EUROCHAM
MYANMAR

White Book 2020

Trade & Investment Policy Recommendations

CO-FUNDED BY

EUROPEAN UNION

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EUROCHAM MYANMAR

EuroCham Myanmar 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 Association of Southeast Asia (ASEAN) region and the European Union (EU).

With a strong, growing network of partners, EuroCham Myanmar 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 French-Myanmar Chamber of Commerce and Industry (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 Memorandum of Understandings (MoU) with the chambers of Germany, Greece, Italy and the UK, including the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI).

A key instrument in EuroCham Myanmar'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 fourth 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 Myanmar'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 2020

EUROCHAM MYANMAR CHAIRMAN OF THE BOARD

Shaping resilient, sustainable and inclusive economy is crucial to build a better working society. In that sense, EuroCham Myanmar supports actively European companies looking to establish themselves in Myanmar as responsible investors as those Europeans investors can create social and economic values that will benefit various stakeholders.

EuroCham Myanmar strongly believes that dialogue is a strategical tool to establish a fair, sustainable and level playing field. Every year, EuroCham Myanmar White Book provides Trade and Investment Policy recommendations as the culmination of another year of advocacy work.

We are absolutely committed to strengthen the cooperation between EuroCham Myanmar and the national authorities.

The steady exchanges between Yangon and Naypyidaw portraits a clear proof of such an achievement. In this regard, we want to kindly thank all government officials that worked with us last year.
Today, I am pleased to release the fourth edition on behalf of the chamber's Board of Directors, the Advocacy Groups, EuroCham Myanmar's partner members and all other members.

With the aim of harmonising economic growth with social progress and environmental sustainability, EuroCham Myanmar Responsible Business Initiative (EMRBI) remains an important resource for European businesses in Myanmar. Along with EMRBI (launched in 2019), the EuroCham Myanmar Digital initiative (EMDI) and the EuroCham Myanmar Anti-Illicit Trade initiative (EMAITI) were created earlier this year. The three initiatives aim to create a cross-sectoral dialogue for better awareness and inclusive dialogue on their respective topics.

Such developments are testament to the ongoing opportunities in this frontier market, but it must be acknowledged that Myanmar still faces many political, economic and social challenges. Tackling said challenges is key to the ongoing transition to democracy and to the sustainable economic development of the country. Great progress has been made, including the launch of Myanmar Companies Online (MyCo), the online company registration platform, the enactment of intellectual property laws, the adoption of the Myanmar Sustainable Development Plan (MSDP) and the opening of the insurance sector.

We trust this White Book will provide a broader perspective on Myanmar's current climate for European investors. We also strongly believe EuroCham Myanmar's all-round growth is proof of the strong interest in Myanmar among European investors. All our members are committed to advocating for better business practices that will benefit Myanmar, its citizens and European investors. Indeed, as investors aim to create long-term value for the country, we will strive to support inclusive development, peace and prosperity.

Nicolas Delange
Chairman of EuroCham Myanmar

EU AMBASSADOR TO MYANMAR

Dear Friends of Europe,

Since 2011, as Myanmar embarked on its journey towards democracy, the European Union restored its broad spectrum of trade and investment instruments. In 2013, sanctions were lifted and unilateral trade privileges deriving from the EU Generalised Scheme of Preferences (GSP) were reinstated. As a result, the EU – Myanmar bilateral trade in goods is at an all-time high, amounting to EUR 3.4 billion in 2019.

Amidst stagnating global trade growth, further hit by coronavirus, Myanmar's economy continues to grow and is expected to narrowly escape a recession.
A number of developments in Myanmar's business climate during the past year have had a positive effect on its growth. The World Bank named Myanmar as one of the top 20 improvers in Doing Business 2020 and highlighted reforms that ease the starting of a business and provide better protections for minority investors.

Whilst the business environment has improved, significant political and human rights challenges remain, which, if not addressed, could reduce Myanmar's long-term economic performance, as well as the trade and investment relationship between Europe and Myanmar. These challenges have called for an enhanced dialogue between the two parties to address human rights violations and find long-term solutions for all conflict-affected areas of the country, in line with international commitments and EU GSP requirements. The onus is on Myanmar to safeguard its privileged market access to the EU. We continue to look for opportunities to strengthen our dialogue and cooperation on all these sensitive issues.

European businesses are an essential part of this relationship. They need to remain resilient, and continue to reflect the very best of the European presence in Myanmar, especially in terms of promoting transparency, accountability, and corporate social and environmental responsibility.

In this spirit, the EuroCham Myanmar White Book 2020 serves as an excellent source of information for policy makers as it outlines trade and investment recommendations of European companies to improve the business climate in Myanmar. It can also serve as a reference in bilateral trade and investment dialogue between the EU and Myanmar, as well as for EU's development cooperation.

So let me extend my sincere gratitude to EuroCham Myanmar and its members for contributing to this year's White Book. We look forward to continued cooperation in the coming year, in order to meet the challenges and further improve the friendship and ties between Myanmar and the EU.

Ranieri Sabatucci
Ambassador-designate of the European Union to Myanmar

Thank you to our Partner Members!

PLATINUM

GOLD

SILVER

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Myanmar language version

METHODOLOGY

The EuroCham Myanmar White Book 2020 is a trade and investment policy recommendation publication, developed through an extensive consultation with European sector's industry stakeholders. The publication starts with the EuroCham Myanmar Responsible Business Initiative (EMRBI) emphasising the relevance of aligning the economic growth with responsible and sustainable practices.

The Business Climate chapter 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.

The General Recommendations and Policy Responses forerun the topics of each Advocacy Groups' Position Papers. The former section offers reliable guidance to the national government in order to tackle all the main challenges that hinder the prosperity of the internal market. The latter section sheds light on the normative progress made by the government throughout 2019.

Furthermore, this fourth edition of the EuroCham Myanmar's White Book has been developed through a close collaboration with stakeholders from each of the following industries: Agrobusiness, Anti-Illicit Trade Initiative, Automotive, Construction & Infrastructure, Digital Initiative, Energy, Garment, Health, Legal and Tax, Logistics and Wine and Spirits.

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

The papers are structured as follows:

Issue Description:

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

Potential Gains for Myanmar:

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

Recommendations:

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

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

FOREWORD: EUROCHAM MYANMAR RESPONSIBLE BUSINESS INITIATIVE

2

INTRODUCTION

Rationale

EuroCham Myanmar is convinced that the course of Myanmar's economic growth needs to be aligned with social progress and environmental sustainability. EuroCham Myanmar believes that good practices can only be spread based on their effectiveness and their impact, creating a chain reaction in the service of a prosperous and fair economy in the country.

EuroCham Myanmar has recognised the value of European responsible business practices in Myanmar since its inception. To further improve the effectiveness of promoting responsible business practices, EuroCham Myanmar initiated the launch of the EuroCham Myanmar Responsible Business Initiative (EMRBI) in 2019, opening it to all its members. The EMRBI's mandate is to promote the value of responsible business practices.

Objectives:

The EMRBI's objectives are to promote its members' best practices, insights and knowledge about responsible business operations. The initiative aims to encourage all businesses in Myanmar to better integrate sustainability and responsibility in their daily operations and long-term strategies.

The EMRBI provides members with a platform to exchange experiences and aims to foster positive mutual collaboration with corporations, government, non-governmental organisations and the general public. It aims to do so by organising talks and workshops at which companies can share and transfer their practical expertise and know-how in managing businesses responsibly.

In 2018, the government of Myanmar presented the Myanmar Sustainable Development Plan (MSDP), and EuroCham Myanmar and the EMRBI strive to support the government in the execution of this plan and the achievement of its core objectives.

2019-2020 EMRBI Action Plan:

1. Event Sustainability Manifesto

In January 2020, the EMRBI initiated an "Event Sustainability Manifesto" co-signed with 11 other chambers in Myanmar. The signatories have pledged to commit to work with event venues to remove single-use plastics (e.g. bottles, straws, utensils, cups, packaging, etc.) and replace them with reusable alternatives when hosting an event. With the support of the Myanmar Centre for Responsible Business (MCRB), the chambers are using their voices to reach people and further support the MSDP.
The co-signatories also encourage their member businesses and organisations to take the same approach and demonstrate that we can all reduce, reuse and recycle to minimise single-use plastic and other forms of waste.

EuroCham Myanmar hopes this initiative will encourage other businesses and organisations and will demonstrate how business and sustainability can complement each other.

2. Series of quarterly Breakfast Talks

The EMRBI has established itself as a knowledge sharing platform that showcases any responsible business initiatives taken by our members in Myanmar. The EMRBI has been organising a series of Breakfast Talks on a quarterly basis to highlight responsible business practices and sustainability matters that are relevant to both European and local businesses in Myanmar.

Talk on Private sector and non-profit collaboration for sustainable development

The EMRBI organised a Breakfast Talk to gather private sector players and not-for-profit organisations (NFPs) to discuss how collaboration between stakeholders with different missions should be fostered. The public sector cannot achieve the Sustainable Development Goals (SDGs) alone, which are shared goals for a sustainable future for all. As both the private sector and NFPs see the value of enhancing living standards and protecting the environment together, private sector and NFP collaborations are slowly moving away from traditional donation-based funding models to a partnership model where stakeholders on both sides actively participate, for example by providing funding, ideas and dedicated staff. This type of collaboration is not only necessary for tackling global issues like equality, climate change and peace but is also a win-win for both parties and the government: NFPs can contribute to peace-building, create well governed and secure societies and stable operating societies, whereas the private sector can create more jobs and stable income for disadvantaged and marginalised communities. This promising way of collaborating is creating a positive impact and scaling up companies' safety, health and child labour policies and standards. The Breakfast Talk highlighted that incentives should be put in place to encourage stakeholders, including the government, to reap the benefits of such partnerships. The importance of the role of community as key to project success was also mentioned.

Potential Gains and Recommendation:

The Breakfast Talk discussions raised the following points:

- Incentives and special regulations are needed to support alliances between NFPs and businesses.
- The government could provide opportunities for the private sector to create sustainable products and services that solve some of the most challenging problems of the society (e.g. inequality, poverty, health).
- The private sector should be enabled to invest in socially and environmentally responsible technologies and practices using the technical and financial support provided by donors and governmental organisations.

Talk on Gender equality in the workplace

EuroCham Myanmar has identified gender equality as a core principle of European responsible business practices in Myanmar, and in February 2020, the EMRBI organised a Breakfast Talk on the issue in collaboration with the Business Coalition for Gender Equality (BCGE). For Myanmar's social and economic development, gender equality in the workplace is crucial. The role of women in society has dramatically changed over the past few decades, and women are indispensable in today's political, social and economic life. More women are represented in the workplace and in management positions, but gender equality is much more than just the proportion of men and women in the workplace (gender parity). More steps should be taken for women to get the same opportunities and equal pay as their male counterparts. Besides, gender equality is often misinterpreted: many people believe it only relates to sexual harassment, or that it is an issue that does not concern men. In order to achieve gender equality, men should also be included in discussions and actions on gender equality. Promoting gender equality will contribute to the achievement of the United Nations Sustainable Development Goals 5 (gender equality), 8 (decent work and economic growth) and 10 (reduced inequalities).

During the Breakfast Talk, it appeared that companies encouraging diversity at the workplace have improved performance and creativity. For companies, gender equality is an important factor in terms of their capacity to innovate, as well as their attractiveness and competitiveness. But women empowerment works two ways: it is a responsibility of both the employer to create an opportunity but also the employee to embrace the opportunity given.

To further support gender equality, EuroCham Myanmar is pleased to have signed a Memorandum of Understanding (MoU) with the BCGE. The aim of the MoU is to develop further collaboration between the two organisations within the scopes of their mandates and spheres of competences. The BCGE is one of EuroCham Myanmar's important partners for promoting dialogue on gender equality practices in the workplace, under the framework of the EMRBI. Following the Breakfast Talk, the two organisations will be organising more events together, signalling the importance of making gender equality and participation of women at the workplace central to their operations.

WHITEBOOK 2020 | FOREWORD: EMRBI

Potential Gains and Recommendation:

The Breakfast Talk discussions raised the following points:

- The government should support research initiatives that will help build a strong local evidence-base for how workplace gender equality impacts businesses, which will encourage more companies to implement practices for sustainable development.
- As the current legislation does not refer to workplace gender equality directly, it leads to a lack of awareness, both among companies and employees. The enforcement of national regulations—such as paternity leave under Social Security Law 2012, childcare support, entitled leaves under the Leave and Holiday Act, and Shop and Establishment Law 2016 for overtime payment—is still weak and rarely applied.
- The government could provide fiscal or tax break incentives to businesses that are taking on workplace gender equality initiatives.
- By promoting more women within state bodies, the government could take the lead on gender equality. Leading by example is key. The focal ministries that oversee gender equality activities in the country include: the Ministry of Social Welfare, Relief and Resettlement (focal ministry for gender equality and women's economic participation), the Ministry of Labour, Immigration and Population (MOLIP) (focal ministry for labour laws and regulation), the Ministry of Investment and Foreign Economic Relations (MIFER) (focal ministry for the SDGs).
- Committed companies should communicate more about their business case and share their best practices, including why and how it helped them grow their business.

Talk on Business and Biodiversity: How to achieve the SDGs

One of the EMRBI's objectives is to follow and echo the United Nations World Environment Day each year, translating global issues into the context of Myanmar. The 2019 UN World Environment Day focused on tackling air pollution, calling on governments, industry, communities and individuals to take action to explore renewable energy and green technologies and improve air quality in cities and regions across the world. This theme was very relevant to Myanmar, as an estimated 45,000 premature deaths in the country in 2017 were linked to the effects of air pollution.[1]

In 2020, the UN World Environment Day centres around the theme of 'Biodiversity'. In a country rich in flora and fauna like Myanmar, companies can step up to play a part in biodiversity conservation. The European Union is increasingly looking at the stimulation of green trade, i.e. trade of products under the precondition that the production process involves as little impact on the environment as possible. The EMRBI will follow this theme and engage in further discussion on the role of business in biodiversity conservation in 2020. The protection of biodiversity is a global priority, reflected in the UN Sustainable Development Goals: SDG14: Life Below Water – Conserve and sustainable use the oceans, seas and marine resources and SDG 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.[2]

Companies can have a significant direct or indirect negative impact on biodiversity and natural environment and play a positive role in its conservation. The COVID-19 pandemic is leading to calls to 'build back better'. As the OECD has said "By the economic recovery from the COVID-19 crisis to be durable and resilient, a return to 'business as usual' and environmentally destructive investment patterns and activities must be avoided. Unchecked, global environmental emergencies such as climate change and biodiversity loss could cause social and economic damages far larger than those caused by COVID-19".[3]

1 The World Bank. (2019, June 11). Myanmar Country Environmental Analysis: Air Pollution. Retrieved from: https://www.worldbank.org/en/news/video/2019/06/11/myanmar-country-environmental-analysis-air-pollution

2 Sustainable Development Goals Knowledge Platform. (n.d.). Sustainable Development Goal 15. Retrieved from: https://sustainabledevelopment.un.org/sdg15

3 http://www.oecd.org/coronavirus/policy-responses/building-back-better-a-sustainable-resilient-recovery-after-covid-19-52b869f5/

In 2020, the EMRBI will organise a talk focusing on how to make this transition, and the role that business can play. The World Wild Fund for Nature (WWF) and Fauna and Flora International (FFI) will present their initiatives to support the private sector to tackle issues such as deforestation, wildlife protection and the development of the renewable energy sector in Myanmar.

The private sector will share good practices and the lessons learned. The Ministry of Natural Resources and Environmental Conservation (Department of Forest) will discuss about opportunities for the government to implement recovery sustainable business practices. The Wildlife Conservation Society will share more details about the Myanmar Biodiversity Fund created one year ago. The meeting will be an occasion to better address standards, such as Environmental Impact Assessments (EIAs) and their implementation.

Potential Gains and Recommendation:

- It is recommended that all wildlife markets be immediately shut down, as they promote illicit wildlife trade and endanger Myanmar's rich flora and fauna. Such markets also pose public health risks.

- After overcoming COVID-19, many business owners will focus on their production and economy as business as usual. It is expected that investments in environmentally sustainable practices will not be prioritised and enforcement by the government may be slowed due to economic circumstances. The situation with COVID-19 will create an opportunity for the government to implement recovery sustainable business practices.

- Banks and financial institutions should consider including environmental and social safeguards into their lending policies so that investments are geared towards green and sustainable investment.

- The government should partly capitalise the Myanmar Biodiversity Trust Fund itself, while also seeking private sector contributions.

- The lack of strong legislation in Myanmar with regards to environmental and social protections in sectors with a large environmental footprint should be addressed; in the meantime, committed companies should voluntarily adopt international best practices and introduce independent third-party standards. Examples of such standards include Forest Stewardship Council (FSC), Programme for Endorsement of Forest Certification (PEFC), High Conservation Value (HCV) and Roundtable on Sustainable Palm Oil (RSPO).

- Committed companies should make public statements of intent on the SDGs and national environment policy, whether related to decarbonisation, removal of single-use plastics or staff codes of conduct with respect to use and consumption of illegal wildlife products.

- Committed companies could encourage green volunteerism among their staff, for example taking part in public campaigns during work hour NGOs or providing pro-bono contributions to environmental non-governmental organisations (ENGOs).

Acknowledgements

EuroCham Myanmar Responsible Business Initiative (EMRBI)

BUSINESS CLIMATE

3

INTRODUCTION

Following decades of military rule, Myanmar opened its borders to the rest of the world in 2011. Since then, the State has sought to recover from half a century of isolation by implementing radical reforms to achieve political and economic liberalisation.

The task remains colossal as the government plans to undergo the process of national reconciliation whilst transforming Myanmar into a stable and prosperous nation. Promoting economic growth has been key: reforms have encouraged foreign direct investment (FDI), attempted to fight corruption, and liberalised the agriculture, transport and telecommunication sectors.

The interest of foreign investors grew considerably in 2013 when Myanmar joined the European Union (EU) Generalised Scheme of Preference (GSP) under the 'Everything but Arms' Agreement (EBA). This mechanism granted to national exporters on both sides of the equation full duty-free and quota-free access to the EU single market and Myanmar market for all products with the exception of armaments[1].

At the end of 2015, the National League for Democracy (NLD) won the absolute majority in the parliament and the new government took office in April 2016. The political change marked a turning point for EU-Myanmar economic relations. In June 2016, The Council of the EU and the European Parliament adopted the 'Conclusions on an EU strategy with Myanmar' to lead the country towards more efficient governance and increasing Myanmar's competitiveness[2]. Myanmar's rich natural resources, strategic location, and young and dynamic population are now accessible to the wider world.

Although there was a perceived loss of confidence in Myanmar's market in the last years, mainly due to regulatory delays, a wave of enthusiasm was renewed among foreign stakeholders throughout 2019. According to EuroCham Myanmar's 2019 Business Confidence Survey, 38% of survey respondents said that the local business environment greatly improved or improved over the last 12 months.

This marks a 19% increase from 2018 when 81% of the consulted European companies described the overall business environment as "poor" or "needing improvement". The data from 2019, therefore, shows stronger confidence in Myanmar's market, a positive change after two years of pessimism.

Alongside many investors, EuroCham Myanmar believes in stable recovery region through continuous economic development and increasing cooperation between Myanmar's ethnic minorities and the government. Challenges such as poor healthcare and lack of infrastructure remain important issues to be tackled, however, there is a willingness to improve the socioeconomic structure, exemplified by the government's 2.7 trillion MMK education budget for the 2019/2020 financial year (FY).

In summary, emerging signs of a more economically focused government have begun to appear, with the approval of several high profile and long-awaited laws such as the Condominium Law (2016), the Myanmar Investment Law (2016) and the Myanmar Companies Law (2017). Furthermore, major progress is being made in other sectors, especially in energy, transportation, infrastructure and the insurance sector.

However, 2020 is a pivotal year for Myanmar, as the outcome of the general election, as well as the impacts caused by the sudden spread of Coronavirus (COVID-19) in 2020, will influence both the economic and political environment. EuroCham Myanmar and its members are strongly committed to further improving the country's reform process while strengthening and preserving both the local and foreign business environments.

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2 European Commission. (2019, June 17). Myanmar (Burma). Retrieved from: https://ec.europa.eu/trade/policy/countries-and-regions/countries/myanmar/

WHITEBOOK 2020 | BUSINESS CLIMATE

2010
- USDP declares a wide margin of victory in the general election

2011
- U Thein Sein becomes president of a new civilian government
- Controversial Chinese-backed Myitsone hydroelectric dam cancelled by U Thein Sein administration
- Thousands of political prisoners freed following amnesty
- Laws introduced to allow labour unions and strikes
- Inclusion in European Union's General Scheme of Preferences as part of the "Everything But Arms" agreement

2012
- NLD wins 43 out of 44 possible seats in the by-election
- United States President Barack Obama visits to improve relations
- Visiting European Commission chief Jose Manuel Barroso offers Myanmar more than $100m in development aid

2013
- Four private daily newspapers established for the first time in almost 50 years
- The European Union lifts its remaining trade, economic and individual sanctions
- Telecommunications sector liberalised, foreign providers arrive the following year
- President U Thein Sein makes a state visit to the United States

2014
- US extends certain sanctions, citing the military's continued involvement in the economy and politics
- Government pledges to adopt a federal system

2015
- NLD wins enough seats in parliamentary elections to form a government
- Draft ceasefire is signed between the government and 16 ethnic armed groups
- First phase of Thilawa Special Economic Zone launched

2016
- U Htin Kaw becomes president, Daw Aung San Suu Kyi assumes role of State Counsellor
- US lifts remaining sanctions
- Launch of Yangon Stock Exchange (YSX)
- Yangon Region government suspends construction of high-rise buildings in Yangon for seven months
- Yangon International Airport opens upgraded international terminal

2017
- Crisis intensifies in Northern Rakhine State, northern Shan State and Kachin State
- Government announces change of fiscal year
- Companies Law passed by the Union Parliament

2018
- President U Htin Kyaw resigns, former House of Representatives speaker U Win Myint assumes the position of President
- Talks at the EU to remove Myanmar from the GSP accords due to increasing tensions in northern Rakhine State
- Presentation of the Myanmar Sustainable Development Plan

2019
- Parliament agrees to set up a committee in charge of reforming the country's 2008 Constitution[3]
- Liberalisation of the insurance sector
- Annoucement of new opportunities to extract oil and gas
- Opening up of the wholesale and retail industries to foreign investors

2020
- Launch of the Project Bank to centralise and release infrastructure proposal from Nay Pyi Taw
- Release of the COVID-19 Economic Response Plan (CERP) to tackle the socioeconomic impacts of the virus outbreak
- Opening of the Foreign Liquor imports' market
- Announcement of a thir round of foreign banks licensing in June 2020
- Elections to take place in November 2020

RECENT CHANGES IN THE LEGAL FRAMEWORK

Law / Act	Explanation	Year of Enactment
ASEAN Comprehensive Investment Agreement (ACIA[3])	The ACIA 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
Special Economic Zone Law[4]	The law's main objectives are to encourage industrial investment to increase exports, foreign currency earnings, and employment opportunities. Foreign companies are permitted 100% ownership of entities within the Special Economic Zones (SEZs).	2014
Arbitration Law[5]	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[6]	The law vastly simplifies the process for investment applications and offers several tax breaks, incentives, guarantees, rights and protections for business ventures set up in specially designated zones.	2016
Condominium Law [7]	This 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 [8]	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 that will affect local and international investors, including share transactions, dividends, reduction of initial capital and shareholder authorities.	2017
Consumer Protection Law[9]	The Consumer Protection Law was enacted in March 2019, the law was devised in order to defend consumers' rights and prevent fraud. The law addresses both the public and private sectors and aims to provide the consumer with safe goods and services[10]. The normative will be fully implemented in March 2020.	2019
Insolvency Law [11]	On the 25th of March 2020, the government approved its new Insolvency Law, aiming at starting a modern insolvency structure for stakeholders and entrepreneurs. Its contents embrace the United Nations Commission on International Trade Law (UNCITRAL), striving for more transparency on transnational insolvency issues. The focus of the law is corporate rescue and debt rehabilitation for small and medium enterprises (SMEs).	2020

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WHITEBOOK 2020 | BUSINESS CLIMATE

Law / Act	Explanation	Year of Enactment
New Industrial Zone Law[12]	The new legislation passed on the 26th of May 2020 aims to fight the issue of land speculation while enhancing the environmental governance of over 60 industrial zones nationwide.	2020
Traffic Safety and Vehicle Management Law [13]	The Traffic Safety and Vehicle Management Law was enacted on the 26th of May 2020 aims to make the vehicle registration process more transparent. In this regard, the primary objective is to issue licences only to qualified drivers, thus reducing road accidents.	2020

OVERVIEW OF THE ECONOMY

The first quarter of the 2019/2020 financial year showed Myanmar's economy to be resilient, although the country is still affected by the global slowdown and domestic uncertainties. Furthermore, the ongoing Coronavirus pandemic has affected most sectors in Myanmar, whose economy is heavily dependent on China, where the outbreak is thought to have originated; the Asian Giant accounts for over 30% of Myanmar's imports and exports respectively and the 15% of FDI inflow[14].

From January 2020 to the end of March 2020, Beijing registered a negative growth in China's industrial production for the first time in thirty years[15], and Myanmar has felt the effects. Prior to the spread of COVID-19, the economic growth of Myanmar was expected to reach 6.3% in the 2019/20 financial year and 6.4% in 2020/21. According to the World Bank, the direct impacts of the outbreak on the domestic economic landscape of Myanmar will lead to a collapse in economic growth to 0.5% by the end of the current financial year[16].

However, contrary to many countries worldwide, Myanmar is not expected to experience a negative growth rate; the economy is forecast to recover and reach a growth rate of 7.2% by the 2020/21 financial year, driven by resilient private consumption, a return of investments in infrastructure, and strong exports, mostly typified by Mineral fuels and clothing (accounting respectively for 23% and 21% of total exports, or a trade value of 4.4 and 4 billion USD)[17][18]. According to the World Bank, the entire South-East Asia region is expected to recover its economic growth and reach 8.5% by 2021[19].

Nevertheless, the economic forecasts show a less positive outlook if including the broader Asian region. China excluded, the World Bank expects the East Asia and Pacific (EAP) region's growth to range between 1.3% and -2.9% by the end of the 2019/20 financial year; a considerable recession compared to the previous year, when the regional economy experienced 4.7% growth.

The impact of this recession on the population will be significant. Should the region's economy experience negative growth at the lower end of the predictions, an additional 11 million people are expected to fall below the poverty line by the end of 2020 (earning less than 5.5 USD per day)[20].

12 Liu, J. (2020, June 11). Myanmar to revamp governance of industrial zones under new law. The Myanmar Times. Retrieved from: https://www.mmtimes.com/news/myanmar-revamp-governance-industrial-zones-under-new-law.html
13 EuroCham Myanmar. Government Affairs Weekly Updates (22.5.2020) to (29.5.2020). Retrieved from: https://eurocham-myanmar.org/uploads/e37d1-25-5-2020-to-29-5-2020.pdf
14 World Bank. (April 2020). Findings and Recommendations. East Asia and Pacific Economic Update, April 2020: East Asia and Pacific in the time of COVID-19. World Bank Group.
15 Textor, C. (2020, June 15). Added value change of industrial production in major sectors during COVID-19 pandemic in China in 2020. Retrieved from: https://www.statista.com/statistics/1109575/china-monthly-industrial-production-change-by-sector/
16 World Bank. (June 2020). Myanmar Economic Monitor June 2020: Myanmar in the Time of COVID-19. Retrieved from: https://www.worldbank.org/en/country/myanmar/publication/myanmar-economic-monitor-june-2020-myanmar-in-the-time-of-covid-19
17 Workman, D. (2020, June 2). Myanmar's Top 10 Exports. Retrieved from: http://www.worldstopexports.com/myanmars-top-10-exports/
18 World Bank. (June 2020). Myanmar Economic Monitor June 2020: Myanmar in the Time of COVID-19. Retrieved from: https://www.worldbank.org/en/country/myanmar/publication/myanmar-economic-monitor-june-2020-myanmar-in-the-time-of-covid-19
19 EuroCham Myanmar. (May 2020). Foreign Chambers of Commerce in Myanmar together with World Bank-Impact of Covid-19. Webinar. Retrieved from: https://eurocham-myanmar.org/event/209/Foreign-Chambers-of-Commerce-in-Myanmar-together-with-World-Bank-Impact-of-COVID-19
20 World Bank. (April 2020). Findings and Recommendations. East Asia and Pacific Economic Update, April 2020: East Asia and Pacific in the time of COVID-19. World Bank Group.

From a healthcare perspective, Myanmar, as well the majority of ASEAN Member States, has been managing to contain the viral outbreak. As of the beginning of July 2020, there were 299 confirmed cases of Coronavirus infections in the country, including 6 deaths and 221 recoveries[21].

The World Health Organisation (WHO) estimated that there were roughly less than 7 nurses and 10 doctors per 10,000 inhabitants in 2018, and around 600 critical care beds, i.e. 1 bed per 100,000 inhabitants as of the beginning of 2020. The national authorities took action to respond to the emergency, establishing 2000 Intensive Care Unit (ICU) beds at the Phaunggyi Civil Service Training Institute in the outskirt of Yangon. Furthermore, from the start of the outbreak, the public healthcare system has received medical equipment from volunteer organisations and the private healthcare sector[22].

In an effort to contain the spread of the virus in Myanmar, the government implemented strict measures, starting with imposing restrictions on travel and trade in March 2020. The restrictions had a direct economic impact, in particular on the tourism sector, garment sector and agriculture exports. The Myanmar tourism sector is the source of employment for 27% of urban workers and accounts for 16% of gross domestic product (GDP). Agriculture is the country's main sector of employment; it employs roughly 80% of the country's rural labour force[23].

Garment is also a leading industry for Myanmar's economy, accounting for 13% of total exports and employing hundreds of thousands of female workers[24]. The lockdown measures hampered direct access to labour and therefore crushed Myanmar's industrial production, which normally accounts for 36% of the economy. Industrial production is now forecast to experience a negative growth of -0.2% in 2019/20 financial year[25].

In this context, the economic dependency of Myanmar on China is critical; the closure of the land-based frontier has ceased the supply of industrial inputs from China to Myanmar, while both domestic and international demand has remained low[26]. Moreover, in 2018/19, 20% of tourists were Chinese, while roughly half of Myanmar agriculture exports (around 10% or almost 2% of GDP) were sold to China[27]. Such a level of Chinese tourism in Myanmar is not expected to return until 2023.

Since 2011, Myanmar has been one of the fastest-growing economies in Southeast Asia, thanks in no small part to the vast political and economic reforms undertaken by its government. According to the Asian Development Bank, the country's GDP growth averaged at 7.5% between 2012 and 2016[28].

This growth momentum was triggered by the massive influx of investments following the country's opening to the international community. In 2018, the ongoing liberalisation of the country's economy enabled foreign investors to get access to national banking, retail, wholesale and education sectors. Although other reforms need to be initiated, the current changes indicate that the government is willing to take the path to sustainable development.

Most foreign investors are attracted by the country's strategic geographic position, the abundance of natural resources and an attractive labour market. Myanmar's young population also indicates good business opportunities due to expected income and consumption growth between 2015 and 2025.

