Myanmar into compliance with its WTO commitments.

METHODOLOGY



The second edition of the White Book of EuroCham in Myanmar has been developed through a close collaboration with each of the following industries' stakeholders: Agrobusiness, Anti-Illicit Trade, Automotive, Construction, Corporate Social Responsibility (CSR), Digital Innovation, Energy, Garments, Health, Legal, Logistics and Transportation, 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 highlighted.

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 to 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 wishes to emphasise its ongoing commitment and willingness to actively engage with the government in implementing the recommendations brought forward. EuroCham firmly believes that effective implementation of the recommendations will bring favorable benefits to Myanmar's high-potential 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%¹ of GDP is accounted for by the sector, the ratio of agriculture expenditure to agricultural GDP is only 1.4%. In the last ten years, just 1.2% of total FDI was the agricultural sector.

Agriculture is a crucial sector for Myanmar, both in terms of the development of the nation from an economic perspective but also from a social perspective, to ensure that everyone has access to safe food. For these reasons, the EuroCham Agrobusiness Advocacy Group was recently set up. 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, 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 labor 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 a disabling environment for FDI.¹ 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 12.25 million hectares of arable land, of which 5.7 million hectares (46.5%) still needs 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: National Food Law updated and revised

The current National Food Law derives from 1997, issued under the State Law and Order Restoration Council (SLORC). In 2013 there was an amendment to the law, but this was mainly related to the usage of terms and not on actual content, implementation and/or enforcement of this law.

The process of drafting a new Food Law is ongoing, but not yet finalised. The aims of the law are: i) to enable the public to consume food of genuine quality, free from danger, and of a good standard of hygiene; ii) to prevent the public from consuming food that may cause danger or are injurious to health; iii) to supervise production of safe food systematically; iv) to control and regulate the production, import, export, storage, distribution and sale of food systematically. These objectives touch upon all stages of possible value chains from the production to the consumption of agricultural products.

Potential Gains:

The national food law touches upon food safety issues from many angles, such as laying down the policies related to production, storage and distribution and sale of food; determining good production practices; determining detailed criteria and standards for food; quality assurance (from production to consumption); labelling; advertisement and determining laboratories and committees to safeguard the standards etc. As long as the National Food Law is not being updated and revised towards the current situation in Myanmar and implemented accordingly, it is quite challenging for the various players to act in line with the policies and standards. Moreover, food safety cannot be guaranteed to the end consumer.

1. 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% to the GDP <http://www.fao.org/myanmar/fao-in-myanmar/myanmar/en/>.

Recommendations:

Complete the process of revising the National Food Law towards the current situation of Myanmar in which Myanmar is seen as the provisioner of food to their inhabitants but at the same time is seen as exporter of agricultural products internationally. The law should protect the domestic consumers while contributing to economic development by providing a strong regulatory foundation for domestic and international trade of food. This can be achieved by taking advantage of the Codex standards and the experiences of other countries in developing a risk-based regulatory framework. The framework can satisfy both domestic needs while considering SPS agreement and the demands of key trading partners. The law should be available in English and a final round of inputs for comments, remarks of agrobusinesses in Myanmar is preferred.

An up-to-date National Food Law in place, provides a framework to tackle food safety in all steps of the supply/value chain, while supporting the related actors in trading safe food domestically and internationally.

Issue Description 2: Finalise practical GAP guidelines

Related to the National Food Law but more focused on the production are the development and finalization of GAP (Good Agricultural Practices) guidelines in Myanmar. ASEAN GAP has been developed in Myanmar since 2004-2005. The Handbook of Myanmar – GAP guidelines for fresh produce has been 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 out of 16 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 laborer. In October 2017, 15 crop GAP guidelines were launched. But only for 2 crops GAP certificates are issued: tomato and mango. In order to make the guidelines more effective they could be made more practical and relevant for the producers. Furthermore, producers need to be informed on those guidelines and trained, supported and inspected in the implementation of this, which means that human resources should be available in order to do so. And the guidelines should be connected to national recognised standards.

Potential Gains:

Having practical GAP guidelines in place which are understandable for producers and having the human resources available to support the farmers in implementing the GAP guidelines are essential for the program. This results in better soil management, reduced usage of pesticides/herbicides, effective usage of fertiliser, good (post) harvest practices resulting in better quality and quantity of the respective crops. At the same time, harmonization 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:

Roll out the current GAP guidelines in a practical manner for the respective producers and issue and acknowledge related certification schemes and make clear that these are developed on the basis of nationally accepted standards. This should be done in parallel with seeking for regional/international recognition of the overall Myanmar GAP standard through harmonization and benchmarking.

Having GAP guidelines in place is a great first step, making them more practical and train, support, inspect the producers will be a perfect next step. Together with the issuing of the relevant certificates in parallel with connection of regional/international recognition.

Issue Description 3: A working task force (committee) is in place 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 respective law. The functions and duties (10 in total) of the Board of Authority vary from laying down the policy 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 only committee which has been addressed in this moment of time, is the Food Standards Technical Committee under the National Standard Committee (found underneath the Ministry of Education) to develop the Myanmar Food Standard. Myanmar has not formed a National Codex Committee yet but has extensive contact with the Codex Alimentarius Commission.

Potential Gains:

As mentioned before, law enforcement and/or standardization increases the production capacity of producers, provides protection of the health of consumers and at the same time standards enable fair practices in the exchange of goods and therefore eliminating barriers to trade.

Recommendations:

Set up a task force responsible for implementing, controlling and enforcing law, standards and guidelines. This task force should be formed with the coordination and participation of all related ministries.

Making laws effective can only be done by implementing, controlling and enforcing these laws. And this can only happen when there is a task force in place which is held responsible executing those tasks and in coordination and participation of all related ministries.

Issue Description 4: 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, oftentimes it is challenging to find out who the land owner is and who is expected to proof ownership based on official documents. In relation to changing the land use purpose status, this can lead to very long lasting, costly, non-transparent and complex procedures. And finally (but not only), different government levels have authorities with regard to land acquisition. However, in many cases it is not clear which government level (local, regional, national) is authorised in a particular stage of the land acquiring process.

Potential Gains:

If land acquisition for foreign companies in Myanmar would be more easy, it would reduce uncertainty, costs and time. And it would improve a business enabling environment for foreign companies. Finally, it creates a more attractive investment climate in Myanmar towards foreign companies. FDI is very important for the development of the economy, it will lead to innovation, more competition and higher employment levels.

Recommendations:

Create a clear set of guidelines towards foreign companies who are looking for land in Myanmar. This can be a kind of manual with steps that need to be followed, including contact information per step, indications on how long each step will take and which input is expected at which stage from the foreign investor. Other can be to create a transparent legislation with regard to land ownership. Finally, 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 in 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 who want to acquire land.

Issue Description 5: Trade

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 the statistical data. The government lacks the capacity to monitor border trade, and customs officials have limited qualified human resources. A number of goods, including agricultural products are traded illegally across the country's porous borders. There is no control on quality as products are not registered and controlled at customs (eg. potentially dangerous substances). Tax is not being paid which impacts the Myanmar economy and develops unfair competition to those who pay taxes. Seasonal agricultural related products are imported through cross border trade and is leading to drastic decline in prices. And in the meantime, the production cost is high in the country and most of the producers/growers cannot compete with the imported prices and face losses.

Potential Gains:

Checking cross-border trade properly improves quality controls 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 can control price levels which can protect domestic producers.

Recommendations:

Initiate a special committee which is in control over cross-border trade issues. Although there are existing departments working on cross-border trade, there is a lack of cooperation. 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 a controlled checking system at the borders together with applying a proper tax system.

Issue Description 6: 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 constitutes 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 programs, 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 for the economy, the environment and society.

The significant areas of Illicit trade activities include trafficking in 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, as well as, 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 centers 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 the 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 Program (AEOP) with the objective of accelerating and securing general import-export processes, these programs 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 programs to dismantle criminal networks.

EuroCham 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 border areas.

Another key issue is the availabilities of parallel products that derive 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 fueling 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 significantly be increased by legal and measurable trade volumes. The availabilities of unsafe and disqualified goods will also be limited and consumers' rights and protection will be improved through transparent and disciplined interactions.

Recommendations:

Establish Illicit Trade Environmental & 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; Trade Volumes & Statistics from CSO; UN Comtrade; IMF's Direction of Trade Statistics (DOTS) and WTO's Trademap.

Engagement with WCO, WTO, Europol, OECD, ICC, OLAF including via an Industry Advisory Group will further enhance the global network of taskforce to address the issues.

Increase Manpower at Ports and Borders

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

Enhance Government-to-Government Cooperation

Establish an 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.

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 enhancing in further government to government cooperation.

Issue Description 2: Ineffective 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 the consumers at the retail level.

Furthermore, the deterrent factor should be further enhanced with regulations to stamp out corruption that can undermine the enforcement of laws.

There should also be measurable targets or key result targets set against the enforcement efforts taken by all relevant law enforcement agencies that have the power to act against the illegal trade.

Potential Gains:

Harmonizing enforcement actions related to customs, taxation and other fiscal matters will further encourage the level playing field and increase the economic benefit of a variety of legitimate businesses.

The livelihoods of legitimate retailers will be enhanced, whose shops lie at the heart of communities. Flow of genuine products distributed through legitimate channels will be reinforced, smuggling becomes less profitable and bribery and corruption will also be discouraged.

Recommendations:

Set-up Illicit Enforcement Committee

Establish an inter-governmental enforcement committee at Region/State level to coordinate and intensify monitoring and enforcement that will ensure continuous effective multipronged action. All Region/State Committees then report to a national level Steering Committee, which could be spearheaded by the Union Government Office.

Mandate Coordinated Law Enforcement Agencies

Defining the necessary powers of Law Enforcement Agencies such as the Ministry of Finance, Commerce, Border Control, Police Force and General Administration Offices to act against illegal trade will significantly increase their enforcement actions. Priority should also be given to provide more resources in terms of manpower or equipment and allocate sufficient source of funding.

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.

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.

Issue Description 3: High Price Differential

Myanmar is a highly price-sensitive market, whereby consumers make the majority 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 consumers 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 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:

It is our recommendation that the Government would comprehensively approach annual taxation taking considerations to address the illegal trade menace in Myanmar. To this end, we stand ready to offer the required resources and assistance to stamp out this illegal activity.

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

Holistically approaching taxation by taking in to consideration factors like 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.

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:

Raising Awareness on the Risks of Illicit Trade

Myanmar has one of the biggest buyer bases for illegally traded products in South East 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.

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.

Withdraw Business Licenses

Withdraw or rescind business licenses from retailers, manufacturers and distributors involved in illegal trade.

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

AUTOMOTIVE



INTRODUCTION

Established in November 2017, the EuroCham Automotive Advocacy Group (EAAG) stands among the leading authorised importers and distributors of automotive brands with headquarters in Europe. This group seeks to provide the Myanmar Government with constructive policy recommendations, based on the international experience and know-how of its members. The EAAG has welcomed positive reforms carried out by the Myanmar government in 2017, such as the recent Motor Vehicle Law. Further efforts should be directed toward improvement of safety and emissions standards, while paving the way to allow more citizens to drive high-quality, reliable, safer and greener vehicles.

While Myanmar is in a slightly better situation than some of its neighboring countries when it comes to security and emissions, effective action should be undertaken as a matter of priority in order to head off avoidable problems in the future. Recent data shows overall fatalities related to road crashes will jump from 4,688 in 2016 to around 15,000 in 2025, according to the current vehicle fleet rate¹. Air pollution is one of the biggest issues facing cities like Yangon and experts agreed that traffic congestion and poor emission standards are among the major causes.² The EAAG strongly believes that pollution should not be the price of economic progress.

The following recommendations serve the purpose of improving the quality of life of Myanmar citizens, particularly in big cities like Yangon, as well as boosting FDI in coming years. The recommendations are in line with those made in the October 2017 EU-ASEAN Business Council report 'Automotive Industry in ASEAN: Towards an increased global role and enhanced safety'.³

Issue Description 1: Taxation (< 2000cc)

Myanmar citizens desire and deserve to drive the latest model available in the automotive market. However, because of high import duties and taxes such as customs duty, commercial tax and road registration tax, a vehicle in Myanmar might cost 150% of the price of the same model on a European market. Consequently, a significant portion of potential buyers cannot afford newer model vehicles, and so opt for lower-quality options. This leads to severe and long-term negative externalities in the society. Low-quality vehicles often fall short on emissions standards and are, at best, outdated when it comes to safety requirements.

¹ ADB. (2016). *Myanmar Transport Sector Policy Note: Road Safety*. Mandaluyong City, Asian Development Bank. Available on <https://www.adb.org/publications/myanmar-transport-sector-policy-note-summary-decision-maker>

² <https://frontiermyanmar.net/en/alarm-sounded-on-yangon-air-pollution>

³ EU-ASEAN Business Council. (October 2017). *Automotive Industry in ASEAN: Towards an increased global role & enhanced safety*. Available on https://docs.wixstatic.com/ugd/63371b_eaf099dad3774a749e7dde16e6413392.pdf

The table below clearly shows how taxes and duties affect the final price of imported vehicles in Myanmar, grouped according to engine power:

	Engine Power	Completely Build-Up Unit (CBU)
Custom Duty (Based on CIF value)	Below 2000cc	30%
	Above 2000cc	40%
Special Good Tax (Based on CIF and CD)	Below 1500cc	0%
	1501 - 2000cc	20% (10% from April 1)
	2001 - 4000cc	30%
	Above 4001cc	50%
Commercial Tax	Any	5%
Road Registration Tax (Based on 83.33% X CIF)	Below 1350cc	30%
	1351 - 2000cc	50%
	2001 - 5000cc	80%
	Above 5001cc	120%

Creating a robust and large internal automotive market is a stepping stone to attracting FDI in this sector. European automotive brands are at the forefront of industry in terms of R&D, technological transfer and empowering the labour force.

