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BETTER POLICIES FOR BETTER LIVES

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Foreword

This OECD Investment Policy Review of Myanmar *represents the first international co-operation with the Government of Myanmar on investment climate reform. Undertaken in partnership with the Secretariat of the Association of Southeast Asian Nations (ASEAN), it charts the dramatic economic reforms in Myanmar since 2011 and draws lessons from the earlier reform experience after 1988, as well as from other countries that have undergone similar transformations.*

The Review uses the Policy Framework for Investment *to discuss the challenges and opportunities for Myanmar as it opens to the outside world. Covering a broad range of policy areas, it looks not only at how to increase private investment in Myanmar but also at how to ensure that investors act responsibly and contribute to inclusive and sustainable development. It was prepared in collaboration with a government task force of 17 ministries and agencies chaired by the Director General for Investment and Company Administration in the Ministry of National Planning and Economic Development. A draft version of the Review was presented to the task force in Nay Pyi Taw and to stakeholders in Yangon in June 2013. A delegation led by the Deputy Minister for National Planning and Economic Development Dr Khin San Yee discussed the Review with the OECD Investment Committee in October 2013.*

The Review has been prepared by a team comprising Stephen Thomsen, Mike Pfister, Coralie David, Hélène François, Fernando Mistura and Geraldine Ang of the Investment Division of the OECD Directorate for Financial and Enterprise Affairs and Nariné Nersesyan of the OECD Centre for Tax Policy and Administration. Secretariat inputs were received from the Financial and Corporate Affairs Divisions. The Review was supported by the ASEAN-Australia-New Zealand Free Trade Area Economic Co-operation Support Programme. The information in this Review is current as of end-November 2013.

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Preface by Dr Kan Zaw, Minister of National Planning and Economic Development, Republic of the Union of Myanmar and Angel Gurría, Secretary-General, OECD

Myanmar stands at a crossroads. After decades of economic isolation, the government is launching an ambitious agenda to strengthen the economy, tackle poverty and promote sustainable and equitable growth. These comprehensive reform efforts are being followed closely by the international community, including by international investors.

The country has much to offer, including a strategic location, abundant natural resources, a rich and largely untapped cultural heritage for tourism, and a young population. Its ample water resources and land once made it the "rice bowl of Asia". All these elements could eventually make Myanmar an ever growing magnet for investment, but Myanmar faces many challenges as it seeks to put in place an open, market-based economy. This transformation will take time.

This *Investment Policy Review*, Myanmar's first international co-operation initiative on investment policy, will help guide the country's current efforts to modernise the legal and regulatory framework for investment. Recent measures undertaken by the government, including the revisions of the Foreign Investment and Special Economic Zone Laws, illustrate its commitment to further openness. Laws have been enacted in rapid succession, but government capacity needs to be improved in order to implement them effectively. As in many countries, land ownership issues are complex and will need to be resolved.

This work offers valuable insights on how to avoid past mistakes and ensure that investment contributes fully to sustainable and inclusive development. The areas of focus of this comprehensive assessment, including responsible business conduct and sustainable investment in agriculture, allow Myanmar to benchmark itself against advanced economies and regional partners, while providing actionable policy options for the government. The report underlines that Myanmar needs to enhance the development impact of international investment, including through regulations based on high social and environmental standards and by strengthening implementation capacity. It also stresses the importance that international investors comply with national laws and regulations, as well as observe international standards of responsible business conduct, such as those set out in the *OECD Guidelines for Multinational Enterprises*.

In undertaking this Review, the government established a cross-government Task Force co-ordinated by the Ministry of National Planning and Economic Development. This allowed for full ownership and a whole-of-government approach to investment policy making, which the OECD was privileged to support through its policy tools and experience in promoting investment for development. The Review also builds on the OECD's investment work in partnership with the Association of Southeast Asian Nations (ASEAN), which allows for an open exchange of experiences with Myanmar's regional peers to support its development. We would like to thank the ASEAN-Australia-New Zealand Free Trade Area Economic Cooperation Support Programme for supporting this Review.

Myanmar and the OECD are proud to have joined forces in this report, a harbinger of further and deeper co-operation to support Myanmar's economic development.

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Acronyms and abbreviations

ACIA	ASEAN Comprehensive Investment Agreement
AED	Agricultural Extension Division
AGO	Attorney General's Office
AMD	Agricultural Mechanisation Department
ASEAN	Association of South East Asian Nations
ASTI	Agricultural Science and Technology Indicators
BIT	Bilateral Investment Treaty
CCMCL	Central Committee for the Management of Cultivable, Fallow and Waste Land
CCVFV	Central Committee for the Management of Vacant, Fallow and Virgin Lands
CSO	Central Statistical Office
CSR	Corporate Social Responsibility
DICA	Directorate of Investment and Company Administration
DOA	Department of Agriculture
ESIA	Environmental and Social Impact Assessment
EPZ	Export Processing Zone
EU	European Union
EUR	Euro
FAB	Farmland Administration Body
FAO	Food and Agriculture Organisation
FAU	Fiscal Analysis Unit
FDI	Foreign Direct Investment
FET	Fair and Equitable Treatment
FIL	Foreign Investment Law
FESR	Framework for Economic and Social Reform
FFS	Farmer Field School
FPIC	Free, Prior and Informed Consent
FTA	Free Trade Agreement
FY	Fiscal Year
GAP	Good Agricultural Practices
GDP	Gross Domestic Product
GSP	Generalised System of Preferences
IBA	International Bar Association

ICSID	International Centre for Settlement of Investment Disputes
ID	Irrigation Department
IHRB	Institute for Human Rights and Business
ILO	International Labour Organization
IP	Intellectual Property
LBVD	Livestock Breeding and Veterinary Department
LNA	Land Nationalisation Act of 1953
MADB	Myanmar Agriculture Development Bank
MECF	Ministry of Environmental Conservation and Forestry
MFI	Microfinance Institution
MIC	Myanmar Investment Commission
MIGA	Multilateral Investment Guarantee Agency
MNE	Multinational Enterprise
MNHRC	Myanmar National Human Rights Commission
MOAI	Ministry of Agriculture and Irrigation
MOFR	Ministry of Finance and Revenue
MOLF	Ministry of Livestock and Fisheries
MOLFB	Myanmar Livestock and Fisheries Development Bank
MRIA	Myanmar Rice Industry Association
MRSC	Myanmar Rice Specialised Company
MT	Metric tonnes
NGO	Non-Governmental Organisation
NLD	National League for Democracy
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
O&M	Operations and Maintenance
PFI	Policy Framework for Investment
RBC	Responsible Business Conduct
R&D	Research and Development
SDN	Specially Designated Nationals
SEE	State Economic Enterprise
SEZ	Special Economic Zone
SLORC	State Law and Order Restoration Council
SLRD	Settlement and Land Records Department
SME	Small and Medium-Sized Enterprise
SPDC	State Peace and Development Council
TRIPs	Trade-Related Aspects of Intellectual Property Rights
UMFCCI	Union of Myanmar Federation of Chambers of Commerce and Industry
UNCITRAL	United Nations Commission on International Trade Law
US	United States
USD	United States Dollar

UMFCCI	Union of Myanmar Federation for Chamber of Commerce and Industry
VFV	Vacant, Fallow and Virgin Land
WB	World Bank
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation
WUG	Water User Group

Executive summary

After years of economic isolation, the government of Myanmar has initiated a wide range of reforms to open its economy to foreign trade and investment. As set out in the *Framework for Economic and Social Reform,* the reform programme includes: budgetary and tax reforms; monetary and financial sector reforms; liberalisation of trade and investment; food security and agricultural growth; land issues; and improvements in infrastructure availability and quality. The country stands to benefit from greater global and regional economic integration, with its rich natural resources base, young labour force and strategic geographic location between India and China.

Bringing about simultaneously a political and economic transition will not be an easy task. In the early 1960s, Myanmar was one of Asia's leading economies but fell substantially behind many of its peers in ASEAN during the lost decades of military rule. Some relevant reforms were never implemented, and those that were failed to modernise the country. Now Myanmar finds itself with a legislative framework that is often outdated and inadequate, and with limited capacity to implement widespread reforms.

As it undertakes the necessary structural reforms to boost Myanmar's development through greater integration with the world economy, the government can draw on some relevant lessons from an earlier attempt in the late 1980s to open up the country to foreign investment. Investments by multinational enterprises, often in joint ventures with state economic enterprises in extractive industries and the energy sector, provided little tangible benefits to local populations and were often seen as contributing to human rights abuses.

Building an appropriate framework for investment can help to avoid repeating the past experience and contribute to attracting the type of investment that adds to Myanmar's development. More can be done to promote responsible business conduct in the country by enhancing public consultations on changes in the legislative framework and on investment projects, as well as by signing many of the key international conventions related to labour and human rights. A continuing area of concern involves land acquisition for large-scale investment projects. Property rights are not well-established and populations living or working on the land have complained about inadequate consultation and compensation. It will take some time for the government to build the capacity to implement and enforce human rights, labour and environmental standards and consumer protection throughout its territory, hence there is scope civil society, both internationally and within Myanmar, as well as governments in investor home countries, to play a complementary role to ensure that investment in Myanmar contributes to inclusive and sustainable development.

The enactment of the new *Foreign Investment Law* and its accompanying implementing rules marks a milestone towards a more open and secure legal environment for investment but is only the first step in a long process. The law still leaves many questions unanswered, notably with respect to investor protection and the criteria for admitting foreign investors. The mechanisms for enforcing contracts and property rights and for settling disputes remain weak. The current regulatory framework is complex, with half a dozen laws regulating the entry of investors, depending on the sector and location of the investment and on whether or not the investor is foreign. The approval process is equally complex and sometimes opaque. Moreover, the new rules set out an extensive list of sectors in which foreign investment is either prohibited or restricted.

More still needs to be done to strengthen investment promotion and facilitation in Myanmar so that it can provide the private sector with an avenue to interface with the government. Despite the various initiatives to streamline business registration and procedures, the current system remains cumbersome. If accompanied by the right mix of supporting policies and measures, special economic zones can also play a central role in Myanmar's efforts to attract investment and to promote competitive semi-manufactured or manufactured goods with significant local value addition. Furthermore, substantial investment is needed in physical and social infrastructure. For this the government will need to improve revenue mobilisation and encourage greater private sector participation in infrastructure. The tax system does not generate enough revenue to ensure fiscal stability or to curb budget deficits. Myanmar currently has one of the lowest levels of tax revenue collection relative to GDP, forcing the government to rely on unstable revenues from natural resources to meet its spending needs.

Particular attention is needed in the agriculture sector which is faced with low productivity. While Myanmar was once the "rice bowl" of Asia, the sector has suffered from decades of extensive government controls and under-investment. More appropriate policies and increased government support for the sector could help Myanmar to recover its place as a major agricultural producer and exporter in Southeast Asia. In reforming the sector, land tenure security remains a major challenge ahead and should be a government priority.

Addressing many of these challenges will take time, particularly the question of capacity, while some may be tackled in a shorter timeframe. Failure to do so will affect both the credibility and effectiveness of reforms in achieving the desired outcomes in terms of inclusive and sustainable development. This review takes a broad brush to the question of investment climate reform and draws attention to numerous policy options available to Myanmar in each area of the *Policy Framework for Investment*. Some policies can be implemented relatively quickly, while others are more aspirational recommendations which will require more fundamental changes in the way the government goes about its business.

Assessment and recommendations

The transformation of Myanmar from decades of isolation mirrors, on a smaller scale, the dramatic changes in Eastern and Central Europe in the 1990s, as well as the opening of both China and Viet Nam. The challenges for Myanmar in simultaneously engineering a political and economic transition are enormous. Reformers in the Myanmar government have laid out their ideas in the *Framework for Economic and Social Reform*, including budgetary and tax reforms; monetary and financial sector reforms; liberalisation of trade and investment; food security and agricultural growth; land issues; and improvements in infrastructure availability and quality.

The government has received advice from international organisations, bilateral donors and others about priorities for, and sequencing of, reform. This OECD *Investment Policy Review of Myanmar*, undertaken in partnership with the ASEAN Secretariat, takes a broad brush to the question of investment climate reform. The review covers almost all ten policy areas in the *Policy Framework for Investment* – PFI (Box 1) to varying degrees, as well as a special focus on agriculture, a sector which still employs two thirds of the labour force and which will play a key role in alleviating poverty. Beyond progress in reform in each policy area, the review looks at the institutional structure of government in Myanmar and at how the legislative reform process has been carried out. It also addresses the question of institutional capacity and how this will affect the credibility of reforms, as well as at what complementary measures both within and outside of Myanmar might help in filling this capacity gap.

Through this review, conducted in close collaboration with the government of Myanmar, including a task force of 17 ministries and agencies, the OECD provides an objective assessment of progress in Myanmar in its ambitious reforms, as well as of reform challenges that remain. The review also shares the experience of how other countries, such as Viet Nam, have tackled the same challenges when they were at a similar phase of transition. It also helps to benchmark Myanmar's performance against these and other countries. At the same time, the government of Myanmar can use the PFI assessment exercise to help build consensus and capacity within government and to foster a whole-of-government approach to investment climate reform.

Box 1. **The Policy Framework for Investment**

The Policy Framework for Investment (PFI) helps governments to mobilise private investment that supports steady economic growth and sustainable development, thus contributing to the prosperity of countries and their citizens and to the fight against poverty. The Framework was developed at the OECD by representatives of 60 OECD and non-OECD governments in association with business, labour, civil society and other international organisations and endorsed by OECD ministers. It offers a list of key questions to be examined by any government seeking to create a favourable investment climate.

The Framework is a flexible instrument that allows countries to evaluate their progress and to identify priorities for action in ten policy areas: i) investment, ii) investment promotion and facilitation, iii) trade, iv) competition, v) tax, vi) corporate governance, vii) promoting responsible business conduct, viii) human resource development, ix) infrastructure and financial sector development, and x) public governance. Three principles apply throughout the Framework: policy coherence, transparency in policy formulation and implementation, and regular evaluation of the impact of existing and proposed policies.

By encouraging a structured process for formulating and implementing policies at all levels of government, the Framework can be used in various ways and for various purposes by different constituencies, including for self-evaluation and reform design by governments and for peer discussions in regional or multilateral forums. A Toolkit was created to offer practical guidance on how to implement the PFI.

The PFI recognises that creating a good investment climate involves the interaction of governments, firms and other stakeholders, as well as both output and factor markets. Too often, governments focus narrowly on the costs of doing business or on investment promotion without paying sufficient attention to the bigger picture. Creating a good business climate requires efforts by government to: expand market opportunities for new entrants; improve public service delivery and policy effectiveness, in part through public consultations; improve the availability and quality of inputs and the efficiency of capital and labour markets; facilitate access to imported inputs; foster innovation and technology transfer by making markets more competitive and by protecting intellectual property rights; and encourage firms to play their part through voluntary codes of corporate governance and responsible business conduct, and through training of local employees and linkages with local suppliers.

The objective of a good investment climate is not just to increase investment but also to improve the flexibility of the economy to respond to new opportunities as they arise – allowing productive firms to expand and uncompetitive ones (including state-owned enterprises) to close. The government also needs to be nimble: responsive to the needs of firms and other stakeholders through systematic public consultation and able to change course quickly when a given policy fails to meet its objectives. It should also create a champion for reform within the government itself. Most importantly, it needs to ensure that the investment climate supports sustainable and inclusive development.

Box 1. **The Policy Framework for Investment** *(cont.)*

The PFI was created in response to this complexity, fostering a flexible, whole-of-government approach which recognises that investment climate improvements require not just policy reform but also changes in the way governments go about their business.

For more information on the *Policy Framework for Investment* and its User's Toolkit, see: *www.oecd.org/daf/investment/pfi* and *www.oecd.org/investment/pfitoolkit*.

The historical context in Myanmar shapes the reform process

History matters for the government as it embarks on reforms. Box 2 lists key events in Myanmar's post-independence history. Myanmar is often advised to learn from the mistakes of others, but some of the most relevant lessons may come from an earlier attempt at opening in the late 1980s. Investments by state economic enterprises, often in joint ventures with foreign multinational enterprises (MNEs), in extractive industries and the energy sector provided little tangible benefits to local populations and were often seen as contributing to human rights abuses. At a time when the judiciary was acquiescent and any opposition silenced, foreign investment came to be associated with the full litany of possible ills: land grabbing, population displacement without adequate compensation, forced labour and other abuses of both worker and human rights.

The rise of civil society and of reformists in government who appear to have learned the lessons of this earlier reform experience suggest that history is not likely to repeat itself. Home governments and investors are also more attentive to the dangers of investing in weak governance zones. The experience of Bangladesh suggests that reputational risks can affect both the host government and investors, with implications for the ability of a host country to attract more investment in the future. Both the international climate and the domestic one in Myanmar are very different from what they were 25 years ago.

In the early 1960s, Myanmar was one of Asia's leading economies, with a per capita income more than three times that of Indonesia and twice that of Thailand. Fifty years later, per capita income on a purchasing power parity basis is roughly ten times higher in Thailand. The military takeover in 1962 launched the "Burmese Way of Socialism" which led to wide-scale nationalisation of industry and the financial sector. Agricultural land had already been nationalised, and farmers were obliged to sell their produce directly to the government.