21 Worldometer. Myanmar. Retrieved from: https://www.worldometers.info/coronavirus/country/myanmar/
22 Kyaw San Wai. (2020, May 1). Myanmar and COVID-19. The Diplomat. Retrieved from: https://thediplomat.com/2020/05/myanmar-and-covid-19/
23 World Bank. (April 2020). Findings and Recommendations. East Asia and Pacific Economic Update, April 2020: East Asia and Pacific in the time of COVID-19. World Bank Group.
24 Nyein Nyein. (2020, April 9). EU Pledges Support for Women Garment Factory Workers in Myanmar. The Irrawaddy. Retrieved from: https://www.irrawaddy.com/specials/myanmar-covid-19/eu-pledges-support-for-women-garment-factory-workers-in-myanmar.html
25 World Bank. (June 2020). Myanmar Economic Monitor June 2020: Myanmar in the Time of COVID-19. Retrieved from: https://www.worldbank.org/en/country/myanmar/publication/myanmar-economic-monitor-june-2020-myanmar-in-the-time-of-covid-19
26 World Bank. (June 2020). Myanmar Economic Monitor June 2020: Myanmar in the Time of COVID-19. Retrieved from: https://www.worldbank.org/en/country/myanmar/publication/myanmar-economic-monitor-june-2020-myanmar-in-the-time-of-covid-19
27 World Bank. (April 2020). Findings and Recommendations. East Asia and Pacific Economic Update, April 2020: East Asia and Pacific in the time of COVID-19. World Bank Group.
28 Knoema World Data Atlas. (2018). Myanmar - Gross domestic product in constant prices growth rate. Retrieved from: https://knoema.com/atlas/Myanmar/Real-GDP-growth

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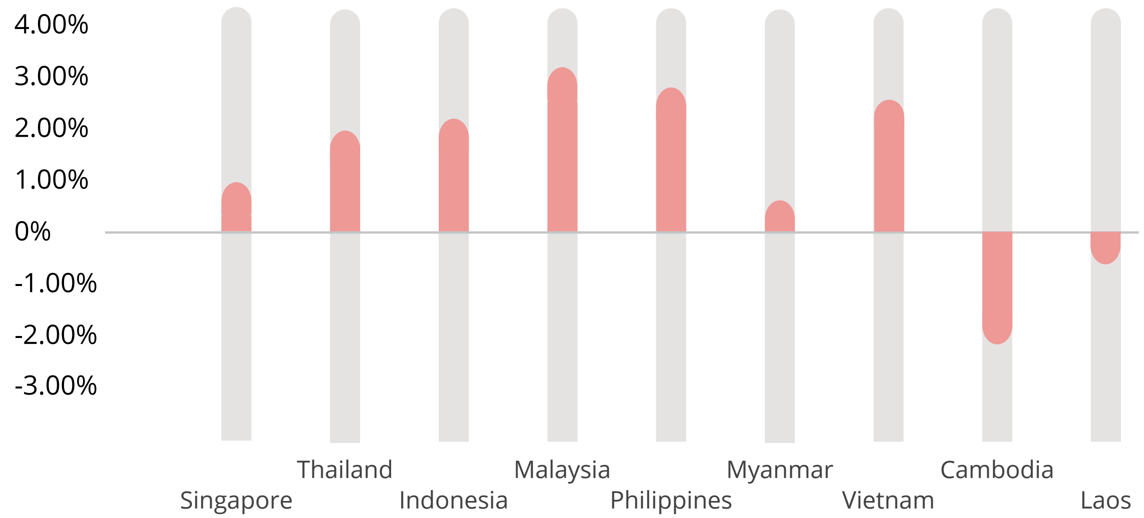
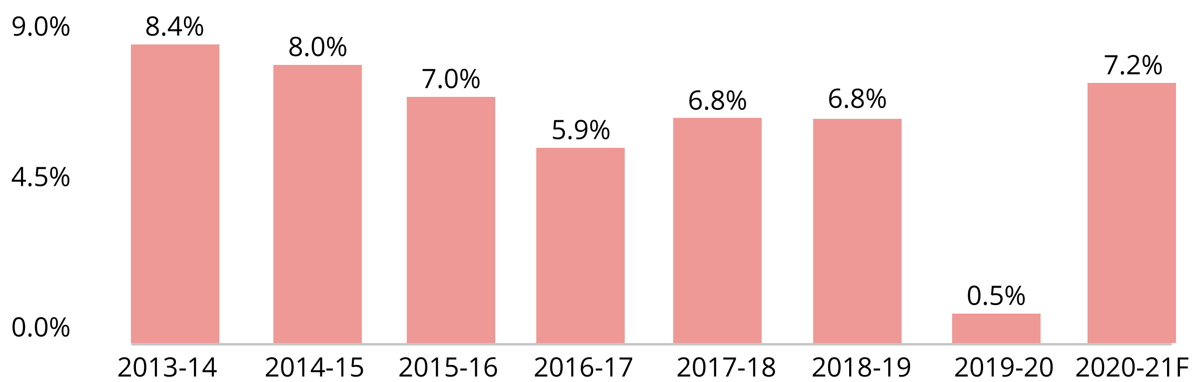
GDP ASEAN Countries growth forecast in 2020



Real GDP growth (Source: World Bank: COVID-19 to Impact Lao PDR, Malaysia, Cambodia, Vietnam, Indonesia, Thailand, Philippines Growth, Debt in 2020: New World Bank Report, May/June 2020)

Myanmar GDP Growth (Annual%) from 2013 to 2020F



Real GDP growth (Source: World Bank: Myanmar Economic Monitor June 2020: Myanmar in the Time of COVID-19)

Prior to the outbreak of COVID-19, Myanmar's macroeconomic environment was impacted by several other factors. Firstly, between April and September 2018 the Myanmar Kyat (MMK) encountered an 18% depreciation against the US Dollar (USD).

This period of volatility ended in October 2018 with a stabilisation rate of 1550 MMK to 1 USD. The devaluation of the local currency increased the inflation rate that grew from 5.5% in 2017 to 8.8% in 2018. Subsequently, import costs for key products such as fuel, imported foodstuffs, electronics and machinery increased. This caused a reduction in household purchasing power, leading to a consumer behavioural change[29].

Inflation decreased to 6.8% in FY2019 after reaching its highest peak of 10.9% in July 2019[30], whereas it is forecast to moderate again to 7.5% in 2020 due to a sharp decline in global fuel prices and the resulting scaling of the electricity price, as direct consequences of COVID-19's impacts on the global economy[31]. In addition, stakeholders might expect Myanmar's account deficit to increase from 3.3% to 3.8% in 2020, considering that export revenues have slowed down while import income has risen[32].

29 World Bank. (December 2018). Foreign trade investment and exchange rate. Myanmar Economic Monitor: Navigating Risks. World Bank Group.
30 World Bank. (December 2019). Executive Summary, Recent developments. Myanmar Economic Monitor: Resilience Amidst Risk. World Bank Group.
31 World Bank. (April 2020). Findings and Recommendations. East Asia and Pacific Economic Update, April 2020: East Asia and Pacific in the time of COVID-19. World Bank Group.
32 Ibid.

Furthermore, Myanmar's budget deficit will likely increase due to the expenditures related to the COVID-19 Economic Relief Plan (CERP), the governmental program aimed at flattening both the pandemic and the recession curves, while keeping trade open and boosting international cooperation[33]. In this regard, the main institutional bodies have been focusing on reforming the tax system, adjusting the monetary policy and injecting capital into the most affected businesses.

These extraordinary fiscal measures should only focus on supporting the public health response and social safeguarding. The World Bank Group has been advocating for debt relief for Myanmar, acknowledging that the scarce resources are needed for tackling the impact of the crisis[34].

The public spending to execute all CERP's key goals will amount to nearly 2 billion USD in the short-term, mainly to support the huge losses of national small and medium businesses. On the 21st of May 2020, the government declared that it will borrow 1.3 trillion MMK (approximately 1 billion USD) to rectify the national budget deficit[35]. In this regard, the International community has been mobilising to contain Myanmar's fiscal burden.

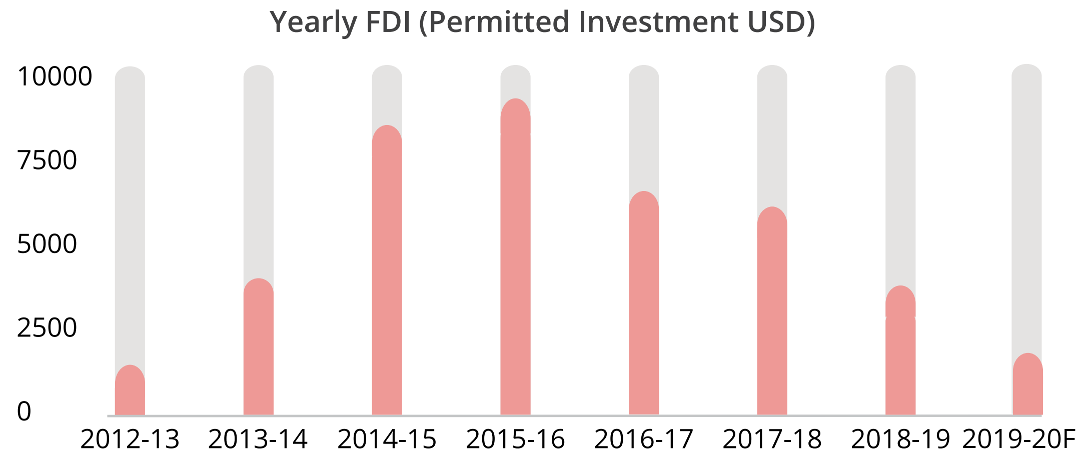
The World Bank is planning to allocate 350 million USD in support of the national relief plan's operations: 50 million USD have already been allocated to tackling the COVID-19 emergency as part of the Global Response Plan, an International Development Assistance (IDA) loan is expected to reinforce the National Food and Agriculture Project, while another 100 million USD will be allocated to the Essential Health Service Access Project (5 million USD have been allotted so far[36]).

Moreover, on the 26th of May 2020, Assembly of the Union (Pyidaungsu Hluttaw) approved a motion to seek a loan of 700 million USD from the International Monetary Fund (IMF) aimed at alleviating the expenditure needed for economic recovery[37]. In April 2020, The European Union also donated 5 million EUR in support of Myanmar garment workers who lost their jobs or did not get paid following the closure of tens factories nationwide[38]. The fund is part of a broader financial commitment from the EU to the region; Brussels has actually mobilised over 350 million EUR to assist ASEAN countries in the fight against COVID-19[39].

Regardless of the direct economic impact of COVID-19, the current slow pace of GDP growth is positively correlated with the decrease in FDI, through which the government mostly finance the national account deficit. The growth of private foreign and domestic investments remained moderate between 2018 and 2019. The growth of FDI flows also decreased in 2018 as the Directorate of Investment and Company Administration (DICA) approved fewer FDI projects in 2017 (a 14% decrease compared to 2016). The viral outbreak, however, hindering global demand, will further impact Myanmar mainly through trade and FDI inflow level[40].

However, many foreign investors also point to limited skilled labour, an uncertain regulatory environment and weak reform momentum as notable factors slowing the GDP growth rate. Nevertheless, Myanmar climbed six positions from 171st to 165th (out of 190 countries) in the World Bank's Ease of Doing Business Index 2019. Despite this, the amount of FDI remains lower than in the past 5 years; many investors still fear the impact of ongoing ethnic conflict, a fact exemplified by the EU threatening to remove Myanmar from its GSP due to the Rakhine crisis.

33 Ibid.
34 Ibid.
35 Chan Mya Htwe. (2020, May 22). Govt to borrow K 1.3 trillion from Central Bank to plug deficit. Myanmar Times. Retrieved from: http://www.thaibizmyanmar.com/th/news/detail.php?ID=3157
36 Thiha Ko Ko. (2020, May 11). Govt expects COVID-19 response plan to cost $2 billion. Myanmar Times. Retrieved from: https://www.mmtimes.com/news/government-expects-2-billion-international-aid-covid-19-response-plan.html
37 Nan Lwin. (2020, May 26). Myanmar Parliament Approves $700-Million IMF Loan for COVID-19 Spending. The Irrawaddy. Retrieved from: https://www.irrawaddy.com/specials/myanmar-covid-19/myanmar-parliament-approves-700-million-imf-loan-covid-19-spending.html
38 John Liu & Chan Mya Htwe. (2020, April 9). EU provides €5 million emergency cash for Myanmar garment workers. Myanmar Times. Retrieved from: https://www.mmtimes.com/news/eu-provides-eu5-million-emergency-cash-myanmar-garment-workers.html
39 Delegation of the European Union to Myanmar. (2020, May 9). Press release: EU Ambassador marks Europe Day in Myanmar with donation to health workers. Retrieved from: https://eeas.europa.eu/delegations/myanmar-burma/78957/eu-ambassador-marks-europe-day-myanmar-donation-health-workers_en
40 World Bank. (April 2020). Findings and Recommendations. East Asia and Pacific Economic Update, April 2020: East Asia and Pacific in the time of COVID-19. World Bank Group.



Yearly approved amount of foreign investment (Source: DICA, April 2020)

However, the COVID-19 outbreak has cast doubt on the trajectory of actual FDI inflows, as the viability of planned investments will depend on successful efforts to contain the virus and mitigate Myanmar-specific country risks, as well as the uncertain evolution of global markets.

As of the 25th of June 2020, Myanmar attracted approximately 3.2 billion USD in FDI during FY2019/2020, an increase of 33% compared to the same period of the previous FY. Nevertheless, this value is still lower than two years ago, when the country collected a total of 4.2 billion USD in FDI.

It ought to be acknowledged that the COVID-19 outbreak might divert the predicted flow of FDI, since the effective viability of investments will severely depend on the strictness of the Myanmar government's measures to mitigate the crisis[41]. The economies that are currently investing most in Myanmar are Singapore (27%), China (25%), Thailand (14%), Hong Kong (11%) and the EU (9%)[42 43].

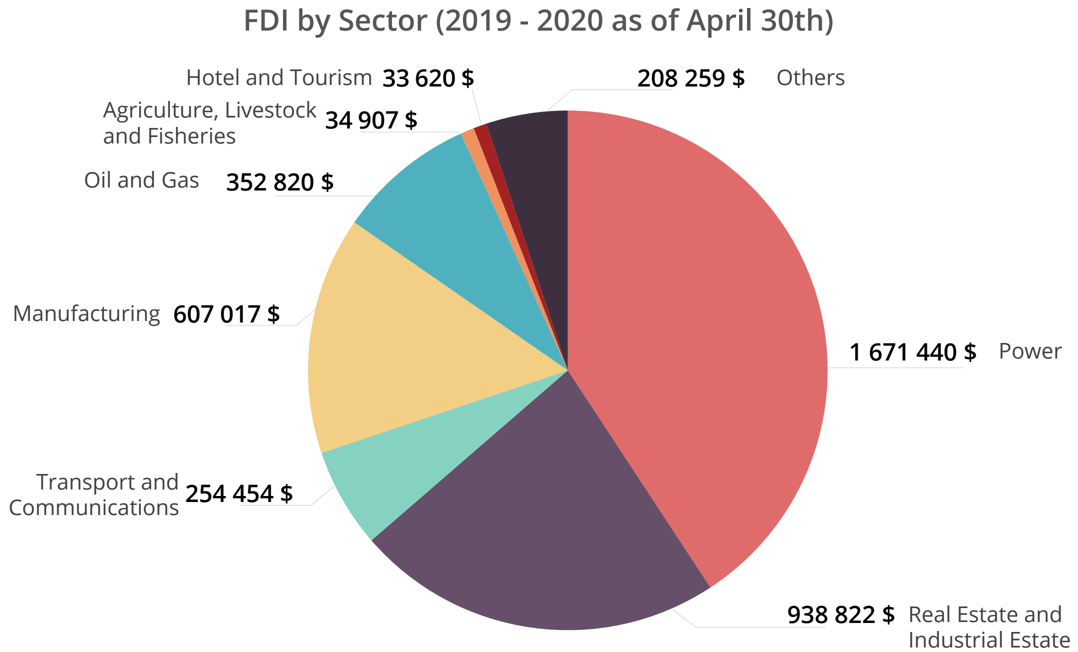
However, COVID-19 implications have revealed a different figure. In the first four months of FY2019/2020, the major investors in Myanmar were Hong Kong (55%), Singapore (33.5%) and China (3%)[44]. The five largest sectors attracting FDI are power, real estate, manufacturing, oil and gas, transportations and communications.

They account for over 80% of the FDI inflow between 2015 and 2019. Several key communications and oil and gas projects contributed to the large approval totals in 2014-15 and 2015-16. Prior to COVID-19, the growth of the services sector, which is mainly driven by FDI in tourism, was expected to accelerate to 9% over the next year. As expected, the inflow of FDI in tourism shrank about a third compared to 2019. On the other hand, agriculture will remain stagnant even in 2020[45], and the overall percentage of FDI that went into both power and oil and gas respectively decreased from around 33% in 2015 to around 27% in 2020.

However, this contraction paved the way for a substantial percentage increase in other key market sectors, which are escaping relatively unscathed from the economic crisis, namely manufacturing (from 10.5% of FDI in 2015 to 14% in 2020, accounting for 16% of total FDI in the first seven months of FY2019/20), real estate (from 4.2% in 2015 to 8% in 2019, accounting for 27% of total FDI in the first

41 World Bank. (June 2020). FDI commitments increased in FY2019/20 amidst rising uncertainties in actual inflows. Myanmar Economic Monitor June 2020: Myanmar in the Time of COVID-19. Retrieved from: https://www.worldbank.org/en/country/myanmar/publication/myanmar-economic-monitor-june-2020-myanmar-in-the-time-of-covid-19
42 DICA. (December 2019). Foreign Direct Investment Yearly Approved Amount by Country. Retrieved from: https://www.dica.gov.mm/en/topic/foreign-investment-country
43 It should be kept in mind that many European companies operating in Southeast Asia have their headquarters in Singapore, therefore a considerable amount of European FDI is coming directly from Singapore. As a consequence, the overall amount of EU FDI flowing in Myanmar is realistically more than 5%.
44 World Bank. (June 2020). FDI commitments increased in FY2019/20 amidst rising uncertainties in actual inflows. Myanmar Economic Monitor June 2020: Myanmar in the Time of COVID-19. Retrieved from: https://www.worldbank.org/en/country/myanmar/publication/myanmar-economic-monitor-june-2020-myanmar-in-the-time-of-covid-19
45 Asian Development Bank. (2019). "Economics Prospects" in Myanmar, Key Indicators. Asian Development Bank.
46 This refers to the yearly approved amount of foreign investment according to DICA, April 2020.
47 World Bank. (June 2020). FDI commitments increased in FY2019/20 amidst rising uncertainties in actual inflows. Myanmar Economic Monitor June 2020: Myanmar in the Time of COVID-19. Retrieved from: https://www.worldbank.org/en/country/myanmar/publication/myanmar-economic-monitor-june-2020-myanmar-in-the-time-of-covid-19

seven months of FY2019/20) and transport and communication (from 8% in 2015 to 15% in 2020). However, because of COVID-19, the overall amount of FDI that went into the tourism sector remained stagnant at approximately 3.5%, from 2015 to 2020[46 47].



Share of permitted FDI by sector (Source: DICA, 31st of May 2020)

Despite issues, the ongoing implementation of the Myanmar Companies Law and the liberalisation of the service, retail and wholesale sectors have maintained strong interest from both foreign and domestic investors, though many challenges to creating a stable and attractive business climate remain.

Throughout 2020, the government is continuing the reform process while enforcing measures already taken. To create a sustainable and stable business environment, national reconciliation is paramount. Improving the business climate will also require improving human capital through investment in health and education. Action on these issues will be closely observed by current and future investors.

SIGNIFICANT ECONOMIC REFORMS

> 2018

Liberalisation of the Education Sector

In April 2018 the Ministry of Commerce issued a notification allowing full foreign capital investments in the private education sector. The measure is designed to encourage foreign investors and education providers to respond to Myanmar's increasing demand for quality education.[48]

Liberalisation of the Retail and Wholesale Sector

A directive issued in May 2018 by the Ministry of Commerce allows wholly foreign-owned companies and joint ventures between foreign and local entities to carry out retail and wholesale businesses. Previously, these could only be operated by local companies and joint ventures and covered only a few select industries. This reform will grant local consumers better access to technology and quality products. However, some restrictions will remain in order to protect the local small retail trade; foreign investments in firms operating mini-markets, convenience stores and small-scale retailers will remain limited.[49]

48 PwC. 2018. Myanmar Business Guide. Retrieved from: https://www.pwc.com/mm/en/publications/assets/myanmar-business-guide.pdf
49 Thiha Ko Ko & Chau T. (2018, May 14). Myanmar opens up for foreign retailers and wholesalers. The Myanmar Times. Retrieved from: https://www.mmtimes.com/news/myanmar-opens-foreign-retailers-and-wholesalers.html

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The Myanmar Credit Bureau Limited

In May 2018, the Central Bank of Myanmar issued a license to the Myanmar Credit Bureau Limited (MCBL). The country's first credit bureau, it was created as a joint venture with a Singaporean credit bureau. The MCBL's primary task is to collect information on borrowers in order to establish their debt profile. This process will help lenders improve their risk assessment procedures by allowing them to better evaluate the credit-worthiness of borrowers. Thanks to the credit bureau, small and medium enterprises (SMEs) without collateral will also be able to obtain financial services. [50]

Liberalisation of the Service Sector

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

The Myanmar Sustainable Development Plan

In August 2018, the Ministry of Planning and Finance (MOPF) released the Myanmar Sustainable Development Plan (MSDP). The initiative is designed to connect and align the country's policies and institutions in order to find ways to attain economic growth. This plan targets five priorities: achievement of national peace and reconciliation; pursuit of economic stability; job creation and development of the private sector; improvement of access to education and healthcare; and natural resource management and environmental protection.

The Myanmar Companies Law

The Myanmar Companies Law was brought into effect in August 2018, replacing the 1914 Companies Act. This new law greatly contributes to the opening of the country to foreign investors. One of its most important reforms allows foreign entities and individuals up to 35% ownership in local companies.
Myanmar Companies Registration Online (MyCO).

In August 2018, DICA launched MyCO, an online registration platform. It is required under the new Companies Law that all 50,000 local and 7,000[51] foreign companies listed in Myanmar re-register via the website or by paper. Unlike traditional paperwork, online registration is free and always accessible. In the long term, the use of MyCO will eventually replace manual re-registration. This system also makes general information (such as the type of company and its registration date) publicly accessible.

The Myanmar Investment Promotion Plan

In October 2018, the Myanmar Investment Commission (MIC) launched the Myanmar Investment Promotion Plan (MIPP). [52] This aims to attract over 200 billion USD in investments from responsible and quality businesses over the next 20 years, and to make Myanmar a middle-income country by 2030 by establishing fair and transparent investment systems.

During the Invest Myanmar Summit 2019, the State Counsellor declared the implementation of the MIPP as one of the government's top priorities[53]. One of the first steps of this plan is the establishment of the Land Bank to resolve land usage matters by locating sites available for industrial activity and focusing on their development.

50 Thiha Ko Ko. (2018, May 22). Central Bank issues license to Myanmar Credit Bureau. The Myanmar Times. Retrieved from: https://www.mmtimes.com/news/central-bank-issues-license-myanmar-credit-bureau.html
51 Chau, T. (2018, June 25). All companies need to re-register starting from August 1. Myanmar Times. Retrieved from: https://www.mmtimes.com/news/all-companies-need-re-register-starting-august-1.html
52 DICA. (2018, October 19). The launch of the Myanmar Investment Promotion Plan (MIPP) to attract more than US$ 200 billion in 20 years. Retrieved from: https://www.dica.gov.mm/en/news/launch-myanmar-investment-promotion-plan-mipp-attract-more-us-200-billion-20-years
53 Nan Lwin. (2019, January 15). 120 Projects Worth $3B to Showcase at Invest Myanmar Summit 2019. The Irrawaddy. Retrieved from: https://www.irrawaddy.com/business/120-projects-worth-3b-showcase-invest-myanmar-summit-2019-2.html

The Project Bank

In February 2020, the Ministry of Planning, Finance and Industry (MOPFI) launched the online Project Bank, a centralised and publicly accessible database of key projects that will help the effective implementation of the MSDP's 251 strategic action plan points.

The Project Bank will also align the development objectives engaged by various policies and institutions and establish a framework for public-private partnerships. It will give private investors details they need to make informed decisions and to make propositions relevant to the MSDP.

Each project will be pre-screened by DICA, the Environmental Conservation Department and relevant ministries in order to identify possible social and environmental issues. However, investors are currently requesting more details, as effective implementation of the project remains the real challenge. [54]

The Banking Sector

In November 2018, a directive issued by the Central Bank of Myanmar allowed 13 overseas licensed banks to lend to domestic businesses in local and foreign currencies. Before this reform, non-local banks could grant funds only to foreign clients in foreign currency[55]. In February 2019, the Central Bank of Myanmar allowed local and foreign banks to charge up to 16% interest on loans without collateral. This directive will contribute to expanding the financial sector's operational base, as foreign lenders will be able to make larger investments.

The Ministry of Investment and Foreign Economic Relations (MIFER) and the Ministry of Planning, Finance and Industry (MOPFI)

The MIFER was established in November 2018 and its mission is to promote Myanmar as an attractive investment destination. It aims to simplify the investment process by making it more rapid and less costly[56]. Foreign businesses are now also supported by the MOPFI, which took its mandate in 2019, replacing the former MOPF.

> 2019-2020

The Insurance Sector

Myanmar has the lowest rate of insurance penetration in the ASEAN region (for reference, life insurance represents 0.1% of GDP)[57]. However, economic growth has created opportunities for foreign firms active in the sector. The national insurance market was previously open exclusively to local and state-owned companies[58], but in January 2019, the MOPFI issued a statement authorising overseas life and non-life insurers to operate by forming joint ventures with local firms. Currently, five foreign life insurance providers have been granted a license that allows them to operate independently.

Various foreign insurers from 14 countries with 31 representative offices in Myanmar were previously waiting for the removal of all the restrictions to the sector. The slow pace of the liberalisation process caused Samsung Life Insurance to exit the Myanmar market in January 2019. Local firms have been active since they were granted license to operate six years ago.

However, many insurers believe that foreign competition will help the local industry provide better and more fairly priced products and services. The arrival of these companies will also bring the funds necessary to develop the government bond market. Indeed, 30% of the capital required to obtain a license will be used to finance these bonds.

54 Ministry of Planning, Finance and Industry. (2018, October 19). P&F Ministry clarifies role of Project Bank in MSDP. Retrieved from: https://www.myanmar.gov.mm/en/news-media/news/latest-news/-/asset_publisher/idasset354/content/p-f-ministry-clarifies-role-of-project-bank-in-ms-1
55 Htin Lynn Aung. (2019, January 3). Banking Sector to strengthen, support economy in 2019. The Myanmar Times. Retrieved from: https://www.mmtimes.com/news/banking-sector-strengthen-support-economy-2019-experts.html
56 Oxford Business Group. (2019, February 21). Creation of new ministry part of Myanmar's plan to incentivise FDI. The Myanmar Times. Retrieved from: https://www.mmtimes.com/news/creation-new-ministry-part-myanmars-plan-incentivise-fdi.html
57 Oxford Business Group. (n.d.). Insurance companies in Myanmar prepare for opening of local market. Retrieved from: https://oxfordbusinessgroup.com/overview/poised-expansion-insurers-prepare-opening-market
58 Republic of the Union of Myanmar Ministry of Planning and Finance (2019). Announcement No. (1/2019). Retrieved from: https://www.mopf.gov.mm/sites/default/files/upload_pdf/2019/01/Announcement%20E_0.pdf

Most recent rounds of Bidding for Oil and Gas Blocks

In August 2018, the Ministry of Electricity and Energy (MOEE) announced new bidding rounds for 13 offshore and 18 onshore oil and gas blocks. The ministry planned to call for bids during the first and second quarters of 2019. This invitation to international tenders originated from the state-owned Myanmar Oil and Gas Enterprise. The previous initiative was launched in 2014.

In 2018, there were 53 onshore oil and gas blocks listed in Myanmar, 25 of which were operated by foreign companies in collaboration with the government. Some 51 offshore blocks were also counted, of which 38 are operated by overseas companies[59]. According to the MOEE, the last national government's call for bidding attracted foreign companies to explore 27 onshore blocks and 38 offshore blocks.

The Consumer Protection Law

In October 2018, the Ministry of Commerce announced an amendment to the 2014 Consumer Protection Law. This amendment aims to guarantee consumer safety by requesting that labels be affixed on determined categories of products available in the local market.

These labels must mention the product's name, type, size, quantity and composition, all in the Myanmar language. Any violation will be met with sanctions ranging from six months in prison to a 5 million to 200 million MMK fine. Initially, the changes were meant to be implemented in the six months following the approbation of the law; however, concerns arose among foreign importers due to the logistic and technical challenges it posed and thus there was a delay in implementation.

One issue was that the supply of various imported goods (such as high-end medicines) would have been jeopardised. Following extensive lobbying led by EuroCham Myanmar with the support of the American and British Chambers of Commerce, the Lower House of the Parliament (Pyithu Hluttaw) approved an amendment to the Consumer Protection Law in February 2019. This amendment gave companies a one-year window after the enactment of the law to ensure their products were in compliance. The new law was fully implemented in March 2020.

Importation of Foreign Liquors

On the 25th of May 2020, the Ministry of Commerce (MOC) released a Notification regarding import restrictions. As a result, foreign liquors are no longer included in the list of prohibited items for importation, resulting in an opening of the market.

The authority issued the official document named 'Guidelines for the importation of Foreign Liquor', setting out legislative framework that guarantees foreign spirits with cost, insurance and freight (CIF) value equal to or above 8 USD to enter national borders through ports and airports. In the past four years, only hotels and duty-free outlets could sell imported spirits and beer. Although the ban was imposed by the Military government in 1995, U Thein Sein's cabinet allowed import of foreign wines from 2015.[60]

OPPORTUNITIES FOR INVESTORS

Myanmar's heterogeneous market continues to attract investors despite challenges. Indeed, the country needs to improve or develop infrastructures to effectively harness these opportunities and adequately answer its citizens' needs. European companies can help the country to achieve sustainable development and prosperity with their knowhow and expertise.

Natural Resources and Energy

Myanmar possesses abundant natural gas and fuel resources, but this rich resource potential is still underdeveloped due to the lack of infrastructure and exploitation facilities. In 2019, the Ministry

59 Thiha Ko Ko. (2019, February 24). New round of oil and gas exploration bids to be called soon. Myanmar Times. Retrieved from: (https://www.mmtimes.com/news/new-round-oil-and-gas-exploration-bids-be-called-soon.html).
60 Zeyar Hein. (2020, May 25). Commerce ministry issues foreign liquor import guidelines in Myanmar. Myanmar Times. Retrieved from: https://www.mmtimes.com/news/commerce-ministry-issues-foreign-liquor-import-guidelines-myanmar.html

of Electricity and Energy announced that 15 onshore and 18 offshore blocks would be opened for bidding. Currently, foreign firms are only allowed to operate the downstream market, while upstream production is monopolised by local and state-owned companies. Regarding natural gas, the MOEE has established liquefied natural gas import schemes for the short term. These imports will tackle energy shortages until local gas is available.[61]

Electricity supplies also suffer from the same lack of infrastructure. At the end of 2019, the MOEE revealed that 50% of the overall population had access to electricity, reporting an improvement on 2018 (43%) and 2017 (37%). Yangon alone accounts for 42% of total national electricity consumption. The primary sources of electricity are hydropower (57%), natural gas (36%), coal (6.7%) and non-hydropower renewables (0.3%)[62]. Meanwhile, 90% of the energy produced by hydroelectric dams built in Myanmar by Chinese and Thai firms are channelled to these two countries. [63]

At the end of 2019, the government acknowledged the need to strengthen the national power transmission networks in 2020 and increase the overall electric generation at 4200 MW so as to meet rising demand and consumption[64]. The National Electrification Plan supports this aim with projected universal access to energy by 2030 and a new bidding round announced by the MOEE. The four national major hydroelectricity projects, which were announced in 2018, will follow the implementation phase throughout 2020.[65]

Strategic Location

Myanmar has a strong export potential due to its location in Southeast Asia with borders with India and China. It has the possibility of becoming a regional hub, capable of reaching 40% of the world's population. Myanmar is the bridge between India and China, such a strategic position allows the country to access a vast catchment area; moreover, Myanmar borders with Thailand, Laos, Bangladesh, the advantageous geographical features enables the country to play a crucial economic role also within ASEAN decision-making process. However, large investments are required to develop the land routes and port infrastructure to reach this potential.

Attractive Labour Market

75% of the population is of working age, a considerable incentive for many companies setting up in Myanmar. This condition is mostly favourable for manufacturing, which remains the sector with the highest growth rate in the country. However, most investors still point out a shortage of qualified and skilled labour outside Yangon.