Potential Gains:

- Environmental impact:
Brand new model year vehicles perform better in terms of emissions
- Safety risk:
Latest model year vehicles have more safety features and rate better on performance tests from the National Highway Traffic Safety Administration (NHTSA)
- Lifestyle improvement:
Lower breakdown rates on the roads improve traffic congestion
- Fuel consumption:
Latest model vehicles have lower fuel consumption than their older counterparts
- Internal market/FDI:
Reducing tax for vehicles below 2000cc will allow more citizens with an average income to afford top-quality international brands. It will also attract more investments in loco.

Recommendations:

- Reduce the Road Registration Tax for vehicles below 2000cc

Road Registration Tax (Based on 83.33% X CIF)	Below 1350cc	20%
	1351-2000cc	40%
	2001-5000cc	80%
	Above 5001cc	120%

- Tax on vehicles should be based on emissions, rather than cc. This hinges on fuel quality being improved. For more on this, see Issue 6

Reduce the Road Registration Tax by at least 10% for vehicles below 2000cc.

Issue Description 2: Registration Process

Myanmar citizens often prefer not to register their vehicles or transfer ownership correctly because of difficulties faced during the registration process. This involves gathering numerous documents, and taking them to be processed in various governmental offices.

As a result, this registration process can often take as long as two or three weeks.

At present, the following documents and processes are required, and many of them can only be obtained or achieved in Yangon, Naypyidaw and Mandalay (which presents a significant barrier to non-urban-dwelling roadusers):

- Purchase of 20-year-old vehicle
- Transfer of ownership to new owner
- Scrap certificate for 20-year-old vehicles (Yangon-licence)
- Personal income tax confirmation from IRD
- Registration based on engine power
- Issue of owner-book

Potential gains of compliance with proper registration procedures and protocol:

- Allows authorities to keep track of actual and correct ownership
- Allows banks to check information on ownership of vehicles with government departments or on government websites
- Improved ability to trace traffic offences to the vehicle owner
- Facilitates the introduction of high-speed cameras to monitor traffic offenders
- Enhances ability to trace claims in the event of an accident
- Helps police to return stolen vehicles to their rightful owners

Recommendations:

- Provide one-stop services for new vehicle registration
- Simplify procedures for transfer of ownership
- Reduce ownership transfer fees in order to incentivise registration compliance
- Transfer of ownership handle by another Government Department
- Provide clear and current information online, and make relevant documents available for download

- Open RTAD offices in capital cities
- Remove requirement for new vehicles to present to RTAD upon registration (this does not apply to used cars or those being re-registered)

Transfer of ownership procedures and open RTAD offices in each capital city.

Issue Description 3: CBU, SKD and CKD

New vehicles in Myanmar are imported as CBU (Complete Build-Up) and SKD (Semi Knocked-Down) units. CBU vehicles are fully assembled outside the country, whereas SKD vehicles are reassembled upon arrival in Myanmar.

Currently, there are two different types of SKD procedures in Myanmar. SKD1 (9-part reassembly) and SKD2 (10-part reassembly).

However, the government currently only allows SKD2 for new applications, although some brands are still operating under SKD1. Another importation form known as CKD (Complete Knock-Down) is considered the most beneficial in terms of FDI⁴.

Taxation

CBU taxation rates are significantly higher than SKD (approximately 100% or more). However, taxation on SKD and CKD operations is not clearly defined.

CKD vehicles should enjoy greater benefits with taxation since CKD operations require larger upfront investment capital compared with SKD operations.

By allowing SKD operations to pay less tax, the government is losing out on taxable revenue on a venture that does not deliver significant benefits when compared with CBU or CKD operations.

Cost ineffectiveness

SKD units are built-up vehicles that are knocked down for the purpose of reassembly in the destination country. Hence, SKD operations attract additional cost.

Investment capital

There is no substantial difference in investment capital between building an SKD facility and an internationally-recognised 4S car showroom. A CKD plant requires far greater FDI than CBU imports and SKD.

Lack of knowledge transfer

Reassembling a vehicle under the SKD system does not transfer any technological knowledge or skill to the workforce. It is one of the simplest forms of operation in the automotive industry.

Unfair practices/competition

Not only is there no volume limitation on SKD vehicles, but an individual can buy as many SKD vehicles as he/she wants. This includes Yangon licence registration. CBU vehicles do not enjoy these benefits, yet attract higher taxes.

⁴ Tomiyama, E. (2014) A study of semi knock down (SKD) production and sales and marketing strategy in the Russian Far East. *The Northeast Asian Economic Review*, 2(2), pp. 39-50. Available on <https://ideas.repec.org/a/eri/review/2239-50.html>

An individual in Yangon has limited choices when it comes to buying cars due to licence registration availability. Recently, the Yangon regional government has looked to develop strategies to reduce parked car volume and ease traffic congestion.

However, the current practice of giving SKD operations reduced taxation with no volume limitation – as well as free Yangon licence registration – means the Yangon Regional Government's strategy to reduce the number of lot-parked vehicles is inherently flawed.

Potential Gains:

Promoting CKD operations can lead to greater FDI and necessitates factory construction. As CKD procedures are more complex than SKD, advanced technology and skills can be transferred to the workforce. A larger workforce is needed to run CKD operations.

Recommendations:

- Clearly define distinct policies and regulations for CBU, SKD and CKD operations
- Create distinct and pragmatic taxation protocol for CBU, SKD and CKD operations
- Limit SKD volume and address licence registration procedures
- Promote fair competition

Create a clear distinction between CBU, SKD and CKD operations, and foster a better-balanced system for taxation across those categories.

Issue Description 4: Bonded warehousing

A bonded warehouse allows companies to safely and legally store products under Customs control and defer the payment of duties and taxes until the goods have been removed.

Such facilities in Myanmar can be used by the automotive business to store non-licence items (e.g. replacement parts), but not licence items (e.g. imported vehicles), with the inevitable consequence of slowing down the process of delivering new vehicles to clients.

Potential Gains:

Consumers will benefit from improved access to newer-model cars and trucks, as will businesses. For example, a logistics business will be able to have faster access to new trucks from a bonded facility, rather than waiting for goods to be ordered or delivered from a third country or factory. This will allow for faster business expansion and growth in infrastructure development, leading to stronger tax revenues and accelerated economic development for the country.

Importers will benefit from being able to store products close to the end consumer, which will reduce overall logistics costs whilst enhancing revenues for locally-based logistics providers.

The associated savings can, in turn, be passed on to end users. This will also enable importers to stock a wider range of products, providing an enhanced range of choices to businesses and consumers alike.

Customs will be able to track and monitor stocks of vehicles and ensure that only proven products are imported and stored in Myanmar. This enhances control and security for Customs, as well giving greater assurances to importers and consumers.

Recommendations:

With the existing SEZ infrastructure already in place, changes to regulations could allow licensed goods to be stored in bonded facilities.

This applies equally to other industries providing goods to consumers, businesses and infrastructure.

Existing controls and logistics capacity make this a relatively seamless transition, with customs retaining the ability to fully monitor bonded facilities. This could streamline the import process and lead to a more immediate availability of products which help grow the economy and build much-needed infrastructure in line with growing demand.

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

Issue Description 5: Road/Vehicles Safety

The worsening congestion in Myanmar's commercial capital of Yangon exemplifies the urgent need for investment in the country's infrastructure.

Accidents in Myanmar can generally be attributed to reckless driving, dangerous practices among pedestrians, and the failure of drivers to follow traffic rules. The widespread use of old, used cars is also a contributing factor to many accidents. These often fail to meet basic safety requirements (e.g. many lack rear airbags), and there is a poor record of enforcement by authorities on annual vehicle inspections.

Potential Gains:

Reduced traffic accidents and improved safety measures will lead to a decrease in road fatalities. For instance, wearing a seatbelt reduces the risk of fatalities among front-seat passengers by 40-50%, and 25-75% for rear seat car occupants.⁵

In the long run, according to the World Bank, reducing road traffic injuries by half in low-to-middle-income countries could translate into an additional 15 to 22% of GDP per capita income growth over 24 years.⁶

Recommendations:

- Seek to limit the use of old vehicles by promoting policies that improve access to newer ones
- Enforce mandatory annual vehicle inspections (check tyres, lights, wipers, windscreen, brakes, oil leakage, etc.)
- Allow certified and/or authorised workshops to check and issue safety certificates
- Encourage education programs about road and vehicle safety, in schools and in public awareness campaigns
- Support local awareness programs and/or township-level safety campaigns

⁵ Bloomberg Philanthropies. (2012). *Leading the worldwide movement to improve road safety*. Available on https://www.bbhub.io/dotorg/sites/2/2014/04/Bloomberg_Road_Safety_Midway_Report_Final.pdf

⁶ The World Bank. (2017). *The high toll of traffic injuries: unacceptable and preventable. The Macro-Economic and Welfare Benefits of reducing road traffic injuries in low-middle - income countries*. Available on <http://www.worldbank.org/en/programs/global-road-safety-facility/publication/the-high-toll-of-traffic-injuries-unacceptable-and-preventable>

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.

Issue Description 6: Emissions Standards (Euro 4 and Euro 5)

The influx of low-quality imported vehicles has led to a tremendous increase in the number of vehicles circulating in Yangon.

The chronic traffic congestion has led to a deterioration of air quality, with alarming consequences for citizens.

According to World Health Organisation (WHO) data, the concentration of pollution particles in Myanmar's urban and rural areas combined has a median of 51, and an estimated range of 32 to 80. China and India are often singled out for having dangerous levels of air pollution, with their median pollution levels sitting at 54 and 62, respectively.⁷

Myanmar, however, still does not have a clear roadmap for implementation of Euro 4 and Euro 5 emissions protocol.

Fuel quality needs to be improved in both urban and rural areas, in order to allow new and cleaner engines to be fully effective.

Potential Gains:

Moving toward higher standards on emissions for diesel vehicles necessitates a reduction of NOx in the air.

When compared to Euro 3 standards (500mg/km of NOx), Euro 4 entails emissions of NOx equal to 250mg/km, meaning a massive 50% decrease. Particles of NOx are harmful to the population (notably children, the elderly and asthmatics) and contribute to deterioration of the ozone.⁸

Quite apart from the obvious benefit of improving quality of life for citizens, improved emissions standards are a brilliant tool for controlling the number of cars on the roads. Myanmar has the opportunity to step up and make good on its international commitment to tackle climate change.

Recommendations:

- Establish clear roadmap for implementation of Euro 4 and Euro 5
- Ensure consistent quality checks on fuel sold by retail distributors
- Seek to improve fuel standards across the board

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

⁷ WHO. (2016). Ambient air pollution: A global assessment of exposure and burden of disease. Available on <http://apps.who.int/iris/bitstream/handle/10665/250141/9789241511353-eng.pdf?sequence=1>

⁸ Emission Standards Reference Guide for On-road and Nonroad Vehicles and Engines (2017) <https://www.epa.gov/emission-standards-reference-guide>

Issue Description 7: Helmets

Deaths in road-related accidents in Myanmar were the second-highest in Southeast Asia in 2013, with 20.3 deaths per 100,000 people, according to a WHO report.⁹

The majority of fatal crashes are motorcycle accidents and, alarmingly, fatalities are expected to double by 2020. The annual cost of road accidents is US\$800 million or 1.5% of Myanmar's GDP in 2013.¹⁰

Although driver behavior and road infrastructure contribute to accidents, motorcyclists not wearing helmets is a common factor in the severity of most accidents. Some 89% of injured motorcyclists in Myanmar were not wearing a helmet. These are not luxury items, and the government needs to promote their mandatory use among motorcyclists.

Potential Gains:

By promoting the use of helmets among motorcyclists, road accidents and medical cost can be reduced. Most importantly, lives will be saved.

Recommendations:

- Eliminate taxation on all motorcycle helmets
- Design and implement awareness campaigns to promote the use of helmets
- Ensure strict nationwide enforcement on use of helmets
- Require all helmets to meet ECE R22-05 certification standards, and only allow imports of helmets that make the grade (ECE R22-05 is the most widely recognised international helmet certification and the most-up-to-date, required by over 50 countries worldwide)

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

⁹ Maurizio, F. (no date) Road safety in Myanmar: data collection begins on the Yangon-Mandalay highway. World Health Organization Myanmar. Available on http://www.searo.who.int/myanmar/areas/roadsafety_datacollection/en/

¹⁰ ADB. (2016). Myanmar transport sector policy note - road safety. Available on <https://www.adb.org/sites/default/files/publication/189080/mya-road-safety.pdf>

**CONSTRUCTION AND
INFRASTRUCTURE**



INTRODUCTION

The EuroCham Myanmar Construction and Infrastructure Advocacy Group was created in September 2016 and has recently drawn up the second position paper since its formation.

The construction industry is one of the main drivers of economic and social growth and prosperity, especially for a developing country such as Myanmar.

The EuroCham Construction and Infrastructure Advocacy Group 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 FDI.

Myanmar has the objective of developing its 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 seeks to strengthen its relationship with the Myanmar government in order to provide support in accomplishing economic development goals.

The EuroCham Construction Advocacy Group'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 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

The construction industry is a key sector in Myanmar's race toward development. The thirst for rapid construction of new public and private buildings and infrastructure facilities must be balanced against considerations of sustainability.

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 and 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 important headway had been made, there is further work to be done.

There was unanimous agreement that enforcement of standards during the construction process presents a major challenge to the industry.

Potential Gains:

Adherences to rigorous standards and regulations should increase 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 should generate benefits across the board.

Recommendations:

A clear roadmap outlining targets and objectives for the construction sector should 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 register of construction actors should be established and regarded as a living record. It must be clear, up-to-date and well-maintained.

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 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. Government ministries should retain their rightful role for industry oversight, but not become mired in minutiae.

It is recommended that translation of codes and regulations will be clear and not leave room for creative interpretation.

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

Issue Description 2: Material Standards

With the boom of the construction industry, it is the role of the government to safeguard 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 the construction industry, they are often poorly understood and not implemented.

A lack of formal regulations and enforcement, combined with financial pressure and ignorance, has opened the market to counterfeit or low standard construction materials which pose grave 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, who have 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 to be used in construction. We advocate for the implementation of strict customs policy in order to prevent non-compliant materials from entering Myanmar territory.