Myanmar's first departure from self-imposed isolation in 1988 coincided with political turmoil which led to increasingly stringent sanctions in major

Box 2. **Important dates in Myanmar's post-independence history**

1826-1947	• Colonial period.
1947	• General Aung San assassinated.
1948	• Independence.
1958	• Military takes power for the first time but only until 1960.
1962	• Military coup deposes civilian government and institutes the Burmese way of socialism, including the nationalisation of all non-agricultural enterprises.
1988	• Following unrest, the State Law and Order Restoration Council (SLORC) takes power through an internal coup. Myanmar is declared a market economy. First *Foreign Investment Law* enacted.
1989	• Burma renamed Myanmar.
1990	• In elections, National League for Democracy (NLD) wins 392 of 492 seats and 53% of popular vote, but the results are annulled by SLORC. First sanctions imposed.
1997	• Myanmar joins ASEAN.
	• SLORC renamed the State Peace and Development Council (SPDC).
2005	• Capital moved from Yangon (formerly Rangoon) to Nay Pyi Taw.
2008	• Cyclone Nargis devastates the Irrawaddy delta, killing up to 150 000.
2010	• Elections boycotted by NLD because of continuing imprisonment of dissidents and disputes over the 2008 Constitution.
2011	• SPDC formally transfers power to a new Union Government. General Than Shwe steps aside. U Thein Sein becomes president.
April 2012	• By-elections held to fill 45 seats vacated by members assuming ministerial office. NLD wins 43 seats. Daw Aung San Suu Kyi is elected.
2014	• Myanmar to chair ASEAN for the first time.
2015	• General elections to be held.

Source: Authors' compilation.

markets such as the United States. Canada, Australia, the European Union and others also imposed certain restrictions, while Japan cut off most of its aid. Any nascent interest in investing in Myanmar by enterprises from most OECD countries was quickly reversed, and many investors from OECD countries that were already present in Myanmar withdrew.

The new government of President U Thein Sein took over in 2011 and began the first steps towards reform. By-elections were held in April 2012 which were judged by the UN Special Rapporteur for Myanmar to be, by and large, free and fair, and the National League for Democracy won 43 out of 44 seats. A general election is to be held in 2015, which explains in part the government's desire for what it calls "quick wins" in the reform process so that the fruits of reforms will already be abundant by then. Another landmark in Myanmar's international opening is its current chairmanship of ASEAN.

Legislative reform has proceeded at a rapid pace…

Going beyond any consideration of the political calendar, there is a justifiable sense of urgency on the part of the government to reform the legislative framework. Not only do some key laws, such as the *Companies Act*, date back to colonial times, but others – adopted under the military junta in the past – are often ill-suited to an open economy and not in conformity with international standards. Dozens of new statutes have already been enacted (Table 1), but at the same time, a hyperactive government and a newly empowered and assertive parliament, together with insufficient public consultation, mean that draft laws are not adequately vetted. There is also the risk that the government will copy legislation from other countries which may be ill-suited to the conditions currently found in Myanmar.

Many international observers have expressed the concern that the government's haste to provide a modern legislative framework may come at the expense of laws that are suitable, credible and able to be implemented given the existing capacity levels within government. The UN Special Rapporteur reported in 2012 that "there remains no clear and comprehensive strategy for legislative reform, resulting in a somewhat ad hoc and uncoordinated process […] the legislative reform process should allow for proper consideration by the parliament, and for systematic consultation and discussion with relevant stakeholders, including civil society" (UN, 2012).

… but with insufficient consultation and review

Public consultation is partly a way of ensuring more effective laws by bringing to light *ex ante* any possible adverse implications or inconsistencies. By involving stakeholders at an early stage, it also creates greater buy-in and understanding by stakeholders of the new or amended legislation which will assist in implementation and enforcement. Consultations on draft laws have sometimes been selective. The government solicited comments from the national chamber of commerce (UMFCCI) during the drafting of the *Foreign Investment Law*, for example, but wide consultations were reportedly not held. The lack of adequate consultation to date can be attributed to several possible factors: the perceived need for speed in legislative reform, a legacy of secretiveness within government and the possibility that disclosure of a draft statute would violate the *Official Secrets Act* (IBA, 2012). This situation is reportedly improving, as the government has published in the state gazette

Table 1. **Key legislation affecting the investment climate in Myanmar**

Copyright Act	1911	Attorney General of the Union Law	2010
Companies Act	1914	Special Economic Zones Law	2011
Insolvency Act	1920	Dawei Special Economic Zone Law	2011
Partnership Act	1932	Labour Organisation Law	2011
Special Companies Act	1950	Settlement of Labour Disputes Law	2012
Land Nationalisation Act	1953	Social Security Act	2012
Tenancy Law	1963	Vacant, Fallow and Virgin Land Management Law	2012
Income Tax Law	1974	Ward or Village Tract Administration Act	2012
Transfer of Immoveable Property Restriction Law	1987	Farm Land Law	2012
Foreign Investment Law	1988	Settlement of Labour Disputes Act	2012
State-owned Economic Enterprise Law	1989	Foreign Investment Law	2012
Private Industrial Enterprise Law	1990	Environmental Conservation Law	2012
Commercial Tax Law	1990	Import-Export Law	2012
Central Bank Law	1990	Union Budget Law	2012
Financial Institutions Law	1990	Foreign Exchange Management Law	2012
Promotion of Cottage Industries Law	1991	Minimum Wage Law	2013
Co-operative Society Law	1992	Law on Environment	Draft
Tariff Law	1992	Central Bank Law	Draft
Myanmar Citizens Investment Law	1993	Law on Anti-Corruption	Draft
Hotels and Tourism Law	1994	SME Law	Drafting
Attorney General Law	2001	Domestic investment law, microfinance law, foreign currency expenditure law, securities exchange law, import-export law, new tax laws	

Source: Authors' compilation.

the text of all draft laws submitted to the parliament since July 2012 (Rieffel, 2012).

Beyond public consultations, certain institutional innovations might be necessary in order to improve the legislative process. The International Bar Association recommends establishing a law reform commission to make future reforms as consistent and efficient as possible (IBA, 2012). A parliamentary Committee on the Rule of Law, Peace and Stability was established in August 2012 and chaired by Daw Aung San Suu Kyi to review existing legislation and make recommendations on amending or revoking laws where necessary. The Attorney General's Office is also involved in vetting draft laws, including checking their conformity with international commitments.

Once laws are passed, it is also essential to ensure that they are enforced by an independent and competent judiciary. Judicial reform takes time. Judges need to develop their own capacity to act as arbiters rather than simply administrators of the law, but even more important is the change of mind set required. The courts need to demonstrate independence and people and companies need to develop trust in judicial recourse. Even if the 2008 Constitution guarantees the independence and impartiality of the judiciary, in practice, the President nominates the Chief Justice of the Supreme Court and controls the financing of Myanmar's court system (IBA, 2012). As a result, in spite of the constitutional guarantees, the judiciary is widely judged, both within and outside of Myanmar, to be under-resourced, politically influenced and lacking in independence (EU, 2012).

Ministries sometimes have overlapping responsibilities in implementing laws

The Myanmar government is divided into over 30 ministries, with sometimes overlapping responsibilities and poor inter-ministerial co-ordination. This affects not only policy effectiveness but also the overall investment climate because of the uncertainty which it creates for investors. In terms of tax administration, for example, 15 types of tax in Myanmar are collected by seven departments falling under six ministries. Foreign investment approvals sometimes require both line ministry and MIC approval. This institutional fragmentation can also be seen in the transport sector, with six ministries involved. Similarly, various land administration bodies have been set up in line with the two new laws concerning agricultural land. Their overlapping roles and responsibilities give rise to some incoherence in land management and increase tenure insecurity. To begin to address the poor inter-ministerial co-ordination, six senior ministerial posts have been created under the President's office.

… and the government faces significant capacity constraints

> "*We do this [reform] at a time of weak institutions that evolved in a very different environment and to serve very different purposes*."
>
> President U Thein Sein, 2013[1]

It is widely recognised, both within government and outside, that the administration faces enormous capacity constraints which are only exacerbated by its ambitious reform agenda. All 13 of the ministries and agencies visited during the OECD mission highlighted their need for greater capacity to keep up with the pace of reforms and manage a rapidly changing economy. Legislative reforms and international commitments will only be as credible as the capacity within the government to implement them. Credibility matters for foreign investors interested in making long-term commitments to Myanmar, such as in extractive sectors. As suggested by the quote by President U Thein Sein above, the government recognises that it lacks capacity in many areas. Developing this capacity will take time and the government will need to rely to some extent on civil society, foreign governments and international organisations for technical and policy advice. Foreign investors can also play a role by ensuring they respect both domestic laws – even when those laws are not effectively enforced – and international expectations for responsible investment. Similarly, civil society can play an important complementary role to ensure that human rights are protected, that officials and businesses obey the law, that workers' rights are respected and that the environment is not degraded.

Long term reforms are necessary to improve governance

Addressing these governance challenges will take time, particularly the question of capacity, but they are essential if reforms are to be credible and hence effective in achieving the desired outcomes in terms of inclusive and sustainable development. The remainder of this overview chapter will look more at the question of *what* to reform, but the sense of urgency behind the reforms should not overlook the issue of *how* to reform. The recommendations on governance elaborated below are already understood by the Myanmar government, but it is worth reiterating them because they will ultimately determine the success or failure of the entire reform agenda.

Policy options:

- Improve inter-ministerial co-ordination such as through the continuation of the inter-ministerial task force created as part of this Review. In the longer term, consider ways to streamline government by merging ministries with overlapping responsibilities.
- Ensure genuine public consultations with all stakeholders, particularly when drafting laws and approving large scale projects with potential environmental and social impacts.
- Empower civil society, including labour unions, to perform their complementary role in monitoring the enforcement of newly enacted laws and the respect of enterprises for those laws. In parallel, build capacity and empower the judiciary to promote the rule of law.

Improving the investment climate in Myanmar

The *Policy Framework for Investment* considers ways to improve the investment climate for both domestic and foreign enterprises. As a general rule underpinning the PFI, the best reforms are those that benefit all enterprises equally, but the most binding constraints on investment for any given enterprise will depend on its characteristics in terms of size, sector and ownership – private or state-owned, domestic or foreign. Given that the government is keen to attract foreign investors that can provide capital, technology, expertise and access to global markets, Chapter 3 on investment policy looks more specifically at the concerns of foreign investors.

Barring political turmoil, Myanmar has many attributes that are likely to appeal to foreign investors: its endowment of natural resources, large and relatively young population, rich cultural heritage and strategic location. It may be an exaggeration to call Myanmar the crossroads of Asia, but it is clearly a missing piece in a puzzle that connects China, India and ASEAN. The difficulty is not likely to lie in attracting foreign direct investment (FDI) during the initial period of opening but in sustaining it over the longer term. Many factors can account for why the foreign share of total investment might decline over time, such as continuing policy uncertainty or backtracking on reforms, inconsistent implementation of rules, investor-state disputes which have been shown to discourage other foreign investors, or reputational risks for foreign investors from the government's failure to enforce environmental or social legislation which calls into question the responsible business conduct of investors.

The section which follows reviews the assessments from each of the policy chapters, including the special focus on agriculture. The numerous policy options mix concrete measures which can be implemented relatively quickly and more aspirational recommendations which will require more fundamental changes in the way the government goes about its business. Some measures can only be implemented over a long time horizon, while others are already being considered by the government. The aim is not to overwhelm the Myanmar government with recommendations but rather to provide a list of policy options in each area of the PFI for the government to consider as the reform process gathers momentum.

Trends in foreign investment

Investor dissatisfaction with the investment climate might manifest itself in a declining share of investment approvals that are actually realised or of foreign investment as a share of total gross fixed capital formation. Both China and Viet Nam witnessed declines in FDI in relative terms after the euphoria of the initial reform period wore off and as any difficulties experienced by investors became widely known. In Myanmar, approvals of Chinese projects have already plummeted from USD 8 269 million in FY2010 to only USD 407 million in FY2012 and only USD 0.76 million in the first two months of FY2013. Some of this might result from the fact that certain large projects were approved in 2010 in energy and oil and gas sectors but it might also be partly a result of the uncertain policy environment.[2]

In spite of this sharp drop in approvals, recent figures for realised investments suggest that FDI inflows are still growing rapidly. Furthermore, recent approvals suggest that FDI trends are likely to depart from previous patterns. While investors from OECD countries have yet to commit significant sums, many large multinational enterprises have pledged to invest in Myanmar. In addition, the most active sectors for foreign investment over the past 12 months have been manufacturing and hotels and tourism. Approvals were 94 in FY2012, compared to only 13 in the previous fiscal year.

Policy options:

- Improve reporting on foreign investment based on international standards as set out in the OECD Benchmark Definition of FDI.

Responsible business conduct

The primary responsibility for preserving the environment and respecting human rights, including labour rights, in Myanmar rests with the government of Myanmar. Although reconciliation and democratisation are still a work in progress, it is generally recognised that the government of President U Thein Sein is moving towards establishing the rule of law and allowing civil society to flourish. Ceasefires have been achieved with almost all ethnic groups, political prisoners are being released, by-elections were held successfully in 2012 and national elections are scheduled for 2015. New labour laws will help Myanmar eventually to achieve international standards in terms of workers' rights, and Myanmar has been readmitted to the International Labour Organisation as a result. The government has also set up a Myanmar National Human Rights Commission (MNHRC) to address human rights issues

Fifty years of military rule will not be erased overnight. The MNHRC will need gradually to assert its independence, recently enacted laws will require government capacity to enforce them, and civil society will need to find its new role. More still needs to be done to allow greater public consultations on changes in the legislative framework and on investment projects in the energy sector and extractive industries, as well as in signing many of the key international conventions related to labour and human rights. A continuing area of concern with large-scale investment projects involves land acquisition where property rights are not well-established and where those living or working on the land have complained about inadequate consultation and compensation (Chapter 9). More fundamentally, there is some question about the capacity of the government to enforce the new human rights and labour standards throughout its territory, especially in border areas which are often still highly militarised.

In this uncertain and evolving environment, and given the legacy of investments in the past which were sometimes associated with human rights abuses and which generally provided little benefit to the local population, there is scope for both civil society and governments in investor home countries to play a complementary role to ensure that investment in Myanmar contributes to inclusive and sustainable development. Civil society is emerging rapidly in Myanmar, and some major projects have been halted temporarily on the back of local protests. The formation of labour unions under the *Labour Organisation Law* (2012) will help to ensure that workers' rights are protected. Nevertheless, experience in Bangladesh with the recent collapses of factory buildings demonstrates that having laws in place and civil society on the ground does not always guarantee that rights will be respected.

Just as multinational enterprises (MNEs) can bring capital, technology and access to global markets, so too can they contribute to the host country by acting responsibly, in other words, by obeying local laws even when they are not enforced and by adhering to international standards of behaviour beyond what is required by the host government. Given capacity constraints within government and the legacy of human rights abuses, foreign investors must be vigilant to ensure that their investments do not cause harm and that they fully respect both the laws of Myanmar – whether or not they are actually implemented – and international expectations about responsible business conduct in weak governance zones.

Home governments of MNEs can play a key role in this regard by expressing expectations for corporate behaviour, such as through the *OECD Guidelines for Multinational Enterprises,* and by assisting MNEs to comply with these expectations. Going beyond expectations, the US government now requires evidence that American investors in Myanmar are acting responsibly through annual reporting requirements. This initiative and others by home country governments, some of which are unique to Myanmar, are described in this review.

Policy options:

- Ratify major international human rights, labour and environmental conventions. Enact and enforce domestic legislation consistent with those standards.
- Expand the role of civil society (e.g. labour unions, local community organisations) to help ensure that new laws protecting worker and human rights are effectively implemented.
- Strengthen the independence and expand the mandate of the National Human Rights Commission in terms of investigations, advocacy and education on human rights.
- Provide adequate protection of property rights, including for customary land. Promote free, prior and informed consent for land acquisitions and

resettlement. Develop grievance mechanisms and provide redress to victims.

- Promote revenue transparency, such as through the Extractive Industries Transparency Initiative.
- Ensure that domestic enterprises, including SEEs, conform to the new standards of behaviour and prosecute any violations.
- Prepare sectoral master plans which include responsible investment (as has been done in tourism).
- Work with governments which are home countries to multinational enterprises investing to Myanmar to promote respect for the *OECD Guidelines for Multinational Enterprises* and the UN *Guiding Principles on Business and Human Rights*. Require foreign investors obtaining a permit from the MIC to commit to these principles.

Investment regulation and protection

Myanmar has initiated a broad reform process to improve its legal and regulatory framework for investment to create a more favourable investment climate. The enactment of the new *Foreign Investment Law* (FIL) and its accompanying implementing rules marks a milestone towards a more open and secure legal environment for investment. While the basic framework is now in place, the FIL is only the first step in a long process, and its importance is in part as a symbol of the government's desire to welcome responsible foreign investment after decades of autarky and economic sanctions.