Growing Consumer class

Increasing incomes have led the rise of a new middle class and a growth in private consumption. The latter accounts for 50% of Myanmar's GDP and creates opportunities for investors from manufacturing and light industrial sectors. Due to inflation, consumer preferences have shifted towards the purchase of higher quality goods. [66]

Telecommunications

After the liberalisation of the sector in 2014, the authorities planned to gradually provide inhabitants of urban and rural areas with better access to telecom services. This will require the extension of the fibre-optic cable network and the further installation of telecommunication towers. This infrastructure

61 Business Information Centre, Royal Thai Embassy. (2018). Myanmar Economy in 2018. Retrieved from: http://www.thaibizmyanmar.com/docs/Non-Paper%20on%20Myanmar%20Economic%20in%202018.pdf
62 Oxford Business Group. (2020). Energy, In reserve. The Report, Myanmar 2020.
63 Stokke K., Vakulchuk R. & Overland I. (2018). Myanmar: A Political Economy Analysis. Oslo: Norwegian Institute of National Affairs. Retrieved from: https://reliefweb.int/sites/reliefweb.int/files/resources/Myanmar_-_A_Political_Economy_Analysis_-_Norwegian_Institute_of_International_Affairs_2018.pdf
64 Ministry of Electricity and Energy. (2019, December 30). Electricity officials discuss uninterrupted power distribution in 2020 summer. Retrieved from: https://www.moee.gov.mm/en/ignite/contentView/1585
65 Win Htut. (2019, November 19). Four hydropower projects to continue implementation in 2019-2020 FY. Eleven Media Group. Retrieved from: https://elevenmyanmar.com/news/four-hydropower-projects-to-continue-implementation-in-2019-2020-fy
66 World Bank. (October 2017). Myanmar Economic Monitor: Capitalizing on Investment Opportunities. Retrieved from: https://www.worldbank.org/en/country/myanmar/publication/myanmar-economic-monitor-october-2017

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will support the Sharing Network Scheme[67], as different operators will have to provide their services via the same cables.

Improving Infrastructure

The government needs to improve the country's underdeveloped infrastructure in order to attract investors and create a prosperous economic climate. This will require considerable international investment and technical expertise.

Connectivity and accessibility need to be improved, as currently there are only 63km^2 of paved roads per 1,000km^2. In order to develop rural, urban and regional transport networks, Myanmar needs new roads, bridges, waterways and an improved railway network. Projects have been submitted to renovate the 300km of highways connecting the outlying areas to Yangon and further to the Greater Mekong region[68].

The planned Yangon Central Railway Station project already began in 2019, while the construction of the Yangon Ring Road has not started yet[69]. Furthermore, the development of the Myanmar-China Economic Corridor (MCEC) will link India to China and cross as part of China's Belt and Road Initiative. [70]

The government is presently preparing the development of new industrial centres. Following the enactment of the Labour Dispute Law in June 2019[71], public-private partnerships related to new industrial and logistics hubs were actively promoted. Nevertheless, the effective provision of said partnerships is still in the process of being enforced.

The new Construction Industry Development Board Law is also being drafted[72]. However, a Special Economic Zone, namely Thilawa, has already been constructed to encourage investments and increase exports. The latest SEZ to date is the Kyaukpyu deep-sea port (in Rakhine State), whose construction is expected to start soon. The SEZ also includes the construction of the Kyaukpyu-Kunming high-speed railway and natural gas pipelines while the transportation hub in Dawei is a separate project. [73]

In January 2019, the Ministry of Construction confirmed the work in progress of four mega projects[74.] After completion, it will create over 33,700 jobs across various sectors including infrastructure, food and wood processing and banking and finance.

Two other projects in Yangon Region will be known as the New Yangon City and the Yangon Smart District located 13 km from the capital's central business district. In Hlegu, Yangon Region, a Korean company and the Department of Housing Development are cooperating to build an Eco Green City. The project should be completed by 2023 and consists of low-cost housing, a transportation terminal and shopping malls. [75]

Digital Innovation

Although the digital sector is still underdeveloped, both the emergence of new payment technologies and greater public awareness may lead to growth in the field in 2020. The main challenge for investors will be to manage developments in e-commerce, e-banking, digital literacy and mobile services for

67 Myanmar Infrastructure Summit. (n.d.). Building an inclusive, integrated and connected Myanmar. Retrieved from: http://www.myanmarinfrastructuresummit.com/
68 Business Information Centre, Royal Thai Embassy. (2018). Myanmar Economy 2018. Retrieved from: http://www.thaibizmyanmar.com/docs/Non-Paper%20on%20Myanmar%20Economic%20in%202018.pdf
69 Chau, T. (2018, February 21). Eight years needed to build Yangon railway station project. The Myanmar Times. Retrieved from: https://www.mmtimes.com/news/eight-years-needed-build-yangon-railway-station-project.html
70 Williams, C. (2019, January 4). Myanmar is set to embrace Xi's Belt and Road Initiative. Retrieved from: https://globalriskinsights.com/2019/01/myanmar-set-embrace-xis-belt-road-initiative/
71 Pyidaungsu Hluttaw. (2019, June 3). Pyidaungsu Hluttaw Law No. 17/2019 – Law Amending the Labour Dispute Settlement Law for the Second Time
72 Soe Min Htike. (2018, December 17). Draft of Construction Industry Development Board completed. Eleven Media Group. Retrieved from: https://elevenmyanmar.com/news/draft-of-construction-industry-development-board-law-completed
73 Reuters (2018, August 2). Myanmar scales back Chinese-backed port project over debt fears. The Guardian. Retrieved from: https://www.theguardian.com/world/2018/aug/02/myanmar-scales-back-chinese-backed-port-project-over-debt-fears
43 Thiha Ko Ko. (2018, May 23). Ministry of Construction commits to four mega projects in 2018. The Myanmar Times. Retrieved from: https://www.mmtimes.com/news/ministry-construction-commits-four-mega-projects-2018.html
75 Global New Light of Myanmar. (2019, May 26). Four mega urban projects under implementation in Yangon and Mandalay. Global New Light of Myanmar. Retrieved from: https://www.globalnewlightofmyanmar.com/four-mega-urban-projects-under-implementation-in-yangon-and-mandalay/

payments of fees and taxes. For instance, banks and start-ups such as Flymya and Inoveller are already offering ticketing services, e-commerce systems and salary transfers online[76].

The Central Bank of Myanmar also aims to launch a framework that could enable consumers to carry out digital payments with QR codes. However, the development of infrastructures and the presence of a transparent legal framework are necessary conditions for any digital policy to work.

In this scenario, Myanmar might have the opportunity to employ the digital potential to increase and support the productivity in rural areas, thus aiming at ease the integration of both youths and women into the job market. Increasing universal access to electricity nationwide is an essential condition for a cashless future. Furthermore, the surge in telecommunications and e-commerce activities despite COVID-19 is testament to the resilience and potential of the information and communications technology (ICT) sector. [77]

Real Estate

With more competition and attractive pricing, real estate continues to attract a consistent amount of FDI in Myanmar. Following the adoption of the Condominium Law in 2018 and the establishment of the Condominium Registration Office in 2018, property investors are expecting a supportive environment. After the government's decision to reduce taxes and stamp duties for buyers having undisclosed incomes, the number of real estate transactions increased throughout the previous financial year.[78]

The Ministry of Construction built over 3000 apartments during FY2016/2017 between Yangon and Mandalay; furthermore, it is expected that the authority will build another 180,000 home buildings nationwide by FY2020/2021. The aim of the project is mainly to create better connectivity among ethnic minority groups, which mainly reside in bordering territories. [79]

Partial Liberalisation of the Insurance Market

Currently, only 1% of the population has access to insurance. This data implies that the market could have a significant growth margin in 2020. There are currently 12 companies in Myanmar offering 29 types of insurance products, a greater variety is expected to soon be available in the market. The insurance sector, however, is still substantially hindered by a lack of business skills, knowledge and public awareness of the services insurers provide.

Given that only 0.07% of the GDP constitutes the overall national insurance penetration, there is huge potential for growth: the sector could generate 2 billion USD by 2030 if liberalisation continues, population growth is maintained, personal incomes continue to increase and understanding of risks improves. [80]

76 Myanmar Times. (2020, January 1). Five sectors in Myanmar to watch this year. Myanmar Times. Retrieved from: https://www.mmtimes.com/news/five-sectors-myanmar-watch-year.html
77 World Bank. (June 2020). Myanmar Economic Monitor June 2020: Myanmar in the Time of COVID-19. Retrieved from: https://www.worldbank.org/en/country/myanmar/publication/myanmar-economic-monitor-june-2020-myanmar-in-the-time-of-covid-19
78 Myanmar Times. (2020, January 1). Five sectors in Myanmar to watch this year. Myanmar Times. Retrieved from: https://www.mmtimes.com/news/five-sectors-myanmar-watch-year.html
79 Oxford Business Group. (2019). Building Confidence, robust growth expected to continue amid efforts to encourage foreign participation and improve regulation. The Report, Myanmar 2019.
80 PwC. (2018). Insurance. In Myanmar Business Guide. Retrieved from: https://www.pwc.com/mm/en/publications/assets/myanmar-business-guide.pdf

2020 POLICY RESPONSES

4

Agrobusiness

1. Publish clear Good Agricultural Practices (GAP) guidelines that are available online and at township level. Simplify access to the certification process and seek regional and international recognition of standards.

PARTIALLY TACKLED

The Agrobusiness Advocacy Group is pleased to learn that PDF documents of GAP guidelines for certain crops have been shared through the official website of the Department of Agriculture (DoA). On the other hand, the Advocacy Group encourages easy access to guidelines for farmers through DoA branches at townships since most of them have low levels of digital literacy.

2. Establish a task force to enforce implementation of the National Food Law and GAP guidelines.

NO PROGRESS

The Agrobusiness Advocacy Group learnt that the Food and Drug Administration Department (FDA) has been developing a draft law to replace the old National Food Law which was enacted in 1997. The old law required formation of the State/Divisional, District, Township Food and Drug Supervisory Committees, but they were not operative most of the time and known for weak enforcement. The Advocacy Group hopes the new law will ensure stronger enforcement implemented by an effective combined task force in which all the related government bodies are involved. Formation of a task force to implement GAP guidelines also does not seem to be a government priority yet.

3. Establish a clear set of guidelines for foreign companies seeking to acquire land.

PARTIALLY TACKLED

The Vacant, Fallow and Virgin Lands Management Law (VFV Law) was amended with the aim of boosting economic development by using vacant, fallow and virgin lands for agricultural, mining and other business. Following a permit granted by Myanmar Investment Commission (MIC), an investor can apply for land use rights for vacant, fallow and virgin lands from regional governments or the central government depending on the size of the land. Although the law outlines steps for land application, there have been numerous reports regarding delayed land approvals as each case requires a long series of official inspection and communications between regional governments and the Ministry of Agriculture, Livestock and Irrigation (MOALI).

4. Establish a special committee in charge of cross-border trade issues.

PARTIALLY TACKLED

The Illegal Trade Eradication Steering Committee led by Vice President U Myint Swe was formed on the 25th of June 2019 to enforce anti-illegal trade measures. Nine illegal trade control and prevention groups were formed in nine regions and states with the aim of making arrests related to illegal imports.

5. Develop financial products to increase access for farmers.

NO PROGRESS

Farmers report that they can access loans from the Agricultural Development Bank, but the bank loan money only comes after the harvest, and not at a more suitable time, so they go to private banks and loan sharks. Government banks have increased the amount they are willing to loan, but the timeframe is still a problem.[1]

1 DaNa Facility. (2019). Transforming Smallholder Farmer Access to Finance in Myanmar. Retrieved from http://www.danafacility.com/wp-content/uploads/2019/08/DaNa-Access-to-Finance-Case-Study.pdf

Anti-Illicit Trade Initiative

1. Measure the size and the scale of the overall illicit trade environment.

PARTIALLY TACKLED

Given the lack of data and information on Myanmar's illicit trade activities, EuroCham Myanmar commissioned a report on revenue loss due to illicit trade activities in Myanmar and hosted the Anti-Illicit Trade Forum 2019 in Nay Pyi Taw on the 19th of September 2019 to present the findings of the report. The Union Minister of Planning, Finance and Industry U Soe Win opened the event and pledged to take strict action against illegal trade with the aim of substantially reducing the volume of fake or illegal products entering the market. According to EuroCham Myanmar, illegal trade volumes in Myanmar during fiscal year (FY) 2017/2018 totalled 6.4 billion USD. Although exports statistics showed Myanmar had a trade volume of 25.1 billion USD, the EuroCham Myanmar report revealed that actual exports amounted to just 18.7 billion USD. This already accounts for illegal volumes of beer, whiskey, cigarettes, medicines, electronics, cosmetics and other consumer goods.

2. Define the necessary powers of law enforcement agencies.

PARTIALLY TACKLED

The Illegal Trade Eradication Steering Committee was formed on the 25th of June 2019 and assigned 13 tasks with an aim to enhance cooperation among union level departments in order to improve Myanmar's rank in the Global Illicit Trade Environment Index. The ministry responsible for implementing the works of the committee was the Ministry of Commerce (MOC). Based on each sector, relevant ministerial departments were to form work committees, sub-committees and special task forces, and states and regions were to form illegal trade eradication committees for effective implementation of illegal trade prevention measures.[2]

3. Boost manpower resources at ports and border checkpoints.

PARTIALLY TACKLED

There were no significant changes in terms of manpower resources to monitor the flow of goods at ports and border checkpoints, although the government said that it has been developing a system to control the flow of goods via sea, including inspection of containers, establishing a secure lock system and building high security warehouses to store goods in transit. The EuroCham Myanmar Anti-Illicit Trade Initiative (EMAITI) encourages the government to launch the system as soon as possible and to increase manpower at the ports of entry.

4. Establish an enhance government-to-government cooperation.

PARTIALLY TACKLED

An agreement was made in September 2019 between Myanmar and China to resume joint inspections of their common border for the first time in 24 years. The Government of Myanmar and the Kachin State Government have acknowledged the need to improve border management and security efforts in the area. Regional strategies for reducing illicit trade, particularly of illicit drugs and precursors, along with other forms of transnational crime including human, wildlife and timber trafficking, were highlighted during their meetings with the UN Office on Drugs and Crime (UNODC).[3] The administrative bodies agreed in October 2019 to expand cooperation, particularly through facilitating greater cross-border intelligence sharing with neighbouring Yunnan, China.

2 President Office. (2019, August 19). VP U Myint Swe calls for stepping up fight against illegal border trade as it hinders economic growth. Retrieved from https://www.president-office.gov.mm/en/?q=briefing-room/news/2019/08/19/id-9512
3 UNODC. (2019, October 25). Border cooperation between Myanmar and China set to expand. Retrieved from https://www.unodc.org/southeastasiaandpacific/en/myanmar/2019/10/myanmar-china-border/story.html

5. Public consultation to increase the level of transparency improve regulatory quality.

NO PROGRESS

Other than regular meetings of the Private Sector Development Committee (PSDC) at which the Vice President of Myanmar gave updated outcomes of the government's anti-illicit trade measures, no consultation has been carried out. The meetings took place at the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) in Yangon.

6. National laws relating to illegal trade should be strengthened, regularly updated and reformed according to the progress and needs of the problem.

PARTIALLY TACKLED

The EMAITI hopes that Myanmar or bilingual product labelling requirements stipulated in the Consumer Protection Law (2019) will add another regulatory measure that will filter out some illicit goods. EMAITI also welcomes establishment of the Myanmar Competition Commission in the late 2018, a long awaited move towards the implementation and enforcement of the Myanmar Competition Law (2015) which aims "to control unfair market competition on the internal or external trade and economic development".[4]

7. Thorough consultation with the private sector for a win-win situation for legitimate producers.

PARTIALLY TACKLED

The EMAITI is pleased to report that the MOC is increasingly inviting the business community to participate in consultations on new trade-related bills such as the Consumer Protection Bill and Myanmar Trade Bill.

Automotive

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

PARTIALLY TACKLED

Although the YVQC did not progress, starting from April 2020 customers of CBU units can always register using the Yangon address. However, if the car owner cannot present the necessary documents (e.g. scrap certificate) during the registration, the office of the Road and Transport Administration Department (RTAD) will assign the license plate of another region.

2. Reconsider possible restrictions on imports of passenger cars with cost, insurance and freight (CIF) value over 100,000 USD according to World Trade Organization (WTO) provisions.

TACKLED

The government has addressed this issue and no new cases of limitations on imports based on the CIF value have been reported.

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

NO PROGRESS

4 Pyidaungsu Hluttaw. (2015, February 24). Pyidaungsu Hluttaw Law No. 9/2015 - Competition Law. Chapter II, Section 3 (b).

4. Create one-stop centres between the Customs Department and Road Transport Administration Department (RTAD) to speed up the registration process for applicants and ensure professional inspections to bring Myanmar in line with international best practices.

PARTIALLY TACKLED

Although there is no progress for what concerns the creation of one-stop centres between the Customs Department and Road Transport Administration Department (RTAD), the government is now working towards opening vehicles to third parties.

5. Implement Thilawa's pilot project for storage of licensed items in bonded warehouses to avoid delivery delays and improve cash flow of local businesses.

PARTIALLY TACKLED

The government is moving forward with the implementation of national SOPs and the first bonded warehouses are expected to be operative by the end of 2020. However, restrictions about the type of items allowed to be stored in bond still remain within Thilawa SEZ.

6. Extend the Road Registration Tax to encompass both Completely-Built-Up (CBU) and Semi-Knocked-Down (SKD) importers.

NO PROGRESS

Construction and Infrastructure

1. Create a realistic and attainable development framework for the construction sector, i.e., enforce standards and regulations such as a certification scheme and a living registry record of construction actors.

PARTIALLY TACKLED

Although certain standards have been issued such as the Myanmar Building Standards and the rules for construction permits set by Yangon City Development Committee (YCDC), they do not cover all practices in the sector, and strong enforcement is still required.

2. Enforce laws and standards to ensure safety at the workplace and quality of infrastructure and prevent non-compliant materials from entering into the Myanmar market.

NO PROGRESS

3. A holistic approach in the construction sector is required; measures should be adopted to comply with international standards as well as to sustainably address pollution, energy use and water waste in the construction sector.

PARTIALLY TACKLED

Environmental Impact Assessments (EIA) are becoming more common in projects such as hydropower dam construction where it has been made compulsory. The EIA Division under the Environmental Conservation Department (ECD) of the Ministry of Natural Resources and Environmental Conservation (MONREC) oversees the review and approval of EIAs, Initial Environment Examinations (IEEs), and Environmental Management Plans (EMPs). The number of EIAs, IEEs and EMPs submitted is increasing every year, with a significant increase in EMPs in 2016/17 and of all reports in 2017/18. A total of 2,783 reports were submitted as of February 2019 and 89.6% of them had been replied to, yet only 6.9% (192) of reports had been approved, leaving 250 EIAs, 482 IEEs, and 1,851 EMPs awaiting approval. Significant challenges remain in effectively implementing the EIA Procedure (2015).

This is largely due to the limited resources and institutional capacity of the ECD to review, approve, and follow up on EIAs for investments and developments across all sectors. This limited capacity is causing a significant backlog of unprocessed EIAs, IEEs and EMPs.[5]

4. Increase efforts to preserve heritage by involving third-party stakeholders and implementing schemes and initiatives such as tax incentives for preserving heritage buildings.

PARTIALLY TACKLED

The Construction and Infrastructure Advocacy Group was pleased to witness the restoration of the Secretariat in Yangon, which helped the government realise that heritage buildings can also be a source of income.

5. Set construction safety measures and ensure compliance with international safety standards and develop a professional safety training scheme.

NO PROGRESS

Digital Innovation

1. Promote the transition to digital by shifting government services online and enact a strategy with the end goal of implementing a digital ID.

PARTIALLY TACKLED

Internal consultations are still ongoing inside the government on potentials for installation of video conferencing systems at the district offices, promulgation of cyber security law, categorising data policy, duty assignments for Chief Information Officers (CIOs), and formation of e-Government departments at government offices. Although the government announced in 2018 a plan to build an e-Government Integrated Data Center (eGIDC) by taking out a loan from the Republic of Korea, any progress has not been reported since then. A draft of the contract on implementation of an e-ID system in cooperation with the Austria-based OeSD company[6] has been awaiting approvals of different levels of the cabinet and the parliament.

2. Support the private sector with a digital agenda that aims to streamline the registration process for new digital businesses and improve conditions that support e-commerce platforms.

PARTIALLY TACKLED

At the end of 2019, the government launched a project funded by the Enhanced Integrated Framework (EIF) to leverage e-commerce as a source of growth for its services sector and for transitioning to a more digital economy. An e-commerce strategy will be developed under the aegis of the Digital Economy Roadmap prepared by the Digital Economy Development Committee (DEDC) which granted a specific mandate to the Ministry of Commerce as the lead agency for e-commerce development.[7]

3. Undertake more initiatives to raise the level of digital literacy among all civil servants, students and citizens.

PARTIALLY TACKLED

In February 2019, the DEDC released the Myanmar Digital Economy Roadmap which outlines digital

5 World Bank, Myanmar. (2019). Myanmar Country Environmental Analysis - Sustainability, Peace, and Prosperity: Forests, Fisheries, and Environmental Management - Environmental Impact Assessment System Diagnostic. Washington: World Bank Group. Retrieved from http://documents.worldbank.org/curated/en/388671560181443963/
6 Österreichische Staatsdruckerei GmbH – OeSD known as the Austrian State Printing House.
7 UNCTAD. (2019, December 9). Myanmar to receive support from UNCTAD to develop its e-commerce strategy. Retrieved from https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2261

advancement goals in nine sectors, including education. A pilot programme for Digital Literacy Teachers Training (DLTT) was conducted in Yangon in June 2019 aiming to “equip teachers with essential digital knowledge and skills”.[8] The Ministry of Education also launched a project on digital literacy, online safety and resilience in August 2019.

Energy

1. Improve coordination between ministries and with the private sector in order to promote more efficient and effective project implementation.

PARTIALLY TACKLED

On the 13th of August 2019, the Ministry of Electricity and Energy (MOEE) presented the Petroleum Testing, Drilling and Processing Bill to the Assembly of the Union (Pyidaungsu Hluttaw). The bill aims to provide comprehensive regulation for the upstream petroleum sector, both for onshore and offshore activities. It touches on matters such as tender processes for oil and gas blocks, the revision of Production Sharing Contracts (PSCs), administrative and regulatory responsibilities, labour and environmental issues as well as occupational health and safety. The proposed bill also serves as a way of organising the oil and gas sector, for example, it stipulates that any private or foreign-owned oil and gas companies may get involved only in cooperation with Myanma Oil and Gas Enterprise (MOGE). It also sets out the rights and obligations of a developer together with penalties for non-compliance, as well as establishing a reserve fund for rehabilitation and environmental conservation and a training fund for human resources development.

Nevertheless, since no timeframe was set for its adoption, the sector faced considerable uncertainty regarding the regulations applicable to the planned tender round for 18 onshore and 15 offshore oil and gas blocks which were expected to take place in the second half of 2019. The bill is now under revision due to considerable criticism, particularly regarding its proposed tender procedures, meaning that the new tender round will likely be conducted under the existing regulatory framework.

In conclusion, the Energy Advocacy Group is positive about the forward steps taken in terms of cooperation with other ministries and the recent improvements in EIA approvals. The Energy Advocacy Group also welcomes cross-sector consultations which include multilaterals, the MOEE and the Department of Rural Development (DRD) and hopes that they continue to be carried out effectively. Further coordination is required between the MOEE and the DRD to ensure planning under the National Electrification Plan (NEP) scheme is fully respected and timelines for increased household connections are fully adhered to. Least cost electrification methods, population density and geographical constraints should be fully considered to enable the fastest and most efficient electrification methods. Mini-grids should be deployed wherever it is more effective to provide timely access to energy for the population.

2. Address the need for a more transparent and updated tendering process.

NO PROGRESS

3. Reinforce the current generation equipment and effectively combine grid expansion with mini-grid implementation.

PARTIALLY TACKLED

The DRD has committed to implementing more mini-grid programmes which are part of the World Bank-supported Myanmar NEP 2030 that aims to electrify every household in the country by 2030. The government raised electricity tariffs in July 2019, making solar panel installations more attractive because of their cost competitiveness and ability to be deployed more quickly than other renewable energy sources.[9] Moreover, solar and hydro mini-grids are reliable, sustainable and least-costly electrification methods in many areas of Myanmar where the population density doesn’t justify the tremendous costs of extending the national grid.

8 King, A. (2019, July 1). Digital literacy training for Yangon teachers. The Myanmar Times. Retrieved from https://www.mmtimes.com/news/digital-literacy-training-yangon-teachers.html
9 Lui, J. (2019, December 5). Country’s largest mini-grid unveiled in Magway. The Myanmar Times. Retrieved from https://www.mmtimes.com/news/countrys-largest-mini-grid-unveiled-magway.html

4. Enable the appropriate foreign currency or mixed-currency payments and implement a set of sustainable tariff reforms.

PARTIALLY TACKLED

The government implemented the electricity pricing reform in July 2019, which was a very positive and highly anticipated policy measure. This reform trajectory should be continued to enable Myanmar's power sector's sustainability in the long term. As power demand is constantly growing from residential, commercial and industrial users, the supply must grow accordingly to fuel the economic growth of the country. Higher electricity tariffs will further enable this growth.

5. Develop a clear legal framework in the upstream sector while incentivising investments to unlock natural resources and renewable energies, namely, hydropower and solar energy.

PARTIALLY TACKLED

The Petroleum Testing, Drilling and Processing Bill covers upstream activities as well, which have been governed by the terms of PSCs. The draft bill legalises the practice of the MOGE, formalising the need to conduct tenders prior to awarding blocks. In order to avoid overlapping regulations, it is stated that companies that have already executed a PSC will not be subject to the new law.

The setting-up of the National Renewable Energy Committee (NREC), chaired by the Minister of Electricity and Energy, demonstrates the government's commitment to increasing the country's renewable energy supply. The NREC is currently working on incorporating renewable energy framework into the country's existing legal framework. This is a much welcome initiative which can truly boost the growth of renewables in the country, with potential incentives to include favourable fiscal measures as well as net metering.

6. Revise Production Sharing Contracts, taxes, and the timing of Environmental Impact Assessments.

NO PROGRESS

Garment

1. Increase transparency in labour law reforms with tripartite consultation. Ensure new laws and regulations are clear and provide the private sector with enough time to adjust their industrial systems accordingly, to provide certainty and stability to enable the sector's growth.

PARTIALLY TACKLED

Settlement of Labour Disputes Law was enacted in June 2019 but rules and regulations are not ready yet to be adopted and labour forces are calling for it to be enforced. When a labour dispute arises, it is first discussed within the Workplace Coordinating Committee (WCC). According to the newly amended law, if a dispute cannot be settled by a factory's WCC, it shall be brought to the township conciliation body, the arbitration committee and then the arbitration council. If the dispute concerns labour rights, it is stipulated that the relevant government offices should handle it. These are the Labour Department, the Factories and General Labour Laws Inspection Department, and the Social Security Board.[10] The difference between rights-based and interest-based cases is subject to interpretation, and the appropriate mechanisms for bringing forward right-based cases are unclear.

2. Shift from a Cut-Make-Pack (CMB) system to a Free-on-Board (FOB) one to increase its vertical supply chain and develop a strong textile and components industry.

PARTIALLY TACKLED

An FOB system will not only significantly shorten lead times and increase flexibility but will also create more job opportunities and boost exports values. To move to an FOB system, a concrete textile industry plan needs to be developed and stronger partnership between the private sector and government is essential.

10 The Irrawaddy. (2019, November 2). Why Have Thousands of Myanmar's Workers Taken to the Streets This Year? The Irrawaddy. Retrieved from https://www.irrawaddy.com/dateline/thousands-myanmars-workers-taken-streets-year.html

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The government is drafting a national textile policy involving relevant ministries, private organisations and textile businesses for the development of domestic textile sector. It will include action plans, road maps, laws, rules and procedures, infrastructural development, creation of a business environment that encourages local and foreign investment, and manufacturing of value-added products. Myanmar has also announced that an updated National Export Strategy (NES) will focus on measures like transition of cut-make-pack (CMP) garment system into free on-board (FOB) system, adoption of a bonded warehouse system and establishment of specialised textile and garment zone for boosting exports.[11]

3. Invest in skills development by creating specific courses at different education levels.

NO PROGRESS

Myanmar's efficiency rate is considerably low, reflecting the lack of skills in the local labour force at many levels. While the garment sector is often considered to be a low-skilled industry, middle management and higher skills are also extremely important for the development of the xsector and its competitiveness.

Although projects led by non-governmental organisations and business organisations such as the Aung Myin Hmu Project and Myanmar Garment Manufacturers Association (MGMA) have been providing skill trainings for migrant job seekers and other levels of workforces, the government's attention towards training labourers in middle management and higher skills is still limited. An International Labour Organization (ILO) report from January 2019 titled Weaving Gender: Challenges and opportunities for the Myanmar garment industry found that there were limited opportunities for women already working in the sector to learn new skills or to seek promotion.

Health

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

PARTIALLY TACKLED

There was no progress in procurement procedures regarding pharmaceuticals, but the Health Advocacy Group acknowledges reforms in terms of tendering processes for procurement of medical equipment/devices. The vendors are now well informed by the Ministry of Health and Sports (MOHS) about procurement procedures and timelines. In the past, there was no separate section for product presentations, and now the ministry allows 5-10 minutes product presentations for all vendors before the price negotiations in front of a tender committee (chaired by the Deputy Minster). The Health Advocacy Group is also pleased to witness more transparency in reviewing price quotes. Tender Envelope Type-A which contains price is opened serially in front of all the suppliers and projected and recorded per vendor in the meeting room. A scoring system which reviews technical and administrative information related to the supplier has also been introduced. Names of tender-winning suppliers along with information on the equipment and prices are now publicised through the notice board of the procurement division.

Nevertheless, the Health Advocacy Group also wants to highlight that the planning for tenders still needs more improvement especially with regard to the quantity requirements as well as lead time for supplying the products to the tenders. If proper quantity estimates and sufficient lead time were given to suppliers to service the tender demand, it would streamline the whole process.

2. Develop a Globally Validated Healthcare Industry Code of Conduct.

NO PROGRESS

According to official reports, the development of a Code of Conduct does not yet seem to be a priority of the MOHS.

11 Fibre2Fashion News Desk. (2020, January 16). Myanmar drafting national textile policy. Retrieved from https://www.fibre2fashion.com/news/textile-news/myanmar-drafting-national-textile-policy-254501-newsdetails.htm

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

NO PROGRESS

Although there was some progress in terms of official procurement processes for medical devices, no significant change was seen in terms of the government's willingness to invite more stakeholders to participate in joint efforts to develop the public healthcare sector in Myanmar.

Legal and Tax

1. Work on increasing transparency and the rule of law through the implementation of legislation and the issuance of licenses.

PARTIALLY TACKLED

The Directorate of Investment and Company Administration (DICA) announced that it is planning to digitalise all its services to speed up processes and reduce corruption risks. The plan is to expand the digitalisation process to DICA's internal works and all procedures for permit application to the MIC. DICA is preparing software so the online system will provide services including granting permits on behalf of the MIC with the support of the World Bank and International Finance Corporation (IFC). An instruction to make all payments by cards or online system was also released at the end of 2019.[12]

2. Put in place a notification or guideline prescribing a harmonised mechanism for dealing with the competition framework for the telecom sector as well as an effective merger control mechanism.

NO PROGRESS

Conflicting provisions under the competition framework remain unchanged.

3. Provide a single, uniform definition of 'foreign [owned/invested] company' as well as clear guidelines.

NO PROGRESS

Although institutions such as DICA which focus on development of the company law and related institutions become more and more present at EuroCham Myanmar's breakfast talks on legal matters, unfortunately there has been no progress towards harmonisation of the definitions.

4. Offer increased protection to well-known trademarks and facilitate easier re-registration process. Despite improvements with the new Trademark Law (2019), issues with well-known trademarks and re-registration remain.

PARTIALLY TACKLED

The 2019 Trademark Law establishes the framework for a comprehensive trademark registration and protection system in line with international standards. In the past, trademark protection in Myanmar was obtained by filing a Declaration of Ownership with the Registration of Deeds Office and publishing the trademark via a Cautionary Notice in a Myanmar newspaper. This will change with the implementation of Myanmar's new trademark registrations system, scheduled to become effective in early 2020. In the first "soft opening" phase, which is expected to last for six months, trademarks registered under the former system may be refiled with the new register, allowing such trademarks to claim seniority rights, meaning that in the event of a dispute, they will prevail against trademarks which have been filed at a later point in time.