Create national institute for certification of materials and implementation of rules and regulations.

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.

With the rapid expansion of the construction industry in recent years, and the lack of consideration given to environmental issues, Yangon has experienced detrimental effects from building developments. 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. Enforcement is another issue. One positive development noted by the Group is the incorporation of the ASEAN Institute for Green Economy (AIGE), with its secretariat in Yangon.

Potential Gains:

As a country vulnerable to climate change and natural disasters, Myanmar would be well advised to give 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 must balance the need for growth with the wellbeing of the environment. The potential environmental impacts of a building should be laid out with an EIA at the permit stage, including the materials to be used.

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.

Introduce measures in relation to safety and environment by including EIAs in the permit stage, checking the quality of material used and dovetailing green building codes with international standards.

Issue Description 4: Preservation of heritage

The fast-paced growth of cities poses threats to heritage structures. Although there have been organisations such as the Yangon Heritage Trust that have worked on preserving historical sites in Yangon, the Construction Advocacy Group shares its concerns with regard to natural attractions, 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 efforts of the government to preserve the soul of Myanmar's cities should be intensified.

Moreover, there should be increased involvement of third-party stakeholders. The government should step up programs 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:

- Formation of a government entity or a body that can advise the public on heritage-related matters. This entity should be the focal point that advises the public on the kinds of actions that can be taken for the preservation of heritage sites.
- Implement schemes and initiatives that encourage the preservation of heritage buildings, such as tax incentives for preserving buildings that are over 100 years old.

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

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.

The government has issued a draft law to govern safety matters at construction sites. It remains to be seen how effective the new law will be.

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 government attention.

Potential Gains:

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

Recommendations:

Alongside the implementation of the new law, the government should 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 national scale.

Developing a safety training scheme, followed by the foundation of a safety training institute.

CORPORATE SOCIAL RESPONSIBILITY (CSR)

10

A large, stylized number '10' is centered on the page. The number is white with a blue dot pattern (halftone) inside the digits. The background is a light gray with abstract, curved, overlapping shapes in various shades of gray.

INTRODUCTION

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.

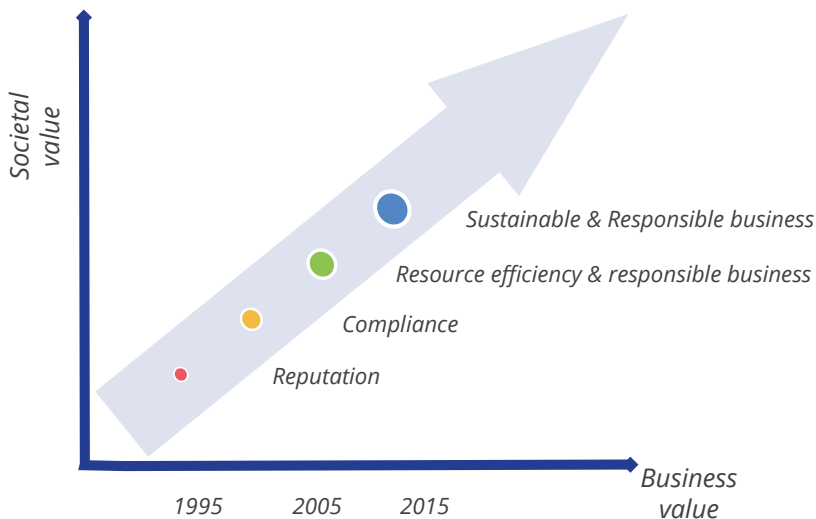
CSR is a complex subject. Over the last 20 years, the way businesses view CSR has evolved dramatically (see below).

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.

Business motivations on people, planet and profit have become more aligned: saving energy is essential for both the planet's sustainability and the profitability of any operating business.

Assessing the risks within the value chain contribute 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 additional long-term revenues. CSR is now viewed by the business community as a platform to unlock potential value and serves the purpose of governments to having it shared in a better and more sustainable way.

CSR DRIVERS' EVOLUTION



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 exactly one of the key components of the CSR definition provided by the European Commission (cf. Box 1 below).

The EuroCham CSR Advocacy Group fully endorses this definition. European companies have to comply with different laws, norms and standards covering a wide range of topics. Recently, a new Directive has been published in order to reinforce the transparency requirements for large European companies (cf. Box 2 below). This is an asset, especially for doing business in Myanmar: transparency, business responsibility, strong corporate governance practices are key to fund a solid 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 always a success from the start, 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 CSR projects. 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.

The 2011 CSR definition by the European Commission¹

“The Commission puts forward a new definition of CSR as “the responsibility of enterprises for their impacts on society”. Respect for applicable legislation, and for collective agreements between social partners, is a prerequisite for meeting that responsibility.

To fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, with the aim of:

- Maximising the creation of shared value for their owners/shareholders and for their other stakeholders and society at large;
- Identifying, preventing and mitigating possible adverse impacts.

To maximise the creation of shared value, enterprises are encouraged to adopt a long-term, strategic approach to CSR, and to explore the opportunities for developing innovative products, services and business models that contribute to societal wellbeing and lead to higher quality and more productive jobs.

To identify, prevent and mitigate their possible adverse impacts, large enterprises, and enterprises at particular risk of having such impacts, are encouraged to carry out risk-based due diligence, including through their supply chains.”

¹ Cf. Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions A Renewed Eu Strategy 2011-14 For Corporate Social Responsibility <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0681>

Focus on the Non-Financial Reporting Directive

Since 2016, certain companies in EU Member States have been required to include non-financial information in their management report. In 2017, the 2014/95 EU Directive² on non-financial information disclosure will be transposed into local law for EU Member States. This directive on the disclosure of non-financial reporting (NFR Directive) amends the Accounting Directive 2013/34/EU, to require certain large companies to disclose information on:

- A brief description of the undertaking's business model;
- A description of the policies, risks and outcomes as regards to environmental matters, social and employee aspects, respect for human rights, anti-corruption and bribery issues, and diversity in their board of directors;
- The outcome of those policies, and;
- Non-financial key performance indicators relevant to the particular business.

This NFR Directive will reinforce the non-financial reporting of European Companies and will contribute to trust-building -- notably in Myanmar.

Developments since the 2017 White Book

Around the world, attitudes toward Corporate Social Responsibility have evolved and the concept has now become mainstream. In 2017, there was a marked shift:

- Investors are now looking for companies who can sustainably create results and guarantee performance. BlackRock CEO Larry Fink wrote in his 2018 letter to CEOs: *"Companies must ask themselves: What role do we play in the community? How are we managing our impact on the environment? Are we working to create a diverse workforce? Are we adapting to technological change? Are we providing the retraining and opportunities that our employees and our businesses will need to adjust to an increasingly automated world? Your company's strategy must articulate a path to achieve financial performance. To sustain that performance, however, you must also understand the societal impact of your business as well as the ways that broad, structural trends – from slow wage growth to rising automation to climate change – affect your potential for growth."* This echoes the 2018 Global Risks Report published by the World Economic Forum, which posited that environmental risks will have the most impact on business sustainability in the next 10 years.
- Policymakers around the world are adopting new laws that require more transparency from businesses. For instance, EU law requires large companies (some of which have operations in Myanmar) to disclose certain non-financial data in their annual reports from 2018 onwards (see box 2). In France, the 2017 French *devoir de vigilance* Law (Duty of Care of Parent Companies and Ordering Companies) establishes a legal requirement for human rights due diligence, and the establishment and implementation of annual vigilance plans by companies registered in France. Since January 2017, listed companies in Hong Kong must disclose environmental, social and governance information and opt for a 'comply or explain' approach. The Chittagong Stock Exchange Limited (CSE) decided to be part of the Sustainable Stock Exchange (SSE) initiative in June 2017, joining other regional stock exchanges such as Singapore, Thailand and Vietnam.

While the majority of organisations in Myanmar 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. The last 12 months have been particularly interesting, and CSR is moving quickly in Myanmar. To wit:

- Multi-stakeholder projects started delivering results. For example, the Myanmar government, the Ministry of Electricity and Energy (MoEE), and the Ministry of Natural Resources and Environmental Conservation (MoNREC), together with the IFC, shared their Strategic Environmental Assessment (SEA) findings on the hydropower sector in March 2018.

² Cf. Directive 2014/95/Eu Of The European Parliament And Of The Council (2014) <http://eur-lex.europa.eu/legal-content/ENG/TXT/?uri=CELEX%3A32014L0095>

- The Securities Exchange Commission of Myanmar (SECM), the Yangon Stock Exchange (YSX), the Directorate of Investment and Company Administration (DICA) and the IFC are working together to improve corporate governance practices in Myanmar.
- The fourth edition of the Myanmar Centre for Responsible Business (MCRB) Pwint Thit Sa report has a new approach and is now focusing on corporate governance, sustainability management and performance. The second part of this report provides more details regarding the recent evolution in Myanmar. Other NGOs and CSOs are disclosing more information and releasing reports, which may be used to make better-informed business decisions.
- Some pioneering Myanmar companies are now working to radically transform the way they are managing CSR. One leading retailer has disclosed its sustainability strategy, which is perfectly aligned with its business objectives. Another large Myanmar company decided to engage transparently with its stakeholders about a controversial cement factory project and to disclose the minutes of its meetings on its website.

Issue Description 1

Currently, Myanmar lacks a formal, established definition of CSR. Establishing one will positively impact perception and clarify objectives, and lay the groundwork for subsequent industry-standard practices. It is often confused with charity and philanthropy and is therefore not seen as part of an integrated business model. A definition of an adequate way to practice CSR and a clear roadmap for all stakeholders to easily navigate are both required to reinforce and guarantee impact on societal and economic values.

Potential Gains:

Embracing a clear and precise definition is the first step to align on the primary role of CSR. This will help both the community; public and private sectors capture what can be achieved by CSR and how. Based on this, a clear roadmap can be formulated to pave the way for successful CSR practices in Myanmar and the milestones to achieve in the short and long run. The European Commission's definition can be used as a reference and inspiration in defining Myanmar's own CSR framework.

Perspective:

An alignment of the objectives, content and operating model of CSR is the first consideration to secure future successes of sustainable and responsible business models in Myanmar. European companies are ready and willing to:

- Share their knowledge and best practices to nurture this debate with their counterparts and Myanmar authorities.
- Involve all the relevant stakeholders to build a specific roadmap for Myanmar which would detail a pragmatic approach to CSR and provide practical guidelines for businesses.

CSR knowledge sharing with Myanmar companies and authorities, in addition to building a roadmap best tailored for Myanmar businesses.

Issue Description 2

Today, companies submitting investment proposals to the MIC (Myanmar Investment Commission) are encouraged to allocate a percentage of their expenditures to fund CSR activities. While to this day it is not a requirement by law, the EU Advocacy Group shares its concern that it could be extended to a legal enforcement at a later stage. This mandatory requirement would have a counterproductive effect as a new tax burden, which would indisputably defeat the entire CSR purpose of positive transformation.

Potential Gains:

In order for CSR to work, it must be tailored to each industry and business model. It must be specific, not generic, and also take into consideration society's needs. By making CSR a mandatory expenditure, CSR would deviate entirely from its original concept.

Perspective:

The Advocacy Group will strive for the avoidance of any regulation which would consider CSR as percentage of expenditure or net result or any other financial metrics and instead encourage any initiative that allows a positive spin creating sustainable shared value.

Painting CSR as a catalyst for positive change and creation of sustainable shared value.

General Perspectives

- The government should also be involved in the process by supporting businesses to engage more in CSR works. Raising awareness and knowledge on a business-oriented approach of CSR could be enhanced through campaigns. Consultations and conferences can provide businesses with practical information about CSR practices and concepts. Creating a dedicated body within the government (i.e. under a relevant ministry) would ensure a form of accountability while easing the sharing of good practices. It could also help to track adoption and implementation of CSR initiatives.
- Promoting good corporate governance in CSR activities is of critical importance. That shall include compliance, transparency and efficient decision-making processes. The government may wish to draft a roadmap to create key milestones to achieve this, and CSR can assist companies engaging in this process.
- The Advocacy Group will encourage its member European companies which already engage in CSR activities in Myanmar to report their progress and results on a yearly basis. The Group will also ensure active engagement with stakeholders to share its experience with Myanmar business leaders and policy makers.
- A tight collaboration between the public and private sectors is a prerequisite to ensure that CSR delivers the expected value to all stakeholders as it creates connections and synergies amongst them. This will generate a dialogue that can enhance this cooperation and create a productive working environment between Myanmar officials and European companies.

Call for a collaboration between the public and private, with both entities working towards wider adoption and acceptance of CSR as an essential aspect of business.

The Advocacy Group will put forward a ranking list of priority areas. It is committed to achieving the highest impact for Myanmar. The Advocacy Group consists of several diverse European companies, across industries, with various levels of expertise. For this reason, the group will be able to leverage its strengths in every chosen area and will be dedicated to working closely with any government agency.

DIGITAL INNOVATION



INTRODUCTION: MYANMAR'S DIGITAL TRANSFORMATION

Myanmar has witnessed an extraordinary series of events since the opening up of the country to foreign investment in 2012. One of the most remarkable changes is the strong growth in the number of citizens with access to internet and smartphones. All of which, have created opportunities for the country to leap-frog from “no connectivity” to “full connectivity.”

To fully embrace this (digital) transformation, the broader society will need to adopt digital solutions that can address the needs of the local population. This adoption will drive improvements in the everyday lives through the advent of relevant and social impactful digital services. To reap the benefits - and limit the risks - of a fully digital connected society several steps still have to be made. The digital transformation should offer opportunities for all stakeholders from government institutions, development organisations, nonprofits and for-profit private sector parties to all citizens of Myanmar. It is evident that the change is fast and all parties need to get onboard to drive the digital transformation into the right direction. Examples of everyday improvements evolve around better access to information and education and more efficient markets at significantly lower costs than through current channels.

The adoption of digital technologies will provide inclusive and sustainable socio-economic development across all states and divisions as targeted by the government's 12-point Economic Policy steered by the Digital Economy Development Committee (DEDC).