The 2012 FIL offers some improvements over the earlier 1988 *Foreign Investment Law* but still leaves many questions unanswered, notably with respect to investor protection and the procedures for admitting foreign investors. The new FIL is an important first step and, now that it has been enacted, the government has turned to many other pressing issues. While many of the recommendations in this review concerning the FIL will only need to be addressed in the medium term, there is nevertheless a risk that the lack of clarity in the FIL and the uncertainty surrounding protection of investment, if not sorted out quickly, will fail to ignite sufficient investor interest in projects in Myanmar and could create problems in the future in terms of disputes between investors and the government.

One of the most pressing problems of the current regulatory framework is its complexity, with half a dozen laws regulating the entry of investors, depending on the sector and location of the investment and on whether or not the investor is foreign. The approval process is equally complex, with foreign investors sometimes requiring overlapping approvals and facing detailed and often opaque criteria for scrutinising individual projects. If the process is not streamlined, it risks creating bottlenecks as the influx of investment proposals bumps up against capacity constraints in the Department for Investment and Company Administration (DICA). The authorities recognise these problems and are taking steps to rationalise the legislative framework, but the flurry of legislative activity – with over 30 laws enacted since 2011 – implies that draft laws are not always properly vetted.

Another issue of concern is the amount of discretion allowed to the Myanmar Investment Commission (MIC) under the FIL, both in terms of the approval system for investment and the conditions that may be attached to individual projects. This flexibility allows the government to open progressively and selectively to foreign investment and to try to maximise the potential benefits from that investment. But flexibility comes at a cost. It creates uncertainty for investors concerning the criteria upon which the decision to admit them is based. It also creates opportunities for corruption when individual officials are given responsibility for deciding on what basis to admit an investment project. Too much discretion may also favour large investors in their negotiations with the MIC by allowing them to extract the maximum benefit in terms of incentives and other favours in exchange for a commitment to invest.

The government is currently considering options for reducing the amount of discretion and the likely capacity constraints of the MIC. Among the options are the development of clear criteria for approving investment in each sector and the possibility of delegating some of the responsibility for approval to DICA or to regional governments.

The implementing rules for the FIL set out an extensive list of sectors in which foreign investment is either prohibited or restricted. Myanmar has more statutory restrictions than any other country except China, as measured by the OECD *FDI Regulatory Restrictiveness Index*. Many of these restrictions may have been imposed to appease domestic interests in the short term while the government endeavours to create a propitious investment climate for foreign investors through the FIL and its implementing regulations. Over time, the government will need to review these many sector- and product-based restrictions to assess their impact not only on the competitiveness of individual sectors but also on the overall investment climate itself. The authorities report that they are currently reviewing the list of restrictions, particularly with respect to performance requirements, and will be issuing a new notification soon.

Joint venture requirements, for example, are often imposed in order to promote technology transfers, backward linkages and domestic entrepreneurship and to allow local firms to share in any economic rents. While foreign investors might welcome a local partner in some circumstances, joint venture requirements have often been found to be counterproductive, by dissuading potential investors while at the same time minimising the potential spillovers from that investment.

In terms of the degree of protection afforded to foreign investors through the FIL, it incorporates a few welcome innovations that are likely to enhance the level of protection granted to investors. But at the same time, some of the core investment protection standards are absent from the new legal framework and a few legal provisions would need further clarification as to the scope and level of protection they provide.

The principle of non-discrimination has not been incorporated in the investment framework and foreign investors are subject to numerous specific restrictions, notably for accessing land. Myanmar is also endowed with a very basic regime for protecting intellectual property rights, which is expected to be broadly redesigned soon to bring the country in line with international practices. Likewise, the expropriation regime is not aligned with internationally recognised practices and has a narrow scope that does not appear to protect investors against indirect expropriations.

Myanmar provides much stronger protection for foreign investors, notably against expropriation, through the few bilateral investment treaties it has concluded. As Myanmar expands its treaty network, it will need to balance the preservation of its policy space against the need to provide strong legal protection of investment, as well as ensuring full consistency between the treaty provisions and domestic regulations.

Lastly, Myanmar needs significantly to improve the mechanisms for enforcing contract and property rights and for settling disputes. This implies strengthening the independence of the judiciary and developing alternative dispute resolution means, particularly commercial and investment arbitration. In this regard, the recent ratification of the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards is a positive first step towards more secure access to international arbitration.

Policy options:

a) Admission and regulation of investment

- Continue progress towards an all-encompassing investment regime covering both domestic and foreign investment under the same regulatory framework and establish the principle of non-discrimination between foreign and domestic investors more generally.
- Pursue efforts to further rationalise the current regulatory framework governing investors' entry and operations and ensure easy access to, and wide comprehension of, relevant laws.

Screening

- Increase transparency of decisions in the approval process by clearly stating the conditions required for individual investment projects to be admitted.
- Minimise the discretion of the MIC to offer preferential treatment depending on the investor.
- Publish the reasons for rejecting a project and allow investors to appeal decisions.
- Streamline screening under the MIC to remove overlaps in terms of multiple approvals involving different ministries and bodies.
- Monitor compliance with commitments by investors.
- Evaluate periodically the aims and effectiveness of the screening mechanism, including through public consultations.
- Consider gradually moving towards *ex post* notification.

Sectoral restrictions

- Define clearly the objectives of joint venture requirements and measure progress against those objectives.
- Consider other options to achieve the same goals, including the practices of other countries.
- Benchmark restrictions against those in peer countries.
- Limit the scope for arbitrary and unannounced additions to the list of restrictions without broad consultation.
- Develop a built-in mechanism for periodically reviewing restrictions.

b) Protection of investment and international investment agreements

- Further enhance the level of legal protection and predictability provided to investors in the current laws. If additional legal standards of protection are incorporated in the current legislative framework, ensure that the scope and content of the protection granted to investors is clearly delineated and defined.
- Further secure access to dispute resolution mechanisms, both through the domestic court system and through arbitration. While improving the independence and efficiency of the court system, further promote alternative dispute resolution means. Consider adhering to the ICSID Convention.
- When entering into new bilateral investment treaties, clearly define the content of the provisions protecting foreign investors and strike an appropriate balance between providing high standards of investment protection and preserving sufficient policy space.

- Enhance awareness on international investment-related commitments among ministries and other relevant public bodies.
- Uphold efforts to strengthen the regulatory framework for the protection of intellectual property rights, both at the domestic regulatory level and through the ratification of the main IP-related conventions.

Investment promotion and facilitation

In a context of ambitious reforms, with numerous investment-related laws and regulations under review, investment promotion and facilitation in Myanmar take on an important role in providing the private sector with an avenue to interface with the government. Despite the various initiatives to streamline business registration and procedures, including the one-stop shop in Yangon, the current system remains cumbersome. The Directorate for Company Administration's (DICA) role as a co-ordinator of investment attraction to the various sectors is vital to avoid duplication of government efforts and uphold standards of practices in dealing with investors. DICA is well placed to tackle hurdles to improve the investment climate and is highly solicited. A gradual decentralisation of its functions should be foreseen to avoid untenable strains on its capacity to deliver. Such decentralisation should be accompanied by capacity building measures in the other agencies and regional offices.

Myanmar currently lacks a well-defined vision for its private sector development, though it has incorporated elements in this regard in different laws. Such a strategy would contribute significantly to sequencing private sector development reforms, allocating responsibilities among agencies, and elaborating a strategic vision with all relevant stakeholders. This also entails improving the framework conditions for SMEs, which is being addressed through the upcoming *SME Law* and other measures, including the establishment of the SME Development Centre in Yangon.

Special economic zones (SEZs) play a central role in Myanmar's efforts to attract investment and to promote competitive semi-manufactured or manufactured goods with significant local value addition. If accompanied by the right mix of supporting policies and measures aimed at strengthening the ability of local companies to partake in the economic activities generated in the zones, such a policy could lead to the creation of both new local enterprises and of dynamic business networks and clusters.

Policy options:

- Focus efforts on alleviating the operational burden for domestic and foreign investors.

- Introduce monitoring and evaluation mechanisms to systematically assess DICA's performance in attracting and facilitating investment.
- Strengthen DICA's policy advocacy role to provide effective feed-back channels from the private sector to government.
- Develop well-functioning and open public-private sector dialogues, including with SMEs, on business and investment climate issues.
- Strengthen the capacity of dedicated units within government or semi-public agencies as policy advocates for the private sector.
- Follow best practice in one-stop shop operation, including establishing single-point authority over government entities through legislation.
- Support measures for SMEs to make effective use of framework reforms, including the upcoming *SME Law*.
- Use international networks, such as embassies, to communicate investment climate reforms, and make studies on Myanmar's investment climate publicly available through the DICA website.
- For effective decentralisation: build capacity at the local level, strengthen monitoring capacity at the central level, ensure good co-ordination among the different agencies country-wide, and balance and harmonise national and local development priorities.
- In the SEZs: actively promote linkages with local companies, strengthen training institutions for local companies, and monitor social and environmental performance.

Taxation

Given Myanmar's substantial investment needs for physical and social infrastructure, the government will need considerably to improve revenue mobilisation. The tax system does not generate enough revenue to ensure fiscal stability or to curb budget deficits. Myanmar currently has one of the lowest levels of tax revenue collection relative to GDP, forcing the government to rely on unstable revenues from natural resources to meet its spending needs. In addition, the tax structure is overly complicated, with 15 different types of tax collected by seven different departments falling under six ministries. Simplifying income tax by reducing the number of different tax rates and perhaps setting an even higher exemption threshold would make it considerably easier to administer, reduce compliance costs and decrease the incentives and opportunities for evasion and avoidance. Complaints have been reported among the local business community about tax avoidance, especially by the largest taxpayers. Effective programmes of community information dissemination and outreach would help to build a culture of tax compliance in Myanmar.

Policy options:

- Improve revenue mobilisation by simplifying the tax system and broadening the tax base.
- Strengthen the Internal Revenue Department's institutional and human capacity.
- Establish a Fiscal Analysis Unit within the Ministry of Finance.
- Conduct cost-benefit analysis of investment incentives, including by developing a marginal effective tax rate model.
- Develop community programmes of information dissemination and outreach to build a culture of tax compliance.
- Improve the availability and quality of data.

Finance

Myanmar's financial sector is still at an early stage of development. It remains strongly underdeveloped and repressed, with financial intermediation almost entirely dominated by an unsophisticated banking sector. The country has no private debt market and the equity market is virtually non-existent. A deep and sound financial sector can contribute to Myanmar's economic stability and the emergence of entrepreneurial activity through a more efficient mobilisation and allocation of resources and an environment facilitating the development of business linkages.

The process of opening and liberalising the economy entails a number of risks to economic stability during the transition. In the absence of appropriate financial sector supervision and regulation, financial institutions may end up undertaking risky activities in excess of their capacity to manage them. Moving forward in this process while minimising risks will require a wide range of reforms to upgrade Myanmar's monetary and fiscal management capability and to modernise its financial sector, particularly its supervisory and regulatory framework. An important step has already been taken as an initial effort to unify its multiple exchange rates, with the managed floating of the *kyat* (Myanmar's currency) in April 2012 and the lifting of key foreign exchange restrictions in August 2012, including the requirement to use only export proceeds for imports and all the restrictions on current payments and transfers for international transactions. Reforms to improve macroeconomic management capacity and a gradual financial liberalisation have begun to be implemented.

The government has also prepared a financial sector roadmap to: foster monetary development with a new foreign exchange management law; further open the banking sector to foreign participation; and develop the country's capital market with the launch of a stock exchange expected in 2015.

International organisations, such as the IMF and the World Bank, are assisting the government of Myanmar in implementing the roadmap. The careful design and sequencing of reforms will play an important role in creating the environment for the development of a sound financial sector capable of supporting Myanmar's economic transformation.

Policy options:

- Continue efforts to enhance competition in the banking sector by further promoting a level playing field between state-owned and private banks, and gradually allowing the entry of foreign banks.
- Build informational infrastructure to facilitate the sharing of information among financial institutions and the extension of finance by establishing reliable and effective collateral infrastructure and enforcement mechanisms and a credit reporting system.
- Establish key regulatory and supervision frameworks and related infrastructure to govern and support the development of Myanmar's capital market in this early stage.
- Strengthen public debt management capacity to further develop the market for government securities and support the development of private capital markets.

Infrastructure

The shortage of infrastructure in Myanmar is an important obstacle to meeting the needs of society and to enterprise and economic development. Years of economic isolation have aggravated the country's already weak sources of finance for infrastructure development. Currently, the need for infrastructure investment is substantial and the government cannot finance these investments alone. Encouraging private sector participation has become essential both to expand infrastructure services and to promote efficiency in the provision of such services by incumbent state-economic enterprises (SEEs). The government has shown interest in relying on the private sector and has taken steps to make this happen. Telecommunication services were opened up to private participation in 2013 and other regulatory enhancements are expected in other sectors to create a credible and stable environment for safeguarding private interests. Many challenges remain, however. There is a need to address institutional fragmentation in some sectors and to build clear sector plans clarifying the role expected from the private sector and SEEs, and co-ordinating the development of infrastructure projects. There is also a need to build regulators' planning and assessment capacity so as adequately to prioritise investments and facilitate private sector involvement. Regulatory uncertainties arising from a lack of independent regulators and appropriate price-setting mechanisms also still need to be addressed. Furthermore, the presence of vertically integrated SEEs also discourages private investment.

Building the right policy frameworks for enhancing investment in infrastructure, while permitting the country to leapfrog to greener infrastructure systems, is critical for supporting long-term growth and ensuring an efficient and sustainable use of Myanmar's resources. Myanmar is one of the most vulnerable countries to climate risks and natural disasters. Extreme weather events such as cyclones and recurrent floods highlight the need to take into account climate change risks. Long-lived infrastructure systems can be particularly vulnerable to extreme weather events, particularly in flood-prone or coastal areas. As a major part of Myanmar's infrastructure required to meet development objectives is yet to be built, Myanmar has the opportunity to leapfrog to greener and climate-resilient infrastructure systems, to avoid locking-in carbon-intensive and climate vulnerable development pathways without slowing its economic growth rate. Beyond the climate change challenge, investing in green infrastructure can help achieve Myanmar's development objectives by addressing the infrastructure challenges associated with Myanmar's growing urbanisation and industrial development. Low-cost, efficient green energy infrastructure such as off-grid renewable energy systems can for instance improve access to energy in rural areas. In fast-growing cities, where local air pollution and health issues are likely to arise in upcoming years, investment in public transit systems can help improve local air quality, reduce traffic congestion and enhance mobility. Hence there is a need to take advantage at an early stage of the possibility of favouring green solutions in Myanmar's efforts to expand infrastructure assets.

Policy options:

- Build comprehensive sector development plans indicating government priorities and clarifying the role expected from the private sector and SEEs to guide the expansion and development of infrastructure sectors.
- Strengthen stakeholder consultation in the development of infrastructure at all different stages, be it at the policy making level or at the project level.
- Address institutional fragmentation and agencies' weak planning and assessment capacity to enhance co-ordination and prioritisation of infrastructure projects.
- Build independent and effective regulatory agencies to increase transparency and address regulatory uncertainties that arise from the lack of independent regulators.

- Promote competition in infrastructure sectors by unbundling infrastructure activities and allowing the competitive entry of players where feasible and establishing adequate pricing mechanisms.
- Promote policies to ensure a level playing field between SEEs and private investors, such as the corporatisation of SEEs and the enhancement of their governance structure.
- Integrate long-term targets and green policy goals in infrastructure development plans.
- Build an adequate framework and instruments to facilitate green infrastructure investment and avoid locking-in carbon-intensive and climate vulnerable development pathways.
  - ❖ In the transport sector:
    - – account for climate change risks, such as vulnerability to natural disasters, in the planning of transport infrastructure;
    - – support urban public transport, such as with bus rapid transit systems.
  - ❖ In the energy sector:
    - – leverage climate finance from donor agencies and international finance institutions to drive private sector investment in clean energy infrastructure;
    - – promote off-grid renewable energy systems to improve access to energy in rural areas;
    - – phase out inefficient fossil fuel subsidies.

Other areas of the PFI

Corporate governance

Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders; good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and its shareholders and should facilitate effective monitoring. The degree to which corporations observe basic principles of sound corporate governance is a determinant of investment decisions, influencing the confidence of investors, the cost of capital, the overall functioning of financial markets and ultimately the development of more sustainable sources of financing. Of particular relevance is the relation between corporate governance practices and the increasingly international character of investment: international flows of capital enable companies to access financing from a much larger pool of investors. Corporate governance arrangements must therefore be fully disclosed and credible, well understood across borders and must adhere to internationally accepted principles if countries are to reap the full benefits of the global capital market and attract long-term patient capital. Corporate governance is therefore one of the key elements in improving economic efficiency and growth, as well as in enhancing investor confidence.

Policy options:

- Take further steps to introduce basic principles of corporate governance, including for companies owned by public authorities, into Myanmar's corporate legal framework.
- Consider imposing regular disclosure of financial statements to increase transparency in the governance of SEEs and military enterprises.
- Introduce competition principles into the broader corporate framework to ensure a level-playing-field between private companies and those with public participation, including military enterprises.
- Ensure sound transparency of privatisation processes to reap full economic and financial benefit of the sell-off: communicate to the public the rationale behind each SEE privatisation.