Aside from trademarks that have been registered by filing a Declaration of Ownership, trademarks which have been put to actual use in Myanmar—without any formal registration—may also be accepted for registration. Upon completion of the soft opening period, all applications for registration

12 Htin Lynn Aung. (2020, January 7). DICA to provide more services online. The Myanmar Times. Retrieved from https://www.mmtimes.com/news/dica-provide-more-services-online.html

will be reviewed and trademarks meeting the formality requirements will be published for opposition purposes, if there are no absolute grounds for refusal. Thereafter, the new register will accept the filing of any trademark registrations, including such that have not previously been registered or used in Myanmar.[13]

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

SUBSTANTIALLY TACKLED

In November 2019, the Assembly of the Union (Pyidaungsu Hluttaw) approved a proposal by the Ministry of Planning, Finance and Industry (MOPFI) to significantly reduce existing stamp duty penalties. The law lowers the penalties for late or deficient stamp duty payments from 10 times the payable stamp duty to 3 times the payable duty. The Myanmar Stamp Act (1899) states that certain instruments, such as lease agreements, should be subject to the payment of stamp duty on or before the date of execution. Late payment or non-compliance could result in a fine equal to 10 times the payable stamp duty. The last grace period for late payments was under U Thein Sein's government in 2015.[14]

6. Enable automatic application of tax treaty benefits under a relevant Double Tax Agreement (DTA) with Myanmar in line with the practice of other countries with respect to granting relief under the DTA. An automatic application of treaty benefit would reduce the administrative burden of taxpayers in availing such tax exemption or relief.

NO PROGRESS

The relief under the applicable DTA is not automatically granted yet and the taxpayer concerned must submit their arguments and evidence to the Internal Revenue Department (IRD) for review before their income tax becomes due.

7. Clarify the application of 5% commercial tax for equity investments in order to avoid undue advantage for investors who will be investing in land lease rights as a form of equity in a company.

NO PROGRESS

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

PARTIALLY TACKLED

On the 7th of June 2019, the Assembly of the Union (Pyidaungsu Hluttaw) enacted the Tax Administration Law (TAL). Under the TAL, the taxpayer will be entitled to a refund of any excess tax payments during the year (after the assessment has been made during the assessment year). This includes interest paid to the IRD if it is found that the taxpayer has no liability to make such payment.

9. Simplify the tax system and compliance procedures (e.g. addressing the complexity of recovering commercial input tax and abolishing the 2% advance income tax on import and export) to reduce the administrative and cash flow burden of taxpayers.

PARTIALLY TACKLED

The Tax Administration Law addresses several of the shortfalls of the current tax administration procedures, clarifying certain provisions under the existing tax laws with respect to tax filing and payment procedures, maintenance of documents, re-assessment of tax returns, changes to the appeal process, and the imposition of penalties.

13 Kyaw Soe Htet. (2020, January 31). New trademark registration system expected in Myanmar. The Myanmar Times. Retrieved from https://www.mmtimes.com/news/new-trademark-registration-system-expected-myanmar.html
14 Liu, J. (2019, December 3). Myanmar reduces stamp duty penalties. The Myanmar Times. Retrieved from https://www.mmtimes.com/news/myanmar-reduces-stamp-duty-penalties.html

Logistics and Transportation

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

NO PROGRESS

2. Implement bonded warehouses and Container Freight Station (CFS) solutions to re-distribute cargo outbound/inbound activities from the main ports to bonded warehouses and CFSs to create a quicker system.

PARTIALLY TACKLED

The customs department told EuroCham Myanmar that they are ready to issue guidelines for building and operating warehouses although the issuance date has not yet been set.

3. The Myanmar Port Authority (MPA) should review its current process and allow carriers to settle payment as per contracted amount (not MPA-set tariff levels) directly to the terminal so that it can avoid financial losses and eliminate delays in refunding appropriate payments.

NO PROGRESS

Wine and Spirits

1. Lift the ban on the import of foreign spirits by amending Order No. 3/2018 of the Ministry of Commerce (MOC).

TACKLED

The Wine and Spirits Advocacy Group welcomes the Ministry of Commerce's issuance of Notification 38/2020, which lifts the ban on foreign spirits imports, and Notification 39/2020, which establishes the procedures for the importation of foreign spirits.

2. Create clear, effective and controlled system for the importation of foreign spirits into Myanmar.

PARTIALLY TACKLED

Following the issuance of Notification 39/2020 that establishes the procedures for the importation of foreign spirits, the Wine and Spirits Advocacy Group urges the Department of Trade at the Ministry of Commerce to create a clear, effective and controlled system for the importation of foreign spirits into Myanmar, providing coherent guidance on the rules and regulations set forth in the notification.

3. Bring Myanmar into full compliance with its world Trade Organization (WTO) Commitments

PARTIALLY TACKLED

The Wine and Spirits Advocacy Group understands that the current requirement in Notification 39/2020 whereby foreign spirits with a CIF value lower than 8 USD per litre cannot be imported into Myanmar has been adopted as transitory measures that will be phased out as progressive next steps, thereby meeting full compliance with WTO commitments.

4. 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.

PARTIALLY TACKLED

The Wine and Spirits Advocacy Group welcomes the lifting of the ban on foreign spirits as a significant step to realising the Government's intended goals of ensuring access to tax-paid high-quality licit products for consumers and tackle illicit trade. We do however urge the Government to ensure current taxation for alcohol does not further foment illicit trade, encouraging the Ministry of Planning, Finance and Industry to transition towards a simple, fair and balanced tax structure for spirits products.

The Wine and Spirits Advocacy Group welcomes the effort of the Private Sector Development Committee (PSDC) which formed special units to curb illegal imports in nine states and regions. These units prevented 1,065 attempts to smuggle goods from September 2018 to October 2019. On the other hand, the Wine and Spirits Advocacy Group encourages the government to implement stronger measures against the issues related to corruption and security in border regions.

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

TACKLED

The Wine and Spirits Advocacy Group welcomes the opportunity the market opening has brought for foreign spirits companies to participate in the market to undertake joint responsible drinking campaigns together with the government, industry and civil society to tackle drink driving, underage consumption and harmful drinking.

GENERAL RECOMMENDATIONS AND CONCERNS

5

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's Business Confidence Survey 2019 captured the sentiment of European businesses operating in Myanmar and identified five major challenges they are facing. EuroCham Myanmar wishes to take the opportunity to propose recommendations to the government to help tackle these challenges.

Challenge 1: Regulatory issues

In the EuroCham Myanmar Business Confidence Survey 2019, survey takers mentioned time-consuming red-tape processes and weak law enforcement, usually caused by bureaucracy and/or corruption. There have been widespread concerns among the business community over issues of regulatory and policy instability. Lack of thorough calculation and analysis before adoption of new policies or regulations often fuels uncertainties and loss of confidence in the investment climate of the country.

Other obstacles include the lack of consistent trade and investment policies and remaining protectionism. Regulations in important sectors such as trade and land management still require clear interpretation provided by the government and overarching codes that unify all the issued laws, rules and procedures. In some scenarios such as land rights application, issues arise due to lack of clear authority shared among the government employees and their unfamiliarity with existing regulations.

Many of the laws that have been enacted also need strong enforcement, and callings for enforcement are mostly found in labour relation issues, regarding freedom of association, bargaining and dispute settlements.

Recommendations:

The primary recommendation to the government is to establish a mechanism that communicates simplified interpretation of laws, regulations and procedures to all stakeholders including investors, the general public as well as government employees who are responsible for applying them.

In order to ensure all-inclusive legislative processes, we also encourage the government to invite opinions and contributions of all stakeholders, local or foreign, when developing draft laws.

Inconsistencies and conflicts of regulatory practices among government entities should be mitigated by enhancing coordination and sharing well-defined directives between ministries and various levels of government. It is also advised that government agencies start to delegate tasks to encourage more efficient processes. Although resistance to decentralisation is inevitable, empowering bureaucrats in the process could potentially increase their significant buy-in to new policies. Hierarchical structures have led to mistrust and the inability of individuals to problem-solve. Key to the reform process is building trust and encouraging civil servants to engage in institutional transformation.

Challenge 2: Negative press about Myanmar and human rights

According to reports, economists have noted that the ongoing Rakhine crisis as well as the lawsuit filed against Myanmar in the ICJ by Gambia could tarnish the country's image as an investment destination.[1] According to data from the World Bank, Myanmar's net foreign direct investment (FDI) fell to 1.8% of GDP in 2018, down from 6% in 2017.

The government's efforts to attract investment and develop the economy have been stymied by the fallout from the Rakhine crisis, which has scared off many potential investors. The business community in Myanmar is particularly concerned with possibility of sanctions being imposed by the EU over human rights and labour rights abuses. In October 2018, the EU began an assessment process to determine if Myanmar should be removed from the list of countries with Generalised Scheme of Preference (GSP) status, although the current process is still at the monitoring step, not yet formal investigation under Article 19 of the GSP regulations. The GSP allows particular developing countries, including Myanmar, to pay fewer or no duties on exports to the EU, giving them vital access to the EU market which help contribute to the growth of their economies.[2]

1 Khidhir, S. (2020, January 12). Obstacles to Myanmar's growth in 2020. The ASEAN Post. Retrieved from: https://theaseanpost.com/article/obstacles-myanmars-growth-2020

2 Kipgen, N. (2019, February 2). Commentary: Did the Rohingya crisis snuff out foreign direct investments in Myanmar?. Channel News Asia. Retrieved from: https://www.channelnewsasia.com/news/commentary/did-rohingya-crisis-snuff-out-foreign-direct-investment-myanmar-11194086

Recommendations:

We encourage the government to make more efforts to deliver clear positive messages to the international community regarding important aspects of social development in Myanmar, including the human rights situation, labour affairs, children's rights, freedom of association, gender equality and racial harmony.

Challenge 3: Difficulty in market penetration

Despite moving up six positions in the World Bank's Doing Business 2020 report, Myanmar is still the least favourable ASEAN country in which to do business, with Laos ranking 154th and Myanmar at 165th.

Protectionism very clearly stands in the way of growth. Myanmar's economic nationalism had a negative impact on foreign investors' operations. European investors saw a rise in economic nationalism in sectors related to pharmaceuticals and liquor, among others. Moreover, administrative barriers that embrace trade protectionism remain unchanged in other sectors of trading goods and services such as insurance, the airline industry, retail and wholesale, and construction.

Most companies surveyed in the EuroCham Business Confidence Survey 2019 expect protectionist policies in Myanmar or other countries to affect their operations in Myanmar in 2020. Widespread illicit trade activities including smuggling and parallel trade against authorised dealers are also barriers to market penetration for foreign businesses.

Although intellectual property laws were enacted in 2019, rules and notifications relating to the implementation of those laws are yet to be issued and foreign investors have been anticipating a more comprehensive and effective intellectual property protection regime in Myanmar to make the market more attractive.

Recommendations:

The government could support the creation of fair markets in various sectors by complying with WTO commitments and taking active steps to tackle illicit trade issues.

The government could encourage inflow of products and technology by developing a comprehensive and effective intellectual property protection regime including offering some degree of protection for well-known trademarks.

Challenge 4: Lack of a qualified labour force

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

Recommendations:

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

Challenge 5: Legal uncertainty

Despite continuous reforms within Myanmar's legal system since 2011, legal uncertainty in many areas and conflicting provisions of the laws are still a major challenge to investors. An example is the directive issued by the Central Bank of Myanmar in 2018 enabling foreign banks to lend to local companies giving rise to legal grey areas. The new Myanmar Companies Law allows for the creation of securities and requires their registration as an exception to the Transfer of Immovable Property (Restrictions) Act of 1987, but having said that, doubts persist around a provision in the older law that restricts the transfer of immovable property to a foreign-owned company.[3] While foreign lenders in practice employ the services of local banks to act as security trustees, the model has not yet been tried and tested before a court of law.

Similarly, while there is a land title system conceptually similar to the British Land Law system, the lack of updates to the law and years of weak enforcement of the registration of land rights have made the current ownership regime complex and opaque. The facility for potential investors to conduct silent due diligence on land ownership and/or any encumbrances on land is not available. The landowner's consent is required for the relevant government ministry to release information on the title of land and administratively, it could be cumbersome for investors to conduct such checks.[4]

Recommendations:

We encourage more transparency and clarity through proper announcement of any legally binding subsidiary legislation in the gazette. The government could establish mechanisms that harmonise conflicting provisions of the laws and create an official platform or channel where the related government institutions can efficiently provide answers to legal uncertainties.

3 Frontier Myanmar. (2018, November 12). Myanmar relaxes limits on foreign bank lending, but legal uncertainty persists. Frontier Myanmar. Retrieved from: https://frontiermyanmar.net/en/myanmar-relaxes-limits-on-foreign-bank-lending-but-legal-uncertainty-persists
4 Tan Kok Keong. (2013, July 23). Navigating through legal uncertainty in Myanmar. Today Online. Retrieved from: https://www.todayonline.com/business/property/navigating-through-legal-uncertainty-myanmar

EXECUTIVE SUMMARY

6

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 Myanmar 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 optimising existing processes, EuroCham Myanmar and its member companies stand ready to be involved.

The following is a summary of the policy recommendations endorsed by the eleven Advocacy Groups for the year of 2020.

Agrobusiness

- Set up a task force and/or coordination body responsible for implementing, controlling and enforcing the laws, standards and guidelines created by the National Food Law.
- Develop a national standard in Myanmar for categorisation of antibiotic classes for veterinary use.
- Update import and export procedures in consultation with stakeholders to remove requirements that create unnecessary delays and incentivise illicit channels. This would improve the attractiveness of the Myanmar market for foreign investors and local producers.
- Improve access to finance and professionalisation of the sector by developing financial products, particularly for smallholder farmers. This would contribute to the growth and professionalisation of the agriculture and livestock sector.
- Create a clear set of guidelines for foreign companies active in the agriculture sector on land acquisition, including information on land available.

Anti-Illicit Trade

- Take steps to measure the size and the scale of the overall illicit trade environment.
- Define the necessary powers of law enforcement agencies and strengthen intergovernmental cooperation.
- Boost manpower resources at ports and border checkpoints.
- Hold public consultations to increase the level of transparency and information-sharing and improve regulatory quality.
- Strengthen, regularly update and reform national laws relating to illegal trade as issues evolve.
- Hold thorough consultations with the private sector for a win-win situation for legitimate producers.
- Raise public and government awareness about the risks of illicit products and the social cost of illicit trade.

Automotive

- Reduce the imports of used cars as presented in the Automotive Policy 2019 and ensure the CIF value declared at Customs by parallel importers is aligned with what authorised importers and distributors declare for the same model and year.
- Remove the need to tow the new cars for initial physical inspection and implement a digital system for the vehicle registration.
- Reconsider the current limit on the number of cars one individual or business can own.
- Allow customers of CBU units to register the car using the Yangon address and receive the Yangon license plate.
- Allow licences items (e.g. CBU units) to be stored in bond both in SEZs and Myanmar.

Construction and Infrastructure

- Elaborate on and finalise industry codes and regulations on design, material and electrical standards.
- Implement solid policies and apply effective control measures and international standards to en sure the safety and quality of the construction sector.
- Implement initiatives for the sustainable growth of the construction sector and the preservation of heritage buildings.
- Establish regular independent audits on construction sites to check for significant environmental risks.

Digital Innovation

- Ensure fair and uninterrupted access to the internet throughout Myanmar.
- Enact data protection laws and legal safeguards for consumers.
- Improve and strengthen the consumer protection policy and establish a registration process for online retailers.
- Implement digital literacy educational programs for all sectors of society.

Energy

- Address the need for a comprehensive stakeholder consultation process on Myanmar's energy master plan between experts and representatives from the private and public sector in order to ensure the quality of the final plan.
- Increase the proportion of renewable energies such as hydropower, solar power and natural gas in Myanmar's energy mix to address the increasing electricity demands.
- Reinforce current generation equipment and effectively combine grid expansion with mini-grid implementation.
- Continue reforms towards financially sustainable and methodologically formalised electricity pricing.
- Establish a comprehensive renewable energy policy framework to encourage investments in renewable energy solutions.
- Revise and improve the taxation and fiscal terms of Production Sharing Contracts (PSCs) to allow gas to be discovered and developed to support local demands and export.
- Revise the proposed Draft Exploration, Prospecting, Development, Production of Petroleum Law to avoid ambiguity and reduce uncertainties for investors.

- Develop and publish a framework for public-private partnerships in line with international standards and practices.

Garment

- Ensure transparent reform of the Labour Law and provide the private sector with enough time to adjust their industrial systems to new regulations accordingly. New and clear Labour Laws will offer certainty on how to operate as well as predictability for the industry, crucial for investment and growth of the sector.
- Shift from Cut-Make-Pack (CMP) system to a Free-On-Board (FOB) one to increase its vertical supply chain and develop a strong textile and components industry. An FOB system will not only significantly shorten lead times and increase flexibility but will also create more job opportunities and boost export value. Strengthen cooperation between the private sector and the authorities on the National Textile Policy and ensure a successful sustainable development of the textile sector.
- Invest in skills development by creating specific courses and partnerships with institutions in neigh bouring countries at different education levels. Middle management and higher skills are extremely important for improving efficiency and hence competitiveness of the sector.

Health

- Bring transparency to the tender process by: Publishing the scoring criteria prior to tender; combining or remove some of the steps of process; developing the systems and processes to coordinate the supply chain end-to-end from the central procurement to supplier; and implementing an online portal.
- Develop a Globally Validated Healthcare Industry Code of Conduct.
- Increase the level of consultation with more stakeholders to accelerate the pace of positive change in Myanmar and increase access to international quality healthcare products to patients.
- Set clear agreements regarding the maintenance of medical devices and sufficient budgeting.
- Clarify the requirement of the No Objection Certificate (NOC) and the required sample quantity during the registration process.

Legal and Tax

- Increase transparency in administrative procedures to strengthen the rule of law and confidence in the legal system.
- Establish clear guidelines and transparent procedures to increase investors' confidence in the market. Although the Competition Law (CL) came into force in 2017 and the Competition Commission was established in 2018, the country still struggles with the new competition framework.
- Harmonise the principle and definition of "Foreign owned company" throughout Myanmar's legal framework.
- Modernise the amended Myanmar Stamp Act (2019) to align with current business practices.
- Establish a national formal procedure for the claim of tax treaty exemptions/relief and automatic application of tax treaty benefits.
- Issue clarification with respect to Commercial Tax (CT) for payments made in the form of shares (equity investment).
- Set a standard deadline for withholding tax payment under the new Tax Administration Law.
- Introduce specific provisions in the relevant tax legislation or Tax Administration Law to allow taxpayers who have excess tax paid for one type of tax to offset against the tax payable due on an other type of tax.

- Allow (i) zero rating to be applied to export sales and input tax credit to be available relating to zero-rated supplies and (ii) commercial tax exemptions to be applied to CMP businesses for their local purchases of materials for the use of manufacturing.

Logistics and Transportation

- Simplify the customs clearance procedures by increasing responsibilities of front desk staff and fully implementing the Myanmar Automated Cargo Clearance System (MACCS).

- Take steps to increase operating hours and capacity at customs.

- Make all customs rules and regulations available to read online in both Myanmar and English.

- Implement bonded warehouse and container freight station (CFS) solutions outside of Special Economic Zones (SEZs) and ports to re-distribute cargo outbound/inbound activities.

Establish a system for fast, pre-cleared container drop off.

Wine and Spirits

- Create a legal, normalised environment for the import, distribution, retail and consumption of foreign spirits.

- Significantly increase tax 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, in particular counterfeiting of 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 harmful drinking.

- Bring Myanmar into compliance with its WTO commitments.

AGROBUSINESS

7

INTRODUCTION

The importance of agriculture in Myanmar is indisputable as a sector which employs around 50% of the population.[1] Moreover, the nation has some key advantages in terms of available land, water resources, labour force and its strategic location with access to major shipping routes via the Bay of Bengal and the Andaman Sea. These circumstances paint a promising picture for agriculture in Myanmar and the government's decision to prioritise the sector.

Myanmar is becoming more and more integrated in the global market, and as more investors enter the country, the quality and variety of agricultural exports is also growing. The government has an important role to play in the process as the key institution responsible for positioning the country favourably in relation to external markets. Such a task is multifaceted and encompasses the entire supply chain from ensuring farmers produce high quality, safe food products and produce through internationally recognised food safety standards, to simplifying the importing and exporting process to guarantee agricultural products come in and out of the country efficiently.

The entire agricultural supply chain will benefit when farmers are better able to connect with markets. Farmers and producers need to know what products are in demand and where opportunities exist. A better exchange of information between producers and investors will ensure that market opportunities can be financed. Foreign investment can be supported by increasing the availability of information, including information about land availability and market demands.

Information sharing is key to the agriculture sector and EuroCham Myanmar's Agrobusiness Advocacy Group was established to act as a channel to share European expertise and best practice. The goals of the Agrobusiness Advocacy Group are twofold: to foster an environment in which agriculture can flourish sustainably on a national level from producer to consumer, and to create opportunities internationally.

The outlook is positive as Myanmar is becoming more prosperous and the agriculture sector continues to grow and mature. Investment in the agriculture sector however does not accurately reflect this reality. If the following recommendations can be implemented, overall conditions in this key industry are likely to improve.

Issue Description 1: A working task force (committee) is in place to safeguard the effective implementation of the National Food Law

Food safety is a cross-cutting issue in the work of all EuroCham Agrobusiness Advocacy Group members. Food safety refers to handling, preparing and storing food in a way to best reduce the risk of individuals becoming sick from foodborne illnesses. Food safety aims to prevent food from becoming contaminated and causing food poisoning in all steps of the value chain of certain agricultural produce. Therefore, food safety is important to us all, from producer to consumer. In Myanmar, the National Food Law[2] and the Myanmar Food Standard address food safety. The National Food Law has been under revision since 2013 and is in the process of finalisation. As it is still being finalised and we do not know how it will be implemented, the same issue described in previous white papers still apply:

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 policy relating to the production, storage, distribution and sales of food, inspection, control and laboratory analysis of food to forming committees in respect of matters relating to expertise and determining the functions and duties of such committees.

Potential Gains:

Law enforcement and/or standardisation increases the production capacity of producers, protects consumer health and enables fair practices in the exchange of goods therefore eliminating barriers to trade.

1 International Labour Organization. (2019). Employment in agriculture (% of total employment) in ILOSTAT Database. Retrieved from: www.data.worldbank.org
2 State Law and Order Restoration Council. (1997, March 3). SLORC Law No. 5/1997 - The National Food Law.

Recommendations:

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

Issue Description 2: Need to develop a National Standard in Myanmar for categorisation of antibiotic classes for veterinary use

Currently, antimicrobial resistance is becoming a problem that needs urgent attention globally and in Myanmar. Antibiotics play an important role in disease treatment in food-producing animals such as poultry, pigs, cattle and fish. Antibiotics are used to prevent disease or increase production. Antimicrobials are added to animal feed in low concentration to stimulate growth.

The Food and Agriculture Organization (FAO), World Organization for Animal Health (OIE) and World Health Organization (WHO) are collaborating to develop a WHO Global Action Plan and National Action Plan support. With support of the FAO, OIE and WHO, the National Livestock Antimicrobial Usage (AMU) and Antimicrobial Resistance (AMR) control plan of Myanmar (2017-2020 draft) was developed by the Livestock Breeding and Veterinary Department (LBVD). This draft covered awareness and educational programmes, surveillance and monitoring works, good husbandry practices and control of infectious diseases, rules and regulations and directives controlling AMR and a sustainable strategy for reducing antibiotics. However, a detailed categorisation of antibiotic classes for veterinary use has not been developed yet.

Potential Gains:

If a detailed categorisation is made available, livestock producers will know which antibiotics are safe to use. The government could also enforce and control the usage of antibiotics in the livestock better with such a categorisation. These efforts will help to align Myanmar with global efforts to address AMR.

Recommendations:

Increase knowledge and responsible use of antibiotics in Myanmar's agriculture sector. Myanmar Livestock Federation (MLF) recently adopted categorisation of antibiotics classes for veterinary use from the use of antibiotics in animals but this has not yet been adopted at the national level.

Issue Description 3: Import and export practices

Myanmar improved its ease of doing business ranking in 2019 and the country has become more integrated in global markets and supply chains. As Myanmar continues to gain access to new markets, the government has a role to play in ensuring a fair and consistent importing and exporting environment. Investors are drawn to markets when there are reasonable regulations that dictate the flow of goods in and out of the nation. Companies are incentivised to seek illicit means of doing business when time delays and barriers are created through inconsistent and complicated import/export requirements. This penalises those who comply with official procedures. As actors turn to illicit channels to undertake their operations, the government loses out on potential taxation and networks that undermine border security are maintained. Moreover, when the trade of agricultural products is in question, import time delays can be costly for suppliers as produce can expire while waiting in shipping yards.

Potential Gains:

Addressing regulatory shortcomings would help to improve Myanmar's ease of doing business ranking, attract more investment, address the inflow of some illegal agricultural products and therefore raise tax revenue for the government. Increased government revenue could then be used reducing other forms of illicit trade.

Recommendations:

The EuroCham Agrobusiness Advocacy Group is happy to provide consultation about appropriately simplifying importing procedures such as seed variety registration or the process needed when obtaining a Pest Risk Analysis (PRA) Certificate, which currently must be done on a government-to-government basis. One solution is to facilitate PRA exemptions particularly in situations when the product can already be found in the market. We also recommend adjusting the period of validity of import certificates so that they remain valid for six months (similar to import permits).

> *Import and export procedures should be updated in consultation with stakeholders to remove requirements that create unnecessary delays and incentivise illicit channels. This would attract foreign investors as well as improve the market for local producers.*

Issue Description 4: Access to finance

Farmers and small businesses operating in the agricultural value chain have very limited access to sources of finance. Most loans in Myanmar are provided based on collateral, which makes access to finance a big challenge for farmers and companies alike. Farmers and small businesses usually do not have enough assets to provide as collateral. For example, banks do not accept livestock or movable assets as collateral, and only accept certain types of land. As a result, progress in the agricultural value chain is limited, since farmers and small businesses cannot finance their expansion plans and cannot grow their business further. The value chain thus continues to be inefficient, and access to safe and affordable food remains a challenge.

Potential Gains:

Farmers and small businesses with access to finance will be able to expand their business and contribute to the general development of the country by creating jobs, producing agricultural products to feed the population, and by creating welfare and social mobility. The need to import agriculture produce will be lower if Myanmar farmers can produce at more competitive cost prices. Access to finance will also professionalise the agriculture and livestock sectors in Myanmar.

Recommendations:

- Encourage banks to develop specialised financing programmes for farmers and businesses.
- Set up partly subsidised cooperation programmes 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.

Issue Description 5: Land issues

Acquiring/leasing land is a real issue for foreign companies wanting 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 landowner is and who is expected to prove ownership based on official documents. Changing the land use purpose status involves time-consuming, costly, non-transparent complex procedures. What's more, different government levels have authority with regard to land acquisition, but in many cases it is not clear which government level (local, regional, national) is authorised in a particular stage of the process.

Potential Gains:

If land acquisition for foreign companies in Myanmar were easier, it would reduce uncertainty, costs and time, improving the environment for foreign companies active in the agricultural sector. Agricultural foreign direct investment (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 for foreign companies active in the agriculture sector who are looking for land in Myanmar. More information should be made available to investors in terms of the availability of land as well as guidelines outlining steps that need to be followed, including contact information for each step, indications on how long each step will take and which input is expected at which stage from the foreign investor. Another option is to create transparent legislation with regards to land ownership by streamlining the farmland law in consultation with affected stakeholders. Finally, define clear division of responsibilities 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.

Acknowledgements

EuroCham Myanmar Agrobusiness Advocacy Group

ANTI-ILLICIT TRADE

INTRODUCTION

Illicit trade is a worldwide phenomenon with serious negative consequences for Myanmar on its economy, environment and society.

On the 5th of September 2018, EuroCham Myanmar organised the first edition of the Anti-illicit Trade Forum in Nay Pyi Taw. The Chairman of the Anti-corruption Commission of Myanmar delivered the keynote speech and the Transnational Alliance to Combat Illicit Trade (TRACIT) together with the Economist Intelligence Unit (EIU) presented an evaluation of 84 countries' enabling or prevention of illicit trade. According to this Global Index on Illicit Trade, Myanmar ranks almost at the bottom (82nd out of 84 countries, with Iraq and Libya being the last).[1] This significant problem has resulted in TRACIT calling for Myanmar to urgently step up efforts to fight illicit trade.

In light of this, on the 25th of June 2019, the Illegal Trade Eradication Steering Committee was formed by the President Office. At the committee's first coordination meeting, its Vice President and Chairman H.E. U Myint Swe referred to the Global Illicit Trade Environment Index 2018 report mentioned above. His Excellency also added that Illegal trade is "the main obstacle to the development of Myanmar's economy".

In 2019, the second edition of the Anti-illicit Trade Forum saw the participation of the Union Minister of Planning and Finance and Vice Chairman of the Illegal Trade Eradication Steering Committee H.E. U Soe Win, numerous deputy ministers and senior officers, private sector representatives and international bodies such as the United Nations Office on Drugs and Crime (UNODC). For this edition, a study[2] commissioned by the EuroCham Myanmar Anti-Illicit Trade Initiative (EMAITI) on the loss of taxes due to illicit trade in Myanmar was published. The minimum value of illicit trade for 2017-18 was estimated to have been nearly 6.5 billion USD while the loss of taxes on only six selected goods was around 364 million USD.

This has led to much-appreciated increased focus from Myanmar's government over the last year to manage the various challenges posed by illicit trade, however major further action remains necessary. The significant areas of illicit trade activities in Myanmar include trafficking of persons, wildlife, narcotics, tobacco, alcohol, food items and several categories of counterfeit goods including medicines, electronics and fashion. These criminal activities have various negative consequences for Myanmar: illicit trade harms consumers, the environment, tax revenues, and employment. It also undermines good governance, the rule of law, public trust, human capital, and public health.

Myanmar has a total of 18 border trade centres along its borders with China, Thailand, Bangladesh and India as well as sea trading routes over long coastal lines. Many of these border areas are affected by ethnic conflict and are not under direct control of the government. As a result, Myanmar is a hotbed of illicit trade and therefore requires the government to have firm enforcement in place wherever possible.

Although in recent years the government has launched initiatives like the Myanmar Automated Cargo Clearance System (MACCS) and the Accredited Economic Operator Programme (AEOP) with the objective of accelerating and securing general import-export processes, these programmes still have room to improve. 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, should not be neglected, since much illicit trade is through informal routes and is sold in urban areas. The most effective way to combat illicit trade involves using an integrated approach that tackles all levels of the supply chain (importers, distributors and sellers) equally.

The highlighted issues and recommendations that follow below are prepared from the perspective of the international private sector to serve as a reference for further discussion with the government

1 The Economist Intelligence Unit (2018). The Global Illicit Trade Environment Index: Overall results. Retrieved from http://illicittradeindex.eiu.com/documents/EIU%20Global%20Illicit%20Trade%20Environment%20Index%202018%20-%20Overall%20Results%20White%20Paper%20June%206%20FINAL.pdf
2 EuroCham Myanmar. (2019). Report on the study of the loss of taxes due illicit trade in Myanmar. Retrieved from https://eurocham-myanmar.org/uploads/5252b-eurochamweb-final-report-on-illicit-trade-ait-2019.pdf

of Myanmar and its key advisors to strengthen the enforcement of the rule of law and to encourage efforts to target illicit trade problems where they exist.

Issue Description 1: Porous borders

For geographical reasons, the borders of Myanmar are vast and porous and as such, difficult to police comprehensively. Inadequate 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 at many unofficial border crossings in the area. Enforcement at official gates is also below international standards and there is still a lot of room for improvement.

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

EMAITI recognises border control is a complex issue to solve, but it is one of the main factors fuelling illicit trade.

Potential Gains:

• Enhancing 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 security implications, as much illicit trade finances organised crime including human and arms trafficking and terrorism.

• Legal and measurable trade volumes will increase government revenue significantly.

• The availability of unsafe and disqualified goods will also be limited and consumer rights and protection will be improved through transparent and disciplined interactions.

Recommendations:

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

• Implement the use of an up-to-date online system which would reduce administration work, record data more efficiently and reduce the risk of corruption. Such a system would facilitate the exchange of information between the various governmental departments and ensure that each is informed about any change in regulations (sometimes officers at the border areas have no access to information or receive no communications about changes in regulations or directorates regarding taxation on certain products).

• Establish enhanced government-to-government cooperation and network with neighbouring countries such as Bangladesh, China, India and Thailand to tackle cross-border smuggling and detect flows of illegal products through the borders. In Thailand, for example, the government is actively logging the transfer of illegal imports to Myanmar in its exports records. Education of customs staff on how to identify illicit imports at border gates between countries would also be impactful.

Issue Description 2: Barriers to effective enforcement

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

Furthermore, enhanced regulations to stamp out corruption will act as a deterrent.

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One strong incentive for more effective enforcement would be the adoption of Key Performance Indicators (KPIs) and related targets to concretely measure the performance of enforcement agencies.