There are however significant challenges that are evident not only in Myanmar but the global landscape. Trends and phenomena like fake or low-quality news and information, (social media) addictions and unfair or no access to the internet are emerging across countries.

As Myanmar goes from zero to full connectivity, it therefore has to adopt to this new digital world at a much faster pace than other developed or developing countries.

Issue Description 1: Digital Frameworks Foundations

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. Digital transformation, as commonly called, has immense potential to improve consumer lives, create value for business and unlock broader societal benefits. To enable this digital transformation, it is essential that there is an overarching framework and supporting infrastructure.

A well designed digital framework is a critical foundation to develop a digital economy and a driver of foreign direct investment. A Digital Economy can only be holistically developed with a Digital Economy Development Master Plan and commitment from all levels of government. The Master Plan has to be supported by enabling laws and regulations, which have to be enforced fairly and transparently in line with the rule of law.

Upholding the rule of law and combating corruption are both government priorities – this creates a significant opportunity to improve Myanmar's Ease of Doing Business ranking from its current level of no. 171 in the world. This improvement will draw much needed foreign investment and expertise in the country's nascent Digital Economy. When the rule of law is replaced by subjective and inconsistent decision making across government bodies, this opens avenues for continued lack of transparency. This will inhibit Myanmar's efforts to improve its global rankings.

Enacting laws that support a Digital Economy are a critical part of the digital ecosystem. In a newly opened economy such as Myanmar, there are opportunities to benefit from global experience and by consulting experts the DIA would recommend that digital laws, particularly the delayed and already drafted Cyber Crime and Electronic Evidence Act should be passed without further delay, alongside laws on data protection, digital privacy, intellectual property rights and e-commerce protecting the rights of businesses and citizens. The DIA would recommend engaging external stakeholders during the formulation process to benefit from different perspectives and global learnings.

Laws and regulations should be interpreted and enforced in line with international conventions on the rule of law. In addition to developing the Digital Economy, these actions will automatically improve Myanmar's World Bank rankings on the ease of doing business, helping to attract foreign investment to other sectors of the economy. A holistic Digital Economy Development Master Plan should be created with international assistance and extensive local consultation.

In Myanmar the Union Government has enacted the Telecoms Law 2013 whilst also enforcing the use of Unicode in all government communications as a first step to standardization, but has not enforced it nationally on device manufacturers or software developers.

In Europe there are similar examples of draft digital frameworks with the Council of Europe has drafted the Cybercrime and Electronic Evidence Act, but this has not been passed.

The existing Digital Economy Development Committee could be appointed with capable full-time staff from both the private and public sector with a mandate and incentive to implement the Master Plan. Also, influential government figures could be appointed full-time to coordinate, negotiate, and where necessary, mandate Ministries to follow the Master Plan. Moreover, the Committee could be supported with expertise and funding by both government and multilateral agencies. The government should aim for Myanmar to be an ASEAN digital hub in the long term.

Potential Gain:

A Digital Economy Investment Promotion Policy should be developed to attract international investors to Myanmar's digital startups. The government should enforce the standardization of Myanmar fonts in all devices and digital services, similar to the Cambodian government's action in 2010, which resolved its font issues.

Recommendations:

Digital laws, particularly the delayed and already drafted Cybercrime and Electronic Evidence Act should be passed without further delay, alongside laws on data protection, digital privacy, intellectual property rights and e-commerce protecting the rights of businesses and citizens. The DIA would recommend engaging external stakeholders during the formulation process to benefit from different perspectives and global learnings.

Case Study: The Digital Competence Framework -- increasing citizen's digital competence¹.

The European Digital Competence Framework for citizens, offers a tool to improve citizen's digital competence. Digital competence involves the confident, critical and responsible use of, and engagement with, digital technologies for learning, at work, and for participation in society. The framework helps citizens with self-evaluation, setting learning goals, identifying training opportunities and facilitating job search.

The framework was first published in 2013 and has become a reference for the development and strategic planning of digital competence initiatives within Europe.

Key elements include:

- 1) Information and data literacy,
- 2) Communication and collaboration,
- 3) Digital content creation (including programming),
- 4) Safety (including digital well-being and competences related to cybersecurity), and
- 5) Problem solving. The aim of the framework is to harness the potential of digital technologies, innovate education and training practices, improve access to lifelong learning, deal with the rise of new (digital) skills and competences needed for employment, personal development, and social inclusion.

A similar framework will be valuable in the context of Myanmar and goes well with the plans of the local government with the recent establishment of the Digital Economic Development Committee (DEDC). The DEDC has a nine point plan to develop and shape the Myanmar Digital Economy by 2020. The DIA group can positively contribute in a consultative manner to this conversation.

¹ Source: *Being digitally competent – a task for the 21st century citizen* (2017) <https://ec.europa.eu/jrc/en/digcomp>

Issue Description 2: Digital Ecosystems and Infrastructure Enabling the Digital Economy

Becoming an ASEAN digital hub in the long term will require a robust digital ecosystem and supporting infrastructure, all of which is essential in creating an investment-friendly Digital Economy that can directly contribute to GDP growth, in line with the government's Economic Policy. Enabling this growth will comprise of activities that promote digital entrepreneurship, digital financial services, and digital identification, which provide the foundation for innovative digital services for government, enterprises, and consumers.

Digital start-ups challenge existing paradigms, creating innovation and growth in a Digital Economy. These start-ups require a conducive environment for their emergence and growth, including an incubation and support network, access to affordable financing, access to international services and payment gateways, favorable taxation and an innovation-friendly legal and regulatory environment. While innovation centers like Phandeeyar, Impact Hub, and Social Impact Myanmar currently exist, there is an opportunity to improve the environment for digital entrepreneurship in Myanmar holistically. Uniting multiple parties, while enhancing access and exposure to knowledge, skills, and resources, will significantly benefit the Digital Economy and society at large. The DIA group can assist and contribute towards further capacity building within the ecosystem while building trust and credibility at local, regional, and global levels.

Becoming a Digital Economy with sustainable growth will also require expanding access to liquidity & financial services and affordable financing and payment mechanisms. Also, the government's 12-point Economic Policy cites the need for a digital ID - while there are efforts to implement this at present, there are significant opportunities to learn from successes such as India's Aadhaar, which has improved digital inclusion, financial inclusion and access to government and private services. There is also a need to enhance addressing in the country, as it is extremely challenging to identify individual houses or apartments uniquely, particularly in rural areas. Such addressing will be essential to the long-term development of digital service that requires physical delivery, such as online shopping.

Potential Gain:

The government should aim for a top 100 ranking in the World Economic Forum networked readiness index, which scores and ranks countries based on their conduciveness to digital innovation. Citizens should be encouraged to access digital services as a digital ecosystem can only thrive if there is free and fair access to the internet and digital services. The government should promote digital transactions, run campaigns to educate citizens, and encourage both existing and emerging capacity builders to collaborate within the digital ecosystem.

Recommendations:

Support for local start-ups could be provided through a digital innovation center, with incubation and financing platforms, and including government seed funding for digital startups. Registration processes for digital businesses should be streamlined by decreasing capital requirements, registration fees and paperwork. Tax incentives should be provided for eligible local ICT businesses, whose innovations should be showcased on a national and regional stage.

The Government should further investigate the introduction of a digital ID. There might be learning's available from other fast emerging models like India's Aadhar ID. Leapfrog technologies such as blockchain-based IDs, as used in Estonia and planned in Dubai, Canada, and Japan, could be considered to improve security and lower cost.

The tax system should be designed to encourage use and uptake of data services, including e-commerce. Taxes and duties on basic ICT equipment (computers, tablets, and phones) reduced or eliminated to encourage adoption by businesses and consumers. Taxes should be applied fairly and evenly across all sectors, with select incentives for industries that contribute to social and economic development.

Case Study: Developing Ecosystems for Innovation & Entrepreneurship²

Digital Europe is a project which is part of the World Economic Forum's Shaping the Future of Digital Economy and Society System Initiative. The projects aim to build a Pan-European Ecosystem for Innovation and Entrepreneurship based on a network of Europe's many vibrant digital innovation hubs on further digitizing Europe's industry. The project also advances the region's competitiveness in the context of the Fourth Industrial Revolution, which has the potential to propel societies forward, enable innovative business models and help governments address legitimate policy concerns.

The System initiative aims to create networks that enable the long-term health and stability of digitally enabled economies and societies through collectively solving new issues via improved governance and policy-making in a digitised society and partnering to rapidly scale successes by cultivating an online environment of trust and increasing access and adoption.

There is an opportunity to learn from initiatives, as mentioned above, to cultivate a shared, trusted digital environment that can drive inclusions, economic development, and social progress. The DIA group is keen on functioning as a gateway to access and unity capacity builders, raising global awareness for the local ecosystem, and enhancing the mobilization of capital towards the Digital Economy within Myanmar.

Issue Description 3: Digital Skills - Backbone of the Digital Economy

A competent and innovative digital workforce that builds digital services and citizens that consume a wide variety digital services are vital components of a Digital Economy.

Over the past years, we have witnessed that Myanmar's population is digitally curious and that the smartphone penetration of 80% is one of the highest rates globally. The data usage statistics suggest that there is a focus on consumption of social media, communications, and entertainment, rather than economic or social development. These issues are significantly more pronounced in lower socio-economic groups in rural areas. To explore this phenomenon, we'll have to understand both the supply and demand of digital skills -- which form the backbone of a Digital Economy.

On the supply side, 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 work shadowing 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.

On the demand side, 78% of internet user have poor digital literacy and have never used browsers or app stores. As a result, digital services have typically focused on the urban middle class for economic viability, with the base of the pyramid largely excluded. Moreover, 11% of children and 17% of adults have experienced cyberbullying while social media users have shown a propensity for creating and sharing hate speech and fake news – all symptoms of low digital literacy.

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 skills 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-learning, investing in modern, functional ICT equipment and grid connections in schools and universities nationwide.

² source: *How civil society must adapt to survive its greatest challenges* (2018) <https://www.weforum.org/>

Recommendations:

In government, we recommend that all civil servants, starting at senior levels, receive digital literacy training to increase familiarity with modern ICT. There should be a priority for training education policymakers, schoolteachers, and lecturers that 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 Maths (STEM) should be a fundamental tenet of 21st-century education policy 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, 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. The government should also consider partnering with suitable parties while ensuring a transparent and impactful implementation.

All universities should be 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 should be made available at schools and training centers nationwide. The government may also consider partnering with established computer training centers 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 centers³.

ENERGY

12

INTRODUCTION

Access to energy is a key enabler on the road to inclusive economic and social growth. Myanmar benefits from vast natural gas reserves as well as significant 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 unfulfilled 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 all the 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".

In order to achieve this goal, it is fair to believe that international capital and expertise will need to play an important role. Keeping the positive momentum that has been gathering over the last few months is therefore essential to consolidate present and encourage future foreign direct investment in the country.

In 2017 the EuroCham Energy Advocacy Group (EEAG) built upon its constructive and mutually beneficial dialogue with the Myanmar Government. We are more than ever committed to strengthening our cooperation in this regard and are 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 we look forward to addressing in greater detail with all stakeholders the following key topics during the course of 2018.

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 lack of coordination among three relevant ministries: Ministry of Electricity and Energy, Ministry of Finance and Planning and the Ministry of Natural Resources and Environmental Conservation. The ineffective communication and coordination between these regulatory bodies is hindering current energy projects and deterring future activities due to continuous legislation changes, which affect and jeopardise investor's decisions. 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 transparency in tendering procedures and in their inadequacy to satisfy the 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: if not addressed with great determination, this issue could irrevocably harm Myanmar's energy outlook.

Potential Gains:

- Increased coordination among relevant ministries should result in easier understanding of existing regulatory process, leading to more efficient and rapid project implementation process. Myanmar's race towards total electrification should benefit enormously from a faster and simpler manner to implement energy project while maintaining high social and environmental standards.
- A more transparent and updated tendering process and better coordination between ministries should facilitate investors' perception of who-does-what, guaranteeing more streamlined procedures for the benefit of all the parties involved.
- Stability and clear policies is 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.

Recommendations:

- Regular meetings should be held between energy-relevant ministries and their main departments, to identify and tackle conflicting laws and regulations and foremost to improve communication among them. These meetings should be aimed at pinpointing private sector's bottlenecks and improve their ease in doing business in the country. Internal updated governance procedures should be implemented to improve the efficiency of relevant ministries in running regulatory activities.
- Consequently, private companies' delegations should be invited to attend these meetings on a regular basis to strengthen the relationship between energy developers and Myanmar government.
- The whole tendering procedure is inefficient and should therefore be streamlined. EuroCham's suggests the creation of a body, composed by expert personnel, entirely dedicated to facilitating tender procedures. Moreover, this new government figure should also be open to meet with the private sector where to discuss issues and outline correct procedures.
- Energy related technical trainings should be implemented to foster the improved communication between ministries resulting from the newly created coordination scheme and to improve the efficiency of the new government-administrative/regulatory figure.

Tackling conflicting laws and regulations and up to date internal governance procedure to improve ministries efficiency; creation and technical training of a new body to facilitate tender procedures.

Issue Description 2: Upstream (Exploration and Production)

The need of a clear Legal Framework

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 contracts govern the E&P process so long as they are not contrary to other laws in force.

The Investment Law, Foreign Investments Rules and Myanmar Investment Commission (MIC) Notifications are to approve terms and conditions of the PSCs. Other still current legislations govern oil and gas in Myanmar, which give room for unsatisfactory clash of principles.

A new Petroleum Law has been drafted and is under review but has not been reviewed by private industry so its effectiveness in streamlining the legislation cannot be assessed.

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

Myanmar has one of the toughest PSCs in the world. A World Bank view of fiscal benchmarking showed that Myanmar PSCs in general carry a government take of more than 80% and are out of line with other provinces of similar risks and rewards. Such terms also adversely affect commercial value 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, the burden of Government Take for sizable development prospects would exceed 100%.