Trade

Despite decades of isolation, Myanmar continued to participate in international and regional trade initiatives and is a member of various global, regional and sub-regional groupings, such as the World Trade Organisation (WTO) and ASEAN. The government is currently undergoing its first WTO *Trade Policy Review*. Despite generally low import tariffs, importers face numerous non-tariff barriers. Exporters suffer from the general shortcomings in the investment climate, but also occasionally from export restrictions in certain sectors. These must be addressed as part of overall investment climate improvements, should Myanmar aim significantly to benefit from regional trading opportunities, as well as from other advances made in the domestic policy framework and liberalisation.

Sanctions from various governments have had an impact on Myanmar's trading structure and have led to its intensification of regional trading relationships, especially with China and Thailand. As sanctions are being lifted and Myanmar is developing trading capacity, new products and a renewed competitiveness in others, such as in textiles, may emerge in the years to come.

Human capital development

Myanmar is currently under-investing in its human capital base; the limited educational and health financing translates into a major obstacle to growth and development in the future. The government recognises that the current accumulation of human capital in Myanmar represents a binding constraint that affects employability of the labour force and discourages investment in more high value-added activities. The 2012 fiscal year budget that was debated in the parliament for the first time increased spending for social development needs, health and education. Further, the 10-point *Framework for Economic and Social Reform* includes health and education reforms. Even so, education and health spending may still account for less than 2% of GDP. To address and sustain development spending on human capital, the authorities should, once again, reassess the current tax policy. It is critical for Myanmar to generate adequate resources to fund the development programmes in education and health to relieve human capital constraints. Improved revenue mobilisation invested in priority development needs will serve as the largest positive direct impact on investment and economic growth. Moving forward towards an education system that produces a work force with the adequate skills to upscale Myanmar industries, strengthening technical vocational education and training and secondary education systems is vital.

Promoting sustainable investment in Myanmar's agriculture

While Myanmar was considered the "rice bowl" of Asia in the 1930s by exporting around 3 million MT of rice annually, its agricultural productivity has suffered since then from decades of extensive government controls and public and private under-investment. In the new context of economic reforms, Myanmar offers the potential for rapid agricultural development relying on its abundant land and water resources. The government has identified agriculture as a priority sector and aims to focus particularly on boosting rice, oilseed and bean production to supply the domestic market and increase agricultural exports. If the right policies are implemented and appropriate budget expenditures support these objectives, Myanmar could recover its place as a major agricultural producer and exporter in Southeast Asia. Significant challenges need to be addressed to achieve this potential, the major challenge relating to land tenure security.

Land tenure remains insecure for most smallholder farmers for a wide range of reasons: i) a complex and long registration process; ii) weak protection of registered land use rights; iii) rigid land classifications that do not reflect the reality of existing land use; iv) inefficient land administration; v) lack of recognition of customary land use rights; and vi) active promotion of large-scale land allocations without adequate safeguards.

Only 20% of the land has been registered in Myanmar, mainly due to the complexity of the registration process and the lack of benefits, and even the drawbacks, of registering land use rights. While the adoption of new legislation on agricultural land in April 2012, namely the *Farmland Law* and the *Vacant, Fallow and Virgin (VFV) Land Management Law*, intends to be combined with an accelerated land registration process, in practice, land registration remains long and uncertain as several agencies at various government levels have to approve registration and applicants are required to fulfil numerous conditions. Furthermore, the registration of land use rights does not necessarily lead to higher land tenure security as land use rights may be withdrawn if the numerous conditions and required administrative procedures are not respected.

Despite slight recent improvements, the land classification remains rigid as it remains difficult to change land from one category to another. As a result, this classification does not always reflect current land use, thereby impeding land users from registering their rights and increasing land tenure insecurity. For instance, some forest land has been partly or completely converted to agricultural use but remains classified as forest land. The classification of agricultural land into two categories managed by different agencies with overlapping roles and responsibilities undermines the efficiency and coherence of land management.

The new land legislation does not fully recognise customary land rights. Although shifting cultivation relies on fallow land, the *VFV Land Law* states that land use rights may be confiscated if VFV land is not cultivated, thereby leaving many smallholders relying on such practices with very insecure land rights. The new land legislation is in line with government efforts to attract large-scale investments that could lead to employment creation and bring the necessary expertise and financing to enhance the competitiveness of agricultural value chains. The legislation states that, if investment projects are approved by the government, the time and size limits set on land leases can be lifted. Indeed, while agricultural investment trends cannot be interpreted due to limited data, data on land investment of the Ministry of Agriculture and Irrigation show that large-scale land allocations have increased significantly over the past decade.

In a context of weak governance and accountability, large investments in land may result in adverse social impacts. They may lead to land conflicts, thereby harming not only local producers but also large investors. Such conflicts have made the headlines in recent months demonstrating the urgency to design and enforce effective safeguards to ensure that existing land use rights are respected and local communities fairly compensated in case of eviction. Furthermore, the land actually developed and cultivated by the companies that have been granted land would approximate respectively only 36% and 20% of the total land area allocated. The risks related to large-scale investments in land often outweigh the benefits such investments may bring.

Adequate safeguards should thus be developed to ensure that large-scale investments do not have adverse social impacts.

The legislation should also more strictly regulate the potential adverse environmental impacts of these investments. While the recent *Environmental Law* demonstrates the efforts made to promote sustainable environmental management, it presents major weaknesses. Environmental and social impact assessments are not compulsory, and, most importantly, the law vests the ministry with absolute and limitless discretion, with government approval, to ignore its provisions.

After land tenure insecurity, limited access to finance constitutes the second major constraint for agricultural investors, particularly smallholders. Only 1-3% of the volume of formal bank loans is extended to the agricultural sector. As a result, most smallholders access credit through informal institutions at high interest rates. The Myanmar Agricultural Development Bank had the monopoly of providing loans to farmers until recently and was able to offer only seasonal loans covering a small share of production costs and on a short-term basis. Although the new *Microfinance Law* that allows for the development of microfinance institutions should help fill the gap, reforming the MADB would help expand its scope and coverage and ensure that agricultural investors can access long-term credit.

The erratic issuance of rice export quotas also hinders investment in agriculture and partly explains the low export prices of Myanmar's rice to the detriment of agricultural producers and traders. Open, transparent and predictable agricultural trade policies, both domestically and across borders, can improve the efficiency of resource allocation, thus facilitating scale economies, reducing transaction costs and boosting productivity and rates of return on investment.

Finally, investment in agriculture is impeded by limited access to agricultural inputs, particularly seeds and fertilisers, inadequate rural infrastructure and weak extension services and research and development institutions. The domestic supply of fertilisers remains far below demand while imported fertilisers are often adulterated. As detailed in Chapter 7 on infrastructure development, access to infrastructure assets is currently one of the weakest in the region. However, irrigation infrastructure has significantly expanded since 1988, absorbing up to 80% of the agricultural ministry's budget, to the detriment of public expenditures on extension services or research and development – although these last two sectors have proved to be the most effective ones to raise agricultural growth in most countries. Extension staff remains inadequate both in number and quality and an efficient mechanism for performance management is lacking.

Policy options:

Land

- Harmonise the land legislation to help enhance co-ordination across the various ministries responsible for managing specific land categories and allow for decentralised land management.
- Develop national participatory land use planning and balance the needs of all land users.
- Accelerate land registration to help increase land tenure security, a necessary condition of any investment in agricultural production. A one-window service could be established at the lowest possible government level. Provide assistance to help farmers comply with land registration requirements.
- Recognise and protect customary land tenure rights, including collective rights. Recognise shifting cultivation and consider the diversity of customary law that varies across different ethnic groups and geographic areas.
- Create a multi-stakeholder commission composed of government officials, investors, producers' and civil society organisations to help develop standards on human rights and mechanisms to enforce them.

Investments

- Develop appropriate safeguards when granting large land areas to commercial investors.
- Prepare an environmental and social impact assessment (ESIA), complete land registration, resolve any existing land disputes and consult with concerned stakeholders before any allocation of land areas above a certain size.
- Develop clear and transparent selection criteria before granting investment incentives and eliminate the existing broad waivers. Regularly monitor the costs and benefits of incentives.
- Set up monitoring and reporting mechanisms for agri-business companies against a set of minimum standards.
- Make ESIAs compulsory and ensure they are undertaken by independent agencies.
- Establish independent and accessible procedures to address grievances. Incorporate modern safeguards relating to the payment of fair compensation and involuntary resettlement for the taking of land use rights.

Other agricultural issues

- Promote the free choice of crops for farmers.
- Increase trade policy predictability. Export restrictions on rice can help limit rice exports to supply the domestic market but hurt producers and delay the industry's adjustment to the international market. Direct measures to develop efficient value chains, such as infrastructure development in regions with a comparative advantage, would be more effective to meet domestic demand.
- Reform the Myanmar Agriculture Development Bank to expand its coverage, increase its independence, diversify its lending to reduce its risk and foster the growth of non-farm rural enterprises and employment in rural areas. Consider increasing interest rates to incentivise lending.

Notes

1. President U. Thein Sein (2013), "Myanmar's Complex Transformation: Prospects and Challenges", transcript of a speech at Chatham House, 15 July.
2. The *Wall Street Journal* quotes one source as saying that "the Chinese government has warned its companies to be more cautious about investing in Myanmar". Jacob Gronholt-Pedersen, "Chinese investment in Myanmar falls sharply", *Wall Street Journal Europe*, 4 June 2013.

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OECD Investment Policy Reviews: Myanmar 2014

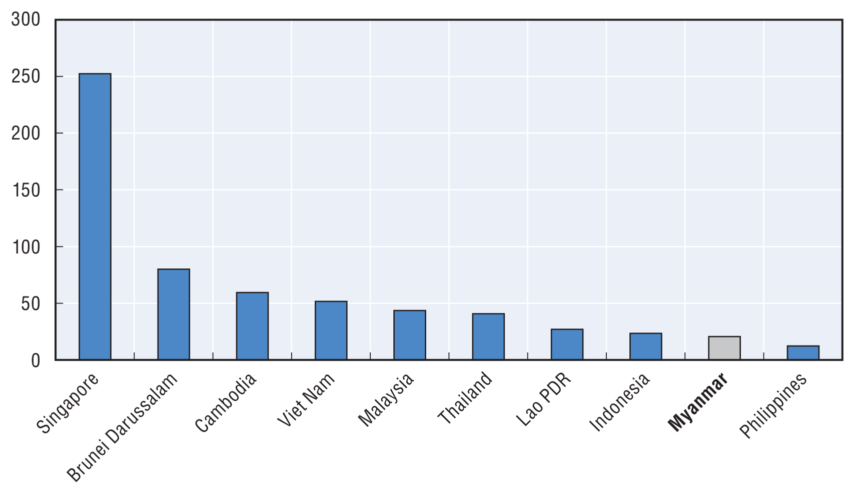
Chapter 1

Trends in foreign investment in Myanmar

This chapter discusses trends in foreign investment in Myanmar and assesses the scope for future growth and diversification of FDI inflows. It considers the role of sanctions in impeding investments in the past and looks at how investors have reacted to the two reform periods, both after 1988 and since 2011.

Myanmar's potential to attract foreign direct investment (FDI) remains largely unexploited. In a region which has built its development strategy on export-led development based partly on FDI, it remains an outlier. By almost any measure, foreign investment has played less of a role in Myanmar than in most other countries in the region (Figure 1.1). In terms of annual inflows, it has received only slightly more than Cambodia, a country with only one fourth of the population and few natural resources. Most of the investment that Myanmar has received has gone into natural resource sectors, with only a negligible role for foreign investors in manufacturing or services.

Figure 1.1. **Inward FDI stock as a share of GDP in ASEAN member states, 2012 (per cent)**



Source: UNCTAD.

The removal or, in some cases, suspension of sanctions has created an opportunity for Myanmar to follow the example of its peers in ASEAN by building up export-oriented production orchestrated largely by foreign multinational enterprises. This includes not only manufacturing but also tourism services for which Myanmar's potential is vast. Myanmar will also benefit from the investment opportunities offered by the new licences in the telecommunications sector, as well as from on-going investment in the energy and oil and gas sectors. This potential is not yet reflected in the FDI statistics, but there are many promising signs and anecdotal evidence to suggest considerable interest on the part of foreign multinational enterprises (MNEs). Many large MNEs with global brand names have already pledged to invest millions of dollars over the next few years. FDI inflows are growing and diversifying by country and by sector. The Myanmar Investment Commission is facing growing requests for permits and the Department of Investment and Company Administration is overwhelmed with visiting delegations of potential investors.

Barring political turmoil, Myanmar has many attributes that are likely to appeal to foreign investors: its strategic location between India and China and within ASEAN, endowment of natural resources, large and relatively young population and rich cultural heritage. The difficulty is not likely to lie in attracting FDI but in managing and sustaining it. Box 1.1 describes the experience of China and Viet Nam in this regard.

Many factors can account for why the foreign share of total investment might decline over time, such as continuing policy uncertainty or backtracking on reforms, inconsistent implementation of rules, investor-state disputes which have been shown to discourage other foreign investors, or reputational risks for foreign investors from the government's failure to enforce environmental or social legislation which calls into question the responsible business conduct of investors.

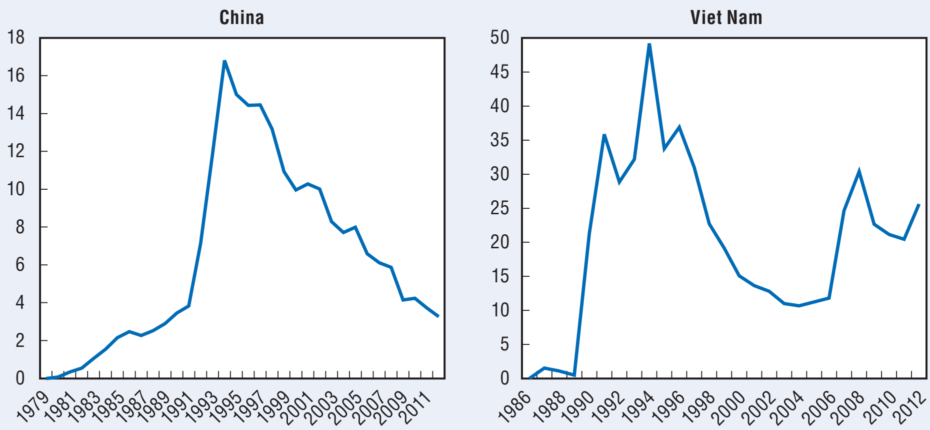
Each country's FDI trajectory is unique, and Myanmar is not obliged to follow the same path as others in the region, but the government should nevertheless prepare itself for the possibility of setbacks in terms of investor interest as the reform process continues. As will be discussed below, there may already be signs that Chinese investors are having second thoughts about expanding their investment projects in Myanmar, partly a result of problems encountered with several large existing projects. This chapter will describe trends in FDI in Myanmar, while the rest of the Review will look at how Myanmar can avoid these problems by ensuring that appropriate policies and adequate capacity to implement them are in place at an early stage in the reform process. Attracting foreign investment should never be an end in itself and hence the remaining chapters will also focus on how to ensure that these inflows contribute to sustainable and inclusive growth in Myanmar.

The remainder of this chapter will rely largely on foreign investment data provided by the Myanmar government. As in many other countries, the data suffer from a number of shortcomings described in Box 1.2.

Box 1.1. **Transition and investment: FDI trends in China and Viet Nam over time**

Both China and Viet Nam attracted considerable investment in the early years of opening to foreign trade and investment. The take-off in China occurred after the major reforms in the 1990s. Within five years of the surge in FDI in each country, the share of FDI in gross fixed capital formation started a long secular decline (Figure 1.2). In Viet Nam, the ratio fell from 49% of total investment in 1994 to only 10.7% by 2004. It was only in 2007, following its accession to the WTO, that Viet Nam saw a revival in inflows. China offers such a large market and deep pool of labour that it continues to attract substantial investment in absolute terms but a s a share of total investment, FDI is now back to the levels of the early 1990s.

FDI as a share of gross fixed capital formation, China and Viet Nam (per cent)



Source: UNCTAD.

A declining share of foreign investment in total investment can also result in part from vibrant domestic private investment and is not in itself conclusive proof of a deterioration of the investment climate. After all, both China and Viet Nam continued to experience rapid growth, even as the foreign share of investment declined. But it does suggest that early euphoria following a sudden and dramatic opening to the outside world does not necessarily lead to sustained inflows relative to total investment or to overall GDP growth over time.

Box 1.2. **Myanmar FDI statistics**

Myanmar statistics record foreign investment as part of the MIC approval process. The Central Statistics Office records both permitted investment (approvals), which covers the total investment expected for an individual project, as well as investment by existing enterprises which can be seen as realised investment. The value of approvals in any given year bears little resemblance to actual FDI inflows both because they include all sources of investment, including local joint venture partners, and because the total investment is spread out over several years. In some cases, approved projects are never implemented. Foreign investment approvals of USD 20 billion in 2010 compare with an actual FDI inflow of USD 1.3 billion.

Some foreign investments in Myanmar may not be recorded by the Directorate for Investment and Company Administration if they do not require MIC approval, particularly for investors forming a joint venture with a military-controlled enterprise. Many smaller investments may also go unrecorded.