Potential Gains:

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

• The livelihoods of legitimate retailers will be improved. The flow of genuine products distributed through legitimate channels will be reinforced, smuggling will become less profitable and bribery and corruption will also be discouraged.

Recommendations:

• Strengthen coordination and collaboration between state and regional illicit trade task forces. State and regional illicit trade task forces need to coordinate and collaborate together with the private sector as well as law enforcement agencies such as border control, the police force and General Administration Offices in order to intensify monitoring and enforcement that will ensure continuous effective multipronged action. Defining the necessary powers of law enforcement agencies could significantly increase their enforcement actions. EMAITI emphasises that providing more resources in terms of manpower or equipment and allocating sufficient sources of funding for capacity building should be prioritised.

• Make use of international best practices as reference to further develop Myanmar's enforcement legislation against illicit trade. Many countries have effective enforcement procedures, such as seize-and-destroy procedures, that could be useful. However, these practices should not be overly complicated or become an administrative burden.

• Establish a track-and-trace mechanism comprising state and regional tracking and tracing systems and a national information-sharing focal point to further secure the supply chain and to assist in the investigation of illicit trade. The private sector should be consulted and best practices shared throughout the development of such a system. A starting point could be to make use of the Myanmar barcode system obligatory in order to easily identify parallel traded products.

Issue Description 3: High price differential

Myanmar is a highly price-sensitive market, whereby consumers make most of their decisions based on price. Illicit trade thrives as a result because illegal products can undercut locally-produced taxed products; illicit beer is 35% cheaper than locally-produced beer, for example.

In its search for tax collections, the government seems to look first to increase taxes on legitimate players, noticeably fast-moving consumer goods and special goods. This does not necessarily result in increased tax revenues as the volume of legal, duty-paid products may reduce or even offset the gain from higher taxation rates, and it means the only winners are illegal traders as their products are even more price attractive. Failure to take into consideration 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 will enable high illegal trade and a decline in the volume of legitimate products.

Potential Gains:

By tackling high price differentials for many product categories (ranging from pharmaceuticals, oil, electrical goods, cars, alcohol products, mobile phones, perfumes, toothpaste, soaps, detergents, and even diapers), legitimate trade will increase and at the same time illegal products will become less attractive.

Recommendations:

• Ensure public consultation when drafting laws or making tax proposals to improve transparency, efficiency and effectiveness of the regulation and improve accountability. Better programmed consultation and more access to information will increase the quality of the discussion. For example, official translations of relevant documents and drafts should be released directly by the governmental agency. Public consultations tend to: bring expertise, different perspectives, and ideas into the discussion; help regulators balance opposing interests; identify unintended effects and practical problems; provide a quality check on the administration's assessment of costs and benefits; and identify interactions between regulations from various parts of government.

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

• Take a long-term approach to tax policy with moderate and gradual increases. There is a range of factors for the government to consider when deciding on increasing taxation, including affordability of goods and price sensitivity of consumers: Any sudden, significant increase in consumer price drives price-stretched consumers to switch to low-priced illegal goods. This would adversely affect government revenue as consumption would shift away from the legitimate tax-paying manufacturers. High price differentials with neighbours could also encourage cross-border shopping, consequently disrupting the country's revenue.

Issue Description 4: Weak penalties

In order to reduce illegal trade, there should be a higher risk of interdiction and more severe and uniformly applied penalties and sanctions. Criminals trading illicit products are undeterred by the weak penalties in place, which are often not fully enforced.

Potential Gains:

Establishing clear penalties lowers the incentive to commit illegal acts, while at the same time improving transparency amongst officials.

Recommendations:

• Promote the rule of law and reform, strengthen, regularly update and communicate national laws relating to illegal trade as the problem develops and changes. The present multilateral agreements need to be strengthened and resilient to internal as well as external turbulences. The most effective action can be taken at regional levels, as the needs of each region vary.

• Increase fines/penalties or charge those caught with illegal products in court. Their retail licence should be removed, and a substantial fine issued. While it is more arduous to prosecute an offender in court, prosecution adds to disruption of their illegal business.

• Set up a special complaint centre so that people can report illicit trade safely and anonymously. The complaint centre could be a reliable and convenient reporting mechanism for the public to submit information to law enforcement agencies concerning suspected illegal activities and improve collaboration, coordination and cooperation with law enforcement agencies such as police force and customs officers and industry players such as fast-moving consumer goods (FMCG) companies in the market. The informer should be provided with safe and secure means of reporting illegal activities. Due to sensitivity and danger, informers cannot name names without adequate protection from the authorities. Information could then be analysed and disseminated for investigative and intelligence purposes for law enforcement and for public awareness.

Issue Description 5: Burdensome policy and regulations

The application of policy and legal approaches to monitoring and preventing illicit trade is critical. However, while regulations can be created and used to help reduce illicit trade, EMAITI recommends they be carefully considered so as not to add extra burden to local producers.

Potential Gains:

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

Recommendations:

• Initiate private sector partnerships to leverage effectiveness of government regulations including developing and deploying technology solutions, enhancing cooperation and sharing solutions through consultation and expanding the knowledge base. Industry associations and/or chambers of commerce in Myanmar are prime partners for intensifying working relationships between business and the government.

• Carry out illicit trade environmental and economic impact assessments. A better understanding of the size and scale of the overall illicit trade environment is needed. This could be achieved through structured scope of assessments by third party agencies and organisations; references could be made on UNODC's Cross Border Trading Zones and Gates, the Central Statistics Office's (CSO's) Trade Volumes and Statistics, UN Comtrade, International Monetary Fund's (IMF) Direction of Trade Statistics (DOTS) and the World Trade Organization's (WTO) Trademap. Engagement with the World Customs Organization (WCO), WTO, Europol, the Organisation for Economic Cooperation and Development (OECD), the International Criminal Court (ICC), and the European Anti-Fraud Office (OLAF), including via an industry advisory group, will help further tackle the issues.

Issue Description 6: Impact on society: The social cost of illicit trade

Myanmar has one of the biggest buyer bases for illegally traded products in Southeast Asia, partly due to the lack of public and government awareness of the risks. Since people tend to consider only the direct consequences of illicit trade, in this section, EMAITI would like to provide a brief overview of the social costs of illicit trade which are too often underestimated or ignored.

Firstly, large revenues generated by criminal networks are directly funding organised criminal and terrorist groups, enabling money-laundering, and undermining the proper functioning of civil society and the achievement of peace in conflict-prone border areas.

In addition, as tax is not paid on illicit goods, government revenue is affected. In a recent study[3] commissioned by EMAITI, the minimum value of illicit trade for 2017-18 in Myanmar was estimated to have been nearly 6.5 billion USD and that the loss of taxes on only six selected goods was around 364 million USD—income that could be reinvested in public services and in infrastructures if it were collected in taxes.

Secondly, illicit trade often provides consumers with sub-standard or counterfeit products, or when the product is genuine, it has been transported or stored in conditions that undermine the quality (e.g. if the integrity of the cold chain is not maintained, some pharmaceuticals and vaccines are rendered ineffective). Therefore, illicit trade poses a serious threat to the health and safety of consumers and, indirectly, to the sustainability of the healthcare system.

Thirdly, the production and inflow of these products also undermines local industries since most of the illegally traded products are produced abroad and illegally imported, depriving local industries of significant revenues which implies that there is an impact on employment as well as local businesses' ability to invest and grow.

3 EuroCham Myanmar. (2019). Report on the study of the loss of taxes due illicit trade in Myanmar. Retrieved from https://eurocham-myanmar.org/uploads/5252b-eurochamweb-final-report-on-illicit-trade-ait-2019.pdf

Potential Gains:

• Higher tax revenue for the government (money that can be invested in infrastructure or in public services).

• Reduced financing of criminal organisations.

• Improvement of consumer health and safety.

• Hampering of money laundering, and transfer of economic prosperity to legitimate local producers.

• More local jobs and investments.

Recommendations:

• Raise awareness of the social cost of illicit trade among both the general public and across governmental departments. By stressing the social cost of illicit trade, EMAITI hopes to orient consumer choices toward legitimate products, but, more realistically, to encourage the government to join efforts in the fight against illicit trade. EMAITI welcomes the institution of the Illegal Trade Eradication Steering Committee, chaired by the Vice President himself, and also the formation of Special Units active in 9 states to enforce anti-illicit trade measures. In addition, EMAITI sees the Government Consumer Protection Agency as a crucial stakeholder, especially in its capacity to inform consumers about the multiple ways illicit trade impacts society.

• Make use of social and digital media to both monitor trade and inform the public. Myanmar has high social media penetration, which presents both a challenge and an opportunity. On one hand, Illicit goods are increasingly bought and sold via online platforms. Therefore, enforcement agencies should more carefully monitor the online trade of illicit goods. For example, illegal beer is openly advertised and traded on Facebook. On the other hand, social and digital media can be an effective means to inform customers about the risks of consuming illicit goods and the social cost of illicit trade in general. The public sectors should collaborate with the private sector as well as with international organisations to create effective content and share it across the web. Content should also aim to rebuild trust in legitimate goods sold online, which has been undermined by the uncontrolled proliferation of high-quality replicas.

Acknowledgments

EuroCham Myanmar Anti-Illicit Trade Initiative (EMAITI)

AUTOMOTIVE

9

INTRODUCTION

Established in November 2017, the Automotive Advocacy Group stands among the leading authorised importers and distributors of automotive brands with headquarters in Europe and seeks to provide the Myanmar government with constructive policy recommendations based on the international experience and know-how of its members.

The automotive group welcomes the current stop in the implementation of government permits for civil servants, as advocated by EuroCham Myanmar and other Chambers of Commerce, and reaffirms the importance of creating a constructive dialogue with the government counterparts to allow a sustainable growth of the automotive industry in the years to come..

Still this year the issue of cars imported and sold by unauthorised importers and distributors, herein defined as parallel importers, remains the main concern for foreign investors hampering the ease of doing business in the automotive sector in the country. However, important steps from previous years have been taken in regard to the registration of imported vehicles in Yangon and the group hopes to see further progress in this direction. In light of the dramatic consequences following pandemic outbreak in April 2020, the automotive group sees the change in operations of the RTAD as one of the main priorities to tackle for this year aiming to develop a more resilient and digital system for the registration of new vehicles. The ongoing implementation of bonded warehouse is positive for Myanmar, but it is important to better include the automotive sector because of the specificity of the issues related to this industry that have failed to be addressed so far. Finally, this group wish to see a bigger involved of all parties - including local associations, non-governmental organisations and chambers of commerce – to better discuss future policies in regard to hybrid vehicles and Battery Electric Vehicles (BEVs).

Issue Description 1: Parallel importers

Although Myanmar has undertaken important reforms to limit vehicles legally imported from another country through channels other than the authorised distribution system, further steps are required to eradicate unfair competition and provide better services to customers. This kind of unauthorised distribution is made possible by traders using the individual import scheme to bypass all the regulations that official importers have to follow (showroom licence requirements, CIF price given to customs).

Hence, the unfair practises adopted by parallel importers regarding the CIF declaration at the Customs is still the main concern for the members of this group. The CIF value is not based on the strict criteria authorised importers and distributors must comply with.Moreover, the lack of warranties and after sale services means purchasers of vehicles from unauthorised vendors have no guarantees and cannot claim any compensation if the product fails to meet standards of quality and performance. Many other ASEAN members have taken steps in discouraging parallel imports to foster fair competition and maximize revenue collection.

Potential Gains:

• Promote market fairness in the automotive sector.

• Provide effective customer protection and satisfaction (safety recalls, warranty, spare parts availability).

• Ensure tax compliance and collect more revenues to invest into national welfare.

• Ensure environmental regulations and labour rights compliance.

• Better impact on economy/employment (technological transfer, trained workforce and quality jobs).

• Improvement of Myanmar's reputation to attract more FDI.

1 Republic of the Union of Myanmar Ministry of Industry. (2019, May). Automotive Policy. Retrieved from: https://myanmar.gov.mm/documents/20143/8126610/Auto+Policy+%281%29.pdf/80fd9f0d-8370-47d5-3d95-9a82e749ef28?t=1557818638529

Recommendations:

• Match the CIF value declared at customs by parallel importers with the value declared by authorised importers and distributors for the same model with same equipment ;

• Adopt efficient regulations to reduce the parallel imports to a minimum (following the example of other ASEAN countries);

• Both authorised and parallel importers should take liability for the products they sell and ensure customer protection which includes warranty and aftersales services;

• Enforce minimum requirements for workshops (e.g. safety tools, wheel alignment, lifts);

Issue Description 2 : Initial registration and inspection

The recent events following the outbreak of COVID-19 showed the weakness of the current system for initial registration where buyers need to tow their cars to the RTAD office for physical inspection and submit numerous documents at different times, making human interaction almost impossible to avoid. Moreover, there are only three cities where vehicles can be registered (Yangon, Mandalay and Nay Pyi Taw), meaning car owners and dealers from other cities in Myanmar need to drive or tow vehicles to one of the three places where registration is possible.

There are three main issues under the current system:

• Automotive brands cannot sell new vehicles as soon as the department in charge of the initial physical inspection closes, such as during the outbreak of COVID-19;

• High risk for dealers driving the car: the system increases the cost of transport, and results in long queues at the RTAD as the vehicle physically needs to be there;

• The vehicle's review is more of a visual inspection and there is no real safety check (brakes, lights, suspension, etc.) or emissions checks (exhaust emissions, oil leakage, etc.).

Potential Gains:

• Align Myanmar with other countries in the region by creating a digital system for the registration process (e.g. Cambodia).

• Reduce human interaction and number of cars visiting the RTAD offices.

• Establish a more resilient system ensuring business continuity in the tragic event of a new pandemic outbreak.

• According to the system adopted[2] , RTAD could relocate part of the staff to other tasks and collect more fees.

Recommendations:

• Authorised importers and dealers could be allowed to register new vehicles without the need to drive or tow each unit to the RTAD in Yangon, Mandalay or Nay Pyi Taw.

•This could be achieved in different ways: by creating one-stop centres between Customs and RTAD at the ports of arrival; by digitalising the entire registration system; by postponing the physical inspection; by allowing authorised third parties to carry out physical inspections. Indeed, there are different successful examples in ASEAN that could be followed.

• Digital payment methods, widely used in Myanmar, could be adopted also in the registration process of new vehicles

2 for instance, if third parties are allowed to carry out the inspections

Issue Description 3: Limit of ownership

The amount of passenger cars imported as Completely-Build-Up (CBU) units that one individual or company can own is limited in number, and often goes case-by-case. This regulation prevents many automotive brands from fully realise their potential by constraining total sales and individuals, or businesses, from buying the car they wish to own and drive. This leads to another issue: car dealerships are limited in the number of cars they register of their own resulting in a limitation of demonstration vehicles available needed to perform test drives and marketing activities.

Potential Gains:

• Bigger market will drive more investments into the automotive sector.

• Allow people to drive the cars they wish without constraints.

• Speed up the change from old vehicles to new ones.

• Safer and greener vehicles will be on the roads.

• Collect more revenues from CBU units.

• Create a level playing field between SKD and CBU brands.

Recommendations:

• Eliminate the existing limits on the number of vehicles that one individual or company can purchase and own;

• The same system should apply for both SKD and CBU brands.

Issue Description 4: Yangon Registration

Although the current system still presents a certain degree of uncertainty, the recent changes that have allowed the registration under the address in Yangon, without the need of purchasing a scrap car to get the license, show the willingness of both local and central authorities to find one steady and fair solution.

Potential Gains:

• Better control over the vehicle circulating in Yangon.

• No need for additional policies in the future.

Recommendations:

• Allow buyers to register under the address in Yangon and receive d the Yangon licence.

• No cap in the number of cars registering in Yangon.

3 Thilawa SEZ Management Committee. (2016, October 7). Instruction 5/2016: Instruction related to SEZ Warehouse. Retrieved from: http://www.myanmarthilawa.gov.mm/sez-management-committee

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Issue Description 5: Licensed items in bonded warehouses

The Thilawa Special Economic Zone (SEZ) Management Committee has a list of notices and instructions which are available publicly. According to the instruction of SEZ Warehousing (No.5/2016), Cargos Held on Account and Deposited Cargos can be stored in Free Zone Warehouses.[3] There is no instruction which pertains to licensed items. It follows that, under the current framework, there is no such instruction or notice which restricts, or allows, licensed items to be stored in bond in the warehouses in Thilawa SEZ. However, in practice, only non-licensed items (e.g. replacement parts) can be stored in bond.

Potential Gains:

The Thilawa pilot project can help customs to learn about possible issues related to bonded warehouses and licensed items, allowing for the necessary steps to be taken on time before the national procedure is in place.

By allowing licensed items to be stored in bond the possibility of false disclosures before customs significantly reduces.

Importers will benefit from having a supplier's stock within Myanmar close to the local consumer, which will reduce the lead time required to deliver the products. Additionally, such a setup can greatly improve the cash flow of local businesses by partially paying the applicable tariffs and duties in line with the demand from the local consumers.

Recommendations:

• Launch a pilot project in Thilawa by allowing licensed items to be stored in bond;

• Address issues related to licensed items when discussing the new procedure for bonded warehouses in Myanmar;

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

Acknowledgments

EuroCham Myanmar Automotive Advocacy Group

CONSTRUCTION AND INFRASTRUCTURE

10

INTRODUCTION

Initiated in 2016, the EuroCham Myanmar Construction and Infrastructure Advocacy Group (EMCIAG) is composed of representatives from leading European companies working in different sectors within the construction industry.

Acknowledging that the construction industry is a slow-moving industry, the EMCIAG is committed to supporting the sustainable development of the industry in Myanmar, proposing structural regulatory improvements.

The EMCIAG's mission is to provide the Myanmar government and relevant stakeholders with a holistic overview of the sector's challenges, and to make recommendations on how best to overcome these to ensure a prosperous and well-structured industry. In the last year, the EMCIAG has met with the Parliamentary Commission on Construction, Transportation and Communication to discuss the current state of the industry and to coordinate their work whenever common ground has been found in the respective improvement agendas. Plans have been made to continue the dialogue this year, in particular on the development of and adherence to construction standards.

Issue Description 1: Design, material and electrical standards

Several quality standards have already been initiated for good-cause in the construction sector of Myanmar. If deployed effectively and throughout the entire sector, they provide a common technical language and are the basis of assessing performance of construction products and protocols.

Members of the EMCIAG have noticed an increase in demand from the market for proof of certification or quality assurance. Clients increasingly request technical information on materials and compliance to international standards. However, this is a bottom-up demand and limited progress has been seen on the government side in encouraging industry players to ensure material quality as a standard requirement in the construction process.

Recently introduced building standards are not as detailed as required according to international practice. Often a variety of standards exist, but there is neither sufficient regulation nor a generalised value recognition to those standards. Lack of enforcement also persists, mainly due to low capacity among respective governing bodies.

There is a pressing need for an industry certification and standardization scheme. The government needs to understand the benefits as certification allows increased governance of quality assurance and safety levels throughout the value chain, it acts as a rule manual for construction players and ultimately benefits clients.

Potential Gains:

- Centralised enforcement of the standards will ensure that manufacturers adhere to standards and that quality increases throughout the industry. If design standards and material standards are not enforced, the quality of construction cannot be guaranteed.

- The availability of datasheets and the standardisation of quality standards will provide clients insights into the quality of materials they are using, improving overall safety and quality of construction.

- The EMCIAG welcomes the launch of the regulator, an institution under the Ministry of Construction. With sufficient budget available the regulator will bring about positive developments in the sector.

- With established laws and standards in place, investor confidence will rise. Compliance with standards will improve building sustainability and curb excessive energy consumption.

Recommendations:

- Further development of existing design, material and electrical standards, covering all aspects of the construction industry.

- Alignment with European construction standards. Myanmar standards are being created but they need to be extended. To secure proper implementation and enforcement of standards, more attention needs to be paid to building capacity within the governing bodies.

- Improved understanding of the need to adhere to certification. Documentation exists, but is not enforced, making certification less effective.

Issue Description 2: Environmental sustainability

The ecological footprint of the construction sector is huge; buildings and infrastructure projects do not always take into account environmental concerns. Bearing in mind that the effects of climate change are becoming more serious, the incorporation of environmental elements is more relevant than ever. Since Myanmar is vulnerable to climate change and natural disasters such as flooding, a holistic approach is needed.

Positive developments are the launch of the Myanmar Sustainable Development Plan (MSDP) and the increasing occurrence of Environmental Impact Assessments (EIA), especially in construction projects for hydropower, for which EIAs are now an integrated part of the planning process. However, the skilled labour necessary for the assessments is in short supply, making validation difficult, which leads to delays in the execution of projects.

Potential Gains:

With the MSDP and increased use of EIAs, construction-related environmental issues such as energy and water waste as well as pollution can be better addressed, improving environmental conservation.

Recommendations:

Establishment of regular independent audits on construction sites to check for significant environmental risks, and that control systems are in place, would help ensure compliance and prompt problem-solving.

The EMCIAG recommends that the government finds the balance between conservation and encouraging the development of construction and infrastructure. Developing a holistic approach that considers environmental factors from the project planning stage will have countless benefits.

Issue Description 3: Preservation of heritage

A legacy of Myanmar's past, heritage structures are still a central part of cities and villages. Economic development and rapid urbanisation are posing a serious threat to the preservation of such structures. Maintenance and restoration of structures is a timely and costly process.

Over the past years there have been several non-governmental initiatives that have been launched to raise public awareness of the value of historical sites. For example, Yangon Heritage Trust works on preserving historical sites in Yangon, the Secretariat in Yangon successfully reopened to the public after extensive renovation, and the awarding of UNESCO World Heritage status to ancient Bagan in 2019 will be beneficial to the preservation of historical structures. Yet, a clear government strategy for preservation of heritage sites is yet to be developed. The EMCIAG is concerned that no clear roadmap exists to ensure preservation of unique natural attractions, religious and cultural heritage sites, given both the historical and economic value of such treasures. Heritage buildings are often expensive to renovate or restore, but their economic value should not be underestimated, especially with regards to attracting tourism.

Potential Gains:

With an adequate system in place, preservation of heritage can be an inclusive process in which public authorities, private owners and citizens participate in shaping the urban environment for the common good. With increased efforts to preserve heritage, the city will be more attractive to its people and visitors. By encouraging the general public to be committed to heritage preservation people may become more aware of their cultural capital and more engaged in building a city that provides welfare for all.

Heritage buildings are a significant drawcard for tourism, another key growth industry.

Recommendations:

The EMCIAG recommends strengthening government efforts to preserve the soul of Myanmar's cities. When heritage is preserved in a positive manner, third-party stakeholders will increase their involvement. The government could increase programmes that encourage active participation from the general public in preserving heritage sites and make sure that they reap the benefits as well. The following points are some recommended measures:

- Establish a government body or entity that can advise and inform the general public on matters related to heritage.

- Implement initiatives and projects that stimulate the preservation of heritage buildings, such as tax incentives to preserve buildings more than a century old.

- Include third-party stakeholders to increase efforts to preserve heritage.

Issue Description 4: Enforcing construction safety

Since construction sites are becoming larger and more complex, there are greater safety, environmental, and health risks for workers and local communities.

Companies active in the construction industry may consider safety measures as time-consuming, voluntary and costly. Government-level intervention is required to change this culture of non-compliance. To that end, the government has issued a draft law to govern safety matters at construction sites, which the EMCIAG hopes will improve the safety of the working environment.

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

Potential Gains:

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

Recommendations:

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

Setting construction safety measures ensuring compliance with international safety standards and developing a professional safety training scheme are possible solutions to occupational risks.

Issue Description 5: Adhering to international standards in contract management

Presence of international financing institutions such as the World Bank, Asian Development Bank (ADB) and other bilateral cooperation agencies that use standardised conditions of contract requires international contract management practices to be introduced and developed in Myanmar. Fair, transparent, and regulated terms of contracts are necessary to capture the interest of an increasing number of companies, local as well as foreign. Ultimately, this would result in a rise in the quality level of the end product at a fair cost. Today, many projects are being launched in Myanmar under standardised conditions of contracts, but too often national implementing agencies fail to adhere to the contract management standards during the execution stages of the project.

Trainings do exist but are currently mostly aimed at the private sector. The EMCIAG believes contract management capacity of government agencies needs to increase if Myanmar wants to fully benefit from the development programs of international financial institutions.

Potential Gains:

- Better contract management leads to a higher quality of the infrastructures built.
- Fair, transparent and regulated contracts attract better companies.
- Standardised contracts put in place a clear allocation of rights and duties between contractor, consultant and owner.
- Clear execution and adherence to contract management duties lowers the probability of delays in building and allows timely finishing of projects.
- All the above attract more investment and lead to fair competition in the market.

Recommendations:

- Engage with experts for coaching purposes.
- Incorporate standardised conditions of contract for all public works.
- Implement capacity-building measures for government officials.
- Regulate fair and transparent terms of contracts.

Acknowledgments

EuroCham Myanmar Construction and Infrastructure Advocacy Group

DIGITAL INITIATIVE

11

INTRODUCTION

Myanmar's digital ecosystem has evolved under unique circumstances. Although Myanmar was closed off to the international system until recently, the country has rapidly adopted mobile technology. The drastic reduction in the price of sim cards is often used as an example of improved accessibility to digital technology, and mobile data has also become more affordable.

This has meant that it is a fertile market for innovations and the adoption of new technologies in a growing economy with increasing digital literacy among the population. Nonetheless, there are still many challenges hindering the emergence of a healthy digital ecosystem.

The Digital Innovation Advocacy Group was created in 2018 in response to the growing number of start-ups and digital companies operating in Myanmar. The group was restructured in March 2020 under the new name of the EuroCham Myanmar Digital Initiative (EMDI). EMDI is committed to supporting digital transformation by offering expertise and knowledge of best practice to the government.

Facebook has become a sort of catch all platform for webpages, communication and e-commerce. Very little time online is spent outside Facebook, and as digital literacy rates are low, misinformation is often widely spread. There is a severe lack of digital skills that might be useful in the future economy.

This is not to suggest the government has been inactive. The Digital Economy Development Committee (DEDC) has been drafting the Myanmar Digital Economy Development Master Plan to develop and regulate the country's digital economy.[1] The DEDC, established in July 2017, focuses on connectivity, skills and capacity building, e-government transformation, digital transformation and trade promotion, cyber security and data innovation to promote the economic growth through digitisation of trade and commerce. The EMDI supports the government's efforts to reform the sector and is ready to assist in the transformation process.

Issue Description 1: Fair access to the Internet

The importance of the internet as a key piece of modern-day infrastructure cannot be overstated. Both internet users and internet usage for everyday tasks are increasing. The internet is a great tool for remote information- and knowledge-sharing.

The shift from traditional media to internet use has led to some issues and challenges, and growing reliance on the internet means the government has a responsibility to ensure citizens have equal access to the internet.

The uninterrupted and free flow of information is also a key component of a healthy democracy as citizens need to be able to make informed decisions. Moreover, given that online tools such as banking, e-commerce and communication apps have become important to daily life, disruption of internet services has significant and far-reaching consequences.

Potential Gains:

Uninterrupted access to the internet is a basic expectation of many international investors and if Myanmar can ensure continuous access there will be tangible gains. Allowing the free flow of information will also support the country's transition to democracy.

Recommendations:

The EMDI recommends that the government:

- Refrain from attempts to limit or shut down the internet; and

- Improve internet infrastructure to ensure access to the internet is affordable and reliable.

1 Thiha Ko Ko. (2018, January 19), Myanmar drafts digital economy master plan. The Myanmar Times. Retrieved from https://www.mmtimes.com/news/myanmar-drafts-digital-economy-master-plan.html

Issue Description 2: Ensuring data privacy

Increasing amounts of personal data and information is being collected on individuals as more services shift to online platforms. With the growth of online banking and e-commerce this trend is only set to continue, however an appropriate legislative framework protecting this information has yet to be developed.

The EMDI strongly opposes the collection of personal information which could be used for nefarious purposes and believes the individual should have some degree of agency in deciding what their personal data can be used for.

One example of potential overreach is the recent request by the government to establish a database which would require individuals to provide fingerprints and extensive personal information in order to register a newly purchased SIM card. The EMDI acknowledges the necessity to request certain information from consumers, however we believe collecting extensive data would be problematic. Such burdensome requirements could also incentivise the creation of a black market supplying unregistered or preregistered SIM cards.

Potential Gains:

Creating an environment of confidence and trust will encourage more people to adopt and use digital services. This will support the overall growth of Myanmar's digital ecosystem and all associated benefits.

Recommendations:

The EMDI recommends that the government:

- Legislate and enact data protection laws and legal safeguards for consumers in close consultations with key bodies and stakeholders; and

- Regulate communication surveillance laws and implement a legislative strategy on data protections including a requirement to report data breaches when they occur.

Issue Description 3: Addressing digital fraud

Most e-commerce in Myanmar is conducted on Facebook which is a largely informal and unregulated platform. The continued use of Facebook as de facto online shops and services has led to an increase in the rates of digital fraud being committed on the platform. This includes false advertising and failure to refund or replace items that do not meet expectations.

The prevalence of informal e-commerce retailers means the government is missing out on potential tax revenue. These conditions make it much more difficult for the appropriate authorities to pursue the matter in a way that builds consumer trust, and retailers can also easily facilitate the trade of illegal products.

While there are ways in which a customer can seek compensation or remedies if they have become the victim of digital fraud, most do not know how to access such remedies.

The result is an environment where illegitimate retailers can openly operate, consumers who are hesitant to engage in e-commerce, and legal companies who are put at a significant disadvantage for attempting to do the right thing.

Potential Gains:

Building consumer trust will encourage adoption of the many digital services and products. Tax revenue will increase if online retailers can be shifted into the formal market.

Recommendations:

The EMDI recommends that the government:

- Improve and strengthen consumer protection policies so that they are transparent, accessible and clear;
- Ensure retailers know of their responsibilities and expectations are to consumers;
- Increase awareness of existing consumer laws, the rights of consumers and how to register a complaint; and
- Establish and enforce a registration process for online retailers.

Issue Description 4: Digital literacy

The above issues cannot be solved without improved digital literacy. Current data usage statistics show that social media platforms (mainly Facebook) dominate internet usage,[2] which suggests there is a lack of understanding of other useful services. People are also quick to believe and share hate speech, fake news and clickbait as a result of poor critical thinking skills and the reliance on social media. Nonetheless, minor improvements have been made in terms of broadening the range of websites and services people in Myanmar use.

A further challenge for both local and international employers and investors is the lack of a skilled digital workforce. Computer science and engineering talent is hard to come by, costly to retain and time-consuming to train, much more so than in other countries. This results in a less competitive digital workforce and skilled labour being imported from abroad. Consequently, development of digital services in both the private and public sector is slowed, and the quality of some locally produced services has been below international standards.

Potential Gains:

There is an opportunity to strengthen the backbone of the digital economy through incorporating digital skills in education policy, developing an Information and Communications Technology (ICT) curriculum, and by improving the digital capabilities of education policymakers, teachers, and lecturers.

Incorporating digital skills in the education policy and subsequent investment in the ICT curriculum will lead to increased digital literacy, improving the digital capabilities of education policymakers, teachers, and lecturers and consequently strengthening the digital economy in Myanmar.

Collectively raising the level of digital literacy can address the shortage in digital skills. To do so, rote learning needs to be replaced with creative thinking, practical self-learning needs to supplement academic lecturing, and more investment in modern, functional ICT equipment and grid connections in schools and universities nationwide is essential.

Improving digital literacy by stimulating creative thinking and practical self-learning will enhance the population's digital skills, strengthening the economy and creating a level playing field with the global market.

Recommendations:

The EMDI recommends that the government:

- Provide digital literacy training to increase familiarity with modern ICT for all civil servants, starting at senior levels. Education policymakers, schoolteachers, and lecturers should also be prioritised.
- Embed student-centric learning, digital literacy, and Science, Technology, Engineering and Maths (STEM) in the middle and high school curricula.