Impeding investment due to high product taxes is highly counter-productive for a government as gas is far more valuable to the country as a fuel for industrial growth than as source of direct tax revenue. Gas has no value if expectation of high tax limits exploration, which holds a significant risk of finding hydrocarbon in a frontier basin like the offshore one, and consequently prevents development.

Timing of Environmental Impact Assessment (EIA) Approval

EIA Procedure (2015) foresees that Environmental Conservation Department (ECD), as part of the Ministry of Natural Resources and Environmental Conservation, issues an approval or rejection of a project within established timeframes (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 O&G sector. This uncertainty over time has a serious impact on Operators' ability to schedule cost-efficient planning and ensure timely and safe execution of the projects within the PSCs working commitments.

Potential Gains:

- Having in place, a clear 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 foreign direct investments 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 fiscal terms would favor the exploration and development of gas discoveries and would refrain current Operators to relinquish PSC blocks in an early stage with no exploration drilling activity.
- Fulfillment of the legislative timeframe for EIA approval would allow operators to rely on consistent project schedules permitting timely execution of PSCs work commitments and costs saving

Recommendations:

- It is recommended that the ongoing Petroleum law draft is opened for industry review and comment.
- Simplification of PSC terms, revision of fiscal/taxation terms and government take will encourage exploration and investment on current PSCs, which may unlock natural gas resources in a short-term scenario.
- A more efficient process shall be put in place in respect of the EIA procedure to de-bottleneck current situation. A solution could be the provision of MOGE oil and gas experts to be seconded to ECD to assist with technical advice and review of reports.

Revive the exploration sector through a revision of fiscal/taxation terms and simplification of PSC terms; opening for review and comments of the petroleum law draft and streamlining of the EIA procedure.

Issue Description 3: Energy Infrastructure

Myanmar is well placed to develop an efficient low-carbon energy system balancing the advantages of natural gas and renewables to power economic growth. The country however currently lacks the strong energy infrastructure that is needed to support such growth. Two top priorities are therefore the urgent improvement of the ageing and overloaded transmission network as well as the further development of and investment in the gas pipeline network and infrastructure.

The national power grid today only reaches 35% of the population. Furthermore, its current weak state results in significant line losses as well as making it challenging to integrate intermittent renewable energy.

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. At \$3 billion in 2016, they represent 25% of total export revenue. While Myanmar is keen to utilise more gas domestically, there are no clear substitutes for the revenues earned through exports to Thailand and China. This will likely balance the government's enthusiasm to increase gas use domestically.

The size of the domestic market is growing but Myanmar has limited options to generate electricity, especially in the short term. The percentage share has been circa 20% mostly owing to contractual obligations to Thailand and China that limit more gas from being used domestically. In future however, it is expected that discovered gas (and to be discovered gas) will be used to meet increasing domestic energy demand, therefore it is essential to plan and develop necessary infrastructure to enhance domestic gas use in country.

Potential Gains:

- More effectively combining grid expansion with mini-grid implementation will enable the population to receive electricity more reliably, efficiently, and cost effectively.
- Reduced line losses will reduce the burden on the existing power supply base.
- Developing gas pipelines will enable the supply domestic gas to power stations and industries which can also contribute to reduce expensive diesel consumption.
- Developing LPG-distribution infrastructure across the country will help reduce the air pollution at household.

Recommendations:

- Power grid expansion efforts must 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.
- Gas and power transmission network should be strengthened and modernised in long term to diversify the generation mix and for the optimal use of natural resources such as gas and renewables.
- Most of Myanmar's gas infrastructure needs to be rebuilt or upgraded, also further extension should be considered with 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 Energy Advocacy Groups supports and encourages the government in its effort to introduce reforms to stimulate foreign direct investment.
- Instead of traditional biomass, which causes heavy pollution and deforestation, LPG is a recommended alternative for cooking and heating to better protect the environment. Clear and strong regulations need however to be developed to mitigate the high cost of supply and storage.

Prioritization of power grid expansion, implementation of mini-grids and strengthening gas and power transmission network; rebuilding and upgrading of Myanmar's gas infrastructure and LPG to be preferred to traditional biomass for cooking and heating.

Issue Description 4: Energy Pricing and Payment Support

Whilst it is understood that the benefits of electrification hinge on it being affordable, 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 infrastructure upgrades with the direct consequence of suppressing the quality of supply.

Beyond the levels themselves, 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, 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 investment 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 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 Gains:

- Increasing energy tariff levels will make investments into improved energy infrastructure more attractive financially and promote energy-saving behavior.
- Introducing time-of-day tariffs will help to spread use around time, thereby helping supply match demand.
- Foreign or mixed-currency payments will enable an optimised risk allocation between the public and private sector.
- Government support will lower the perceived risk of investing in energy projects and thereby reduce the tariffs required by investors.

Recommendations:

- Due to the politically sensitive nature of increasing tariffs, increases should be implemented on a transparent and incremental basis to make them more acceptable for the public.
- Add extra tariff levels or implement bigger increases for some customers such as industrials or urban residential customers whilst leaving untouched those that apply to low-income consumers.
- Introduce time-of-day tariffs which charge more for electricity consumed during peak hours.
- 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.
- To introduce Government support in the short term, it is recommended that a contractual undertaking provided by the Ministry of Electricity and Energy whereby it guarantees the payment obligations of the Electric Power Generation Enterprise should be accompanied by both a letter of acknowledgement from the Ministry of Planning and Finance, and a favorable legal opinion from the office of the Attorney General.
- 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.

Increase electricity tariffs discriminating the prices for industrial and low-income customers and implementing time-of-day tariffs; application of mixed currency payments and government payment support.

Issue Description 5: 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 is very familiar to Myanmar, currently accounting for approximately sixty per cent 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 important that the Government makes real progress in adding more hydropower capacity, particularly considering the inherently long lead times involved.

More attention should also be paid to solar energy, 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 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.

Potential Gains:

- 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.
- Whilst hydropower has always been a relatively cheap source of electricity, the same can now be said for solar with prices tumbling in the last few years.

- With lifetimes often of over fifty years, hydropower plants represent long-term solutions for Myanmar in providing stable and renewable electricity. Solar power plants, with their very short construction periods are able to respond quickly to Myanmar's power needs.
- 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.

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.
- Create a shortlist of the most promising hydropower projects from an impact mitigation and economic perspective, with a particular focus in regions which are in need of significant infrastructure development.
- Establish a dedicated regulatory framework for solar power projects with a Feed-in-Tariff for grid-connected projects and net-metering for smaller-scale solar power plants.

Establish a dedicated regulatory framework and create of a shortlist of promising hydropower project from an impact mitigation and economic perspective; implementation of standardised project documentation such as PPAs.

GARMENTS

13

INTRODUCTION

The garment sector represents Myanmar's second-largest export sector and has seen tremendous growth with 25% per year over the past five years. The total export value for the sector in 2017 was approximately US\$2.2 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 employs around 350,000 workers.

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 as well as 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.

Issue Description 1: Labour law reform

We recognise that there is ongoing work to reform various labour laws, including the Labour Organisation Law and Disputes Settlement Law, as well as the new Occupational Safety and Health Law. This work is being done through tripartite consultations involving the government, employer associations and trade unions. This process is supported by the International Labour Organisation (ILO). We recognise 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 challenges caused, in part, by a lack of clarity surrounding the legal framework and interpretations thereof. There are also significant delays when it comes to implementing new policies or making decisions. Progress is slow.

Potential Gains:

Clear labour laws as well as strong and timely implementation helps create stability on the labour market, where conflicts can more easily be avoided. This offers certainty on how to operate as well as predictability for the industry, which is important for investments and growth.

Recommendations:

- The Labour Organisation Law should provide more clarity on rules of engagement for industrial dialogue and collective bargaining, to provide concerned parties better instructions on just how such actions should be carried out. To settle disputes, the law should enable parties to take industrial action such as lockouts and strikes, in line with international standards such as the ILO Principles Concerning The Right to Strike. The relevant authorities must have the resources and mandate to monitor and enforce these laws.
- The definition of collective bargaining needs to be clarified in the Labour Organisation Law. This should include who has the legal right to engage in collective bargaining and how collective bargaining agreements can be made at a workplace level, as well as on a national level.
- The revision of the minimum wage by the National Minimum Wage Committee needs to be timely, the process should be transparent and based on open data. It should also be subject to more frequent revisions in order to account for inflation and to help ensure a stable and predictable labour market.
- The Occupational Health and Safety law should be passed in order to ensure competency and compliance 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.

Issue Description 2: Development of the textile sector

To further strengthen the growing garment industry and become less dependent on imports we believe it would be prudent for Myanmar to create a vertical supply chain by further developing a supporting textile and components industry. To do that, the legal framework needs to be reformed in order to reflect developments in the industry. 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 in order to reflect the industry shift toward FOB.

Textiles and components manufacturing are dependent on reliable electricity supply and access to water. To plan and set up such an industry, there is a need to have robust and open discussions about where facilities should be located, what the specific needs are in terms of water, electricity and 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. 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 practice.

Potential Gains:

Having a vertical supply chain will significantly shorten lead times and increase flexibility: something which is necessary in order for Myanmar's garment sector to compete on the global market. It will create job opportunities, and the FOB model would generate more value-added products which will generate higher export earnings and foster greater industry resilience to market fluctuations.

Recommendations:

- Purchase of locally produced raw material should be exempt from tax in the same way as imported fabrics.
- Permit foreign companies to import and sell fabrics, make use of external sourcing expertise.
- Create a dialogue around the localisation of the textiles industry and the actions required to ensure negative impacts are mitigated.
- Further support the enforcement of the Environmental Conservation Law and make the implementation of good Environmental Management Plans a priority.

Issue Description 3: Hard infrastructure

To strengthen the garment and textile industry, the government must address shortcomings on hard infrastructure, i.e. roads, ports, airports, electricity and water supply. There must be solid communication on future improvements, and transparency about what is needed.

Potential Gains:

Speed to market is becoming more and more important for the garment sector, and having reliable transportation networks is critical. Clearer visibility on the development plans for required infrastructure investments will create more confidence in the market for further growth.

Recommendations:

We recommend that relevant ministries and representatives from the industry, including local entrepreneurs, foreign companies and buyers, meet to discuss the needs of the sector and work together to set a long-term plan.

Issue Description 4: Soft infrastructure

With plans to grow the industry from \$2.5 billion in export value to \$10 billion, there is a clear need for skill enhancement within the industry. The perception of the garment industry as being a low-skilled sector is only partly correct.

Approximately 10 to 12 % of the workforce in a garment factory needs to be skilled or semi-skilled. Today we see a shortage of middle management that, to some extent, is covered by hiring overseas staff.

Failure to address this issue will leave Myanmar's garment industry stagnant and non-competitive.

Potential Gains:

There is potential to create thousands of semi-skilled jobs in the industry, which would enable local employees to make a career within the industry. Reducing the cost of hiring overseas staff can help funnel investments into other areas to improve efficiency.

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.

Recommendations:

There is a need for relevant ministries together with manufactures to set a long-term plan for skill enhancement of the garment industry. We recognise this is a process that requires time and resources, but we strongly believe that with the experience from other markets there are ways to address this challenge.

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 introduction we would like to revisit some of the recommendations made in the 2017 EuroCham White Book, and acknowledge those successfully addressed by the MoHS.

Ensuring Patient Safety by monitoring of Parallel Trade, Counterfeit and Substandard Drugs

We recognise the initiative taken and resources devoted by the MoHS, in particular within the FDA, in its push to reduce the number of Parallel Trade and Counterfeit Medicines sold in Myanmar.

We support Operation Pangea and are pleased to have seen it growing in scope since 2015. We applaud the hiring of qualified full-time staff in larger cities. This increased monitoring, in combination with the stricter enforcement of the National Drug Law, helps to limit illegal trade and has a positive impact on both patient safety and tax revenues.

Registration Timelines

Shortening of Drug Registration Timelines and implementation of clear and transparent Drug Registration Guidelines increases the number of registered, innovative medicines and therapies available to Myanmar patients, ultimately lowering treatment costs.

We acknowledge the work and investment of the FDA in 2017, leading to a long list of drug approvals in September 2017. We applaud the initiative of the FDA to move toward an e-submission system for new drug registrations. We believe further progress can be made by streamlining processes, such as further adaptation of ACTD guidelines.

In this white paper we address five specific challenges and opportunities for 2018. If these are met, this will accelerate the rate at which longer-term goals are achieved. They are:

1. Importation and No Objection Certificates
2. Tender Transparency
3. Parallel and Counterfeit Trade
4. Intellectual Property protection
5. An Industry Code of Conduct

We are confident that, through collaboration with the relevant ministries, key bottlenecks and issues that are 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 strategy, planning, and implementation, Myanmar might one day become a regional leader in healthcare.

The Myanmar Government has the goal of providing Universal Health Coverage by 2030. EuroCham 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. GMP-PICS and bioequivalence standards for pharmaceuticals, CE standard 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: Liberalisation of Importation and Abolition of Current “No Objection Certificate Policies”

The MoHS restricts importation of Pharmaceutical Products and selected medical devices to local companies. The MoHS allows one pharmaceutical product under one brand name to be imported by only one importer: brand owners can only change importers if incumbent importers provide brand owners with a No Objection Certificate. In practice this means brand owners cannot change importers, eliminating the concept of competition for importers and leading to higher importation costs. This translates into a higher prices for genuine pharmaceuticals in Myanmar than in neighbouring countries.

Potential Gains:

Pharmaceutical companies globally focus on optimising the efficiency of their supply chains, understanding that driving cost efficiency in the supply chain allows for more competitive price positioning toward patients, ultimately allowing for more patients to benefit from the products on offer.

Liberalisation of importation rules and the abolition of NOC policies will allow for more competition resulting in lower costs of doing business, obligating those doing business to improve the quality of their services and supply chains in order to remain competitive. Ultimately this will result in increased access to quality medication for the people of Myanmar.