One way to ascertain whether the reported statistics on FDI in Myanmar reflect actual trends is to compare official FDI statistics as provided to international organisations with what major investing countries report investing. Looking at only three of the largest investors (Thailand, China and Korea), total investment recorded by home country governments is roughly twice what Myanmar reports for total FDI from all countries in 2008 and 2009 but not in other years. Overall, this suggests that FDI statistics from Myanmar may not be out of line with what is happening on the ground, at least for the period ending in 2010.

Home country reporting of FDI in Myanmar by Thailand and China
USD million

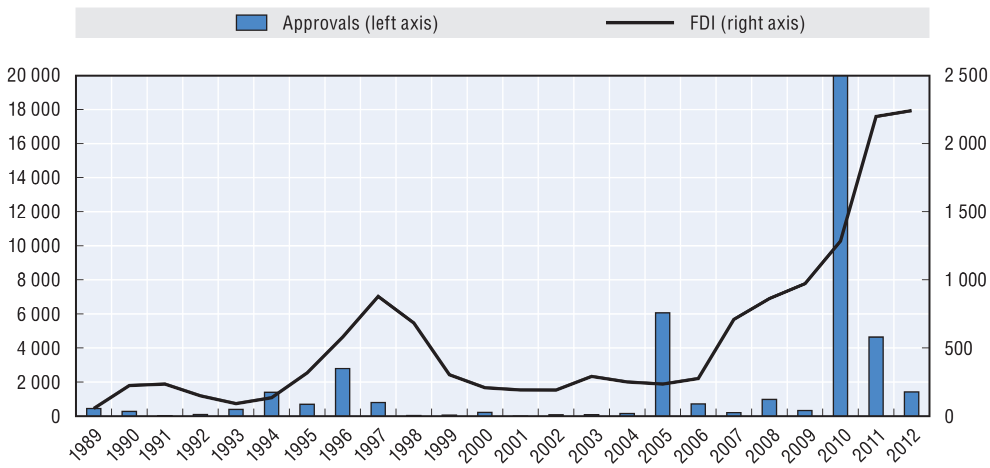
	FDI as reported by source country				FDI in Myanmar	
	Thailand	China	Korea	Total 3	World Bank	UNCTAD
2005	112	12	0.6	125	235	235
2006	83	13	0.5	97	276	276
2007	424	92	1.2	517	710	710
2008	1 574	233	36	1 843	864	863
2009	1 324	377	351	2 052	1 079	973
2010	165	876	197	1 238	901	1 285
2011	336	218	422	976	1 001	2 200
2012	326	749	247	1 322	2 243	2 243

Source: Bank of Thailand, Korea Eximbank and Chinese Ministry of Commerce.

Trends in FDI in Myanmar

Myanmar's underperformance to date in attracting FDI partly reflects the fact that it remained a closed economy for so many decades. When it did finally open to foreign investment in 1988, inflows rose quickly, especially between 1994 and 1997 (Figure 1.2). This growth was eventually interrupted by political turmoil. The economic sanctions which ensued and which became steadily more binding over time meant that potential investors from many OECD countries could no longer consider Myanmar as a location for investment. While sanctions may only have involved some home countries for investment, they would have precluded investment by any foreign enterprise wishing to export to those markets from Myanmar. Investors wishing to set up labour-intensive manufacturing to export garments and other products to the US or EU markets, for example, had to look to countries such as Cambodia or Bangladesh. From 1998 to 2004, very little foreign investment was approved, amounting to only USD 671 million over the whole 7-year period.

Figure 1.2. **Foreign direct investment in Myanmar, 1989-2012**
USD million, fiscal years ending 31 March



Source: MNPED and UNCTAD.

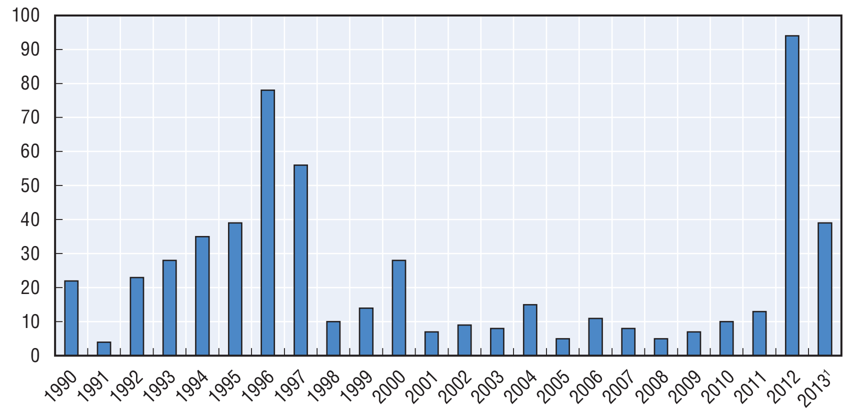
The situation began to change in 2005, first with the approval of important Thai investment in the power sector and then with the exploitation of Myanmar's significant reserves of oil and gas beginning in 2010. Largely as a result of the power and oil and gas sectors, foreign approvals peaked at USD 20 billion in 2010. Approvals are not the same thing as investment, however. Many countries such as China and Viet Nam have seen approvals soar in the past but only a portion of those projects were subsequently implemented as investors adopted a wait-and-see attitude. The trend in FDI in

Myanmar nevertheless shows a steady increase after 2006, albeit at levels only a fraction of the value of approved projects.

Because the overall figures are dominated by a few projects in the oil and gas and energy sectors, another way to view trends is to look at the number of approved projects each year – most of which are in the manufacturing sector. Figure 1.3 shows that the number of projects grew rapidly in the mid-1990s but then largely collapsed until current reform period after 2011. The number of approved projects reached record levels in 2012 and look to match the same level in 2013 (at an annualised rate based on the first five months).

Figure 1.3. **Foreign investment of permitted enterprises**

Fiscal years, number of projects



1. April-August.

Source: DICA.

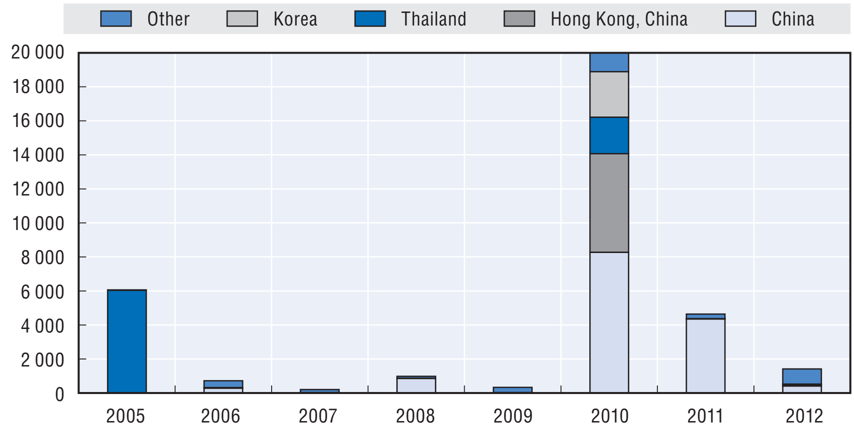
Investment in Myanmar by country and by sector

Figure 1.4 shows investment approvals by country for 2005-12. Approvals have been dominated by investments from China, Thailand, Hong Kong (China) and Korea, and almost one half of total approvals occurred in 2010.

The importance of China is confirmed in the statistics for total cumulative approved investment. Together with Hong Kong, Chinese firms, they represent 61% of realised investment or almost one half of total approved investment (Table 1.1). Only three OECD member countries figure in the top ten in terms of total cumulative approved investments in Myanmar. For French enterprises, much of that investment dates from the period prior to 2000. Only Korean and, to a lesser extent, British investors, among all potential OECD investors, significantly expanded their investment in Myanmar prior to the most recent reforms beginning in 2010. Investments from the British

Figure 1.4. **Approved FDI projects in Myanmar by country, 2005-12**

USD million, fiscal years



Source: MNPED.

Table 1.1. **Approved foreign investment by country, as of 31 October 2013**

USD million, per cent

	Existing enterprises (realised)	(%)	Permitted enterprises (approved)	(%)
China	14 115	42	14 193	33
Hong Kong, China	6 366	19	6 459	15
Korea	2 973	9	3 045	7
Thailand	2 876	9	9 984	23
United Kingdom	2 503	7	3 056	7
Singapore	2 247	7	2 584	6
Malaysia	1 028	3	1 626	4
France	470	1	474	1
Viet Nam	511	2	511	1
India	279	1	283	1
Other	469	1	736	2
Total	**33 837**		**42 951**	

Source: MNPED.

Virgin Islands are sometimes considered as UK investment even though their exact origin is difficult to establish.

Chinese investment may well be understated, even if investment from Hong Kong, China is added, because some Chinese investment may go through the British Virgin Islands or the Cayman Islands. Some Chinese investment in joint ventures with military controlled enterprises may also not be reported to the Central Statistical Office (CSO). Chinese investors may also be involved in projects financed in part by investors from other countries. Major Chinese investments have included oil and gas pipelines, including the Shwe Natural Gas Pipeline, numerous dams such as the Myitsone Dam and several mines, including both the Myanmar Taguang Taung Mine for nickel ore and the Monywa copper mine. For China, the primary motive for investing in Myanmar is to meet the energy needs of Yunnan province where oil prices are by one estimate 30% above those of Eastern China.[1]

By sector, 85-88% of total investment has been in the oil and gas, power (hydroelectric dams) and mining sectors (Table 1.2). Much of this investment occurred under the military regime, with little or no public consultation and frequent allegations of human rights abuses (see Chapter 2 on responsible business conduct). Some of the largest investments in these sectors are listed in Box 1.3. Problems of land-grabbing, forced labour and other human rights abuses associated with some of these projects will be discussed in Chapter 2. Most investment to date in value terms has been in the oil and gas and power sectors, whether in terms of approved or realised investment. Manufacturing and services sectors have so far received very little investment, partly because of import restrictions in key markets such as the United States or the European Union, but also because of the overall absence of a propitious climate for investment.

Table 1.2. **Approved foreign investment by sector, as of 31 October 2013**
USD million, per cent

	Existing enterprises (realised)	(%)	Permitted enterprises (approved)	(%)
Oil and gas	13 630	41	14 372	33
Power	13 254	39	19 284	44
Mining	2 309	7	2 838	6
Hotel and tourism	1 349	4	1 600	4
Manufacturing	2 254	7	3 456	8
Real estate	448	1	1 129	3
Industrial estate	179	1	193	0
Agriculture	163	0	192	0
Transport and communication	138	0	314	1
Livestock and fisheries	88	0	347	1
Construction			38	0
Other services	25	0	42	0
Total	**33 837**		**43 902**	

Source: MNPED.

Box 1.3. Major foreign investment projects in Myanmar in the extractive and energy sectors

Oil and gas

- Shwe Natural Gas Pipeline and the Burma-China Oil Transport Project to carry oil and gas from the Bay of Bengal across Myanmar to China. The USD 29 billion project is a joint venture with the state-owned Myanmar Oil and Gas Enterprise (MOGE) and investors from China, India and Korea.
- Yadana project to produce natural gas in the Andaman Sea 60 kilometers offshore and to transport the gas via a 346-kilometer subsea pipeline and then 63-kilometers onshore to the Thai border. Total (France) has a 31.2% interest, with the rest held by Chevron (US), PTT (Thailand) and the local partner, Myanma Oil and Gas Enterprise (MOGE).

Mining

- The Letpadaung (or Monywa) open pit copper mine opened in 1980 with the largest deposit of copper in Southeast Asia as a joint venture between Wanbao, owned by China's state-owned arms producer Norinco, and Myanmar Economic Holdings, a military-owned conglomerate. Local residents have protested against alleged land grabbing, lack of compensation and damage to the environment.
- The Myanmar Taguang Taung Nickel Ore mine is the biggest co-operative mining project between China and Myanmar. It is a joint investment between the China Nonferrous Group and Taiyuan Iron and Steel Group (TISCO), two Chinese companies and is expected to provide 85 000 tonnes of high grade ferro-nickel annually upon completion for supply to China.[*]

Hydroelectric dams

- Hydropower represents two-thirds of installed energy capacity in Myanmar, most of which is exported to neighbouring countries. China Power Investments Corporation plans to invest USD 20 billion in a series of dams on the upper Irrawaddy river, including the Myisitone dam which was suspended by the government in September 2011.
- Another series of six dams has been approved on the Salween river, involving predominantly Chinese investors but also local enterprises and the Electricity Generation Authority of Thailand. These six dams will provide an estimated 15 000 MW of installed capacity, including the TaSang dam which will be the largest in Myanmar and the tallest in Southeast Asia.

* "China's mining project put into operation in Myanmar", *ChinaDaily*, 15 April 2011.
Source: Authors' compilation.

Recent trends in foreign investment

The most recent data on foreign investment in Myanmar suggest that the trend in 2013-14 is likely to depart significantly from what has occurred so far (as described above). In value terms, investment is dominated by Chinese investors in the power and oil and gas sectors, and while this situation is likely to change only slowly, change is underway nonetheless. Only one new investment by Chinese enterprises was approved in the first two months of fiscal year 2013, worth USD 0.76 million. Since June 2012, Chinese investments have amounted to USD 408 million. This compares with investments of USD 470 million by investors from Viet Nam, USD 330 million from Singapore and USD 240 million by UK investors over the same period. Investors from other OECD countries, including the US, the EU and Japan, have yet to commit large sums of capital to Myanmar.

Even more significant changes may be occurring at the sectoral level: 60% of the value of approved investments over the past 12 months has been in manufacturing (USD 580 million) and hotels and tourism (USD 520 million). This suggests that political uncertainty and the rise of civil society may temporarily have halted new large-scale investments in the power sector and to some extent in mining. In addition, the main oil and gas projects are coming on stream and investors may be reluctant to commit to new projects. At the same time, investors are diversifying into the promising but less capital-intensive sectors of manufacturing and tourism.

Many large MNEs have recently announced their intention to return to Myanmar or, in some cases, to invest for the first time. These include:

- *Food and beverages*: Coca Cola plans to invest USD 200 million in Myanmar over five years, including a bottling plant in a joint venture with a local company, Pinya. Coca Cola withdrew from Myanmar in the 1960s. Unilever (UK-Netherlands) plans to invest USD 650 million over the next decade; Carlsberg, Heineken and ThaiBev have received approval for joint ventures for breweries;[2] British American Tobacco is also planning to spend USD 50 million on a factory in Myanmar to produce cigarettes. The company had pulled out of Myanmar in 2003 reportedly following an "exceptional" request from the British government.[3]
- *Hotels*: Hilton International, Marriott International and Best Western (US), Accor (France), Hoang Anh Gia and CT Group (Viet Nam) all have plans to invest.[4]
- *Telecoms*: Telenor (Norway) and Ooredoo (Qatar) have both been awarded licences to launch telecoms services in Myanmar.
- *Automobiles*: Suzuki Motors (Japan) to recommission a plant closed in 2010.[5] Nissan (Japan) plans to open a USD 75 million car plant.[6]

- Siam Cement Group (Thailand) has pledged to invest USD 386 million in an integrated greenfield cement plant.[7]
- Planned foreign investments in agriculture and plantations are discussed in Chapter 9.

Notes

1. Kong, B. (2010), "The Geopolitics of the Burma-China Oil and Gas Pipelines", in *Pipeline Politics in Asia: The Intersection of Demand, Energy Markets, and Supply Route*s, National Bureau of Asian Research, Special Report 23 September.
2. "Myanmar: foreign investment rush raises hopes… and concerns", *Financial Times*, 17 June 2013.
3. Duncan Robinson, "BAT returns to Myanmar a decade after exit", *Financial Times*, 8 July 2013.
4. Ibid.
5. Ibid.
6. "Carmakers flock to new southeast Asian growth frontier", *Financial Times*, 6 October 2013.
7. "Thai cement company to invest in USD 386 plant in Myanmar", *The Nation*, 27 August 2013.

OECD Investment Policy Reviews: Myanmar 2014

Chapter 2

Responsible business conduct in Myanmar

This chapter looks at reforms by the government in the area of human and labour rights in Myanmar. Environmental considerations are discussed in Chapter 7. It also considers how international standards of responsible business conduct can be introduced by investors in the context of Myanmar's reform process and looks at ways in which governments from the home countries of investors can encourage further reforms in Myanmar in this area and at the different ways in which they have sought to ensure that enterprises from their countries act responsibly when investing in Myanmar.

"My government is taking steps to build investor confidence and promote responsible investment in Myanmar."

President U Thein Sein

"As sanctions are lifted, investment should be responsible and help the process of democratisation."

Daw Aung San Suu Kyi

"The EU recognises the vital contribution the private sector has to make to the development of Myanmar/Burma and would welcome European countries exploring trade and investment opportunities. This should be done by promoting the practice of the highest standards of integrity and corporate social responsibility."

Council of the European Union, April 2012

"We say to American business: invest in Burma(Myanmar) and do it responsibly; be an agent of positive change and be a good corporate citizen."

US Secretary of State Hillary Clinton 2012

"We welcome the commitment to responsible investment in Burma/Myanmar."