2 Roache, B. (2018, January 16). What Myanmar's Facebook supremacy means for business. Frontier Myanmar. Retrieved from: https://frontiermyanmar.net/en/what-myanmars-facebook-supremacy-means-for-business

- Include mobile and computer digital skills and a digital mindset (using internet productively, avoiding hate speech, detecting fake news) in the digital literacy curriculum. In preparation for a digital economy, high school students should receive basic programming skills using Scratch or similar programming training tools. This could be done in partnership with suitable stakeholders while ensuring a transparent and impactful implementation.
- Equip all universities with a grid connection, functioning ICT labs and high-speed fibre internet and include online research in university curricula to train students to efficiently find informationonline. Computer universities should promote computer science programmes such as modern web and mobile app focused coding, and design thinking skills. Additionally, partnerships with international university and companies should be considered in order 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.
- Make vocational digital literacy qualifications available for citizens already out of school or university at schools and training centres nationwide. The government may also consider partnering with established computer training centres to provide said vocational qualifications.
  For citizens that do not want official qualifications, the government should incentivise and support the establishment of digital literacy training centres.

Acknowledgments

EuroCham Myanmar Digital Initiative

ENERGY

12

INTRODUCTION

Access to energy is an essential facilitator to inclusive economic and social growth. There is an abundance of natural gas and renewable energy resources in Myanmar. This unique combination gives hope for a promising long-term energy outlook for the country. However, most of Myanmar's energy potential remains untouched and as of today the country is still one of the least electrified in the world. To address this, Myanmar has set an ambitious target of achieving universal access to energy by 2030 with its National Electrification Plan (NEP). Universal access—though in itself challenging—is even more difficult if the growing demands are also to be met.

The ambition of building a power infrastructure that covers the whole country within the next decade seems ever more challenging in the context of Myanmar's rapidly growing residential and industrial power demands, which requires significant increases in power generation. While the current government has taken important first steps in addressing these challenges, much remains to be done in order to implement the NEP in time and in a way that lastingly addresses Myanmar's energy needs. Meaningful action should be implemented swiftly, and the reform path continued in order to avoid acute electricity shortages in the coming years. Furthermore, a legal and fiscal framework that keeps up positive momentum and encourages foreign direct investment (FDI) should be developed, as international capital and expertise are needed to achieve the NEP. In view of the upcoming 2020 national elections, it is crucial to have an open discussion on how best to tackle the country's energy challenge.

In 2019, the EuroCham Myanmar Energy Advocacy Group (EAG) built upon its constructive and mutually beneficial dialogue with the Myanmar government. The EAG is committed to strengthening its cooperation in this regard and is ready to further contribute to the development of the energy sector for the Myanmar population to benefit accordingly. For this purpose, the group raises key issues to be addressed by the government. The EAG looks forward to engaging with all stakeholders on these issues throughout 2020.

Issue Description 1: Myanmar's energy master plan

In order for Myanmar to build its power generating capacity in a coordinated and foresighted way, a national energy master plan that is aligned with the Myanmar Sustainable Development Plan (MSDP) should be published and made available to the public. This master plan should set out a holistic approach towards power project development and implementation, taking environmental, social and economic considerations into account in order to ensure the quality and sustainability of the power infrastructure. The master plan should outline a road map for the various steps and projects necessary to achieve 100% electrification combined with a clear timeframe for their implementation. The master plan should be goals- and process-based rather than directive to allow the best transparent decisions to be made at each step as the transitional energy environment grows and changes over time. It should also enable parallel timelines and activities on technical, commercial, environmental and social aspects. Part of the master plan should also focus on the optimisation of existing assets and set achievable energy efficiency targets. Importantly, the master plan must be made available to the public and to the private sector, thereby contributing to transparency, accountability and efficiency. It is only with such a clearly defined plan, vetted by experts in the field, that different energy sources can be integrated efficiently, building a power infrastructure that is made to last.

The EAG was delighted to learn that the Ministry of Electricity and Energy (MOEE) finalised a master plan in October 2019, which now awaits approval by the Assembly of the Union (Pyidaungsu Hluttaw) before being made public. In this regard, the EAG encourages a comprehensive stakeholder consultation process during the preparation and legislative review of the plan. It is only with the inputs of experts and representatives from both the private and public sector that the quality of the final plan can be assured.

Potential Gains and Recommendations:

A strategic long-term plan creates clarity and predictability, which allows the private sector to identify potential business opportunities in the close and distant future. Such ability to plan in advance will

make the energy sector more attractive for foreign investment. Therefore, more bids from reputable international companies can be expected for power projects.
The long-term plan will reduce reliance on emergency power projects, instead focusing on projects that are built to last, making the investment more financially and environmentally sustainable in the long term.

The master plan would also allow different governmental bodies to anticipate their involvement. This could facilitate better coordination between the different government bodies and smoother interactions between companies and the relevant authorities.

Overall, this plan contributes to transparency within the sector and accountability of both government and the private stakeholders involved, thereby providing an important contribution to Myanmar's democratic development and transition towards a market economy.

The EAG recommends that the government publish a holistic energy master plan, vetted by experts and stakeholders. A clear timeline, decision-making criteria and project lists create predictability and transparency for all stakeholders involved and ensure the quality and economic, social and environmental sustainability of the energy projects.

Issue Description 2: Sustainable energy mix

Myanmar is naturally blessed with abundant energy sources, with a balanced combination of hydropower and natural gas, and the right weather conditions for solar solutions. This gives Myanmar the unique opportunity to develop an efficient low-carbon energy system and fuel their economic growth with sustainable energy sources. Therefore, the EAG together with the Delegation of the EU to Myanmar raised its concerns about the motion approved by the lower house (Pyithu Hluttaw) in May 2019 which favours a substantial proportion of coal-based power in the generation mix plan. While it may seem economically competitive in the short term (due in large part to low taxes), coal remains a polluting fossil fuel causing serious harm to both the environment and public health in the long run, no matter how 'clean'. In addition, implementing coal projects would not satisfy the increasing electricity demands any faster than other energy solutions.

It was reassuring to learn from the MOEE that although coal features in Myanmar's energy mix, the preference and priority of the current government is to focus on natural gas (including liquefied natural gas (LNG)) and hydropower to address the power requirements and that there is a strong commitment to continue to explore and develop renewable energies. This positive course should be continued and formalised by the next government.

Potential Gains and Recommendations:

By using its own local resources, minimising environmental impact while assuring a resilient competitive power system, and welcoming FDI, the government of Myanmar can boost long-term investment and further catalyse the economic development of the country.

Myanmar's increased reliance on renewable energies, domestic natural gas and LNG will minimise the environmental impact of its energy sector, which is crucial given that Myanmar is acutely vulnerable to the impacts of climate change.

Hydropower and natural gas, the indigenous natural resources of Myanmar, hold complementarities and potential for greater synergic use. Myanmar's ample hydropower potential is a long-proven potentially environmentally sound energy technology which will be an essential solution for energy development efforts.

Solar power, for which Myanmar has great potential, should also be prioritised as the fastest and very affordable electrification method. It can also be of great benefit in the dry season when hydro production is reduced.

The EAG recommends that the government:
- *Aim for an economic and sustainable energy mix that relies on Myanmar's domestic renewable energy sources;*
- *Unlock the untapped potential of hydropower and existing and to-be-discovered domestic gas resources; and*
- *Capitalise on Myanmar's great solar power potential and increase proportion of solar and wind energy solutions in the energy mix.*

Issue Description 3: Energy infrastructure and pricing

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. However, the country currently lacks the required energy infrastructures to support such growth. With only around 50% of the population connected to the national grid,[1] the lack of access to modern energy solutions often results in households having to rely on inefficient, unhealthy and hazardous alternative fuels such as diesel and biomass. The EAG considers urgent action in the following areas of the power infrastructure as priorities.

Firstly, the ageing and overloaded transmission network needs to be improved. The current state of the grid results in significant power line losses and makes the integration of intermittent renewable energy challenging. The power system as a whole should be able to manage the daily and seasonal changes in demand and annual incremental growth without excessive, costly overcapacity. The efficiency of the grid is key in the successful development of the electricity sector.

Secondly, to aim for cost-effective power generation, the efficiency of power plants should be ensured. Currently, the six existing on-grid gas-fired power plants are working below their potential with the average efficiency of their engines being considerably less than 40%.[2] Yet, with the available technology of combined cycle power plants' gas turbines, the efficiency could be augmented to around 60%.[3] With an environmentally and economically sound focus, the same amount of gas could be converted into at least 50% more electric power than at present,[4] saving millions of USD annually.

Finally, further development of and investment in the gas pipeline network and related infrastructures is urgently needed. Investment in gas pipelines in place of long-distance power transmission lines can, in certain cases, better connect sources of supply with centres of demand, improving utilisation of assets, and with significant gains in efficiency. The current percentage of gas dedicated to the domestic market is around 20%, with the remainder mainly exported to Thailand and China. However, it is expected that discovered and yet-to-be discovered gas—especially in the deep ocean—will be used to meet increasing domestic energy demands in the future. Therefore, it is essential to develop the necessary infrastructures to enhance domestic gas use in the country, as well as guarantee adequate domestic gas sale prices and foreign currency payments.

Energy Pricing

Myanmar needs reliable power to fuel the sustainable growth of the country. Reliable power also underpins the ability to justify and collect higher tariffs and, as supported by the recent increase in electricity prices, ensures the financial sustainability of the country's energy sector. The cost of power generation needs to be optimised for the benefit of all Myanmar users while promoting the usage of national resources first.

The EAG lauds the MOEE's courageous but necessary move to increase the electricity tariffs as of July 2019 as a positive step towards a more financially sustainable electricity pricing system.

1 International Monetary Fund. (2020). Staff Report for the 2019 Article IV Consultation: Debt Sustainability Analysis in Myanmar 2019 Article IV Consultation—Press release; Staff Report; and statement by the Executive Director for Myanmar: IMF Country Report No. 20/88. p11. Retrieved from: https://www.imf.org/en/Publications/CR/Issues/2020/03/26/Myanmar-2019-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-49292
2 World Bank. (2019). Myanmar Economic Monitor: Building Reform Momentum. p43. Retrieved from: http://documents.worldbank.org/curated/en/326771560523871008/pdf/Building-Reform-Momentum.pdf
3 Ibid.
4 Ibid.

The increase in tariffs has several positive knock-on effects. It encourages consumers to adopt energy-saving strategies, thereby supporting the establishment of more disciplined electricity usage. It also makes consumers explore alternative renewable energy solutions such as solar power, taking advantage of Myanmar's tremendous potential in that area.

Furthermore, higher tariffs will allow the MOEE to negotiate more competitive tariff rates with prospective private sector power producers, generating interest amongst foreign investors. It is crucial that the next government continues this positive reform trajectory.

Potential Gains and Recommendations:

- Through quick and appropriate action, grid losses could be reduced, saving some megawatts which could provide additional electricity for customers. Importantly, the first savings of electricity could be made without any investment, just with expertise and a comprehensive diagnosis of how the grid is connected and operated. Such a reduction in power line losses will reduce the burden on the existing power supply base.

- The reinforcement of current generation equipment should be continued, and the efficiency of thermal plants increased.

- The 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. The EAG supports and encourages the government in its effort to introduce reforms in natural gas infrastructure to stimulate FDI in this sector.

- Decentralised micro-grids with a high penetration of renewable energy should be encouraged as they provide a cost-effective, quicker and lower-carbon access to electricity for people who have yet to gain access to electricity. Therefore, grid expansion and mini-grid implementation should be combined more effectively. Power grid expansion efforts should be ramped up along with further implementation of mini-grids in remote areas for which grid expansion is too costly and will take too long. Least cost electrification analysis should be continued and mini-grids should be prioritised in areas where they offer both sustainable and cost-effective alternative to the national grid. In many remote regions and areas of the country, mini-grids can provide a viable stand-alone solution for electrification.

- The regulation of electricity prices should be supported by a clear methodology and pricing matrix to ensure transparency and accountability. Furthermore, the involvement of independent regulators and standardised processes would allow to depoliticise the subject, ensuring that the trajectory towards sustainable electricity prices is maintained.

The EAG recommends that:
- *Power line losses be reduced and current generation and gas infrastructure be reinforced to ensure efficiency;*

- *Grid expansion be combined with mini-grid implementation; and*

- *Reforms towards financially sustainable and methodologically formalised electricity pricing be continued.*

Issue Description 4: Renewable energy

Myanmar has significant renewable energy potential, with particularly attractive hydropower and solar energy resources. A substantial reliance on renewables for energy generation can have a positive impact on the country's ability to satisfy the ever-growing demand for energy both at industrial and residential level.

Hydropower is a long-proven clean energy technology with which Myanmar is familiar, currently accounting for approximately 60% of the country's total installed capacity. With a lifespan often of over fifty years, hydropower plants represent long-term solutions for Myanmar in providing stable

and renewable electricity. Still, this is just a small fraction of the nationwide potential. Consequently, it is recommended that the government shift its attention towards increasing hydropower capacity, particularly considering the inherently long lead times involved.

More attention to solar and wind energy is also recommended as these resources hold great potential and should be considered as viable long-term solutions. As prices have dropped over the last few years, solar power is now a highly affordable source of electricity that can quickly alleviate Myanmar's power needs given the facilities do not take long to construct. Additionally, 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. The industrial and mini-grid space is starting to take off, but, overall, Myanmar's solar power sector could still be better developed and provide the much-needed supply for the country's energy demand, especially in the dry season. There is also further development potential for centralised renewable farms both for solar and wind power as the associated construction time could be very short if the administrative processes are efficiently managed.

Along with increases in renewable energy like solar and wind, the need for a modern state-of-the art grid is required (see also Issue 3 above). A digital and modern grid control will have a positive effect when levelling and aligning power demand with power supply, leading to a much more homogenised and efficient use of installed capacity over time and seasons.

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

Potential Gains and Recommendations:

Hydropower and solar power can be developed in a sustainable manner with minimal social and environmental impact if planned properly. Moreover, they complement each other when it comes to managing seasonality as well as peak and off-peak production. 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. Thereby, they offer sustainable and cost-effective solutions for Myanmar's electricity demand. In addition, the decentralised renewable solutions can also be connected to the national grid, in Industrial Zones (IZ) for factories' rooftops for instance. Solar power can then provide additional reliability and reduce the long-term cost of power generation for IZs.

A legal framework that supports investments in renewable energy solutions should be created in order to take advantage of the great potential that Myanmar holds for solar and wind power. In view of this, the EAG welcomes the creation of the National Renewable Energy Committee (NREC) and their goal to incorporate renewable energy into the existing law. Fiscal incentives for investment into renewable energy by the private sector can facilitate this task. In addition, net metering for factories, industries and IZs could alleviate the burden on the national grid, especially in the summer season. What's more, decentralised rooftop solar power will more easily integrate into the current grid.

To further develop the renewable energy sector in the country, the NREC should also create a comprehensive renewable energy policy framework. This should include a dedicated regulatory framework for both grid-connected and smaller-scale solar projects. The EAG encourages the NREC to engage with public and private stakeholders in the preparation of their policies and is ready to support the NREC in any way they consider helpful.

The future government should support solar solutions in a sustainable manner in its energy master plan by, among other initiatives, easing the administrative processes related to the Myanmar Investment Commission (MIC) and land lease/acquisition.

The EAG recommends that the government:
• Establish a comprehensive renewable energy policy framework, including regulations and legislation, to support renewable energy solutions; and

• Establish a regulatory framework for both grid-connected and smaller-scale renewable energy projects.

Issue Description 5: Fiscal terms and draft Exploration Prospecting Development and Production of Petroleum Bill (EPDPP)

Myanmar is rich in gas resources, yet the current fiscal regime inhibits this potential. Myanmar has one the toughest Production Sharing Contracts (PSCs) in the world. The heavy taxes PSCs impose dissuade exploration and extraction of new gas fields: to make exploration and extraction projects economical under the current policy framework, gas reserves have to be large and gas has to be sold at a high price, making it uncompetitive in the local and international market. Consequently, such terms adversely affect the commerciality of low- to medium-sized discoveries or marginal fields. Therefore, a revision of the fiscal terms of the PSCs is crucial in order to support international investments in exploration and development. It is only with such an improved framework that Myanmar's natural gas resources—particularly offshore—can be unlocked and used to contribute to the growing domestic power demand. The execution of two agreements relating to the fiscal framework applicable to the Block A-6 discovered resources in December 2019 should be recognised as a significant milestone in unlocking new gas reserves in Myanmar.

In the same spirit, a cancellation of the 2016 Specific Goods Tax (SGT) Law that introduced an additional 8% tax on natural gas sales should be considered to further incentivise exploration for and production of natural gas, and ultimately enable its domestic utilisation to support the industrial and economic development of the country. Such high product taxes discourage investments and are counter-productive for the government since gas is far more valuable to the country as a fuel for industrial development and growth rather than as a source of direct tax revenues. Natural gas has no value if harsh fiscal terms limit or impede exploration activities, which inherently hold significant risks, and ultimately prevent development of discovered resources. Consideration should also be made for supporting development of local resources into the domestic market.

Finally, in its current form, the draft EPDPP Bill (originally published in October 2018 and in a revised version in August 2019) contains elements of uncertainty that risk discouraging international investments in exploration and development, instead of attracting them.

Potential Gains and Recommendations:

A competitive investment climate for the upstream oil and gas industry in Myanmar will contribute to the country's economic development agenda. Building on the A-6 Block experience, a revision and improvement of fiscal/taxation terms of PSCs and the government's stance will encourage exploration and investment on current PSCs. This would increase the attractiveness of Myanmar contracts with respect to other countries and favour the exploration and development of gas discoveries, avoiding current operators relinquishing PSC blocks in an early stage with no exploration drilling activity performed. Consequently, it is recommended that PSC's fiscal terms be fairly revised to unlock natural gas resources in the short term.

It is also recommended that industry advocacy groups' key areas of concern of the Draft EPDPP Bill, which were raised during the stakeholder engagement phase, are taken in due consideration. This should ensure that the new law provides the clear and unambiguous framework required for capital-intensive exploration and development investments decisions to be made.

The EAG recommends that:
• PSCs be revised to improve fiscal and taxation terms; and

• A fiscal system that encourages natural gas exploration and extraction be developed in order to increase the competitiveness of natural gas for the domestic and international markets.

Issue Description 6: Frameworks for public-private partnerships (PPPs)

The capital and know-how of foreign companies will be essential for Myanmar to implement the NEP. Public-private partnership (PPP) agreements can provide an attractive framework for realising power projects, allowing the government to pool private sector funds for developing the national energy sector. Whilst some relevant laws exist, there is no clear legislative framework for PPPs. Currently, the MOEE negotiates each PPP individually. The absence of standardised processes and documents for negotiating public-private agreements for independent power projects (IPPs) is a burden on financial and time resources for all parties involved. A clear PPP framework that adheres to international standards and practices along with adequate sovereign guarantees offered by the Ministry of Planning, Finance and Industry (MOPFI) can help to boost investor confidence and make private investments in the energy sector more attractive.

Potential Gains and Recommendations:

Developing and publish framework documents for PPPs in line with international standards and practices could act as a catalyst for investment in the energy sector and further incentivise investments in projects, helping Myanmar to address the sector's challenges.

Similarly, the government should set up transparent and systematic processes to establish the mode of financing for PPPs. A publicly available long-term plan of energy projects (see issue 1) combined with a clear budget allocation and funding plans from the ministries involved would allow private sector actors to better determine the financial investments needed for different projects. Furthermore, clear guidelines and principles about the proportion of private/public financial responsibility for the different stages of the projects should be established within the PPPs.

Secondly, to lower the perceived risk of investment it is recommended that a contractual undertaking be provided by the MOEE guaranteeing the payment obligations of the Electric Power Generation Enterprise. This should also be accompanied by both a letter of acknowledgement from the MOPFI and a favourable legal opinion from the office of the Attorney General.

Thirdly, a standardised bidding process would create transparency and predictability and would encourage foreign companies' participation, thereby fostering competition. The development of a regulatory framework for PPAs according to international standards and practices is recommended. Addressing key commercial terms at an early stage in the project development process is particularly important for complex integrated projects and for renewable energy projects that bear considerable risk. Large energy developments with fuel supplies and debt financing denominated in foreign currency will also require robust mechanisms to ensure the effective payment of foreign currency to suppliers and lenders. Therefore, a clear Power Purchase Agreement (PPA) framework with competitive terms could spur investment in the power sector including in renewable energies, such as solar solutions.

The EAG recommends that:
• Framework documents for PPPs and public-private agreements be established;

• Clear funding guidelines according to international standards be established; and

• Adequate sovereign guarantees are offered.

Acknowledgments

EuroCham Myanmar Energy Advocacy Group

GARMENT

13

INTRODUCTION

The garment sector represents Myanmar's second-largest export sector after mineral fuels (including oil) and has seen a tremendous growth at a rate of 25% per year over the past five years. The total export value for the sector in the Financial Year (FY) 2018/2019 was approximately 2.3 billion USD, increasing by 300 million USD from the previous FY. The garment sector is known for create employment for people who, under other circumstances, would face difficulties entering the formal labour market. Today the industry is estimated to employ around 450,000 workers, 93% of which are women and rural-urban migrants. In 2019, at least 400,000 women were employed in the garment sector.[1, 2]

EuroCham Myanmar Garment Advocacy Group believes Myanmar's textile industry has a key role to play in the continued development of a skilled workforce, with significant career and development opportunities, operating in a safe and sustainable industry, across a vertical setup. The industry is attractive for private sector investments and buyers of international brands for whom corporate social responsibility (CSR) and sustainability projects play an important role: a green, sustainable industry that offers opportunities to help a significant amount of the population out of poverty drives investment in the economy and grows Myanmar's middle class.

It has also been calculated that 85% of workers send back a minimum of 50% of their total earnings in remittances to their families, amounting to a minimum of 62 USD per worker per month (figures from 2017). Estimates have shown that 20% of the women employed in the industry today are of non-Bamar ethnicity, indicating that there are opportunities for the industry to engage in activities to increase tolerance between different ethnic groups.[3]

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

Made in Myanmar garment exports to the EU by European companies represent the main driver of the extraordinary growth of the industry in recent years. The Everything But Arms (EBA) scheme, a trade agreement allowing Myanmar "full duty free and quota free access to the EU Single Market for all products (except arms and armaments)",[4] has been the main driver for the development of the garment sector. A withdrawal of the EBA by the EU due to the current human rights situation, would have severe negative consequences on the industry and lead to a considerable fall in export value and a substantial cut in employment, affecting hundreds of thousands of women who are currently engaged in the sector. The EuroCham Myanmar Garment Advocacy Group strongly recommends the government cooperate with the EU to maintain the EBA status in Myanmar.

In addition to the EBA scheme, development of the textile sector encompasses other areas including: (i) revising current legal framework in order to increase competitiveness and open up to new investment opportunities (e.g. T2 tax exemption); (ii) development of trade financing and reducing the cost of investment (e.g. offering credit lines against land lease); and (iii) the continued enhancement of a skilled workforce offer room for recommendation by the advocacy group as they are all important drivers for continued, sustainable growth of the textile industry.

Issue Description 1: Development of the textile sector

EuroCham Myanmar Garment Advocacy Group still strongly believes that it would be beneficial for Myanmar to create a vertical supply chain by further developing a supporting textile and components industry, and hence further strengthen the growing garment industry and become less dependent on imports. However, the legal framework needs to be reformed to allow vertical supply chain expansion within the country.

1 The Myanmar Industries Guide. (2020, February 6). Retrieved from: https://www.industrialdirectory.com.mm / component/k2/item/2452 - garment-exports-are-the-second-most-important-sector-in-myanmarhtml?fbclid=IwAR33gqLagSzrSkKVPP2SQ80D5viYuOOVyajkJr5CRRUB 2GNgmnksxIlhsag
2 EuroCham Myanmar. (2019). Garment Guide 2019. Retrieved from: https://eurocham-myanmar.org/uploads/b959b-garment-guide.pdf
3 ILO Country office for Myanmar. (October 2018). Weaving Gender: Challenges and opportunities for the Myanmar garment industry. Retrieved from: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_672751.pdf
4 European Commission. (2020, January 9). Trade Helpdesk: Everything But Arms. Retrieved from: https://trade.ec.europa.eu/tradehelp/ everything-arms

A prime example of this is the move from a Cut-Make-Pack (CMP) system to a Free-On-Board (FOB) model by enabling a favourable tax and trade regime for investment. Establishing incentive schemes, tax exemptions or import and export exemption schemes for the textile sector as a whole, which is comparable to such applied for the current CMP industry, would also allow vertical expansion.
Furthermore, textiles and components manufacturing are dependent on reliable electricity supply and access to water. Hence, there is a need to have robust and open discussions about (i) where the facilities can be located, (ii) what the specific needs are in terms of water and electricity and (iii) additional supporting infrastructure. It is also important to assess the environmental and social impacts, ensuring the needs of local communities and the health of ecosystems are taken into consideration.

EuroCham Myanmar Garment Advocacy Group is pleased to hear that the Ministry of Planning, Finance and Industry (MOPFI) has conducted the second round of comprehensive stakeholder consultations on developing the National Textile Policy (NTP) and is also promoting the development of the textile industry by suggesting the creation of industrial clusters. Having a proper industrial zone would allow the creation of water effluent treatment plants and a secure reliable electricity supply for shared use, as well as ensure appropriate road transport for incoming and outgoing material. A proper and clear industrial plan is necessary for the creation of such industrial clusters.

The private sector, both in terms of overseas investors and international buyers (main market players in creating the demand of the industry), needs to be directly involved in sector-related processes to ensure a successful sustainable development of the textile sector. If international companies are always updated about current and future market demands, they will be able to assist local authorities in creating a supporting environment and conditions for the development of an international competitive textile industry. EuroCham Myanmar Garment Advocacy Group is pleased that the government is open to collaborating with the private sector, as indicated in the Myanmar Sustainable Development Plan (MSDP) issued by the government in 2018,[5] and is eager to have an ongoing dialogue and share its knowledge and expertise on international best practices.

It is important to make a distinction in the NTP between the local textile industry supporting the local garment manufacturers for the local market and the textile industry needed to support the growing export-oriented garment industry. The needs and demands of the two textile industries are quite different so a one-size-fits-all approach must be avoided.

The vision of the NTP is to have a competitive and sustainable textile industry which contributes to continuous economic growth, decent work, well-being of communities, the safeguarding of cultural heritage and the protection of environmental resources.

Potential Gains:

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

Recommendations:

EuroCham Myanmar Garment Advocacy Group recommends the government take measures to:

- Extend tax exemptions to the purchase of locally produced raw material;
- Create a dialogue around the localisation of the textiles industry and the actions required to ensure negative impacts are mitigated;
- Increase dialogue and collaboration with the private sector (both overseas investors and international buyers) for the development of the industry, as recommended in the MSDP;

5 Ministry of Planning and Finance. (2018). Myanmar Sustainable Development Plan (2018 – 2030). Retrieved from: http://themimu.info/sites/themimu.info/files/documents/Core_Doc_Myanmar_Sustainable_Development_Plan_2018_-_2030_Aug2018.pdf
6 Pyidaungsu Hluttaw. (2012, March 30). Pyidaungsu Hluttaw Law No. 9/2012 – Environmental Conservation Law.

- Further support the enforcement of the Environmental Conservation Law[6] and make the implementation of the Environmental Management Plan (EMP) a priority;
- Create a swifter process for granting the required permits to companies investing in the textile industry;
- Make a clear distinction in the NTP between a textile industry supplying the local traditional garment industry and a textile industry geared towards the export-oriented industry to avoid a one-size-fits-all approach;
- Follow the EuroCham Myanmar Logistics Advocacy Group's recommendations for the creation of a clear and strategic infrastructure plan, and the development of new procedures/rules/regulations;
- Trade financing for the development of the garment industry from CMP to FOB. Myanmar exporters need to accept L/C terms; and
- Open credit lines to make investments in the garment industry cheaper (e.g. operational financing through credit on land lease).

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

Issue Description 2: Labour law reform

EuroCham Myanmar Garment Advocacy Group appreciates the ongoing commitment to reform various labour laws, such as the Labour Organisation Law,[7] the Labour Disputes Settlement Law (June 2019),[8] as well as the new Occupational Safety and Health Law (March 2019).[9] This work is being done through a tripartite consultation mechanism involving the government, employer associations and trade unions, and supported by the International Labour Organization (ILO). The Advocacy Group also understands that it will take time to bring in all relevant stakeholders in order to foster a sense of common ownership over the process and its outcomes.

Nevertheless, the industry faces various challenges, in part due to (i) a lack of clarity surrounding the legal framework and its interpretations, (ii) scarcity of transparency in the decision-making process and (iii) the failure to allow sufficient time for the private sector to adjust the industry systems to comply with new regulations. Therefore, there have been significant delays in implementing new policies resulting in conflicts in the workplace. In addition, recommendations developed and proposed by the tripartite dialogue mechanism are not always fully recognised, creating further instability within industrial relations. For example, the practice of the Arbitration Body within the labour disputes resolution process was amended without thoroughly consulting the tripartite stakeholders, resulting in individual cases not having practical and economical access to arbitration. The consequence has been an increase in the number of conflicts and strike actions. This is causing significant disruptions and loss of productivity in the sector, as well as having negative impact on the reputation of the industry.

Potential Gains:

Clear labour laws, strong and appropriate implementation, and an efficient disputes settlement mechanism will help create stability and reduce conflicts and disruptions to production. This offers certainty on how to operate as well as predictability for the industry, crucial for investments and growth. Recognising the recommendations of the tripartite dialogue forum creates acceptance and ownership which strengthens the implementation of new policies. If industrial relations go well, workplace conditions will be improved, strikes will be avoided, workers will be engaged and motivated, turnover and absenteeism will be lower and factories can increase productivity and efficiency which is needed to compete in the global market.

7 Pyidaungsu Hluttaw. (2011, October 11). Pyidaungsu Hluttaw Law No. 7 - Labour Organisation Law.
8 Pyidaungsu Hluttaw. (2019, June 3). Pyidaungsu Hluttaw Law No. 17/2019 – Second Amendment to the Labour Dispute Settlement Law.
9 Pyidaungsu Hluttaw. (2019, March 15). Pyidaungsu Hluttaw Law No. 8/2019 - Occupational Safety and Health Law.

Recommendations:

The Labour Organisation Law could provide more clarity on (i) rules of engagement, (ii) how Freedom of Association shall be protected, and (iii) how industrial dialogue and collective bargaining shall be carried out. Currently, the lack of clear guidance is often the cause of many conflicts and unequivocal laws and regulations will avoid the necessity of involving Township Conciliation or an Arbitration Body for each single arbitration case, hence reducing pressure on these institutions. Furthermore, EuroCham Myanmar Garment Advocacy Group also recommends the law enable employer and worker organisations to form at sectoral level in a more expedient way, therefore allowing industrial relations to mature more quickly.

A clear definition of the process and legal status of collective bargaining needs to be added in the Labour Organisation Law. This could include: (i) identification of who has the legal right to engage in collective bargaining, (ii) the way collective bargaining agreements can be made not only at a workplace level, but also on a sectoral and national level, and (iii) how they will be enforced.

The Settlement of Labour Dispute Law was passed in June 2019;[10] however, regulations are still needed for it to be put into practice. EuroCham Myanmar Garment Advocacy Group encourages the establishment of a specific labour court to handle rights-based cases. This will help to avoid unrest and strike actions. Or, as an alternative solution, other designated institutions or accessible courts with the same judicial power as the Arbitration Council could be established.

The revisions of the minimum wage by the National Minimum Wage Committee need to follow a process that is transparent and based on open data. In addition, implementing a system for annual revision of the minimum wage which takes inflation into account is of great importance as it will make the market more stable and predictable, and hence more attractive to investors. Furthermore, fair notice should be given to employers once a decision to change wages is taken.

The Occupational Health and Safety (OSH) Law was enacted in 2019,[11] but regulations are still needed to ensure compliance and better OSH management in the workplace. Health and safety committees should also be established for workers and management to make improvements together. EuroCham Myanmar Garment Advocacy Group further recommends that OSH officers from relevant authorities/institutions undergo regular professional development/training.

EuroCham Myanmar Garment Advocacy Group recommends that:

- *Reform of labour laws continue in a transparent manner while considering the tripartite mechanism;*
- *Rules and regulations related to the Settlement of Labour Dispute Law and OSH Law be issues as soon as possible;*
- *New laws and regulations be clear and the private sector be given fair notice to adjust their systems accordingly; and*
- *The Social Security Law be enforced for the benefit of workers in the garment industry.*

Issue Description 3: Skills enhancement

Being one of the fastest growing sectors in Myanmar, the garment sector has attracted many workers from different parts of the country. Most of this labour force was previously engaged in other industries, such as agriculture and light industry, and many lack the required skills and experience to work in the sector.