Recommendations:

- Encourage the MoHS to lift the import ban for foreign pharmaceutical companies: Allowing foreign pharmaceutical companies to import will allow pharmaceutical companies to reassess the efficiency of their supply chain.
- Encourage the MoHS to abolish NOC policies. Myanmar’s pharmaceutical industry is growing, and in an unrestricted market environment this would lead to lower importation and distribution fees caused by the increasing economies of scale import companies benefit from. This allows them to operate more competitively. Savings can be reinvested by the pharmaceutical companies to accelerate business growth in Myanmar, with initiatives such as the introduction of new therapies. Current NOC policies prevent the process of fair competition as pharmaceutical companies can’t move from one importer to another without consent of the current importer. This brings about a stagnation in (high) import and distribution fees, and results in import costs in Myanmar being far above the regional benchmark. This negatively impacts pharmaceutical prices and access for patients.

Lifting the importation ban for foreign companies and abolishing NOC policies will accelerate business growth and increase access to pharmaceutical products to patients.

Issue Description 2: Tender Transparency

The Ministry of Health and Sports invests a significant proportion of its budget in the provision of pharmaceuticals, medical devices and capital equipment. The recent implementation of Presidential Notification 1/2017 has reset and strengthened rules on certain types of government procurement, including those of the MOHS-related tenders.

Potential Gains:

Transparency and standardisation in tender process and outcomes will provide the MoHS with significant benefits such as improved negotiation power and better awareness of the actual needs of the health system from usage data. This allows for more savvy investment, and leads to all-round better health outcomes. For example, if awards are transparent, all suppliers will be aware of what is needed to win the next tender. Such transparency enhances competitiveness. This is a boon for patient and ministry alike.

Recommendations:

- Encourage the MOHS to move to a National Tender, where all public hospitals combine their requirements into a single tender. A combined tender affords the MOHS better negotiation power and will guarantee the best combination of quality, price, and utility.
- Encourage the MOHS to develop a transparent and well-documented points-based system underpinning tender decisions. Price is clearly not the only relevant criteria, and consideration should be given to factors such as clinical efficacy, knowledge support, service and interoperability, to name a few. EuroCham welcomes the publication of winning bids. Such transparency will drive better outcomes for the system and subsequently for patients, as well as, drive competition to provide better products at competitive prices.
- Move to an annual tender whereby product can be supplied on demand over the tender period rather than the total quantity of stock being delivered one month after the tender results have been awarded. Moving to an annual tender will improve efficiency for the MOHS on a number of fronts, including cash flow. In order to facilitate this, the establishment of a central store that manages the supply chain between central procurement, supplier, and hospital would be very useful as the public service expands across the country.

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.

Issue Description 3: Parallel & Counterfeit Trade

The use of counterfeit and substandard drugs is a key issue causing a direct threat to patient safety. Myanmar has high volumes of counterfeit and substandard products circulating in its pharmaceutical market. These products, which are often illegally imported from bordering countries, have not passed bioequivalence tests and are transported and stored in uncontrolled conditions. Because of the lack of testing and control, these drugs are a serious threat to patient safety and can result in potentially serious side effects including death.

A second threat to patient safety is the usage of products that derive from parallel imports. These products (although they are genuine and non-counterfeit products, in many cases produced by reputable pharmaceutical companies) are imported into the country without the permission of the intellectual property owner.

Because there is no control by the intellectual property owner, storage conditions and transport of these products is not monitored, which often results in the products being destroyed or deemed unfit for human consumption. If used, these can result in further complications, serious side effects or even death.

The fact that these products are imported through illegal channels also means Myanmar gains precisely nothing in terms of tax and duties.

Potential Gains:

Eliminating counterfeit drugs will significantly reduce the risk these products present to patient safety. It would contribute to attract foreign investors, as well as encourage local manufacturers to reclaim market share from an industry currently awash with counterfeit goods.

By bringing parallel trade to an end, the control on the distribution of pharmaceutical products goes back to the professionals: brand owners, local distributors and multinational corporations.

The establishment of a regulatory pathway aligned with the World Health Organisation for Biosimilars or Non-Comparable Biosimilars would ensure that only comparable Biologic products can enter the Myanmar market. Public awareness will be raised so that a larger portion of the public will understand and report to hospitals, which will make the data available to industry professionals and consequently lead to the design of better products.

Abolishing parallel and counterfeit trade will result in an increase of the usage of safe products imported through legal channels. As taxes and duties are paid on legally imported products, this will have a significant positive impact on tax revenues. These additional tax revenues can be utilised to further improve the healthcare system and implement Universal Health Coverage by 2030.

Recommendations:

To ensure that drugs fulfill the minimum standard quality at an affordable price, the Ministry of Health and Sports may consider the following:

- Continue to chase counterfeit and parallel imports to ensure the quality of pharmaceutical products in Myanmar.
- Establish laboratories to test drugs both before registration and after granting permission, and imposing penalties on drugs which fail to meet the required standards.

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.

Issue Description 4: Intellectual Property protection for the pharmaceutical market

Myanmar does not yet have a modern legal intellectual property framework, resulting in a lack of patent and trademark protection.

While Myanmar is not a signatory to the Paris Convention for the Protection of Industrial Property or any other treaty protecting patents, it has acceded to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and is thus required to implement and comply with certain sections of the Paris Convention by no later than July 1, 2021.

The lack of a legal intellectual property framework means that production, import, trade and commercial use of goods is possible without permission of the originator or owner of the intellectual property rights, even if they hold the relevant patents outside Myanmar. In absence of a functional legal framework, it is extremely difficult to enforce patents and other intellectual property rights.

Myanmar is now drafting intellectual property laws such as the Patent Law to ensure its legislation is more in line with TRIPS.

This new legal framework governing intellectual property protection is essential for the development of Myanmar's medical and pharmaceutical sector. Intellectual property is not only one of the pharmaceutical companies' most valuable resources, but also the basis for the control and supervision of the medical sector.

Intellectual property protection is therefore not only necessary to protect the interests of pharmaceutical companies, but of the country and its people.

Without intellectual property protection, it is not possible to enforce the rights of patent owners relating to the import, distribution and sale of genuine products.

Potential Gains:

Only a modern intellectual property framework will allow the protection and safeguarding of the patients' health, as well as increased tax revenues generated from the import and sale of genuine pharmaceutical products within Myanmar.

A modern IP framework would entail:

- Border control protection to combat the illegal import of counterfeit products;
- Restriction of parallel imports by non-licensed businesses to ensure proper handling, transport and storage of genuine products;
- Protection of patents and intellectual property as fundamental requirements for the production and manufacture of pharmaceuticals within Myanmar;
- Protection of proprietary interests of pharmaceutical companies as the basis for continued innovation and development of new medicines.

Recommendations:

Through collaboration and technical exchange with industry associations and international experts, the Union Government is recommended to expedite the drafting process of the IP law.

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

Issue Description 5: Requirement of a Healthcare Industry Code of Conduct

The healthcare sector is one of the most important pillars for the development of the nation and it is therefore of paramount importance to ensure that Myanmar citizens receive the right treatment and right standard of care from healthcare professionals.

There should always be confidence and trust that prescribing decisions are independent and made on an ethical and patient-focused basis.

Behavioral guidelines, such as a Healthcare Code of Conduct, can act as a moral compass for all stakeholders in the healthcare sector, driving objective decision making. We encourage the Myanmar Medical Council (MMC), in collaboration with a number of stakeholders including IPMAM and the MOHS to develop an updated Code of Conduct with an independent enforcement body.

Potential Gains:

Having an internationally recognised code of conduct along with regulations regarding the interaction between healthcare professionals and the pharmaceutical industry will build the public's trust and confidence in the local healthcare community and facilities with the following advantages:

- Uplift of health and wellbeing of the entire population which will have positive impact on
 - (1) Development index of the nation such as lengthening of life expectancy;
 - (2) A healthier workforce to build the nation;
 - (3) Reducing the financial burden and socio-economic catastrophe resulting from illnesses including cancer.
- Maximization of reliability on the local healthcare industry in synergism with the Ministry of Health's efforts in upgrading the healthcare infrastructure and capability of healthcare professionals which will lead to a reduction of medical tourism, patients undergoing medical treatment in neighboring countries, and subsequently save foreign currency efflux. In addition, it will be a great benefit to patients, ensuring them international healthcare standards are readily available within Myanmar.
- Furthermore, it will allow fair competition within the pharmaceutical industry potentially leading to a more favorable environment for foreign investment in the healthcare sector, possibly including an increase in the establishment of multinational pharmaceutical companies and international hospitals positively impacting FDI and the economic development of the nation.

Recommendations:

Through collaboration, strategic partnership and technical exchange with industry associations such as IPMAM (International Pharmaceutical Manufacturers Association Myanmar), the Ministry of Health and Sports may consider the following:

- Adopting the IFPMA code of conduct, as it is the most internationally recognised healthcare industry code.
- Establishing a local regulatory body to regulate interaction between healthcare professionals and organisations, in compliance with ethical standards and IFPMA codes of conduct.

Adopt the IFPMA code of conduct, together with a local regulatory body monitoring ethical conduct, compliance and the interaction between healthcare professionals and organizations.

LEGAL

15

INTRODUCTION

The 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 current legal framework. The European legal firms, who joined together under the umbrella of EuroCham 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 should be perceived as an important resource for private and institutional players. Supporting the government, this group is actively involved in providing timely and valuable advice and support – not legal services – for European investors planning to enter Myanmar, or that are already on the ground in Myanmar.

For the EuroCham White Book 2018, the Legal Advocacy Group agreed to contribute by pointing out specific issues that, if tackled appropriately, could benefit the national output by attracting new and significant foreign direct investments both from Europe and other parts of the world. The group welcomes the important reforms undertaken by the government in 2017 as a serious commitment to advancing the legal framework for local and international investors.

During a first meeting in Naypyidaw in January 2018, members of this group met with the Attorney General and the Financial and Economic Development Committee and offered the possibility to share opinions on the latest reforms and pose questions about future developments in Myanmar.

In the latest Doing Business Report 2018 of the World Bank, Myanmar ranks 155th out of 190 countries in the Starting a Business category, putting it above Cambodia and Laos. This is an increase by four ranks compared to 2015. However, despite recent promising developments, investors in Myanmar still face a number of challenges, such as the registration of property, protection of intellectual property rights and enforcement of the laws and its by-laws in practice.

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

Issue Description 1: Registration Law

The laws for registration of documents have always been inoperative in Myanmar where there are gaps between the law and implementation in practice by the government authorities. Myanmar has recently enacted the Registration Law, 2018, detailing the list of documents which should be mandatorily registered within four months from the date of their execution, accompanied by documents on which registration is optional. The unregistered document will be inadmissible in evidence, and affords very limited protection.

Despite this detailed list, the authorities prefer to abide by unnotified practices which creates hindrances to many major transactions in the country. As a result of this, the purpose of the laws is not fulfilled and, in the absence of any centralised registry of the registered documents, there is no comprehensive public record which could be inspected or relied on for ascertaining the legal rights or interest in relation to any property.

1. The trend of denial of registration of lease agreements by the ORD/LRD

The foreign investor can enter into sub-lease agreements with Myanmar citizens and/or entities and obtain rights over subleased land which is leased to citizens and/or entities by the Myanmar government.

However, in cases where the land is not identified for commercial use, the land needs to be converted for commercial use. Although this conversion process must be lodged by the landowner and cannot be lodged by the lessee, it is worth considering that this is cumbersome and may take months or even years.

This is the barrier faced by many telecommunications passive infrastructure companies in recent years, which have lease rights on various non-commercial lands scattered throughout Myanmar. Due to the lengthy delays for land-conversion, many companies find the process exceeding the duration of four months allowed for registration of such leases under the Registration Law.

Under the umbrella of Myanmar Investment Law of 2016 and Special Economic Zones Law of 2014, the foreign investor can enter into long-term lease agreements to obtain leasehold rights. However, despite the settled provision under the law, the Office of the Registration of Deeds (ORD) or the Land Registration Department (LRD) often shows reluctance to register the long-term lease agreements (where the lessee is a foreign investor), even in cases where the land is identified for commercial use.

2. Unregistered land title and unperfected security interest over the leased property

While the Myanmar government has introduced investment reforms to promote foreign investment in the country, the interest of the foreign investor remains unprotected when it comes to land rights.

The legal issues pertaining to registration of lease agreements to establish leasehold rights for foreigners hover over the grey skies of investment freedom.

If a foreign investor creates security interest over unregistered leased/subleased land for generating finances from third-party lenders, the ORD routinely refuses the registration of such security interest without valid reason. This often leads to higher costs of financing for foreign investors. In order to mitigate the risk of non-perfection, the lenders usually charge a higher interest rate from the foreign investor for the financial transaction.

Even the Registration Law fails to address the above-mentioned foreign investor's rights and seems to create more hurdles by assigning discretionary powers to the ORD/LRD to accept the registration of documents after the four month-period elapses.

Potential Gains:

The above-stated steps will considerably increase investor confidence and will boost the developing economy of Myanmar on the international front. Ensuring compliance with legal provisions and protections will be a boon for business and government alike.

Recommendations:

Considering the increasing presence of foreign business ventures and the poor record of transparency on legal issues in Myanmar, the Ministry of Agriculture, Livestock and Irrigation could issue a notification or an internal guideline directing the ORD/LRD to accept the registration of lease agreements establishing leasehold rights for a foreign investor, and also security interest. Further, the Attorney General's Office could issue a notification providing a case for registration of the lease agreements which have exceeded the time limitation stated under the Registration Law.

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

Issue Description 2: No Protection for Existing Registered Trademarks Discourages Early Movers from Market Entry¹

A significant increase in trade is expected in Myanmar in the next few years. An important facilitator to Myanmar's economic growth is the existence of strong intellectual property (IP) protection to encourage market entry.

Currently Myanmar does not have an adequate intellectual property regime, with protection of trademarks, patents and copyright largely reliant upon a set of related laws and accepted practices.

¹ Please note that the above article is based on the Draft Trademark Law published from 8-10 August 2017 in Myanmar newspapers. We are not aware of the existence of any subsequent amendments to the draft law published in August 2017 and assume that this is the same draft that was passed by the Upper House of the Myanmar Parliament (Amyotha Hluttaw) on 15 February 2018. The Lower House (Pyithu Hluttaw) will consider the Draft Trademark Law and may make final amendments prior to its enactment.