G8 Foreign Ministers communiqué, 2013

"A business considering investment in Myanmar should carefully examine the risks and opportunities, as well as applicable international standards for responsible business conduct."

Business for Social Responsibility

The primary responsibility for preserving the environment and respecting human rights, including labour rights, in Myanmar rests with the government of Myanmar. Although reconciliation and democratisation are still a work in progress, it is generally recognised that the government of President U Thein Sein is moving towards establishing the rule of law and allowing civil society to flourish. Ceasefires have been achieved with almost all ethnic groups, political prisoners are being released, by-elections were held successfully in 2012 and national elections are scheduled for 2015. New labour laws will help Myanmar eventually to achieve international standards in terms of workers' rights, and Myanmar has been readmitted to the International Labour Organisation as a result. The government has also set up a Myanmar National Human Rights Commission (MNHRC) to address human rights issues

Fifty years of military rule will not be erased overnight. The MNHRC will need gradually to assert its independence, recently enacted laws will require government capacity to enforce them, and civil society will need to find its voice. More still needs to be done to allow greater public consultations on changes in the legislative framework and on investment projects in the energy sector and extractive industries, as well as in signing many of the key international conventions related to labour and human rights. A continuing area of concern with large-scale investment projects involves land acquisition where property rights are not well-established and where those living or working on the land have complained about inadequate consultation and compensation (Chapter 9). More fundamentally, there is some question about the capacity of the government to enforce the new human rights and labour standards throughout its territory, especially in border areas which are often still highly militarised.

In this uncertain and evolving environment, and given the legacy of investments in the past which were sometimes associated with human rights abuses and which generally provided little benefit to the local population, there is scope for both civil society and governments in investor home countries to play a complementary role to ensure that investment in Myanmar contributes to inclusive and sustainable development. Civil society is emerging rapidly in Myanmar, and some major projects have been halted temporarily on the back of local protests. The formation of labour unions under the *Labour Organisation Law* (2012) will help to ensure that workers' rights are protected. Nevertheless, experience in Bangladesh with the recent collapses of factory buildings demonstrates that having laws in place and civil society on the ground does not always guarantee that rights will be respected.

Foreign investors also have a role to play. Just as multinational enterprises (MNEs) can bring capital, technology and access to global markets, so too can they contribute to the host country by acting responsibly, in other words, by obeying local laws even when they are not enforced and by adhering to international standards of behaviour beyond what is required by the host government. Given capacity constraints within government and the legacy of human rights abuses, foreign investors must be vigilant to ensure that their investments do not cause harm and that they fully respect both the laws of Myanmar – whether or not they are actually implemented – and international expectations about responsible business conduct in weak governance zones.

Home governments of MNEs can play a key role in this regard by expressing expectations for corporate behaviour, such as through the *OECD Guidelines for Multinational Enterprises* and by assisting MNEs to comply with these expectations. Going beyond expectations, the US government now requires evidence that American investors in Myanmar are acting responsibly through annual reporting requirements. This initiative and others by home country governments, some of which are unique to Myanmar, are described in this chapter.

Responsible business conduct

Responsible business conduct (RBC) means above all complying with laws, such as those on respecting human rights, environmental protection, labour relations and financial accountability, even where these are poorly enforced. It also involves responding to societal expectations communicated by channels other than the law, e.g. inter-governmental organisations, within the workplace, by local communities and trade unions, or via the press.

Over the past five years, it has increasingly come to be expected that, while states have the primary duty to protect human rights, business is not a passive actor. There is now a growing international recognition of the responsibility of business to respect international standards of human rights protection – what former Special Representative of the UN Secretary General John Ruggie has referred to as a convergence of expectations.[1] As stated in the updated *OECD Guidelines for Multinational Enterprises*, respect for human rights is the global standards of expected conduct for enterprises, independently of states' abilities or willingness to fulfil their human rights obligations, and does not diminish those obligations.

One of the most important steps for the business and human rights agenda was the launch of the UN *Protect, Respect and Remedy Framework* developed after three years of consultations by John Ruggie in June 2008. The *Framework* rests on three pillars: the state duty to protect against human rights abuses; the corporate responsibility to respect human rights, namely to act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they have been associated; and greater access by victims to effective judicial and non-judicial remedies (UN, 2011). This was followed by the UN *Guiding Principles on Business and Human Rights*, unanimously endorsed by the UN Human Rights Council on 16 June 2011. The *Guiding Principles* are designed to operationalise the framework by providing concrete and practical recommendations for its implementation. Both the *OECD Guidelines for Multinational Enterprises* and the ISO 26000 standard now also incorporate a chapter on human rights.

The Framework has been endorsed or used by national governments, business enterprises and associations, civil society and workers' organisations, national human rights organisations and shareholders (UN, 2011). Recent *Guidelines for International Investment* issued by the International Chamber of Commerce call on businesses to respect the human rights of those affected by their activities, consistent with the UN *Guiding Principles* (ICC, 2012).

Business support for the *Guiding Principles* and for the need to respect human rights stems in part from the growing recognition that companies associated with alleged human rights abuses face a number of significant risks: project delays or cancellations (operational risks); lawsuits or fines (legal or regulatory risks) and any harm inflicted on their brand image (reputational risks). As John Ruggie points out "For a world-class mining operation, which requires about USD 3-5 billion capital cost to get started, there's a cost somewhere between USD 20 million and USD 30 million a week for operational disruptions by communities (IHRB, 2013).[2]

Several foreign investors operating in Myanmar have faced challenges related to alleged human rights abuses associated with their investment projects described below, including *inter alia* "specific instances" under the *OECD Guidelines for Multinational Enterprises* and lawsuits in jurisdictions outside of Myanmar. With the political and economic changes in Myanmar and the removal of many longstanding sanctions, interest in Myanmar on the part of investors from OECD member countries is likely to be keen.

The quotations at the beginning of this chapter testify to the universal concern that foreign investment in Myanmar contribute to sustainable development. As a reflection in part of the weak capacity of the Myanmar government at present to implement its own legislation, both President U Thein Sein and Nobel Prize laureate and opposition leader Daw Aung San Suu Kyi have also called for responsible investment. In an atmosphere in which all parties appear to share a common goal, Myanmar offers insights into the potential role of responsible investment in a situation where the rule of law is only slowly being established and ultimately a test case of how the UN *Guiding Principles* can be applied in practice.

Investment and human and labour rights and environmental protection in Myanmar

Foreign investors in extractive sectors in Myanmar since the first period of liberalisation beginning in 1988, usually in partnership with local state-owned or military controlled enterprises, have received substantial criticism from international civil society. Non-governmental organisations have documented many human rights abuses associated with large investment projects in the past, mostly as a result of land clearance and resettlement by the government and the provision of security services by the military. Allegations include forced labour and other violations of labour rights, extensive land confiscation with inadequate compensation, harassment and intimidation by state agents, arbitrary detention and torture, as well as more generally a pervasive lack of meaningful consultations and consent among affected communities (EarthRights International, 2011). Land and labour issues are discussed in more detail later.

These allegations led to consumer and shareholder boycotts for those foreign investors associated with the projects concerned, as well as cases brought before courts in home or third country jurisdictions. Faced with reputational risks and increasingly restrictive sanctions by western governments, several investors ultimately withdrew from Myanmar or abandoned plans to invest, e.g. Heineken, Carlsberg, British American Tobacco, Triumph, the Arcadia Group, British Home Stores, C&A, Phillips, Levi Strauss, Apple, Pepsi Cola and Reebok.[3]

The government has strengthened environmental and social standards applicable to businesses with the approval in 2012 of the *Environmental Conservation Law,* requiring every business project to undertake environmental and social impact assessments. However, rules and regulations for such assessments still need to be developed.[4] The ADB is supporting the Ministry of Environmental Conservation and Forestry in developing regulations on environmental impact assessments, but work has yet to start for social impact assessments. These regulations, together with improved consultation mechanisms, would also respond to growing concerns over social and environmental impacts of large-scale projects by the local population, particularly in the power sector.[5]

Progress in strengthening human rights protection in Myanmar

Myanmar has had a long history of human rights violations, associated with decades of military rule and ethnic conflict. Armed conflict still persists in Kachin State and inter-ethnic conflict in Rakhine State and elsewhere. Furthermore, while hundreds of political prisoners have been released, many were estimated in 2012 still to remain behind bars (Amnesty International, 2012). The UN Special Rapporteur for human rights in Myanmar, in a visit to Myanmar in mid-2012, pointed out that the country continues to grapple with human rights challenges but nevertheless noted improvements in the situation and the increasing engagement in the reform process of civil society, political parties and other stakeholders (UN, 2012).

Myanmar has not yet become a party to most of the world's conventions governing human rights.[6] The government has not signed the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, including the two optional protocols. The same is true for many other key conventions, such as those relating to slavery and torture. It has nevertheless signed conventions related to women's human rights and certain labour rights, among others.

Myanmar National Human Rights Commission

To address existing and future human rights issues, President U Thein Sein established the Myanmar National Human Rights Commission in 2011 (Box 2.1). International non-governmental organisations such as Amnesty International welcomed the creation of the Commission, but questions remain about its independence and influence. Furthermore, the Commission is only empowered to consider complaints relating to acts which took place after its establishment (Amnesty International, 2011). It was created through an executive order[7] and as such is dependent on the president for its existence and lacks the imprimatur of the parliament.[8] Legislation is reportedly being prepared, with international assistance, to give the Commission a clear legal basis and statutory mandate.[9] Various groups have called on the Commission to take on a larger role in investigating and publicising human rights abuses, advocating ratification of key international conventions and educating the public.[10]

Box 2.1. **Myanmar National Human Rights Commission**

Established by Presidential Ordinance 34/2011 on 5 September 2011, the National Human Rights Commission has a mandate to:

- Receive communications on the violations of the fundamental rights of citizens, to investigate them and to convey the findings to the relevant government departments and bodies for necessary action.
- Examine whether the rights under international human rights instruments to which Myanmar is a state party are fully enjoyed and to advise on reports Myanmar is required to submit to UN bodies and committees and regional organisations.
- Examine the conformity of national legislation and administrative provisions with international human rights instruments to which Myanmar is a party and with the principles of promoting and protecting human rights and to make appropriate recommendations to the government.
- Study international instruments on human rights to which Myanmar has not yet been a party to, and to submit recommendations on signing and acceding to appropriate instruments.
- Communicate with UN organisations and foreign and domestic bodies engaged in the promotion and protection of human rights.
- Enhance public awareness and knowledge of human rights promotion and protection.
- Carry out tasks occasionally assigned by the President in connection with promotion and protection of human rights.
- Submit annual reports to the President on the activities of the Myanmar National Human Rights Commission and developments in the field of human rights.

Box 2.1. **Myanmar National Human Rights Commission** *(cont.)*

The Commission is empowered to summon and question the individuals concerned; to claim and examine the relevant documents except those specially classified as required by the state, and to visit and examine scenes of violations.

Source: Presidential Ordinance 34/2011

Land

One of the main areas of human rights abuse in Myanmar involves land grabbing. The majority of cases brought before the MNHRC involve property disputes, including land confiscations. According to the Institute for Human Rights and Business, the government and dominant businesses have often used coercion and have paid inadequate compensation to those who are evicted with the result that such compensation is insufficient to maintain a basic standard of living (IHRB, 2012). This in turn begets further landlessness and increasing poverty among those affected. As seen in the Chapter 9 on investment in agriculture, many farmers do not have title to their land and in some areas practice shifting cultivation. The *Farmland Law* and the *Vacant, Fallow and Virgin Land Management Law* are intended to provide greater security to farmers but have been criticised for making it easier for the government to appropriate land if it is deemed to be unused. Non-governmental organisations have also lamented the lack of access to the court system in the event of disputes over land (Amnesty International, 2011).

Land issues are discussed in more detail in Chapter 9 but are clearly an essential component of responsible investment. Given the history of disputes related to major investment projects, sometimes involving foreign investors, future investors will need to tread cautiously in this area. A number of organisations provide guidance in this area, including the UN *Basic Principles and Guidelines on Development-based Evictions and Displacement* which provide a framework for the development of policies, legislation and other measures to ensure that forced evictions do not take place and for effective remedies should prevention fail (UN, 2012). The IFC also has performance standards on land acquisition and involuntary resettlement. For acquisitions of agricultural land, FAO *Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, adopted by the Committee on World Food Security in May 2012, provide the most relevant framework for responsible tenure governance.

Two key elements of a responsible investment strategy related to land are free, prior and informed consent (FPIC) involving all affected parties and an independent grievance mechanism (discussed later) to hear complaints and settle disputes. The UN *Declaration on the Rights of Indigenous Peoples* states that "no relocation shall take place without free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, the option of return". The notion of FPIC is gaining increasing currency and more than 200 states have ratified international and regional treaties and covenants that expressly provide for, or recognise, a state's duty to obtain FPIC where warranted (UN-REDD, 2013).

Investors can also adopt FPIC principles. A report issued by Talisman Energy at the request of its Canadian shareholders concluded that "in the long term, the benefits of securing community agreement were likely to outweigh the challenges and costs of doing so" (IHRB, 2013). Based on interviews in the extractive sector, one study highlighted the serious potential costs to investment projects from disputes, including disruption to production, lost opportunities and management time dealing with the conflict (Davis and Franks, 2011).

In September 2013, the government formed a Special Committee for Land Issues in Myanmar, chaired by the Vice President. Its aim is to balance foreign investment facilitation with the requirements of local communities. The government expects the Committee to play a crucial role in administering and managing land issues.

Labour issues

Myanmar has a long history of forced labour, with local populations providing construction or press-ganged into acting as porters or even soldiers. The 1907 *Town Act* and the 1908 *Village Act* both allow the government to oblige local populations to participate in public works. Draft legislation has been submitted to parliament to repeal both acts. In any event, the defence of forced labour on the basis of these acts has never been accepted by the international community. As a result of persistent forced labour, the Council of the European Union withdrew Myanmar's access to generalised trade preferences in March 1997. Partly as a result of this record, Myanmar was effectively excluded from the International Labour Organisation, a body which it had joined in 1948.

The ILO Liaison Officer in Myanmar reported in 2012 that new legislation had been adopted which criminalised the exaction of forced labour. Perpetrators are now prosecuted and punished, including military personnel. The European Commission recommended reinstating generalised tariff preferences for Myanmar in 2012 based on the ILO assessment that violations of the principles laid down in ILO Convention No. 29 (on forced labour) are no longer "serious and systematic". Myanmar was readmitted as a full ILO member in 2012, following the commitment of President U Thein Sein to eliminate forced labour by 2015. It has at present signed only two of the eight core labour standards.

In other areas, both unions and strikes were forbidden under military rule beginning in 1962. With no independent trade unions until recently, workers in Myanmar frequently saw their rights violated, working long hours at low pay and facing sexual harassment, ethnic discrimination and no due process in the event of dismissal (IHRB, 2012).

Although evidence of violations of labour rights still surfaces, Myanmar has made great strides to update the legal framework to protect workers' rights. A *Labour Organisation Law* was approved by parliament in late 2011 and signed by the president in March 2012. Workers are now allowed to form unions, and the ILO reported the registration of 263 workers' organisations and 12 employers' organisations as of October 2012. The law also establishes the procedure for holding strikes. This was followed by a *Labour Dispute Settlement Law* which, according to Amnesty International (2012), not only promotes and protects workers' rights but also involved consultations with international experts in the drafting phase. As a result, "both law and process have set a constructive precedent". The Trade Unions Congress (TUC, 2013) nevertheless argues that the new dispute settlement mechanisms still do not adequately address worker discrimination for union activity. A *Minimum Wage Law* was enacted in June 2013.

Further efforts by the government to promote responsible behaviour by domestic and foreign enterprises

Beyond transcribing international standards into domestic legislation and building up the capacity of the civil service to implement these policies, the government needs to ensure that economic actors within its economy obey the new rules. This is particularly important in the context of Myanmar given the role that state-owned economic enterprises (SEEs) play in key sectors of the economy, including the two military-controlled conglomerates. Government calls for responsible investment need to include from its own enterprises – especially since foreign investors are required to form joint ventures with domestic firms in some sectors. Indeed, Daw Aung San Suu Kyi has warned foreign investors not to enter into business relationships with local businesses with close ties to the military or with political connections (IHRB, 2012). As one sign of progress in this area, the Global Compact launched its activities in Myanmar in May 2012, admitting 14 companies including the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI).

For foreign investors, the government could also consider requiring them, when obtaining a permit from the MIC, to adopt an approach to their investment consistent with the international standards, such as the OECD

Guidelines for Multinational Enterprises or the UN *Guiding Principles on Business and Human Rights*.

One area in which the government can promote responsible conduct for all investors, domestic and foreign, is through revenue transparency. Only four countries[11] on the *Corruption Perceptions Index* by Transparency International have a worse score than Myanmar which ranks 172 out of 176 countries. Many large-scale investors have partnered with state-owned economic enterprises, including the two major enterprises controlled by the military with opaque revenue reporting. According to EarthRights International (2011), "there continues to be a lack of institutional capacity, political space and freedom among technocrats and civil society inside Myanmar to effectively advocate for transparent and responsible resource revenue management".