Similarly, there is a substantial deficiency in middle-management skills, so garment factories hire staff from overseas. While there is a general perception that the garment sector is a low-skilled industry, middle-management skills are also extremely important for the sector (around 10-12% of the workforce needs these skills). Some vocational training centres for skills enhancement have been already established, but they mostly focus on lower/middle skills; middle management level education centres are still missing in Myanmar. Consequently, investing in the education system to create a highly skilled labour force is much needed.

10 Pyidaungsu Hluttaw. (2019, June 3). Pyidaungsu Hluttaw Law No. 17/2019 – Second Amendment to the Labour Dispute Settlement Law.
11 Pyidaungsu Hluttaw. (2019, March 15). Pyidaungsu Hluttaw Law No. 8/2019 – Occupational Health and Safety Law.

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EuroCham Myanmar Garment Advocacy Group is pleased to see that the Ministry of Labour, Immigration and Population (MOLIP) is developing competency standards for Garment Cutting Room Operators, Garment Quality Control Operators and Finishing Operators. The plan was to assess 3,360 workers for level 1 and level 2 Garment Sewing Machine Operator within FY2018-2019. Currently, there are 12 accredited Assessment Centres, including Myanmar Garment Human Resource Development Centre, Aung Myin Hmu Garment Training Centre and other factory training centres. However, these centres are led by private sector and donor initiatives, not by government authorities.

Potential Gains:

The efficiency rate in Myanmar is much lower compared to other competing markets. For example, Cambodia has an efficiency rate of 49%, whereas Myanmar's is around 35% on average. Skills enhancement could close this efficiency gap.

Stronger local middle management labour will help local factories to improve competence, efficiency, and productivity. Garment production companies will not be forced to employ workers from abroad for higher skilled positions. Furthermore, Garment Technologists and Textile Engineers who are well trained can lead the change from CMP to FOB and further sustain garment sector in Myanmar.

Recommendations:

Establish vocational courses, such as night schools, weekend schools, and training centres. These programmes could focus on skills development involving operator level skills training (e.g. for sewing machine operators and Cutting Room Operators). EuroCham Myanmar Garment Advocacy Group also recommends that the government: (i) continue to develop occupational competency standards and vocational training curricula; (ii) develop training centres in different regions and expand training capacity to involve more workers; (iii) invest in training of trainers; (iv) have trainings cover labour law including freedom of association, rights and responsibilities, disciplinary procedures; and (v) make labour law training part of the National Occupational Competency Standards.

Establish garment training schools at high school level (two- to three-year course). Curricula should include a broad range of skills including pattern making, garment design, mechanisms, line management and garment techniques. This would enable local graduates to work at a middle management level in garment factories.

Create specific academic courses for Garment Technology at university level (three- to five-year course). The programme should include English, mathematical engineering, electrical engineering, textile fibre, fabric production technology, garment design, pattern, garment technology, merchandising and export/logistics. Local graduates could then work either at a managerial level in the garment factories, as garment sector developer for the government, or in local or international brands' buying offices.

Create specific academic courses for Textile Engineering at university level (three- to five-year course). This type of programme already exists in some universities in Myanmar, however there is a lack of interest from new students. To change the garment sector from pure CMP to FOB, the country will need more specialists with knowledge of textile engineering.

Investment in skills development by creating specific courses at different education levels will lead to better efficiency in the sector hence making it more competitive and attractive to investors.

Acknowledgments

EuroCham Myanmar Garment Advocacy Group

HEALTH

14

INTRODUCTION

The mission of the EuroCham Myanmar Health Advocacy Group is to work with the Myanmar government and other key stakeholders to continuously improve healthcare solutions for Myanmar's citizens.

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

Myanmar healthcare: Our vision

Myanmar has an exciting opportunity to leapfrog other countries in the development of its healthcare system. Through careful strategising, planning and implementation, Myanmar might one day become a regional leader in healthcare. The Myanmar government's goal is to provide Universal Health Coverage (UHC) by 2030. The EuroCham Myanmar Health Advocacy Group 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 (Good Manufacturing Practice, i.e. Pharmaceutical Inspection Co-operation Scheme and bioequivalence standards for pharmaceuticals, Conformité Européenne (CE) standards or similar). 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.

International companies are watching the Myanmar market with interest since it offers potential growth margins. However, for several reasons, including the lack modern legal intellectual property framework and resulting lack of patent and trademark protection, or the burdensome policy requirements, investors prefer to stay on the sidelines for now. Pharmaceutical companies only recently opened factories in Myanmar, and the EuroCham Myanmar Health Advocacy Group hopes than soon also medical device producers will invest in the country.

Issue Description 1: Requirement of globally validated healthcare industry Code of Conduct

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

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

Unethical gifts, entertainment and benefits vary widely. Sometimes these are clear acts of corruption such as free leisure trips for doctors or financial kickbacks for procurement departments, but they are often more discrete in nature; for example, a donation to a hospital can also be unethical if the expectation of the donor is that the donation will lead to a favourable business position in the future.

The healthcare industry remains one of the higher-risk industries from an anti-bribery/anti-corruption standpoint; in the United States, for example, 27.3% of corporate resolutions by the United States Department of Justice and Securities Exchange Commission relating to the Foreign Corrupt Practices Act were with healthcare and life sciences companies. [1]

1 Ropes & Gray LLP's Health Care Practice. (2018). United States: Implications of Distributor Misconduct For Global Health Care and Life Sciences Companies. Retrieved from: https://www.mondaq.com/unitedstates/Food-Drugs-Healthcare-Life-Sciences/725084/Implications-Of-Distributor-Misconduct-For-Global-Health-Care-And-Life-Sciences-Companies

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

In 2018, the Anti-Corruption Commission tasked the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) with providing industry codes of conduct, including for the healthcare industry, but there have been no results thus far. EuroCham Myanmar held meetings with other relevant stakeholders to put the issue on the agenda, however it emerged that it was not a priority and that only EuroCham Myanmar was willing to take the responsibility to steer this process.

The EuroCham Myanmar Health Advocacy Group believes this directive is necessary and will provide an opportunity for Myanmar to catapult into a globally proven code of conduct framework embraced by countries all over the world as well as business leaders in the pharmaceutical and medical devices industries. The code of ethical conduct principles governed by the International Federation of Pharmaceutical Manufacturers & Association (IFPMA) and the Asia Pacific Medical Technology Association (APACMed) has also been adopted and formalised in the majority of the countries in Asia Pacific.

Potential Gains:

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

• Improvements of the health and wellbeing of the entire population which will have positive impact on:

- the development index of the nation (e.g. lengthened life expectancy);
- the health of the workforce; and
- reducing the financial burden and socio-economic consequences resulting from illnesses such as cancer.

• Maximisation of reliability of the local healthcare industry along with the Ministry of Health and Sports' (MOHS) efforts to upgrade the healthcare infrastructure and capability of healthcare professionals will lead to a reduction of outbound medical tourism, reducing the efflux of foreign currency. Patients will be able to receive quality care within Myanmar, improving the overall health of the nation.

• Fair competition within the healthcare industry and lower risk for compliance-sensitive multinational companies, likely leading to a more favourable environment for foreign investment in the healthcare sector. It could induce an increase in the establishment of multinational pharmaceutical companies and international hospitals.

Recommendations:

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

• For the pharmaceutical industry, adopt the IFPMA Code of Conduct. The IFPMA Code of Conduct is the most internationally recognised healthcare industry code of conduct adopted by global governments and pharmaceutical companies all over the world. The IFPMA Code of Conduct has proven to adequately protect compliance standards and therefore patients' rights while at the same time being practical and in line with business needs. We therefore suggest that the IFPMA Code of Conduct be adopted as a foundation for the Myanmar Pharmaceutical Industry Code of Conduct. This would ensure practices in Myanmar are aligned with the best practices in other markets.

• For the medical device industry, adopt the APACMed code of conduct. The APACMed Code of Conduct is a regional code of conduct agreed to by the majority of the large medical device companies active in Myanmar.

Issue Description 2: Maintenance of medical equipment

Medical equipment is a necessity for hospitals and clinics. Every medical device comes with a product life cycle in accordance with technological advancements and does require maintenance and replacement of parts over its lifetime. Today the industry is saddled with relatively old, and in many cases, non-functioning medical equipment without maintenance agreements in place and not being budgeted for under operational expenditure (OPEX) for ad-hoc and reactive maintenance requirements. Most budgets are capital expenditure (CAPEX) budgets focused on the acquisition of new equipment and do not sufficiently allow for maintaining and/or replacing and managing equipment to maximise the initial investments. In addition, the sector faces a shortage of qualified biomedical engineers with the expertise to look after the equipment and the ability to perform basic maintenance and troubleshooting.

Currently, the terms of the maintenance agreements are established in Preventive Maintenance (PM) contracts. PM contracts are already a standard (best) practice between vendors and private hospitals, but these contracts are less common with public hospitals falling under the MOHS and are discussed on a case by case basis directly with the Medical Superintendent and Head of Department of the relevant hospital and department.

Whether PM contracts are in place or not, the standard warranty for all medical devices is 12 months and covers the costs of spare parts and working hours. The warranty for spare parts is six months. In addition, vendors offer various other kinds of packages. Despite this, at present, the MOHS tenders demand two-year warranties in addition to PM contracts which can last up to six years.

Given the above burdens, vendors would like to see more capable employees using the devices and planned MOHS budgets for their maintenance.

Potential Gains:

• Functioning and performing equipment enables hospitals to make maximum use of the available equipment and provide the services to patients.

• After-sales service agreements, such as PM contracts, increase the economic life of the equipment and simplify operational budgets as agreements cover after-sales service expenses, shifting the risk to the vendors. Operational budgets should also better allocate funds for spare parts.

• Qualified and certified after-sales service guarantee genuine spare parts that meet quality and regulatory requirements.

• By investing in Biomedical Engineering Departments, hospitals would be in a better position to keep track of and maintain the installed base.

Recommendations:

The EuroCham Myanmar Health Advocacy Group recommends that the government:

• Develop an after-sales service policy and system for all medical equipment installed across the country including guidance on how to manage the installed base in terms of what is installed, the location, installation date, warranty expiration date and after-sales service requirements which can differ for each equipment family.

• Start procuring after-sales service agreements for the different equipment and brands once a policy is in place.

• Invest in biomedical engineers who can support the policy on the ground, provide basic technical support and serve as a point of contact about after-sales service issues for vendors.

• Include maintenance of medical device in the capital purchase budget every year or allocate a decentralised budget plan to each hospital. These budgets should include funds for the substitution of spare parts and annual maintenance fees.

Issue Description 3: Regulatory turbulence

Pharmaceutical and medical device companies have developed complex quality procedures to ensure their products meet the highest safety and efficiency standards expected internationally. Any change requires lengthy investigation, vetting and administration to ensure such changes are safe for consumers and meet regulatory requirements. A stable, progressive, regulatory system is needed for the healthcare environment to develop and flourish in Myanmar.

There are several improvements awaiting endorsement and implementation that affect healthcare. This includes matters related to changes regarding the requirements for a No Objection Certificate (NOC), the registration of medical equipment, and the sample quantity required for submission during the registration process, among others.

As a result of regulatory turbulences the registration of new drugs and medical equipment with the Department of Food and Drug Administration (FDA) is lengthy and complex. Complex systems, lengthy processes, and vague, unclear guidelines are a major challenge for registrants as they have to bear the additional costs of time, money and manpower.

In particular, the NOC remains an obstacle to free trade and the EuroCham Myanmar Health Advocacy Group continues to advocate for its removal as this will positively impact patient choice, foreign investment, and drug prices. The MOHS restricts importation of pharmaceutical products and selected medical devices to local companies. Furthermore, it allows a 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 higher prices for genuine pharmaceuticals in Myanmar than in neighbouring countries.

The EuroCham Myanmar Health Advocacy Group encourages the amendment of the medical device registration laws to reflect standardisation according to ASEAN guidelines. Therefore, it welcomes Myanmar's decision to adhere to the ASEAN Medical Devices Directive (AMDD) which is expected to enter into force some time in 2020 and the Advocacy Group offers its support during the delicate transition phase.

The EuroCham Myanmar Health Advocacy Group particularly welcomes the introduction of the Common Submission Dossier Template (CSDT) in the AMDD. The CSDT should reduce the differences in documentation formats that presently exist in different ASEAN jurisdictions and therefore minimise the administrative operations related to the different formats requested by the Regulatory Authority. By adopting the AMDD, uniformity of HS Codes can be achieved and will result in extended validity of official FDA certificates.

Another area of regulatory process requiring further definition is the need for samples to be provided as part of a regulatory submission. There is ambiguity around the quantity required and the need for such samples when regulatory submissions include the formulation, stability data, certificate of analysis and, in the case of products of original research, the clinical trial data. Currently, only a small product sample is required for testing for the certificate of analysis.

When there is a change in the legal framework and procedures, the Advocacy Group kindly requests that the implementing bodies seek constructive consultation from a number of representative bodies to ensure the changes and implementation are well considered and will lead to the right outcomes, which can only be achieved through alignment between relevant stakeholder groups and proper change management planning and process.

Potential Gains:

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

Recommendations:

The EuroCham Myanmar Health Advocacy Group encourages the government to:

- Abolish NOC policies. Current NOC policies (undocumented) prevent the process of fair competition. This issue will be resolved when the MOHS takes the lead to consult with all stakeholders (including this Advocacy Group, the American Chamber of Commerce in Myanmar, etc.).

- Clarify the sample requirements for regulatory submissions and their intended purpose.

- Make small changes to simplify the FDA registration process, for example by allowing fax communications or e-signatures, or, ideally, enabling a well-functioning online system. Such changes would greatly benefit the private sector without requiring significant cost or changes in laws. The DICA registration process could be used as a positive example. Similarly, the opening of a help desk or a document reception desk in cities such as Yangon and Mandalay would be also be impactful.

- Increase the level of consultation with representative bodies to ensure progress is made and that the healthcare system continues to operate correctly during transition periods.

Issue Description 4: Universal Healthcare Coverage 2030

Universal Healthcare Coverage (UHC) has been described as the "single most powerful concept that public health has to offer", and the World Health Organisation (WHO) defines UHC as ensuring all people and communities to receive the health services they need without suffering financial hardship.[2]

A common misconception about UHC is that it stands for free coverage for all possible health interventions, regardless of the cost. No country can provide all services free of charge on a sustainable basis. It is essential to consider the long-term economic sustainability of the healthcare system.

Achieving UHC is one of the key targets of the 2030 Agenda for Sustainable Development (Agenda 2030) that all UN member states are striving to achieve. In accordance with Agenda 2030, the roadmap to UHC includes protection of financial risks, access to quality essential healthcare services, and access to safe, effective, quality and affordable essential medicines and vaccines for all.

Myanmar's leaders have made strong commitments to achieving UHC by 2030. It is a top priority for the country. The current National Health Plan (2017-2021) aims to pave the way to achieving this 2030 target by extending access to a Basic Essential Package of Health Services (EPHS) to the entire population.

Achieving UHC will require a robust policy and regulatory framework, major government funding of clinical development via focused investments in technology, infrastructure and skills development, and the provision of quality medical products. Due its complexity, achieving it will require Myanmar to continue strategic collaborations with all stakeholders involved in the healthcare system, ranging from Development Partners to the Professional Associations and the private sector. As experienced in other countries, the implementation of a cohesive and sustainable UHC system will require accurate and careful planning and the involvement of all sectors of society.

2 World Health Organization. (n.d.). Universal Health Coverage Day. Retrieved from: https://www.who.int/life-course/news/events/uhc-day/en/

Potential Gains:

UHC ensures that all people and communities receive the health services they need without suffering financial hardship.

Recommendations:

The EuroCham Myanmar Health Advocacy Group encourages the government to:

- Improve the general quality standards of hospitals by investing not only in capital medical equipment and pharmaceuticals but also in basic needs. Most hospitals are still facing a severe lack of beds.

- Apply a significant tax reduction (Custom Duty, Commercial Tax) on the import of medical devices and consumables. Medical necessities should not be considered luxury items. The reduction of taxes will significantly reduce the cost burden on patients.

Acknowledgments

EuroCham Myanmar Health Advocacy Group

LEGAL AND TAX

15

INTRODUCTION

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

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

For the EuroCham Myanmar White Book 2020, the Legal and Tax Advocacy Group addresses a wide array of topics of high importance to European companies and investors either coming to Myanmar or already in the country—topics that should be addressed by the authorities for the benefit of Myanmar. Investors and companies still face several challenges in the country, such as land property rights problems for foreign investors, uncertainties on the existing competition framework, uncertainty regarding which legal regime is applicable to companies with foreign ownership, and a lack of protection in some areas for well-known trademarks.

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

LEGAL ISSUES

Issue Description 1: Rule of law and transparency in administrative procedures

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

Another considerable obstacle in the reform process is the long delay in the establishment of supervising authorities and issuance of administrative subsidiary legislation which are necessary for the enforcement of statutory laws. Examples include the Competition Law 2015[1] and the Arbitration Law 2016,[2] which have not been fully implemented, since no rules have been adopted yet.

Furthermore, the application of statutory laws and subsidiary legislation by the administrative authorities could be more transparent, strengthening the rule of law and the integrity in the process so to avoid deterring foreign investments, for example when the implementation of new regulations by the authorities deviates from the wording of the published notifications, as is the case with Wholesale Trading licence applications. Administrative procedures are often also implemented through internal circulars and instructions, which are not publicly available and often fail to comply with the respective governing laws. Such obstacles and the common discrepancy between statutory laws and their administrative implementation remain of great concern for foreign investors.

1 Pyidaungsu Hluttaw. (2015, February 24). Pyidaungsu Hluttaw Law No. 9/2015 - The Competition Law.
2 Pyidaungsu Hluttaw. (2016, January 5). Pyidaungsu Hluttaw Law No. 5/2016 - Law on Arbitration Decisions.

In particular, significant difficulties concerning the issuance of business and operative licences cause delays or even cancellation of foreign investments. In practice, numerous licences are not issued at all or issued only to Myanmar citizens and in respect of the activities of citizen-owned companies, often in contradiction with the Myanmar Investment Law 2016 and Notification 15/2017[3] of the Myanmar Investment Commission (MIC). Examples include licences for road transportation, contractors, recruitment agencies, real estate agencies, video businesses and movie theatres. Similarly, foreign investments in certain sectors such as finance and insurance are still subject to limitations based on internal policies not stipulated in any statutory laws.

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

Potential Gains:

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

Recommendations:

The EuroCham Myanmar Legal Advocacy Group respectfully recommends changes be made to ensure:

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

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

Issue Description 2: Competition Law and existing regulations

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

The Competition Rules of the Telecommunications Law (TCR) gave wide-ranging powers to the Post and Telecommunications Department (PTD) to exercise exclusive jurisdiction to review anticompetitive conduct and agreements in the telecommunications sector. In contradiction with such stipulations, provisions of the CL (which was enforced after the TCR) provide that notwithstanding any existing laws, matters relating to competition must be carried out in accordance with the CL itself (giving exclusive jurisdiction to the CC). The scope of operations of the PTD under the TCR and of the CC under the CL seem to be coinciding with each other, with both sets of legislations giving primacy to itself. It is unclear which of the conflicting provisions in the TCR and the CL would prevail.

Furthermore, the lack of regulations on merger control which would thereby set the threshold based on market share, revenue, investment, number of shares and assets derived for such acquisition

3 Republic of the Union of Myanmar Ministry of Planning and Finance, Myanmar Investment Commission. (2017, April 10). Notification No. 15/2017 - List of Restricted Investment Activities. Retrieved from: https://www.myanmartradeportal.gov.mm/en/legal/133 or mergers is another cause for concern among investors. As the CC has not yet come up with any notification on merger control and/or thresholds, the CL cannot be interpreted in its entirety.

Potential Gains:

The recommended steps below will further reduce the considerable legal issues surrounding the competition framework and increase investors' confidence. This would also improve the economy's international reputation for doing business.

Recommendations:

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

Uncertainties surrounding the existing competition framework and its applicability constitute an area of concern. A notification or guideline prescribing a harmonised mechanism for dealing with the competition framework for the telecom sector as well as an effective merger control mechanism could be put into place. Such action would reduce legal problems regarding the competition framework, increase investors' confidence and improve Myanmar's reputation.

Issue Description 3: Foreign ownership rights

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

Under the 2017 Myanmar Companies Law (MCL),[4] a "Foreign [owned] Company" is defined as a company in which more than 35% of the capital is owned or controlled by a foreign investor. Under the 1914 Companies Act,[5] which was repealed by the MCL, the definition was stricter, as only one foreign-owned share was enough for the company to be considered "foreign". The MCL is more flexible and opened formerly restricted activities to foreigners, permitting foreign investments of up to 35% of the capital of a company which would still be considered a local company under the law.

The 1987 Transfer of Immoveable Property Restriction Law, which prohibits foreigners and foreign-owned companies from owning real estate or signing a lease of more than one year, provides its own definition of a foreign-owned company, based on majority ownership, as follows: "a company or partnership organisation whose administration and control is not vested in the hands of the citizens of the Union or whose major interest or shares are not held by citizens of the Union."[6]

It is also worth noting that Section 464 of the MCL[7] states that it shall not affect any provision of the 1987 Transfer of Immoveable Property Law, which implies that the majority ownership criteria shall prevail over the 35% threshold provided in the MCL. In practice, the authorities do however continue to apply much stronger restrictions for the acquisition of land by foreign-invested entities.

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

3 Republic of the Union of Myanmar Ministry of Planning and Finance, Myanmar Investment Commission. (2017, April 10). Notification No. 15/2017 - List of Restricted Investment Activities. Retrieved from: https://www.myanmartradeportal.gov.mm/en/legal/133
4 Pyidaungsu Hluttaw. (2017, December 6). Pyidaungsu Hluttaw Law No. 29 - Myanmar Company Law.
5 British India. (1914, April 1). The Burma Companies Act [India Act No. VII, 1913].
6 Socialist Republic of the Union of Burma. (1987). Pyithu Hluttaw Act 1 - The Transfer of Immoveable Property Restriction Act (1987). Chapter I, Section 2 (d).
7 Pyidaungsu Hluttaw. (2017, December 6). Pyidaungsu Hluttaw Law No. 29 - Myanmar Company Law. Division 31, Section 464.

Potential Gains:

The right of ownership and more generally the right to rent are matters that affect every foreign investor. Legal certainty in these areas is essential to enable foreign investors to commit to any long-term investment in the country. The current situation, which does not allow foreign investors to rent real estate for more than one year, creates risk and insecurity. Clarifying and improving foreign ownership and lease rights would provide more protection to foreign investors and sustain and grow foreign investment in Myanmar. The purchase of shares in local entities would be reinvigorated, and the confidence of foreign investors would be restored as their rights would be clear and protected under the law.

Recommendations:

The EuroCham Myanmar Legal Advocacy Group recommends that action be taken to:

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

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

TAX ISSUES

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

In November 2019, the Assembly of the Union (Pyidaungsu Hluttaw) made a significant amendment to the Myanmar Stamp Act[8] wherein the penalties for late or deficient stamp duty payments are reduced from ten times to three times the tax due. Despite this being a significant reform that is positively welcomed by taxpayers, there are several provisions under the act and related timelines that remain outdated and inconsistent with modern business practices.

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

Secondly, a wide range of instruments are subject to nominal amounts of stamp duty (e.g. 50 MMK, 150 MMK, 300 MMK etc). We believe the resources required for both taxpayers and tax authorities to administer the high volume of instruments that are subject to such insignificant stamp duties make this a very inefficient means for the Myanmar government to collect such taxes.

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

8 British India. (1899, July 1). The Myanmar Stamp Act (India Act II, 1899).

Fourthly, the terms "loan" and "financing" are not defined in the Act. In such a case, those terms could be given their ordinary meaning as understood in the business context. Experience from dealing with stamp officers shows that there can be inconsistencies in the classification of such documents. Loan agreements could fall under many categories with vastly different consequences in terms of rates. They could be classified as bonds or agreements or memoranda of agreement, for which the rates vary.

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

Potential Gains:

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

Recommendations:

The EuroCham Myanmar Tax Advocacy Group recommends that the Ministry of Planning, Finance and Industry (MOPFI) consider the following:

• Revise Schedule 1 and relevant sections of the Stamp Act in order to limit uncertainties on the application of stamp duty. Ensure that internal guidelines and policies of the Internal Revenue Department (IRD) are in conformity with laws and notifications, and that such guidelines are made public.

• Reassess the application of stamp duties on loan instruments where high levels of duty further restrict access to finance. Remove the application of stamp duty on instruments where the compliance and collections resources required are disproportionate to the benefits and duty collected.

• Reconsider the requirements of stamp duty payments by amending the act to formally allow the taxpayer to affix duty to the document within one month after the signing date. Provide clear guidelines on the requirements for the stamping of offshore contracts in Myanmar, and reconsider the use of multiple adhesive stamps for the stamping of instruments.

• Review and revise the stamp duty regime on loan and financing documents in order to facilitate financial markets. The stamp duty regime on financing documents should be transparent and internal guidelines that seemingly contradict published law should be amended. Clarity as to whether unsecured intercompany loans are dutiable or not would also be appreciated.

• Introduce an appeal process for controversies in accordance with the provisions of the Revenue Appellate Tribunal Law.[9]

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

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

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

9 Pyidaungsu Hluttaw. (2018, August 1). Pyidaungsu Hluttaw Revenue Appellate Tribunal Law.

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

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

Potential Gains:

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

Recommendations:

The EuroCham Myanmar Tax Advocacy Group Advocacy Group recommends that the MOPFI consider issuing a separate notice or guideline on tax treaty benefits procedures under a relevant DTA with Myanmar.

The MOPFI should also consider automatic conferral of tax treaty benefits provided that the non-resident has secured a COR from its country of residence (which has an existing DTA with Myanmar). In this case, the IRD may follow a notification procedure whereby a taxpayer will not need to secure approval from the IRD before availing of DTA relief but only notify the IRD that it will be applying. However, if a request for a ruling from the IRD is still necessary, the EuroCham Myanmar Tax Advocacy Group suggests that the application be limited to certain types of transactions only.

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

Issue Description 3: Commercial Tax on equity investment

In its Interpretation Statement No. 6/2018[10] from the 26th of December 2018, the IRD clarified that payments for purchases of goods and services that are settled in forms other than cash (e.g. payment in kind) are also subject to 5% Commercial Tax (CT).

In the Interpretation Statement, the IRD provided the example of a company leasing out a property in exchange for shares, in which case the payment (company shares) could be subject to 5% CT. However, this is an example of investment in a company rather than regular sales of goods and services, which has created confusion for taxpayers.

Payments in consideration for equity (or shares) in a company should not be subject to 5% CT. An investment in kind is not a sale transaction and is not under the scope of service income under the CT Law.[11] Furthermore, an investor should not be treated as a service provider as the payment is for an equity consideration (in the form of shares) in a company and not as a means of providing services. Note that imposing 5% CT on this kind of transaction would result in undue advantage for all investors who use their land lease rights as a form of equity in a company.

10 Republic of the Union of Myanmar Ministry of Planning and Finance, Internal Revenue Department. (2018, December 26). Interpretation Statement No. 6/2018.
11 State Law and Order Restoration Council. (1990, March 31). SLORC Law No. 8/90 - The Commercial Tax Law.

Potential Gains:

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

Recommendations:

The EuroCham Myanmar Tax Advocacy Group recommends that the MOPFI issue clarification with respect to CT for payments made in the form of shares (equity investment).

Issue Description 4: Withholding tax payment deadlines

Under current tax regulations (as recently amended by MOPFI Notification 62/2020 dated 10th of June 2020), the person responsible for withholding tax on employee salaries and on payments to suppliers must deduct the relevant tax at the time of payment. Such tax withheld must be remitted to the IRD within 15 days (previously seven days) from the date of deduction/payment. Under the new Tax Administration Law,[12] which came into effect on the 1st of October 2019, late payment of withholding tax is subject to a penalty of 10% of the tax due.

Prior to the 1st of October 2019, there was no prescriptive penalty provision for the late payment of withholding tax. However, with the enactment of the new Tax Administration Law and the subsequent announcement made by the IRD in December 2019 regarding the withholding tax compliance, the IRD imposes a 10% penalty for late payment of withholding tax (to be implemented from of the 1st of October 2019).

It will be difficult for some taxpayers to comply with this new deadline for withholding tax given that it is not based on a fixed date as compared to other types of corporate tax (e.g. corporate income tax payment is due 10 days after the end of the relevant quarter). As mentioned, the rules require that the withholding tax payment be done within 15 days from the date of deduction/payment. Therefore, if the taxpayer has made several payments (subject to withholding tax) on different dates, the taxpayer would be required to pay the withholding tax to the IRD within 15 days from each payment date. This is impractical and could add to the administrative burden on taxpayers.

Potential Gains:

Providing a more standard payment deadline for withholding tax (for both salary of employees and payments to suppliers) would encourage taxpayers to comply with the withholding tax requirements and avoid the imposition of penalties.

Recommendations:

The EuroCham Myanmar Tax Advocacy Group recommends that the MOPFI consider a uniform payment deadline for withholding tax based on a fixed monthly date for all payments instead of the current 15 days per date of deduction/payment.

Providing a more standard payment deadline for withholding tax would encourage taxpayers to better comply with the withholding tax requirements and avoid the imposition of penalty.

12 Pyidaungsu Hluttaw. (2019, June 2). Pyidaungsu Hluttaw Law No. 20/2019 - Tax Administration Law.

Issue Description 5: Offsetting excess tax to ease cash flow burden on taxpayers

Income tax, commercial tax and specific goods tax collections by the IRD are governed under three different tax laws, namely the Income Tax Law,[13] Commercial Tax Law[14] and Special Goods Tax Law.[15] In this regard, any excess tax paid for one type of tax during a financial year cannot be offset against the tax payable due to another type of tax. In current practice, the tax refund process is generally time-consuming and results in a cash flow burden on taxpayers.

Potential Gains:

Allowing excess tax paid for one type of tax to be offset against the tax payable on another type of tax would not affect the tax revenue and collection of the IRD, and yet would reduce the administrative burden and compliance costs of both the IRD and taxpayers.

Recommendations:

The EuroCham Myanmar Tax Advocacy Group recommends that the MOPFI introduce specific provisions in the relevant tax legislation or Tax Administration Law to allow taxpayers who have excess tax paid for one type of tax to offset against the tax payable due on another type of tax.

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

Issue Description 6: Simplifying the tax system

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

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

Potential Gains:

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

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

13 Pyidaungsu Hluttaw. (2011, September 29). Pyidaungsu Hluttaw Law No. 4/2011 – Law Amending the Income Tax Law.
14 State Law and Order Restoration Council. (1990, March 31). SLORC Law No. 8/90 - The Commercial Tax Law.
15 Pyidaungsu Hluttaw. (2016, January 18). Pyidaungsu Hluttaw Law No. 11/2016 - Special Goods Tax Law.

Recommendations:

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

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

Issue Description 7: Tax hindrance on exports

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

Recommendations:

The EuroCham Myanmar Tax Advocacy Group recommends that the MOPFI allow (i) zero rating to be applied to export sales and input tax credit to be available relating to zero-rated supplies and (ii) commercial tax exemptions to be applied to CMP businesses for their local purchases of materials for the use of manufacturing.

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

Acknowledgments

EuroCham Myanmar Legal and Tax Advocacy Group

16 Republic of the Union of Myanmar Ministry of Planning and Finance, Internal Revenue Department. (2019, January 16). Interpretation Statement No. 1/2019.

LOGISTICS AND TRANSPORTATION

16

INTRODUCTION

Myanmar is positioned between China and India and shares borders with Bangladesh, Laos, and Thailand—a great competitive geographical advantage. The long coastline is also close to one of the world's most strategic water passages: the Strait of Malacca between Malaysia and Indonesia. Furthermore, the 3,020 kilometre riverine system adds to transport opportunities. Myanmar has the potential to become the heart of Asian logistics, but the government needs to facilitate logistics activities by developing new and clear official procedures, regulations and laws, as well as promoting the development of infrastructure.

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

Currently, most of the import/export activities are performed through the main two port areas in Yangon. The largest is Myanmar International Terminal Thilawa (MITT), used mostly for containerised cargo, roll-on/roll-off (RORO) ships for the transport of cars, and break-bulk vessels. This port is located 16 kilometres from downtown Yangon and 16 kilometres from Yangon River Bay and is next to the Thilawa Special Economic Zone (SEZ), which was developed by a Japanese joint venture. The International Terminal Thilawa consists of:of Myanmar International Terminal Thilawa (MITT); Myanmar Integrated Port Limited (MIPL); Port of Thilawa Terminal (PTT); Wilmar Myanmar Thilawa Port Terminal Limited; International Bulk Terminal Thilawa (IBTT); and Thilawa Multipurpose International Terminal (TMIT), now fully operational.