Although Myanmar is not currently a signatory of the Paris Convention for the Protection of Industrial Property or any other multilateral trademark treaty, as a least developed country is required to implement and comply with Articles 1-12, Article 19 of the Paris Convention and the terms of Trade Related Aspects of Intellectual Property Rights (TRIPS) by no later than July 1, 2021.

In 2017, a Draft Trademark Law (DTL) was submitted to the Myanmar Parliament to bring IP protection more in line with TRIPS. The DTL provides for a move to a “first to file” system, but it is silent regarding a statutory process to allow the automatic registration of currently “registered” trademarks.

1. The protection of existing trademarks upon the enactment of the DTL

Currently the trademark owner files a ‘Declaration of Ownership’ (DOO) under the Registration Act 1909 with the Office of the Registration of Deeds (ORD) to register its trademark.

As the ORD does not offer an official search facility, it is not possible to conduct a search of registered trademarks. Furthermore, as the ORD does not conduct searches of prior trademarks when examining a DOO filing, multiple DOOs can be filed for the same trademark.

Once the DOO is registered, a Cautionary Notice is published in a newspaper to notify the public of the owner’s rights in the trademark. The DOO and the Cautionary Notice serve to establish prima facie use of the trademark for evidentiary purposes (hence the name “first-to-use” system).

The DTL will replace the current system with a “first-to-file” system. Hence, the rights are afforded to the trademark owner who files it first with the newly-established IP Office. Trademarks not recorded with the IP Office are deemed ineffective.

As the DTL is silent regarding protection for existing trademark owners, all marks currently recorded would need to be re-filed once the new law enters into force. Companies will have to re-register their trademarks as soon as possible, because whoever registers the trademark first will become the trademark owner.

This creates a barrier to investment as businesses are discouraged from launching brands, products and services before the enactment of the DTL. Furthermore – importantly in the context of Myanmar where the establishment of functional and competent institutions is a lengthy and challenging process – operation of the law depends on the establishment of the new directorate responsible for registering trademarks and courts with exclusive jurisdiction for handling IP cases. As the establishment of these institutions can take a substantial amount of time, investors may face lengthy delays waiting for the new system to function.²

The DTL recognises priority rights of trademark owners who filed trademarks in a Paris Convention or World Trade Organisation (WTO) member state if they file trademarks in Myanmar within six months from their first application in a member state. Hence, longstanding trademarks unable to be registered in Myanmar will not have priority.

Due to the existence of multiple DOOs (caused by the inability to search for prior registered marks), any carrying over of existing rights would, of course, entail clear challenges. It is nonetheless a worthwhile challenge that justifies careful scrutiny and consideration by parliament.

The DTL provides for applicants to submit a copy of the DOO when filing an application, if their mark was previously registered in Myanmar. However, it is unclear whether this DOO will be considered in resolving conflicts between two similar trademarks filed. In the absence of any clear statutory protection of existing rights, potential investors are offered little reassurance.

² The delay in the realisation of legal reform in Myanmar was recently demonstrated with the passage of the new Companies Law 2017 which, despite enactment and years of anticipation and preparation, is unlikely to come into force until the institutions and process for implementing the law are operational.

Potential Gains:

The six-month suggested window to allow priority protection for already-registered trademarks would facilitate Myanmar's economic growth by providing reassurance to foreign investors wishing to launch their brands, products and services on the Myanmar market in the near future.

Recommendations:

In light of the desire of the Myanmar government to encourage foreign direct investment through the creation of a strong IP protection regime, we suggest that the parliament amend the DTL to introduce a temporary six-month priority protection period from enactment of the DTL to existing:

1. Myanmar-registered trademarks from a first-to-file application; and
2. Foreign trademarks registered in Paris Convention or WTO member states.

Implement six-month priority protection for already-registered trademarks.

Issue Description 3: Endorsement Application under the Myanmar Investment Law 2016

From authorities at the township level to top government agencies, investors in Myanmar often face an inconsistent – if not total lack of – enforcement of laws. This may result in frustration or – in a worst case scenario – a halt in investing in Myanmar.

With the enactment of the Myanmar Investment Law 2016, the government made a step toward a unified legal framework for local and international investments. Compared to the Foreign Investment Law 2012 and the Myanmar Citizens Law 2013, it contains a number of improvements, including streamlined application processes and a decentralisation in decision-making. But while procedures under this law should be completed in a matter of weeks it can, in practice, take months or even be delayed indefinitely, both due to slow processing by the authorities, as well as the request of documents and information in addition to the statutory requirements stipulated under this law and its by-laws. A prominent example of the problem described is the new MIC Endorsement application process for long-term lease agreements and tax incentives, which shall be discussed in greater detail below.

Under the new investment regime, businesses outside of a Special Economic Zone may be established with or without a Permit of the Myanmar Investment Commission. Businesses which do not require a Permit may apply for an endorsement by the Myanmar Investment Commission to be eligible for certain benefits under the Myanmar Investment Law 2016, such as long-term land use or tax and duty incentives.

Any investor who has not received a permit but wishes to enjoy additional benefits or incentives under the Myanmar Investment Law 2016 shall apply for an endorsement. The procedure is as follows:

- The investor shall prepare a complete and comprehensive Endorsement application and submit it to the Myanmar Investment Commission.
- Once the endorsement application has been submitted and the correct application fee is paid, it shall be screened for eligibility and completeness.

- If the Endorsement application is accepted (or deemed to be accepted), the Myanmar Investment Commission or relevant State/Regional Committee will screen the Endorsement application within 30 days after the date of acceptance. In case of approval, it shall issue the Endorsement within 10 working days from the date of decision.
- During the assessment, the Myanmar Investment Commission or relevant state/regional committee may require the investor to provide more information relevant to the endorsement application within 20 days, at any stage of the assessment process.

Based on the above, the new endorsement system should simplify and streamline the application for long-term land use rights and tax and duty incentives, outlining in detail the necessary documents and information for an endorsement application and providing for a specific timeline.

In practice, however, the MIC requires investors to submit additional documents and information neither mentioned in the Myanmar Investment Law 2016 nor in the Myanmar Investment Rules 2017.

For example, when applying for an endorsement to enter into long-term lease agreements in the hotel and tourism sector, investors are asked to submit additional documents and information, such as the draft lease agreement, land title documents, location map, land history forms, list of employees and their remuneration for the first 10 years of exploitation, list of imported equipment and material, etc. Consequently, the application for an MIC endorsement effectively becomes as cumbersome and time-consuming as the application for an MIC Permit.

Potential Gains:

The strict enforcement provides predictability and more security for investments and will ultimately strengthen confidence of investors in Myanmar. It will further help the authorities to establish more efficient practices and serve the public better.

Recommendations:

If the Myanmar Investment Law 2016 and the Myanmar Investment Rules 2017 explicitly provide for certain documents and information, the MIC ought to request exactly that – no more, no less – for the issuance of an endorsement. Should the Myanmar Investment Commission issue further guidelines on application and assessment procedures by making them available to the general public it can ensure transparency in its process and predictability for investors. As the proper enforcement of the law and its by-laws requires knowledge and experience, we would recommend to further train officers.

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

**LOGISTICS AND
TRANSPORTATION**

16

The number '16' is rendered in a large, bold, white sans-serif font. The background behind the number is a light blue grid of small dots, which is partially obscured by the white shape of the digits. The overall design is clean and modern, with a focus on the large number '16'.

INTRODUCTION

Geographically, Myanmar is positioned between China and India. The long Myanmar coastline can provide 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. In the future Myanmar could be at the heart of Asian logistics if it is well-equipped with deep-sea ports, and the 3020-kilometre riverine system is upgraded and connected to the Asian/ASEAN road transport corridors between China, Myanmar and India.

Currently, ports in Yangon can be divided into two areas, but a proposed third area was launched by Yangon Chief Minister in April 2018. The largest is Myanmar International Terminal Thilawa, used mostly for containerised cargo, RORO (Roll-on/Roll-off) ships for the transport of cars, and break-bulk vessels. This port is located 16km from downtown Yangon and 16km from Yangon River Bay, and is next to the Thilawa Special Economic Zone, developed by a Japanese joint venture.

The International Terminal Thilawa consists of three terminals, with a fourth bulk cargo terminal coming during 2018-2019:

1. MITT (Myanmar International Terminal Thilawa)
2. MIPL (Myanmar Integrated Port Limited)
3. PTT (Port of Thilawa Terminal) – opening second quarter of 2018.
4. IBTT (International Bulk Terminal Thilawa) – construction to complete April 2019

The second area is the Yangon City Terminals, covers the following five terminals:

1. The Myanmar Terminal (TMT)
2. Ahlone International Port Terminal (AIPT)
3. Myanmar Industrial Port (MIP)
4. Asia World Port Terminal (AWPT) & Htee Tan Port Terminal (HPT)
5. Sule Pagoda Wharf (SPW)

The third area is a proposed international deep sea port at the mouth of the Yangon river on the opposite side of Thilawa, but further south bordering Kawhmu and Kungyangon Townships.

Other significant port developments around the country are the Dawei and Kyaukphyu deep sea ports, and the recently launched New Yangon Port.

The Dawei deep sea port and SEZ is an infrastructure project aimed at transforming Dawei into Myanmar and Southeast Asia's largest industrial and trade zone. Plans for this project include not only the deep-sea port, but also a large surface for the oil and gas industry, a steel mill, heavy industries, a coal-fired power plant and an LNG power plant. The project came to a halt, but a US\$144 million loan from Thailand was recently approved by the Union Parliament, giving new life to the project. Part of the Dawei development is a new highway project to ensure connectivity, but this is not yet secured.

Another deep-sea port and SEZ project, Kyaukphyu, was initially expected to be up and running by 2025 with plans to build an industrial park of approximately 1000 hectares and Myanmar's highest-capacity port, with facilities able to handle 7 million 20-foot-equivalent-units (TEU) of containerised cargo per year. So far no EIA/SIA have been conducted, so reaching the target date for completion of 2025, will be difficult.

Myanmar is currently going through a series of projects to improve the logistics sector. Yangon International Airport was expanded and modernised and the three terminals have a capacity to handle 20 million passengers annually. The Ministry of Transport are pushing for a new and larger airport, Hanthawaddy International, near Bago. This is mainly due to runway expansion limitations at Mingalardon.

Other important infrastructure projects include the upgrading of multiple highways and expressways, such as the Yangon-Mandalay Expressway, Yangon-Pathayin Highway and, most promisingly, there are plans to build a road between Mandalay and the border of China, in addition to a new road linking southern Sagaing District with India. These new connections would link Myanmar to half the world's population by road, giving it the potential to become one of the larger economic centres in ASEAN.

Worth mentioning is also the Ayeyarwady (Irrawaddy) River Basin Management project, which aims to improve navigability and eventually enabling 24/7 operation on Myanmar's arterial river, having navigational aids, radar and a traffic system in place. The first phase of upgrade is planned to start mid 2018 and will cover the area between Nyaung-U (Bagan) and Mandalay.

In spite of these recent development projects, Myanmar is still facing its share of challenges and issues in the logistics sector. But with many promising projects approved and moving forward, 2018 could see Myanmar take significant steps in the right direction.

Issue Description 1: National Logistics Master Plan 2018-2028

The logistics sector is important as it supports all sectors of the economy, eases trade, reduces cost of doing business and contributes to enhance productivity and efficiency of the economy.

As we are noticing initiatives for logistics and infrastructure development, we are seeking for a clear National Logistics Master Plan to set the course for this industry in Myanmar.

Indeed, we understand that Ministries of Transport and Construction, along with JICA, are collaborating on a National Logistics Master Plan Study. The partnership has identified a series of priority projects, divided into long-term, medium-term and short-term, along various logistics corridors, which are meant to facilitate trade, boost development, strengthen connectivity and support the transport and logistics industry.

Recommendations:

We recommend that as part of developing the National Logistics Master plan, a structured dialogue with representatives of businesses, experts and government, as well as neighbouring countries, should be included.

Formation of a dedicated fast-working committee with members from both the government, end users, facilitators and specialist consultants, is the key to ensure a consistent National Logistics Master Plan.

- We do recommend that the private logistics sector partake in the National Logistics Master plan committee, with local and foreign companies. EuroCham can, via its Logistics Advocacy Group or network, assist in finding the right committee members from this sector or partake directly.

Potential Gains:

This National Logistics Master Plan will provide strategic direction for the development of the logistics industry to further improve Myanmar's productivity and competitiveness in domestic and international markets.

- More visibility and confidence from stakeholders in this industry.
- Potential new legal regulation to develop and support the proposed National Logistics Master.
- More investments from the logistics sector to be expected.

Issue Description 2: Unaligned, time consuming and non-transparent value assessment processes/import formalities

There have been noticeable improvements by the customs department during the past year for the value assessment process in respect to implementation of the World Trade Organisation's GATT transaction value concept.

Importers, however, are still facing challenges during the valuation process causing significant delays, as well as extra costs.

Valuation processes take too long, due to limited resources. Key persons are frequently unavailable for outside engagements.

Other factors which can cause delays in processing include:

- Value on import license of Ministry of Commerce is different from value on shipping documents (differences must be explained/evidenced/negotiated).
- Ministry of Commerce for Import License purposes wants to have one CIF price*) without breakdown whilst Customs Dept. in case of CIF terms wants to have break down on commercial invoice (value of goods, freight, insurance, etc.) or FOB price.
- Even when correct/complete documents are submitted, but the customs internal reference value price is lower, the importer is forced to go through valuation process.
- Some importers do not cover insurance due to commercial reasons (self-insurance = taking risk of not covering insurance) – in such cases they have a choice to face significant increase in value assessed or to buy a kind of cheap “dummy” insurance (Clause C = total loss only).
- Sales contract is available for total quantity covering several shipments only whilst customs is asking for a sales contract for each individual shipment.

Although the MACCS system has been introduced and customs entries can be submitted electronically, hard copies of documents still have to be personally handed over to customs officers for HS code appraisal.