The government has taken an important step towards increasing transparency in extractive industries by committing to implement the Extractive Industries Transparency Initiative (EITI), a global standard for the promotion of revenue transparency. EITI requires companies to declare any payments made to the government, while the latter is required to declare its revenues from extractive sectors. By increasing the transparency in the governance of the country's natural resources, it contributes to curb corruption in these sectors and build a better investment environment. A Minister in the President's Office has been appointed to lead the EITI candidature. The World Bank will assist Myanmar in this task. EITI implementation is important for the development of a sound investment environment in these sectors, notably in oil and gas and mineral industries, which respond to the greatest share of foreign income for the government.

Home country governments can also play a role in this regard, as discussed below.

International options for promoting responsible investment in Myanmar

> "*With the government's lack of preparation and capacity, how much the people of Burma will benefit from these investments will depend on how ethical investors are.* "
>
> BurmaPartnership, 2012

> "*In conflict affected areas, the 'host' state may be unable to protect human rights adequately due to a lack of effective control. Where [MNEs] are involved, their 'home' states therefore have roles to play.*"
>
> UN, 2011

The government has demonstrated a willingness to promote sustainable and inclusive growth, and the international community has responded by lifting sanctions, offering duty-free market access in some cases and engaging with the government in the reform process. This rapid transition process will place increasing strains on the resources and capacity of the Myanmar government, implying that the recent legislative fervour will not necessarily yield the desired outcome in the timeframe evoked in the *Framework for Economic and Social Reform* (FESR). Laws relating to human and labour rights and the environment will require substantial capacity building to be implemented effectively.

Emerging from a rigid, top-down decision making structure and an almost closed economy, the government is reforming at a pace which is placing great demands on its capacity to implement the sweeping reforms under way and to achieve the quick wins outlined in the FESR. Decisions are made and laws passed at an accelerating pace. According to one report, "ministries are overwhelmed by the sheer volume of policy and legislative changes being heaped on them. They are not yet organised to take responsibility at working levels for implementing the changes and tend to await instructions from above" (Clapp and DiMaggio, 2012). In this environment, there is strong scope for home country government policies to support reforms in Myanmar by promoting responsible investment by multinational enterprises from their countries. As a first step, the 46 countries[12] that have adhered to the OECD *Declaration and Decisions on International Investment and Multinational Enterprises*, of which the *Guidelines for Multinational Enterprises* (Box 2.2) are an integral part, could promote awareness of the *Guidelines* among MNEs from their countries considering investing in Myanmar.

Specific instances involving investments by MNEs from countries adhering to the *Guidelines* include an alleged breach of the *Guidelines* by two Korean companies related to the exploration, development, and operation of the Shwe natural gas project in military-ruled Burma. The companies were criticised by the complainant, EarthRights International, for inadequate stakeholder consultation and environmental impact assessments. The Korean National Contact Point (NCP) rejected the complaint on all counts.

Another case from 2002 involved an allegation of forced labour in a project in which a French company was participating. At the time, the French NCP issued the following recommendations to investors concerning forced labour in Myanmar:

- Co-operate with international labour organisations at the relevant levels.
- Introduce external monitoring.
- Promote legislation against forced labour.
- Contribute to development projects, especially in areas of their involvement.

Box 2.2. *OECD Guidelines for Multinational Enterprises*

The *OECD Guidelines for Multinational Enterprises* are recommendations jointly addressed by governments to multinational enterprises. They aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises.

Following the update in May 2011, the *Guidelines* include new recommendations notably on human rights and a general principle on the need to exercise due diligence to avoid or mitigate negative impacts on third parties, notably with respect to the management of supply chains and other business relationships.

The recommendations of the *Guidelines* cover all major areas of corporate responsibility, namely:

- disclosure,
- human rights,
- employment and industrial relations,
- environment,
- combating bribery, bribe solicitation and extortion,
- consumer interests,
- science and technology,
- competition, and
- taxation.

The *Guidelines* comprise a distinctive implementation mechanism, the National Contact Points (NCPs), which are government offices charged with advancing the *Guidelines* and handling enquiries in the national context and supporting mediation and conciliation procedures, called "specific instances". The 2011 update has clarified and reinforced these procedures to strengthen the role of the NCPs and foster functional equivalence.

Source: OECD, *www.oecd.org/daf/investment/guidelines*.

- Verify the behaviour of sub-contractors by local managers.
- Contribute to training.
- Develop a social dialogue with local and international employee organisations.
- Provide regular information to the Board of Directors on initiatives to avoid recourse to forced labour.[13]

In collaboration with the Danish Institute for Human Rights, IHRB has established a responsible investment resource centre in Myanmar (Box 2.3) and will be developing a number of activities aimed at fostering trade and investment in the country consistent with the UN *Guiding Principles* and other standards of responsible business conduct. The centre will be open to all actors: local and international business, government, parliamentarians, investors, civil society, trade unions and communities (IHRB, 2012).

Box 2.3. **The Myanmar Centre for Responsible Business**

The Myanmar Centre for Responsible Business established in mid-2013 seeks to foster corporate practices consistent with the highest international standards among foreign businesses entering Myanmar and local businesses, working with other stakeholders in the country.

A joint initiative of the Institute for Human Rights and Business and the Danish Institute for Human Rights, the Centre will work with local and regional partners and develop strong networks with relevant experts and organisations within Myanmar and beyond to advance knowledge of, and adherence to, responsible business practices. The Centre is funded by a number of governments including the UK Department for International Development as well as Norway, Switzerland, Denmark and the Netherlands.

The long-term goal is for the new Centre to become an independent and self-sustaining entity that will provide a crucial platform for companies, governments, civil society, trade unions and other stakeholders to address dilemmas, challenges and opportunities for shaping responsible business practices in Myanmar. It will facilitate dialogue and build national and local capacity and partnerships on business and human rights issues.

The Centre will lead the process of carrying out several strategic human rights impact assessments in Myanmar, looking at the potential human rights impacts of business activities in several identified sectors. The programme activities are expected to break new ground in developing and applying the strategic human rights impact assessment methodology. While building on existing impact assessment methodologies (such as environmental, social and human rights impact assessment methodology), the programme will refine the processes to assess and account for broader impacts of specific industry sectors and the particular nature of human rights impacts.

Source: www.myanmar-responsiblebusiness.org.

Beyond reminding investors of the OECD *Guidelines*, the UN *Guiding Principles on Business and Human Rights* and other instruments to promote responsible investment, home country governments could foster both transparency and greater responsibility. The various approaches of OECD member countries in these areas are described below.

Reporting requirements

> "*In meeting their duty to protect, states should encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.*"
>
> UN *Guiding Principles*

Enterprises are increasingly being required to report on environmental, social and governance issues. Sometimes this requirement relates to non-financial disclosure for listed companies, sometimes it applies to specific sectors and now even to investments in specific countries, including Myanmar. In the first category, the UK *Companies Act* (2006), for example, mandates social and environmental reporting. A recent directive of the European Parliament and of the Council sets forth a requirement for certain large companies to disclose relevant non-financial and diversity information, ensuring a level playing field across the European Union.[14]

Sector-specific requirements often apply to the extractive sector. In the United States, the 2010 Dodd-Frank Act requires all oil, gas and mining companies listed on US stock exchanges to disclose their payments to all countries for each project.[15] The European Union has recently proposed, subject to agreement of member states and the European parliament, to require all EU-listed or large privately-owned oil, gas, mining and logging companies to publish all payments over € 100 000 on a country-by-country basis for all projects.[16] Disclosure would cover all taxes, royalties and bonuses paid to governments worldwide. Korea is also reportedly considering such reporting obligations (Conflict Risk Network, 2012).

As a counterpart to the suspension of sanctions, the US government imposed reporting requirements on investors in Myanmar (Box 2.4). The European Parliament has proposed annual reporting requirements on company due diligence processes for EU investors in Myanmar which should include impact assessments, remediation plans and disclosure of business operations and relations, including supply chains within Myanmar.[17]

The UN *Guiding Principles* (UN, 2011) stress that state encouragement of, or where appropriate, requirements for, such communication are important in fostering respect for human rights by business enterprises (see quotation above). Non-governmental organisations, such as the Institute for Human Rights and Business, have supported the broader use of reporting requirements for investors in Myanmar.

The Trades Union Congress, a federation of UK unions, has proposed the establishment of a Commission for Responsible and Accountable Investment

Box 2.4. **US reporting requirements on responsible investment in Myanmar**

US sanctions imposed on trade and investment in Myanmar became increasingly restrictive over time, starting in 1997. No new investment by US enterprises in Myanmar was permitted after 2003. These sanctions were suspended as of July 2012 through the issuance by the Office of Foreign Assets Control General Licence (GL) 17. At the same time, GL 17 introduced for the first time explicit reporting requirements on responsible investment in Myanmar for any aggregate investments by US persons exceeding USD 500 000. Investors are to provide annual reports both to the US government and a second, more limited version to the broader public.

Among the requirements, investors are to provide information on due diligence policies and procedures which address the following:

- operational impacts on human or workers' rights and the environment;
- anti-corruption;
- community and stakeholder engagement;
- hearing grievances from employees and local communities; as well as
- global corporate social responsibility policies.

If the submitter has no information to report in one or more of these areas, then it must be stated explicitly, along with a brief explanation. The investor must also summarise any risks or impacts identified in these areas, any steps taken to minimise risk and to prevent and mitigate such impacts, and policies and practices on risk prevention and mitigation.

Investors must also report on arrangements with security providers and on any policies or procedures, including grievance mechanisms, related to the dislocation or resettlement of people with respect to land or other real property.

To foster greater revenue transparency, the investor must also report total payments over USD 10 000 each year to the Myanmar government or any sub-national administrative government entity or non-state group that possesses or claims to possess governmental authority over the investor's new activities in Myanmar. Payments under consideration should include, but not be limited to, royalties, tax obligations, production-sharing arrangements, and fees. Investors must also notify any agreements signed with the Myanmar Oil and Gas Company (MOGE).

Many civil society groups have supported the initiative given Myanmar's unique context. Some have observed that GL 17 does not require investors to have human rights, labour and environmental policies in place or to demonstrate that they implement them but rather only to identify whether or not they exist. Nevertheless, given the potentially large reputational risk for investors from OECD member countries in Myanmar, investors are likely to be under some pressure to take these requirements seriously.[*] Failure of investors to comply with the reporting requirements can lead to fines in the case of civil violations and fines and possibly imprisonment for individuals in the case of criminal violations.

* Amy Lehr, "Burma (Myanmar) Sanctions Eased, but Companies Required to Report on Responsible Business Practices", *http://csrandthelaw.com/2012/07/Burma-myanmar-sanctions-eased-but-companies-required-to-report-on-responsible-business-practices*.

for EU investors in Myanmar, which in many ways plays a similar role to that of national contact points, except that it would also include representatives of both civil society and business and would not be a government responsibility (TUC, 2013). The Commission would carry out promotional activities with regard to business and human rights, be a repository of information and provide mediation/conciliation services regarding breaches of human rights. Enterprises agreeing to join the Commission would have to undertake a thorough and credible human rights due diligence process. The Commission would then issue an annual report on the compliance of European corporations with the UN *Guiding Principles*.

Incorporating corporate social responsibility obligations into future treaties

Whatever home states do to assist, encourage or compel MNEs to act responsibly, the primary responsibility for human rights protection rests with the government of Myanmar. As sanctions are removed or suspended, home states are exploring other ways to apply external pressure and to encourage the reform process. Partner countries can also impose conditionality when they offer preferential access to their markets for exports from Myanmar. The European Union, for example, promotes human and labour rights by making the award of certain trade preferences contingent on the ratification by its partners of the main ILO conventions.[18] They can also require certain commitments tied to financial or technical co-operation. The US government is currently considering restoring preferential access for Myanmar goods under the Generalised System of Preferences which is described in more detail in Chapter 8. Respect for labour rights will be an important consideration in this regard.

Sector-specific agreements can also help to promote respect for labour rights. In 1999, the US signed a bilateral textile agreement with Cambodia which tied market access to respect for labour standards in Cambodia.

Partner countries can also insert corporate social responsibility (CSR) provisions in treaties covering trade or investment. Such clauses are on the rise in global treaty practice, with EU treaty practice, for example, including two sets of provisions: a human rights clause requiring investing firms to respect fundamental human rights, and a labour and environmental protection clause, contained within a sustainable development chapter. A European Parliament resolution concerning the introduction of CSR elements into trade agreements is described in Box 2.5.

The inclusion of references to CSR in trade and investment agreements is still a relatively recent practice, which could be germane for partner countries in their approach to Myanmar. It can be found, for example, in the US-Peru

Box 2.5. **European Parliament resolution on CSR in international trade agreements**

In a resolution of 25 November 2010, the European Parliament proposed that future trade agreements negotiated by the EU should include a chapter on sustainable development which includes a CSR clause based, in part, on the latest update of the *OECD Guidelines for Multinational Enterprises*. The CSR clause would incorporate the following:

- A mutual understanding by the two parties to promote internationally-agreed CSR instruments;
- incentives for enterprises to enter into CSR commitments negotiated with all their stakeholders;
- establishing "contact points" similar to those under the Guidelines to provide information and receive complaints and transfer these to the competent authorities;
- requiring corporations to publish their CSR balance sheets at least every 2-3 years;
- requiring enterprises to show due diligence, including in their subsidiaries and supply chains;
- requiring companies to commit to free, open and informed prior consultation before a project starts; and
- a particular focus on child labour practices.

In the event of proven breaches of CSR commitments, the competent authorities would carry out investigations, including sometimes naming and shaming those responsible. The two parties could also encourage transnational judicial co-operation to facilitate access to the courts for the victims and as well to encourage non-judicial redress mechanisms.

Source: European Parliament (2012).

Trade Promotion Agreement 2009, which does not set out mandatory CSR obligations but rather contains, in an Annex to the body of the agreement, a best-endeavour commitment to take into consideration CSR issues when pursuing labour co-operation activities. The Canada-Peru Trade Agreement goes further in this hortatory approach as it also contains references to CSR both in the Preamble and in the Investment Chapter itself.[19] The Canada-Peru Agreement (Article 817) also establishes an institutional mechanism mandated to promote co-operation on CSR. Governments could also use the "denial of benefits clause" to ensure that foreign companies investing in Myanmar do not benefit from investment treaty provisions if they violate their CSR obligations.

Case study: Responsible business conduct in the mineral sector in Africa's Great Lakes Region

Responsible trade and investment in natural resources hold great potential for generating income, growth and prosperity, sustaining livelihoods, and fostering local development. In 2009, the OECD partnered with producing, processing and consuming countries, business and civil society to develop the OECD *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*. The *Guidance* provides a practical framework to help companies respect human rights and avoid contributing to conflict and criminal activity through mining or mineral procurement practices.

The OECD has worked closely with central African countries to support the effective implementation of the *Guidance* by private sector companies operating in the region. Experience has shown that responsible business also helps producing countries to improve their own natural resource management, with tangible results:

- In 600 mine sites in the DRC and Rwanda, the implementation of the *Guidance* through industry programmes like iTSCi, Solutions for Hope, the Partnership for Social and Economic Sustainability, and the Conflict-Free Tin Initiative has enabled 45 000 artisanal miners to bring the minerals they dig to the legitimate market, under better conditions and for better prices.
- The UN Group of Experts on the DRC have reported that implementation of due diligence and responsible mineral sourcing practices has resulted in decreased involvement of armed groups in the tin, tantalum and tungsten trade, increased revenues, geological, production and trade data, and improved government capacity to regulate the mineral sector in the DRC and Rwanda.

More work is needed to help transform the natural resources of Africa's Great Lakes Region into a development strength, but the DRC and Rwanda have taken a number of important first steps to attract high-quality responsible business. These have included:

- Making implementation of the *Guidance* a legal requirement for mining and mineral trading entities operating in their respective countries.
- Building win-win partnerships with international organisations, donors, processing and consuming countries, the private sector and other stakeholder to engage in, or support, responsible business practices through the implementation of due diligence.
- Supporting implementation of due diligence nationally by setting up traceability and chain of custody systems as well as multi-stakeholder

community monitoring bodies, led by government agencies or by industry with government support.

- Attracting donor support for those government and industry-led efforts to implement due diligence within their countries.

Participating in international and multi-stakeholder meetings on responsible business, such as the biennial meetings of the ICGLR-OECD-UN Forum on due diligence for responsible mineral supply chains, will be an important initial step for any country wishing to build a responsible mineral sector.[20]

More information can be found at *www.oecd.org/fr/daf/inv/mne/mining.htm*.