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

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

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

The Yangon International Airport has been expanded and modernised in recent years and the three terminals have the capacity to handle 20 million passengers annually. However, plans to develop Hanthawaddy International Airport near Bago are still under evaluation and no progress has been recorded in the past year.

The main commercial land border—the crossing between Myanmar (Myawaddy) and Thailand (Mae Sot)—has undergone major upgrades, with a new large and modern bridge, as well as new state of the art customs facilities on both sides. The new border facility was opened in October 2019.[1] The old customs facility, seven kilometres inside the Myanmar border, will continue to operate until further notice. It will mainly be used by not-cleared cargo, which is kept at the multiple transit warehouses in the area.

1 Pinitwong, A. (2019, October 30). Thailand hopes new Mae Sot bridge will boost trade with Myanmar. Bangkok Post. Retrieved from: https://www.bangkokpost.com/business/1783214/thailand-hopes-new-mae-sot-bridge-will-boost-trade-with-myanmar

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

• The Mandalay-Muse highway, which will improve road connections between China and Myanmar;

• A new road linking southern Sagaing Region with India;

• The Myotha Industrial City project, which will connect the Myotha Industrial Zone in Mandalay with Mandalay International Airport and the Yangon-Mandalay Expressway; and

• The Yangon elevated expressway, which will ease access to downtown Yangon, Yangon International Airport, Mingalardon Industrial Park and the Yangon-Mandalay Expressway.

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

The logistics sector supports all sectors of the economy, enables international and domestic trade, reduces costs of doing business and contributes to enhanced productivity and efficiency of the economy. Given its importance, a clear and strategic infrastructure plan needs to be developed with a long-term vision, and all stakeholders need to be involved and consulted, including private sector representatives, experts, and neighbouring countries. The Logistics and Transportation Advocacy Group offers our international knowledge and expertise to assist the government in developing new strategies and plans, both in terms of infrastructure plans and new procedures, rules and regulations.

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

According to the World Bank's 2020 Doing Business report, Myanmar's Trading Across Borders ranking is still 168 out of 190.[2] Little improvement has been made in the field of import formalities, and some issues raised in the 2019 White Book still have not been solved:

• If an insurance policy is not provided during the normal customs process (e.g. because the importer has not covered insurance on purpose or has an open global insurance), the corresponding import file is always sent to the valuation group for a full assessment, which causes delays ranging from two weeks to one month.

• While sales contracts are issued for the total quantity of the order, shipments are often done for a partial quantity. This represents a problem for custom officers who demand the contract show the exact quantity of the shipment. This leads to further delays since a new sales contract showing just the quantity shipped needs to be issued for custom procedures.

• The valuation process for goods like vehicles and motorcycles (also for spare parts) is even lengthier (more than one month).

• Customs normally revert on requests to confirm/clarify the customs Harmonized System (HS) classification code within 30 days if one item only is involved (in case of many items it usually will take longer). Customs charges 50,000 MMK per item (HS code) which can become quite costly when requests for several items are made.

2 The World Bank. (2020). Trading across Borders. Retrieved from: https://www.doingbusiness.org/en/data/exploretopics/trading-across-borders#

- The Myanmar Investment Commission's (MIC) Shipment-by-Shipment process, which consists of (i) an MIC approval application process with the Ministry of Commerce in Yangon and (ii) the commercial tax exemption process with Ministry of Planning, Finance and Industry (MOPFI) at MIC Yangon still takes too much time.

- In addition, according to the new customs rules, all shipments with an MIC tax exemption or a Form D are automatically assigned to the red channel, slowing the cargo release even further.

- Regarding import clearances using a Form D or E, a new challenge has come up: effective from the 18th of February 2020, an original Bill of Lading signed and stamped by carrier must be presented to customs to enjoy duty exemption with these forms—Surrender Bill of Ladings or Sea Way Bills won't be accepted anymore for this purpose. This causes delays in clearance process.

On a positive note, the Ministry of Commerce is now also accepting Free-on-Board (FOB) and Ex-Works prices in import licence applications, same as customs, and setting an appointment with customs is now quicker, with appointments usually granted within three working days of a formal written request.

Potential Gains:

In general, cutting costs and reducing time needed for logistics activities will boost the competitiveness of the local market and Myanmar will become more attractive for investors. Shorter supply chains, faster clearances, reduction of official and unofficial costs, and the resulting decrease in port congestion will lead to higher confidence of foreign investors and improved ease of doing business.

Recommendations:

- Speed up implementation of paperless/electronic processes of the Myanmar Automated Cargo Clearance System (MACCS) to shorten lead times and reduce face to face contact with officials.

- Introduce a systematic and efficient process involving fewer approval and decision-making tiers of officials to enable prompt decisions.

- Introduce a One Stop Service for shipments under MIC, based on the SEZ model (See Section 11 (L) of the Myanmar SEZ Law)[3] which allows electronic submission (processing time 2-3 days) whilst the MIC One Stop Service is based on a hard copies process which takes approximately one month to complete.

- Upload all customs rules and regulations issued in the past and currently effective on the customs website (initially in Myanmar language, later in English too). The website should also be continuously updated with new rules and regulations.

- Increase staff numbers in the Customs Department. Reassign officers from less busy divisions to overworked divisions (e.g. valuation).

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

3 *Pyindaungsu Hluttaw. (2014, January 23). Pyindaungsu Hluttaw Law No. 1/2014 – The Myanmar Special Economic Zone Law. Retrieved from: https://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/myanmarspecialeconomiczonelaw.pdf*

Issue Description 2: High customs penalties for honest clerical mistakes

Small clerical mistakes in import documentation, such as packing lists, commercial invoices, bills of lading, certificates of origin or packaging are commonplace and referred to as minor errors in some other countries. In many jurisdictions, shippers or consignees of goods have what is called a "reasonable excuse" defence for such cases and are therefore not subject to fines and penalties. In contrast, in Myanmar, minor errors on such documents are routinely fined amounts well in excess of what some developed countries impose.

A distinction needs to be made between 1) voluntary omissions, misdeclarations, value under declaration on the one hand, which are generally fraudulent in nature, and 2) involuntary errors committed by company staff. Within the latter category, we need to further distinguish between severe errors or omissions (e.g. wrong country or city) and minor errors, such as typographical errors, spelling mistakes, wrong street numbers in an address, etc.

Minor errors in brand name on any import documents, errors in country of origin certificates, failing to display country of origin on goods or packaging, etc. are subject to fines and penalties ranging from 50% to 100% of the goods' actual value. This is in comparison with duty rates which vary between 3% and 20% on most goods, commercial tax of 5% and advance tax of 2% on value. Other countries have less severe penalties; in the UK, for example, fines vary between 1,000 and 2,500 GBP depending on severity and frequency of the offense, and in Australia penalties amount up to 10,000 AUD or up to 75% of import duty.

Decisions on penalty charges are at the discretion of the Customs Director (Export/Import). It usually takes time and there is no official notification letter from customs. Furthermore, according to MACCS rules and regulations, one should be able to amend import/export declarations in the system up to nine times, but in practice, customs either does not allow amendments or subjects any amendment to penalties.

While other nations have a formal appeals procedure for customs fines and penalties, it seems that formal appeals procedures in Myanmar are either non-existing, poorly documented or unknown to other parties outside of customs.

Potential Gains:

In general, cutting costs and reducing time needed for logistics activities will boost the competitiveness of the local market and Myanmar will become more attractive for investors. Shorter supply chains, faster clearances, reduction of official and unofficial costs, and the resulting decrease in port congestion will lead to higher confidence of foreign investors and improved ease of doing business.

Recommendations:

- Speed up the implementation of paperless/electronic processes of the MACCS to shorten lead times and reduce face-to-face contact with officials.

- Introduce a formal appeals process which involves the Myanmar court system.

- Upload all customs fines and penalties schedules currently effective on the customs website (initially in Myanmar language, later translated in English). The website should be updated continuously.

Issue Description 3: Bonded warehouses and container freight stations (CFS)

Allowing for bonded warehouses and CFSs in strategic areas has been a long ongoing process. Recently the government approved a scheme for five types of bonded/CFS facilities: i) Public bonded warehouses are available for businesses that will store bonded goods on behalf of the owner of those goods, such as logistics providers; ii) private bonded warehouses for use by the owners of bonded goods; iii) manufacturing bonded warehouses; iv) special bonded warehouses for dangerous goods; and v) display bonded warehouses for temporary projects requiring bonded goods to be stored for the duration of the project.

At this point, despite legislative provisions being in place, no licences for bonded warehouses or CFSs have been issued. Currently, bonded solutions exist only in Thilawa SEZ, but this licence is issued under SEZ legislation and administered by the Thilawa SEZ committee. Before bonded and CFS licences can be issued, a set of guidelines, procedures and directions for bonded/CFS facilities operations need to be in place. Furthermore, customs staff should be trained and given enough resources for them to administer the bonded warehouse system. It is also unclear which ministry (or customs department) is involved in this process.

Potential Gains:

The use of bonded warehouses and CFS solutions would have many benefits:

• The new bonded warehouses and dry ports with CFS solutions can greatly overcome the custom clearance workload of the downtown and other ports.

• The ability to defer custom duty and taxes, until the goods are sold into the domestic markets, would help cash flow.

• There would be faster processing of cargo at the ports, as only drop-off of containers would be required.

• All parties would use less overtime.

• Customs officials would have a better control and ability to monitor activities, since they are located close to where CFS cargo are loaded.

• Trucking could be done at different times and one truck could handle multiple pick-ups and drop-offs in a day.

Recommendations:

The implementation of bonded warehouses and CFS solutions outside the SEZs and ports is the optimal solution for this issue and can be easily implemented. Both import and export activities will benefit a great deal. Considerable quantities of imported goods will be able to proceed directly to the bonded warehouse and hence avoid being trapped at ports. Export goods will be able to be cleared at the CFS facilities and therefore by-pass custom activities at the port, preventing bottlenecks.

The Logistics and Transportation Advocacy Group is aware that the government is working on bonded warehouse and CFS procedures, but it also believes progress could be assisted. The Advocacy Group stands ready to support the government to ensure these procedures can be quickly implemented. The Advocacy Group recommends that the government:

• Encourage MIC/customs to swiftly process and issue bonded and CFS licences to strategic locations to appropriate and eligible businesses with large volumes of outgoing and/or incoming cargo;

• Put a “drop-off” solution at the ports in place when the CFS and bonded warehouse come into operation to allow containers to be delivered as quickly as possible;

• 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);

• Adequately hire and train customs officers for these new CFS/bonded warehouses;

• Allow laden containers to be lifted off at the export area before finishing export customer clearance in order to release trucks/trailers (if the container is in the red channel, a customs officer can come to the export area to inspect the cargo inside containers);

• Make available an outline of licence fees and security deposit amounts, other fees or costs as these are still unclear for the bonded/CFS operators;

• Authorise more senior staff with the right to sign final documents for import or exports, in particular at the Thai and China borders; and

• Collaborate with private sector representative bodies with international and regional experience.

The implementation of bonded warehouses and CFS solutions will bring about great benefits to Myanmar logistics activities. A considerable quantity of imported goods will be able to proceed directly to the bonded warehouse and hence avoid being trapped at the ports. Export goods will be able to be cleared at the CFS facilities and therefore bypass custom activities at the port, preventing bottlenecks. Overall, this will redistribute cargo outbound/inbound activities from the main ports to bonded warehouses and CFSs, creating a more efficient system.

Issue Description 4: Availability of customs services vs. transport sector

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

The limited availability of customs clearance creates interruptions for the cargo transport sector in Myanmar. This results in trucks spending more time waiting for the cargo to be cleared than driving, with the highest waiting/driving ratio being for sea exports. Overnight and day costs due to delays, red channels and other delaying factors are too common and result in added costs for forwarders and losses for trucking companies, hence reducing the profitability of the sector.

Furthermore, these delays create bottlenecks near custom clearance areas. This issue can be seen in ports in downtown Yangon: due to a combination of limited customs accessibility, the truck ban, and operating restrictions (trucks can only operate between 11am and 3pm), there are considerable traffic jams around the ports. Furthermore, emissions from old, poorly maintained container trucks pose major health risks. On average, a truck operating between warehouses in the greater Yangon area and the downtown ports can do 12 to 15 trips per month, compared to, for example, 60+ trips per month per truck operating in Bangkok or Ho Chi Minh City.

As highlighted in the previous Issue Description, the MACCS has not yet been utilised to its full potential and some of the old paperwork procedure is still being used in addition to the MACCS, hence making the process even slower. If the MACCS were fully utilised, the customs clearance process would be automated and less bureaucratic and customs staff would be available for other duties or work shifts, potentially increasing operating hours (ideally to 24/7 at ports and borders).

Potential Gains:

The combination of automation, single point of contact (one signature) and fast processing of files will reduce workload and free up customs resources for extended opening hours, eventually leading to a 24/7 operation where needed.

If this is implemented at the downtown ports of Yangon and at Myawaddy it will reduce traffic congestion and enable better fleet usage and could reduce the number of container trucks on the road in Yangon alone by up to two thirds. This in turn would lead to lower costs and hence enable the truck owners to replace old, polluting, unsafe right-hand trucks with new, safe and modern left-hand ones.

In short, improving processing at customs would:

• Reduce traffic congestion and prevent bottlenecks in downtown Yangon;

• Keep container trucks running rather than not parked or waiting, increasing the productivity of each truck; and

• Reduce incidents on the road.

Recommendations:

The Logistics and Transportation Advocacy Groups recommends that the government:

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

The limited availability for customs clearance creates interruptions for the cargo transport sector in Myanmar, with trucks spending more time waiting for the cargo to be cleared than driving. Overnight and day costs due to delays, red channels and other delaying factors are too common and result in added costs for forwarders and losses for trucking companies, hence reducing the profitability of the sector. As a solution, the Logistics and Transportation Advocacy Group suggests a combination of automation, increased responsibilities of custom front desk staff, and a faster processing system.

Acknowledgments

EuroCham Myanmar Logistics and Transportation Advocacy Group

WINE AND SPIRITS

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INTRODUCTION

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

Opportunities arising from Market Opening

The wine and spirits industry greatly welcomes the lifting of the ban on the importation of foreign spirits by Notification 38/2020 and Notification 39/2020 issued by the Ministry of Commerce (MOC) on the 25th of May 2020. This is a major step forward in the ongoing transformation of the country's economy. The market opening to foreign premium spirits with transitory measures also brings Myanmar closer to fulfilling its commitments with the World Trade Organisation (WTO), and will significantly help integration with the international trading community.

Prior to the notification, imports of foreign spirits had been officially banned in Myanmar since 1998, with the exception of duty-free channels and a small duty-paid luxury hotels channel. The ban contravened Myanmar's commitments to the WTO. The demand for foreign spirits in Myanmar, which was conservatively estimated to be around 500,000 nine-litre cases in 2018 by the International Wine and Spirits Record (IWSR)[1], was mostly supplied through non-taxed channels and illicit stock, encouraging widespread illicit trade and causing substantial losses in much-needed tax revenue.

While the industry welcomes and appreciates the progress, the Wine and Spirits Advocacy Group believes there are more steps that could be taken to fully maximise the benefits of market opening. Currently, a Cost, Insurance and Freight (CIF)[2] value threshold of 8 USD has been enacted as a transitory measure. Coupled with a disproportionately high tax burden on imported spirits, the Wine and Spirits Advocacy Group is concerned that such a high CIF threshold would undermine the positive impact of market opening for premium foreign spirits and result in sub-optimal outcomes when it comes to tax revenue collection, reducing illicit trade and mitigating public health risks. Moreover, there is a need for better measures to protect consumers from counterfeit alcohol. Relevant government agencies can benefit from continued collaboration with the industry and the international business community to improve regulatory framework and consumer welfare in Myanmar.

Issue Description 1: High CIF value threshold for imported foreign spirits

Prior to market opening, the bulk of foreign spirits in Myanmar was supplied through illicit channels—principally smuggled across the Thai border or leaked from the duty-free channel. It was estimated that around 75 million USD worth of whisky illegally entered Myanmar in fiscal year (FY) 2017-18. Data from the Department of Trade recorded only 8.24 million USD of whisky imports that same year. This suggests that around 90% of imported whisky entered Myanmar through illicit channels.[3]

The import procedures for foreign spirits formulated by the Ministry of Commerce states that foreign spirits with a CIF value lower than 8 USD per litre cannot be imported into Myanmar. This minimum CIF value threshold is too high and should only be a transitory measure. The high CIF value threshold combined with the 60% ad valorem special goods tax (SGT) rate and 50% customs duty on foreign premium spirits makes the retail selling price (RSP) of legally imported spirits much higher than the majority of illicit products sold in the market. Retailers, hotels, bars and restaurants do not have legal channels to import highly sought premium foreign spirits, so consumers are likely to continue to be exposed to illicit and counterfeit products as a result. In a previous post-market surveillance sample by the Myanmar Food and Drug Administration (FDA)[4], 20% of sampled spirits were found to have methanol concentrations above safe human consumption levels. This poses serious health risks to both local consumers and tourists. Furthermore, the government will lose out on a potential source of tax revenue; in 2017-18, the tax revenue loss from illicit imports of whisky alone was estimated to be 80 million USD.[5]

1 International Wine & Spirits Record. (2018). Global Database. Retrieved from https://www.theiwsr.com/
2 Refers to the value covering the exporter's expenses to manufacture and transport the products to the receiving country's port of entry.
3 EuroCham Myanmar. (2019). Report on the study of the loss of taxes due illicit trade in Myanmar. Retrieved from https://eurocham-myanmar.org/uploads/5252b-eurochamweb-final-report-on-illicit-trade-ait-2019.pdf
4 Mizzima. (2020, June 22). Domestic tourism to resume Q3. Mizzima. Retrieved from http://mizzima.com/article/domestic-tourism-resume-q3
5 EuroCham Myanmar. (2019). Report on the study of the loss of taxes due illicit trade in Myanmar. Retrieved from https://eurocham-myanmar.org/uploads/5252b-eurochamweb-final-report-on-illicit-trade-ait-2019.pdf

The 8 USD CIF value threshold is often interpreted as a straightforward method for preventing direct competition between international and domestic products. However, the domestic industry is well-protected by current SGT rates and customs duty imposed on imported products. Domestic whisky enjoys a much lower price threshold than premium foreign spirits; IWSR data from 2018 show that 99.98% of domestic whisky sold in Myanmar had an RSP of less than 5 USD.[6] Therefore, even without a CIF value threshold, premium foreign spirits will not directly compete with domestic products because of foreign spirits' high price points and the current SGT rates and customs duty. The CIF value threshold is not a necessary protective measure and is therefore incompliant with Myanmar's WTO obligations.

To summarise, the current 8 USD CIF value threshold should only be a transitory measure and should be lowered in the near future to broaden the legal channel in order to meet existing market demand, mitigate illicit trade, and allow room for international players to operate sustainably.

Potential Gains:

Decreasing the CIF value threshold will have considerable gains, including:

- Significant increases in tax revenue collected from foreign spirits;
- Promotion of the rule of law by converting the majority of illegal spirits imports to the legalised channel;
- Complementing law enforcement efforts to address illicit trade, including counterfeiting;
- Protection of consumer health by increasing access to legitimate and safe products; and
- Improvement of the business climate, and closer alignment with WTO commitments.

Recommendations:

The lifting of the ban on the import of foreign spirits and the issuance of spirits import procedures were significant steps welcomed by the international business community. While these positive developments are highly appreciated, the Wine and Spirits Advocacy Group is of the view that the CIF value threshold needs to be reviewed and lowered in a timely manner so as to maximise opportunities for government revenue collection and combat illicit trade while allowing the entire industry to grow healthily.

The Wine and Spirits Advocacy Group suggests a CIF value of 4 USD per litre of finished product (i.e. 3 USD per 75cl bottle) as a reasonable threshold. This would lead to a minimum retail price of around 10 USD per 75cl bottle, taking into account all current taxes (import duty[7], SGT[8], and commercial tax) and margins along the supply chain.[9] An RSP of 10 USD is well above the price at which 99.8% of local whisky was sold in Myanmar in 2018, thereby creating a market opening that presents no direct competition to the local market.

A reasonable CIF value threshold as a transitory measure, coupled with a clear and effective action plan to tackle illicit trade, would promote legal trade, and enable retailers and consumers to purchase legitimate products from tax-paid channels. The normalisation of wine imports without any CIF value threshold in 2015 is a good example: transparency improved and legal imports increased significantly. This example can serve as best practice and a model for the government and private sector aiming to satisfy consumer demand, generate tax revenue, and improve consumer welfare.

The current CIF value threshold of 8 USD should ideally be lowered after the initial six months of the market opening to facilitate international producers' timely participation in the market and restore the tourism and hospitality sectors, as well as improve the business environment for international

6 International Wine & Spirits Record. (2018). Global Database. Retrieved from https://www.theiwsr.com/
7 Using import duty for foreign spirits at 50% as from April 2020.
8 Using SGT as defined in Union Tax Law (UTL) 2019-2020.
9 Importer margin at 25%, wholesaler margin at 10%, retail margin at 15%, industry assumption (adjusted).

companies during the post-Covid-19 recovery period. Along with stronger enforcement against illegal imports and counterfeit products, a lower CIF value threshold will contribute to the goal of eliminating illicit trade of foreign spirits in Myanmar, as well as further strengthen Myanmar's ties with its vital trading partners.

Issue Description 2: Large illicit trade due to high tax burden and weak regulatory environment

The full benefits of market opening can be reaped by adopting a reasonable tax structure. In the 2019-2020 Union Tax Law (UTL), a 60% ad valorem SGT rate was imposed on premium spirits with a landed value above 15,000 MMK per litre, as compared to 29,000 MMK per litre in the UTL 2018-2019. This means that the SGT has increased by approximately 150% for spirits with a value class between 15,001 MMK and 29,000 MMK per litre. Only foreign spirits fall within this range. This increase is disproportionately high compared to the 8%-22% SGT increase for spirits valued between 1,000 MMK and 15,000 MMK per litre. In addition to the increased SGT burden, customs duty for imported spirits has been raised from 40% to 50%. The increased SGT rate and customs duty rates lead to high retail prices and push primarily profit-conscious retailers towards illicit suppliers and impede efforts to shift unrecorded consumption towards a recorded and legal market.

A reasonable tax structure is particularly important considering the current enforcement against smuggled products. Myanmar ranked 82nd out of 84 countries in the Global Illicit Trade Environment Index 2018 compiled by the Economist Intelligence Unit (EIU).[10] To improve Myanmar's ranking on this global index and effectively tackle illicit trade, reasonable tax rates and stronger enforcements should be adopted.

Moreover, the Wine and Spirits Advocacy Group would greatly appreciate opportunities for consultation in future reviews of the UTL. Increased transparency and inclusion of both domestic and international industry stakeholders are essential for important issues such as SGT rates and customs duty given the overall impact on Myanmar's business environment.

Potential Gains:

Implementing a reasonable tax structure could have considerable gains, including:

- Boosting government revenue by promoting the tax-paid importation and retail channels;
- A reduction of illicit trade by establishing a reasonable and transparent tax structure which reduces the price gap between goods sourced via tax-paid channels and those sourced from non-tax paid channels;
- Improved consumer welfare by reducing the economic incentives for counterfeit products; and;
- Increased use of international best practices to ensure only traceable and quality-assured products enter the market.

Recommendations:

The Wine and Spirits Advocacy Group encourages the government to consider the introduction of a more nuanced taxation model for imported spirits. With the current CIF threshold of 8 USD, all imported foreign spirits fall under tier 16 and are therefore subject to ad valorem tax of 60%. The SGT model adopted for domestically produced spirits, which considers the value of goods in a tiered 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 officials, importers, and retailers.

10 The Economist Intelligence Unit (2018). The Global Illicit Trade Environment Index: Overall results. Retrieved from http://illicittradeindex.eiu.com/documents/EIU%20Global%20Illicit%20Trade%20Environment%20Index%202018%20-%20Overall%20Results%20White%20Paper%20June%206%20FINAL.pdf

The increase in customs duty from 40% to 50% runs counterproductive to efforts to curb illicit trade through market opening. Importers will try to bypass official channels due to the higher tax burden imposed by the increased customs duty. Therefore, the customs duty should remain at a reasonable level and the government should improve enforcement mechanisms to tackle illicit trade. The industry stands ready to support the Myanmar Customs Department through developing innovative solutions and capacity building programs.

The Wine and Spirits Advocacy Group encourages a concerted effort by all industry players and the authorities to work to ensure enforceability and monitoring. Collaboration with industry stakeholders would ensure a high level of compliance, which would benefit the economy through proper tax revenue collection from all spirits sold in the domestic market.

Issue Description 3: Exclusive distributorship/dealership and application requirements

The import procedures for foreign spirits mandated by the Ministry of Commerce require Myanmar importers to first obtain an exclusive distributorship or an exclusive dealership agreement with an international producer. The import procedures do not state clearly whether international producers can appoint more than one exclusive distributor in Myanmar. Restricting international producers to appointing only one exclusive distributor in Myanmar may actually run counterproductive to efforts to eliminate illicit trade, as businesses which fail to secure exclusive distributorship or dealership agreements with international producers may well decide to source from illicit channels. This will undermine the benefits of the market opening and does not benefit Myanmar consumers nor maximise tax revenue collection.

Furthermore, a single importer system limits the efficiency and growth of the spirits market in Myanmar. If international players have to rely on only one local importer, it will have an impact on their ability to distribute across the country and hence limit their reach. Moreover, as there are very few Myanmar businesses that have the capacity to handle nation-wide distribution, new brands entering the Myanmar market for the first time will have extremely limited options when looking for a distributor. If only exclusive dealerships are permitted, very few international brands will be able to enter the market as local distributors can only do business with only one international producer. Therefore, the efficiency and growth of the spirits market in Myanmar will be severely limited.

In addition, importers of foreign spirits are also required to renew their alcohol import registration certificates every year, and these are necessary for import license applications. This short validity period of alcohol import registration certificates means that importers have to reapply every nine months in addition to applying for import licenses for every batch of imports. This adds significant friction to the importation process.

Potential Gains:

Changing the above restrictions would:

Improve market access for international producers and attract investors; and
Expand the legal channel for spirits importation, which in turn contributes to government fiscal objectives and benefits job creation of legitimate economic operators.

Recommendations:

To improve market access and grow the legal channel for importation of foreign spirits, international producers should be allowed to appoint more than one distributor or dealer in Myanmar. This will not only improve the ease of doing business for international producers but also prevent importers from engaging in illicit trade. As a result, the overall regulatory and business environment of the spirits market will improve.

While a potential limitation on international producers to appoint only one distributor/dealer in Myanmar may appear to be a quick tactic to improve enforcement against illicit trade, in reality, they are burdensome restrictions on the legal channel for spirits and will push local businesses to import products through illicit channels.

Other provisions in the import procedures should also be reconsidered, such as the requirement to renew alcohol import registration certificates every year. Licensing and application requirements should be simple and streamlined: according to members' international experience, required licenses/certificates should have a period of validity of between three and five years to facilitate the ease of doing business for local importers and international producers alike.

Issue Description 4: Creating shared value and responsibility towards society

As responsible international companies, we members of the Wine and Spirits Advocacy Group recognise that we have a responsibility towards society. For instance, we recognise we have a role to play in reducing harmful drinking and promoting responsible and moderate consumption of alcohol as part of a balanced lifestyle. In many countries, and in close partnership with local authorities, companies have committed to taking action to reduce alcohol harm by identifying solutions that bring about impactful change. This is one example of how companies can contribute to society. We stand ready to work closely with the government on issues of priority and common concern.

Potential Gains:

Working together could:

- Improve consumer welfare; and

- Move Myanmar closer to international best practices and make use of the track record and experience of international companies.

Recommendations:

Industry players stand ready to work with the government on issues of concern, such as promoting responsible drinking and measures to tackle the harmful use of alcohol. While the market opening is a significant step, a more liberalised and improved level of opening will allow international spirits companies to sustain their presence, including engaging in long term activities that will benefit the Myanmar people.

Issue Description 5: Consultation with industry players to improve regulatory framework

The government is making a considerable effort to improve the regulatory environment of the spirits industry. For example, the Department of Consumer Affairs (DoCA) has enacted the Consumer Protection Law,[11] which includes specific labelling requirements in Burmese. The Ministry of Commerce also enacted the Import Safeguard Law in December 2019,[12] which aims to offer protection to local producers by allowing for temporary import safeguard measures. The issuance of new regulations and guidelines will develop a strong regulatory environment for Myanmar's recently liberalised foreign spirits market, and industry players can share their international experience and best practices with the government.

Potential Gains:

Consulting industry stakeholders will help the government to:

- Gain access to international best practices regarding the regulatory framework of the spirits market globally;

- Promote consumer welfare and business standards through consultation and knowledge sharing with industry players; and

- Improve traceability measures for imported products and tackle illicit trade.

11 Pyidaungsu Hluttaw. (2019). Pyidaungsu Hluttaw Law No. 9/2019 – Consumer Protection Law.
12 Pyidaungsu Hluttaw. (2019, December). Pyidaungsu Hluttaw Law No. 35/2019 – Import Safeguard Law.

Recommendations:

The Wine and Spirits Advocacy Group welcomes the efforts made by the government to clarify and improve the regulatory framework for alcohol products in Myanmar. It also appreciates the opportunity to contribute to the crafting of a fair, transparent, and effective regulatory framework in Myanmar that will benefit all industry players, including local and international producers, importers, distributors and retailers. As the industry shares the government's goals of combatting illicit trade and protecting consumer welfare, an inclusive consultation process and partnership with all relevant stakeholders can strengthen efforts to achieve these common goals.

The Wine and Spirits Advocacy Group welcomes and recognises the enactment of the Import Safeguard Law as a step towards protecting the local industry as is done in other WTO member. However, given that local producers have a dominant market share and the ban on foreign spirits imports has contributed to the proliferation of illicit products in the market, any consideration of import safeguard measures against foreign spirits could undo the gains from liberalisation. Therefore, we encourage transparent and thorough consultation with both local and international players in the execution of safeguard measures.

In order to develop a clear and effective regulatory environment for the spirits industry, the Wine and Spirits Advocacy Group encourages the industry and government to work hand in hand to develop or adopt technical and labelling requirements for wine and spirits, in accordance with international best practices and standards such as those set out in the Codex Alimentarius. Regulations in markets where wine and spirits are produced both for local consumption and export (including to Myanmar) such as the EU, the US, Australia, New Zealand, etc. can act as examples, and the International Organisation of Vine and Wine (OIV) also provides useful learning points. We understand that the Ministry of Health and Sports (MOHS) is reviewing the National Food Law and that the Food and Drugs Administration is developing labelling standards. We look forward to engagement with all relevant stakeholders in order to develop an effective regulatory framework that is consistent with international best practices, with the aim of protecting the interests and safety of all consumers in Myanmar.

One measure that can strengthen the regulatory environment and help effectively tackle the problem of illicit trade is improving traceability. Traceability can be improved by a variety of measures, such as labelling lot codes on individual products. International companies are open to collaboration with relevant authorities, such as the Customs Department and the Department of Trade, to discuss the most effective ways to improve traceability for imported products, which in turn will reduce the flow of illicit trade.

Lot indications are mandatory for the circulation of foodstuff in the EU and tampering with them is forbidden. European wines and spirits producers, abiding by EU law and following Codex Alimentarius guidelines, place lot indications on individual packages which allows them to be traced throughout the supply chain. Smugglers routinely remove, modify or blur producers' lot indications placed on EU products to remove themselves from liability and to hide their supply source. Such products are beyond producers' quality control systems and barely meet acceptable shipment or storage conditions, imposing a material threat to consumer safety and public health. Without relevant lot identification codes on the bottle, legitimate operators cannot conduct appropriate batch recalls in case of any food incident. Intact producers' lot identification codes will not only benefit consumers and legitimate producers, but also facilitate government authorities' ability to identify illicit products.

The Wine and Spirits Advocacy Group would like to request stronger protection of EU wine and spirits producers' lot codes by legal prohibitions of tampering, blurring, erasing or removing the traceability information (i.e. "decoding") by Myanmar legislation without introducing a new country-specific coding requirement which would duplicate requirements, as we already conform to the existing administrative protection on food labelling information (including lot code).

Acknowledgments

EuroCham Myanmar Wine and Spirits Advocacy Group

ABBREVIATIONS AND ACRONYMS

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

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

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

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

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DISCLAIMER

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