Shipment-by-shipment MIC approval application with the Ministry of Commerce takes too much time: if value is under US\$100,000, this can take 5-7 working days. For shipments \$100,000 and above, approval can often take 10-12 working days.

Commercial Tax Exemption (BaKha) with Ministry of Commerce at MIC Yangon for shipments under the MIC-approved investment scheme also takes too long: approximately 10 working days.

The main reason for this time-consuming process is that a number of individuals must be involved in manual checking and approval.

Recommendations:

- Increase manpower in the concerned customs section doing customs value assessment.
- Set up guidelines which are transparent to all stakeholders, implement adequate training of customs officer to ensure same standard of service and increase focus on PCA (Post Customs Audit).
- Further expand use of MACCS to increase efficiency and reduce face to face contact with officials.
- For MIC approval and commercial tax exemption processes of MIC shipments, introduce a systematic and efficient process involving less people – ideally a one-stop service for shipments under MIC privileges.

Potential Gains:

Shorter supply chain, faster clearances, reduction of official and unofficial costs, positive impact on port congestion, higher confidence by foreign investors, greater ease of doing business.

Issue Description 3: Availability of customs services

Myanmar customs border at the Yangon ports and border points to Thailand and China, are only open during regular daytime office hours. Overtime is possible, but limited, depending on location. We do not expect to see 24/7 operations or fully automated customs clearance systems to come into force just yet, so remedial solutions are needed. This is in order to see inbound and outbound cargo cleared swiftly and at the expected cost. We see this as a new opportunity and the single-most significant impact would be removing some load from the ports, by allowing for Bonded Warehouses and real CFS solutions.

This is part of the MIC and government strategy and will have a very positive impact.

The IFFC and other users of the customs services face a number of challenges that, separately or as a combination, cause delays as well as unwanted official or unofficial costs. Examples of such daily challenges and bottlenecks include:

- Yangon trucking ban allowing for only four hours of container trucking time between 11am and 3pm, which creates traffic congestion and gives little time for clearance of the volume of outbound cargo, prior to closing hours, resulting in extra cost for overtime to customs, shipping agents, office staff and trucking companies.
- Outbound inspections 'Red Channel' comes late in the day, often resulting in over-day or overnight charges, since the trucks are stuck until next day's opening hours.
- Limited authorised staff on hand for final approval/signature of outgoing cargo, in particular at the border points, such as Myawaddy, where delays can become very critical and very costly if air cargo transiting via Bangkok miss the flights.

Recommendations:

By having Bonded Warehouses and CFS solutions outside the Special Economic zones and ports, a large number of import containers can proceed directly to the bonded warehouses, as well as a large number of containers of export cargo can be customs-sealed at the CFS and dropped at the ports.

The Logistics Advocacy Group are aware of the lack of procedures and guidelines for Bonded/CFS solutions, for both customs and new Bonded/CFS operators. 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 licenses to strategic locations with large volumes of outgoing and/or incoming cargo.
- When the CFS and Bonded warehouse comes into operation, a "drop-off" solution at the ports needs to be put in place, so that containers can be dropped off in minimum time. This service needs to be functional at night. (As an example, one single truck in Vietnam can drop off up to 8-10 containers per day, depending on the location of the CFS/Port.).
- 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). A simple "copy-paste" solution from a country where this is well functioning can be a good way to start.
- Ensure sufficient or proper hiring and training of customs officers for these new CFS/Bonded warehouses. A good way for a fresh start with less non-compliance handling.

- Service fees and pricing need to be put in place 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 border crossings.

Potential Gains:

- Better availability of customs services.
- Faster processing of cargo at the ports.
- Less use of overtime for all involved parties.
- Trucking can be done at different times and one truck can handle multiple pick-ups and drop-offs in a day.
- Lower volumes of red-channel inspections done at the ports, due to handling at bonded warehouse/CFS.

Issue Description 4: Advance Payment for Terminal Usage

There are four main terminals in the Yangon city area which service shipping liners. To use these city terminals, current rules require carriers to make advance payment to the Shipping Agency Department of the Myanmar Port Authority at the tariff level which is set by Myanmar Port Authority – a significantly higher rate than actual contracted rates between carriers and terminals. After this, the Shipping Agency Department deducts any service charges and then pays the remainder to terminal. Then carriers must then follow up constantly for the refund. This allows (some) terminals to delay payment and wield this as bargaining power over carriers. This should not be the case, as the finance rightly belongs to the carrier.

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

Recommendations:

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 terminal. Any Shipping Agency Department Fees can be settled directly from carrier to Shipping Agency Department as well.

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.

WINE AND SPIRITS



INTRODUCTION

Eurocham Myanmar, together with leading European wine and spirits companies, teamed up to create the Wine & Spirits Committee in September 2017. The ambition of this group is to provide support and objective 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 estimated to be around 5.5 million litres in 2015 by the International Wine & Spirits Record (IWSR). This demand is currently met primarily through non-tax paid channels and illicit stock. The main reason consumers and traders buy illicit stocks is Order No. 8/2013 of the Ministry of Commerce, a measure that imposes a ban on the legal import of foreign spirits, except by select duty-free licence holders and luxury hotels. This ban contravenes Myanmar's commitments to the World Trade Organisation (WTO).

In addition, 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 risks to Myanmar consumers who cannot be sure of the source or quality of foreign branded products.

Issue Description: The current ban on the direct import of foreign spirits hurts Myanmar's economy, government and consumers

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 illegally imported products are sold at low prices because no taxes are paid on them, 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 ban on foreign spirits also encourages counterfeiting and related illicit activities. This results in a major loss of potential tax revenue, even as the government urgently seeks to boost revenues in order to expand services and finance the development of the country. In addition, in the absence of legally imported products on the market, counterfeit products create a serious public health risk.

The current ad valorem tax structure prevalent for foreign spirits legally imported by hotels leads to a high retail price in Myanmar and provides further incentive to suppliers in illicit channels. At the same time, the disproportionately high ad valorem tax creates an enforcement issue with the Myanmar Customs Department when it comes to valuation of goods. Customs agents often fear that importers under-declare the value of imported goods. If taxation is excessive while enforcement is not improved, smuggling and illicit trade will flourish.

Potential Gains:

- Promote the rule of law by creating a legalised 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.
- Bolster law enforcement efforts with market mechanisms to address the illicit trade and counterfeiting of spirits products that cause revenue losses for the state 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, drawing on their global experience and best practices.
- Bring Myanmar into compliance with some of its WTO commitments.

Recommendations:

- The Myanmar government should lift the ban on the import of foreign spirits by amending Order No. 8/2013 of the Ministry of Commerce. 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.
- The government should adopt an effective tax structure for import tax and introduce a special goods tax on foreign spirits. 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. It would also reduce the price gap between goods sourced via tax-paid channels and non-tax paid channels. This would boost government revenue by promoting the tax-paid channel. However, import duty should remain at its current rate, which is very high, as an increase could negate efforts to curb illicit trade through the opening of the market.
- There must be 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.
- An Anti-dumping Law, Countervailing Law and other safeguard laws should be put in place as soon as possible to afford the same protection to local industry as in other countries that are members of the World Trade Organisation (WTO).
- The government should 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 EU, US, Australia, New-Zealand etc. and the International Organisation of Vine and Wine (OIV).

ABBREVIATIONS AND ACRONYMS

ACTD	ASEAN Common Technical Dossier
AEOB	Accredited Economic Operator Program
AIGE	Institute for Green Economy
AIPT	Ahlong International Port Terminal
ASEAN	Association of Southeast Asian Nations
AWPT	Asia World Port Terminal
BSW	Bo Aung Kyaw Street Wharf
CBU	Complete Build-Up
CCGT	Combined-Cycle Gas Turbine
CE	European Conformity
CFS	Container Freight Station
CIF	Cost Insurance and Freight
CKD	Complete knock-down
CMP	Cut-Make-Pack
CSE	Chittagong Stock Exchange Limited
CSO	Central Statistics Office
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
DICA	Directorate of Investment and Company Administration
DOA	Department of Agriculture
DOO	Declaration of Ownership
DOTS	Direction of Trade Statistics
DTL	Draft Trademark Law
EAAG	EuroCham Automotive Advocacy Group
ECD	Environmental Conservation Department
EEAG	EuroCham Energy Advocacy Group
EIA	Environment Impact Assessment
EU	European Union
FDA	Food and Drug Administration
FDI	Foreign Direct Investment
FOB	Free On Board
FTZ	Free Trade Zones
GAP	Good Agricultural Practices
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GMP	Good Manufacturing Practice
HPT	Htee Tan Port Terminal
HS code	Harmonised System
IBTT	International Bulk Terminal Thilawa
ICC	International Chamber of Commerce
IFC	International Finance Corporation
IFPMA	International Federation of Pharmaceutical Manufacturers & Associations

ILO	International Labour Organization
IMF	International Monetary Fund
IP	Intellectual Property
IPMAM	International Pharmaceutical Manufacturers Association Myanmar
IRD	Internal Revenue Department
ISWR	International Wine and Spirits Record
JICA	Japan International Cooperation Agency
LNG	Liquefied Natural Gas
LPG	Liquid Propane Gas
LRD	Land Registration Department
MACCS	Myanmar Automated Cargo Clearance System
MGMA	Myanmar Garment Manufacturers Association
MIC	Myanmar Investment Commission
MIP	Myanmar Industrial Port
MIPL	Myanmar Integrated Port Limited
MITT	Myanmar International Terminal Thilawa
MMC	Myanmar Medical Council
MoAL	Ministry of Agriculture, Livestock and Irrigation
MoEE	Myanmar's Ministry of Electricity and Energy
MOGE	Myanmar Oil and Gas Enterprise
MoHS	Ministry of Health and Sports
MoNREC	Ministry of Natural Resources and Environmental Conservation
MPA	Myanmar Port Authority
NFR	Non-financial reporting
NGO	Non-governmental Organisation
NHTSA	National Highway Traffic Safety Administration
NOC	No Objection Certificate
NOx	Nitrous oxide
O&G	Oil and Gas
OECD	Organisation for Economic Co-operation and Development
OIV	Organisation of Vine and Wine
OLAF	The European Anti-Fraud Office
ORD	Registration of Deeds
PC	Post Customs Audit
PICS	Pharmaceutical Inspection Cooperation Scheme
PPA	Power Purchase Agreement
PSC	Production Sharing Contracts
PTT	Port of Thilawa Terminal
RORO	Roll-on/Roll-off
RTAD	Registration Transport Administration Department
SEA	Strategic Environmental Assessment
SECM	The Security Exchange Commission of Myanmar
SEZ	Special Economic Zone
SKD	Semi Knock-Down

SIA	Social Impact Assessment
SPS	Sanitary and Phytosanitary
SPW	Sule Pagoda Wharf
SSE	Sustainable Stock Exchange
TEU	Twenty-Foot equivalent Unit
TRIPS	Trade Related Aspects of Intellectual Property Rights
UNODC	United Nations Office on Drugs and Crimes
USD	United States Dollars
WCO	World Customs Organisation
WTO	World Trade Organization
YSX	Yangon Stock Exchange

ACKNOWLEDGEMENTS

EuroCham Myanmar would like to thank the Advocacy Group members and especially the Advocacy Group co-chairs for their contributions to the second EuroCham Myanmar White Book. We also wish to thank Frontier Myanmar Research (FMR) for their technical support. In addition, we thank the Myanmar government, the EU Delegation, the EU Member-State representatives, the EU Member-State Chambers and the UMFCFI for their constant support. Last but not least, we would like to thank our Partner-Members for their trust in EuroCham Myanmar.

DISCLAIMER

The White Book is a collective expression of the views of EuroCham's members, represented by the Advocacy Groups, on specific aspects of the business environment in Myanmar. It does not explicitly represent the views of one or more individual companies nor the EuroCham founding members. The information and views put forward in the White Book are solely intended to promote a constructive dialogue and offer recommendations for the improvement of European-Myanmar business relations. Furthermore, the White Book is strictly intended for the use of EuroCham's members and other interested parties, and not for a particular company and/or institution.

No part of this publication may be reproduced, distributed or transmitted, in whole or in part, in any form or by any means, including but without being limited to photocopying or other electronic reproduction, or mechanical methods, without the prior written consent of EuroCham. For permission requests, please write to EuroCham at the address mentioned below. EuroCham has made all efforts to ensure that the information contained in the White Book is accurate at the time of drafting to the best of EuroCham's knowledge and belief. However, EuroCham does not assume and it hereby disclaims any liability and/or responsibility to any party for the completeness, accuracy, reliability or suitability of the content of the White Book and/or for the outcome of any decision taken on the basis of it. In any case, no party should act upon the content of the White Book without seeking professional advice and/or assistance.

Furthermore, in no event shall EuroCham, its members, its board of directors and/or the members of the board of directors be liable for any direct, indirect, special, incidental, or consequential damages (including loss of profit) directly or indirectly relating to or arising out of the publication of the White Book, regardless of the form of action, whether in contract, tort, strict liability, or otherwise, and whether or not such damages were foreseen or unforeseen, even if one has been advised of the possibility thereof. In case of any discrepancy between the English and Myanmar versions of the White Book, the English version shall prevail.

Content finalised in May 2018.

© 2018 European Chamber of Commerce in Myanmar, all rights reserved.

EuroCham Myanmar

271-273 Bagayar Street, Sanchaung Township
 Yangon, The Republic of the Union of Myanmar
 T +95 9 45058 2335
 E info@eurocham-myanmar.org
 W eurocham-myanmar.org



The voice of European business
in Myanmar

ADVOCACY

BUSINESS SERVICES

EVENTS

European Chamber of Commerce in Myanmar

271-273 Bagayar Street
Sanchaung Tsp, Yangon, Myanmar



+95 9 45058 2335



info@eurocham-myanmar.org



www.eurocham-myanmar.org



[eurocham.myanmar](https://www.facebook.com/eurocham.myanmar)



[eurocham-myanmar](https://www.linkedin.com/company/eurocham-myanmar)



[EuroChamMyanmar](https://twitter.com/EuroChamMyanmar)