Notes

1. Foley Hoag 20/2012.
2. One company John Ruggie interviewed estimated that it had lost USD 6.5 billion to stakeholder-related risk in a two-year period. "John Ruggie on Business Practice and Human Rights", Harvard Kennedy School, 29 April 2011, *www.hks.harvard.edu/news-events/publications/insight/markets/jphn-ruggie*.
3. "Campaigners force Triumph International's withdrawal from Burma", Burma Campaign UK, 28 January 2002.
4. The new law does not provide the details of the applicable standards for carrying out these assessments; nor does it contain provisions on the approval and consultation processes.
5. Public protests in regard to the USD 3.6 billion Myitsone hydropower dam project by a Chinese investor have contributed to the suspension of the project by President on the basis of "public concern". The civil society voiced a variety of concerns relating to the environment, people displacement and adequacy and fairness of contracts. Many other projects have been subject of public protests but have been allowed to go forward until now (WEF, 2013; Dapice, 2012).
6. The full list Myanmar's ratifications of human rights treaties can be found at the University of Minnesota Human Rights Library, *www1.umn.edu/humanrts/research/ratification-myanmar.html*.
7. As such, the Commission goes against the Paris Principles – minimum standards endorsed by the UN on the functioning of national human rights commissions (Human Rights Watch, 2013).
8. The parliament refused to include funding for the Commission in the national planning bill on the grounds that it was its constitutional prerogative to create such a body, but also because its policies and objectives had not been included in the national planning bill. See *www.mmtimes.com/2012/news/620/news62016.html*.
9. *www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern/burma/?showall=1*.
10. See, for example, IBA 2012.
11. Sudan, Afghanistan, North Korea and Somalia.

12. Countries include all OECD members, as well as Argentina, Brazil, Colombia, Costa Rica, Egypt, Jordan, Latvia, Lithuania, Morocco, Peru, Romania and Tunisia.
13. Further specific instances by country and sector can be found at *http://mneguidelines.oecd.org/database/#d.en.217490*.
14. European Commission, COM (2013) 207 final, 16 April 2013.
15. Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.
16. "European Union reaches deal on historic oil and mining transparency law", 9 April 2013, *www.publishwhatyoupay.org/resources/european-union-reaches-deal-historic-oil-and-mining-transparency-law*.
17. *www.europarl.europa.eu/meetdocs/2009_2014/documents/inta/re/926/926587/926587en.pdf*.
18. European Parliament resolution of 25 November on corporate social responsibility in international trade agreements (2009/2201(INI)).
19. See Article 810 of the Canada-Peru FTA: *www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/peru-perou/peru-toc-perou-tdm.aspx*.
20. For more information on the OECD *Due Diligence Guidance*, its implementation programme and the meetings of the ICGLR-OECD-UN Forum on due diligence for responsible mineral supply chains, please see: *www.oecd.org/fr/daf/inv/mne/mining.htm*.

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Chapter 3

Regulation and protection of investment in Myanmar

This chapter examines the quality of investment policies in Myanmar and the level of legal protection granted to investors in the country's regulatory framework for investment. It covers the admission, regulation and protection of foreign direct investment in Myanmar and ascertains whether the principle of non-discrimination features in investment laws. It also looks into the expropriation regime, the existing framework for protecting intellectual property rights and the conditions imposed upon foreign investors when accessing land. The adjudication of commercial and investment disputes as well the country's investment treaty practice are two other building blocks of a sound and protective investment policy framework that are also addressed.

Myanmar has initiated a broad reform process to improve its legal and regulatory framework for investment to create a more favourable investment climate. The new *Foreign Investment Law* (FIL) and its accompanying implementing rules mark a milestone towards a more open and secure legal environment for investment but are only the first step in a long process. Their importance is partly symbolic, to show the government's desire to welcome responsible foreign investment after decades of autarky followed by a first attempt at liberalisation after 1988 which offered few benefits in terms of inclusive and sustainable development.

The 2012 FIL offers some improvements over the earlier 1988 *Foreign Investment Law* but still leaves many questions unanswered, notably with respect to investor protection and the procedures for admitting foreign investors. The new FIL is an important first step and, now that it has been enacted, the government has turned to many other pressing issues enumerated in the *Framework for Economic and Social Reform*. This chapter will discuss areas where the FIL could be amended over time to reflect good practices elsewhere. While many of the recommendations will only need to be addressed in the medium term, there is nevertheless a risk that the lack of clarity in the FIL and the uncertainty surrounding protection of investment, if not sorted out quickly, will fail to ignite sufficient investor interest in projects in Myanmar and could create problems in the future in terms of disputes between investors and the government.

One of the most pressing problems of the current regulatory framework is its complexity, with half a dozen laws regulating the entry of investors, depending on the sector and location of the investment and on whether or not the investor is foreign. The approval process is equally complex, with foreign investors sometimes requiring overlapping approvals and facing detailed and often opaque criteria for scrutinising individual projects. If the process is not streamlined, it risks creating bottlenecks as the influx of investment proposals bumps up against capacity constraints in the Department for Investment and Company Administration (DICA). The authorities recognise these problems and are taking steps to rationalise the legislative framework, but the flurry of legislative activity – with over 30 laws enacted since 2011 – implies that draft laws are not always properly vetted.

Another issue of concern is the amount of discretion allowed to the Myanmar Investment Commission (MIC) under the FIL, both in terms of the approval system for investment and the conditions that may be attached to individual projects. This flexibility allows the government to open progressively and selectively to foreign investment and to try to maximise the potential benefits from that investment, but flexibility comes at a cost. It creates uncertainty for investors concerning the criteria upon which the decision to admit them is based. It also creates opportunities for corruption when individual officials are given responsibility for deciding on what basis to admit an investment project. Too much discretion may also favour large investors in their negotiations with the MIC by allowing them to extract the maximum benefit in terms of incentives and other favours in exchange for a commitment to invest.

The implementing rules for the FIL set out an extensive list of sectors in which foreign investment is either prohibited or restricted. Many of these restrictions may have been imposed to appease domestic interests in the short term while the government endeavours to create a propitious investment climate for foreign investors through the FIL and its implementing regulations. Over time, the government will need to review these many sectoral and product-based restrictions to assess their impact not only on the competitiveness of individual sectors but also on the overall investment climate itself. Joint venture requirements, for example, are often imposed in order to promote technology transfers, backward linkages and domestic entrepreneurship and to allow local firms to share in any economic rents. While foreign investors might welcome a local partner in some circumstances, joint venture requirements have often been found to be counterproductive, by dissuading potential investors while at the same time minimising the potential spill-overs from that investment.

The second part of this chapter deals partly with the issue of the degree of protection afforded to foreign investors through the FIL and through international agreements, including bilateral investment treaties. Although the new FIL incorporates a few welcome innovations that are likely to enhance the level of protection granted to investors, some of the core investment protection standards remain absent from the new legal framework and a few legal provisions would need further clarification as to the scope and level of protection they provide.

The principle of non-discrimination has not been incorporated in the investment framework and foreign investors are subject to numerous specific restrictions, notably for accessing land. Myanmar is also endowed with a very basic regime for protecting intellectual property rights, which is expected to be broadly redesigned soon to bring the country in line with international practices. Likewise, the expropriation regime is not aligned with internationally recognised practices and has a narrow scope that does not appear to protect investors against indirect expropriations.

Myanmar provides much stronger protection against expropriation through the few bilateral investment treaties (BITs) it has concluded. These BITs reflect the traditional repertoire of investment treaties. As Myanmar expands its treaty network, it will need to balance the preservation of its policy space against the need to provide strong legal protection of investment, as well as ensuring full consistency between the treaty provisions and domestic regulations.

Lastly, Myanmar needs significantly to improve the mechanisms for enforcing contract and property rights and for settling disputes. This implies strengthening the independence of the judiciary and developing alternative dispute resolution means, particularly commercial and investment arbitration. In this regard, the recent ratification of the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards is a positive first step towards more secure access to international arbitration.

Legislative and regulatory framework for investment

Various laws cover enterprises and investment in Myanmar, many of them dating back to colonial times. Treatment of investors differs according to ownership (foreign, domestic and state-owned) and location (e.g. special economic zones). The main laws applicable to foreign investors are the *Foreign Investment Law* and the *Special Economic Zone Law*, although joint ventures with state-owned economic enterprises (SEEs) are covered by the *Special Company Act* (1950). A foreign investor in some sectors also has the option of investing under the *Myanmar Companies Act* (1914) although this option suffers from several drawbacks compared to the FIL: no long-term leasing of land allowed; no tax benefits; no work permits for key personnel and no protection against future changes in the law. For these reasons, very few investors are likely to enter through this channel, with the possible exception of smaller enterprises from neighbouring countries since the *Companies Act* has lower minimum capital requirements and relatively simplified procedures. The various laws covering investment are described in Box 3.1.

The new *Foreign Investment Law* (FIL) No. 21/2012, which repealed the 1988 *Foreign Investment Law* was approved by President U Thein Sein in November 2012 after months of debate between the government and parliament. The legislative reform process was initiated to revise the investment regime put in place following the change of government in 1988, when the country first opened its doors to FDI. The new legislation states that one of its purposes is to "enable commencement of business enterprises and investments meeting international standards". It aims to improve the current investment legislative framework, thereby enhancing Myanmar's attractiveness as an investment destination.

Box 3.1. Current laws applying to investment activities in Myanmar

The *Myanmar Companies Act* 1914, which remains in force but is acknowledged by the authorities to be outdated, constitutes the *jus commune* applicable to the incorporation of companies that do not benefit from the Investment Permit under the FIL. Likewise, the provisions of the *State-Owned Economic Enterprises Law* of 1989 are still applicable. Other laws relevant to the conduct of business activities in Myanmar include the *Contract Act* 1872, the *Specific Relief Act* 1877, the *Transfer of Property Act* 1882, the *Trusts Act* 1920, the *Arbitration Act* 1944, and the *Civil and Criminal Procedure Codes*, all of which date back to the colonial period.

Officials have expressed their intention to reform some of these laws, particularly the *Companies Law*, the *SOE Law* and the *Arbitration Act*. A new *Companies Law* will be needed to allow for a full and efficient modernisation of the company registration process. The government also enacted both the *Special Economic Zone Law* and the *Dawei Special Economic Zone Law* in 2011. The *Myanmar Special Economic Zone Law* has since been redrafted with the assistance of Japan and was submitted to the parliament for approval. In order to ensure the overall consistency of the broader legislative framework, the FIL prevails over any other law. The *Myanmar Citizens Investment Law* was enacted in 1994 to allow local Myanmar investors to benefit from similar incentives to those offered to foreign investors under the 1988 FIL.

Myanmar remains, for the moment, the only ASEAN member state to have separate laws governing foreign and domestic investment. Viet Nam, for example, unified its investment laws in 2005 and Indonesia in 2007. The government of Myanmar has reportedly declared its intention to unify the *Foreign Investment Law* and the *Myanmar Citizens Investment Law* before the advent of the ASEAN Economic Community by 2015 (WEF 2013).

- Contract Act (1872).
- Specific Relief Act (1877).
- Transfer of Property Act (1882).
- Myanmar Companies Act (1914).
- Sale of Goods Act (1930).
- Special Company Act (1950).
- State-owned Economic Enterprises Law (1989).
- Myanmar Citizens Investment Law (1994).
- Special Economic Zones Law (2011); Dawei Economic Zone Law (2011).
- Foreign Investment Law (2012).

The 2012 FIL offers some improvements over the earlier 1988 *Foreign Investment Law* but still leaves many questions unanswered, notably with respect to investor protection and the procedures for admitting foreign investors. Its main value is symbolic: to demonstrate that Myanmar is once again open for business. The new FIL is an important first step and, now that it has been enacted, the government has turned to many other pressing issues enumerated in the *Framework for Economic and Social Reform*. This remainder of this chapter will discuss areas where the FIL could be amended over time to reflect good practices elsewhere. While many of the recommendations will only need to be addressed in the medium term, there is nevertheless a risk that the lack of clarity in the FIL and the uncertainty surrounding protection of investment, if not sorted out quickly, will fail to ignite sufficient investor interest in projects in Myanmar and could create problems in the future in terms of disputes between investors and the government.

An incomplete FIL does not preclude amendments in the near future. In Viet Nam, for example, the *Foreign Investment Law* in 1987 was amended four times in the first 15 years, including twice in the first five years (Box 3.2). The revisions were intended to strengthen investor rights, to make the environment more investor friendly and to narrow the policy gap between foreign and domestic investors. It was eventually replaced in 2005 by an *Investment Law* covering both domestic and foreign investment (Vo and Nguyen, 2013).

The *Foreign Investment Law* was followed by the subsequent issuance of by-laws referred to as Notifications 1/2013 (FIL Rules) and 11/2013 (also referred to as MIC Notification). The notifications were issued in January 2013, within the timeframe of 90 days required in the FIL, to provide further clarity to the content, scope and implementation of the FIL, which had been heavily criticised for being imprecise and for lacking investment protection standards. In spite of the efforts made towards greater openness and transparency, many international observers have raised concerns over the drafting of the new legislative framework and have complained that the FIL and its subsequent regulations were passed without adequate consultation with relevant stakeholders. The authorities themselves acknowledge that the law-making process has been complicated by resistance from members of parliament as well as from the six ministries that were consulted at the drafting stage of the process.[1] Such disagreements in the parliament mainly reflect the concerns that were raised in the local business community over a possible crowding out of local investors by increased inflows of FDI. The government thus made it a priority to minimise any adverse impact that the opening to FDI could have on domestic investors and has given regional authorities the responsibility to assess the social impact of investment projects.

Box 3.2. **Viet Nam: gradual improvements in the investment framework since the 1980s**

Viet Nam's experience in building its legal framework over almost three decades to attract FDI clearly reflects how reforming the investment environment is a continuous and evolving process and how substantial changes in investment laws have further encouraged foreign investment. As part of the Doi Moi (Renovation) reform process initiated in 1986, Viet Nam began an open-door policy and enacted the *Law on Foreign Investment*. As FDI became increasingly recognised as critical for Viet Nam's economic development, the government repeatedly revised the law, in 1990, 1992, 1996, 2000 and 2003, and finally drafted, in 2005, a new *Investment Law*, which substantially improved the investment environment.

The investment framework has gradually improved over the years: registration procedures, tax policies, rights to transfer abroad capital and foreign exchange and access to land have been progressively relaxed, while the investment environment has been gradually brought in line with Viet Nam's international commitments (ASEAN in 1995, WTO in 2007, numerous bilateral agreements). The authorities have made major adjustments towards further transparency and stronger protection for foreign investors. The most notable change brought about by the 2005 *Investment Law* was to regulate both domestic and foreign investment under the same legal umbrella and to state clearly, for the first time, a principle of non-discrimination, ensuring that all investors, both foreign and domestic, are treated equally. Other investment guarantees were also considerably improved: the law introduced a legal stabilisation clause that protects investors against adverse effects of regulatory changes; it recognises intellectual property rights, and ensures consistent prices, fees and taxes for all investors.

These gradual and iterative reforms of the legal framework brought new waves of FDI into the country. Chien and Zhang (2012) show that the 2005 *Investment Law* substantially increased the amount of registered FDI capital. Viet Nam's experience also illustrates that major changes in the policy framework over time, such as introducing non-discrimination principles, offering legal stability, and improving investment guarantee measures, contributed to raising not only the amount but also the quality of FDI inflows into Viet Nam.

Source: Chien N.D., Zhang K. (2012), "FDI of Viet Nam; two-way linkages between FDI and GDP, competition among provinces and effects of laws", in *iBusiness*, 2012, No. 4: 157-163 *http://dx.doi.org/10.4236/ib.2012.42018*, Published Online June 2012 (*www.SciRP.org/journal/ib*).

A comparison of the 1988 and 2012 Foreign Investment Laws

While there is substantial scope to improve the scope and effectiveness of the *Foreign Investment Law* over time, the 2012 FIL nevertheless represents an improvement both over the 1988 FIL and over earlier versions of the draft law as it passed through parliament. Compared to the 1988 *Foreign Investment Law*, the FIL 2012 offers the following improvements:

- Negative list of restricted sectors rather than positive list/case-by-case approach.
- A broad definition of investment.
- Lease periods for land (maximum 70 years instead of 40 years).
- No longer a general minimum capital requirement.
- Free transfer of shares.
- Remittances no longer at official exchange rate.
- No longer minimum foreign share in joint ventures.

The 2012 FIL also represents an improvement over earlier draft versions which were discussed in parliament. Earlier proposals included a maximum foreign equity in joint ventures in restricted sectors of 49% (instead of the current share of 80%), a minimum capital requirement of USD 5 million (compared to the actual levels of USD 500 000 for an industrial investor and USD 300 000 in services),[2] and a buy-out clause which would have allowed local partners to buy out the foreign investor which was dropped. At the same time, the new FIL risks further deteriorating the fiscal position by extending the tax holiday to five years instead of three (see Chapter 5).

Article 18 (b) of the 2012 FIL marks a move towards further liberalisation, as it allows investors to transfer their shares and business interests to both foreign companies and Myanmar citizens. Transfer of rights was previously permitted towards Myanmar nationals only. This step towards more openness is constrained nevertheless by the requirement to submit any transfer of shares to the prior approval of the MIC [Article 17 (i) and (j)]. The law also sets out a number of duties imposed upon foreign investors, such as a local content requirement for employment. While quotas apply to skilled workers, unskilled positions must be allocated to Myanmar nationals only.

The role of the Myanmar Investment Commission in investment approvals

The FIL and its notifications also set out the various responsibilities of the Myanmar Investment Commission (MIC), which is in charge of assessing business proposals, setting requirements and conditions for investment and interpreting and overseeing the implementation of the FIL and its Rules. Under the FIL, the MIC plays a leading role in the regulation of foreign investment. It approves all investment projects receiving incentives except those in special economic zones which are handled by the Central Working Body set up under the existing *Special Economic Zone Law* (2011) and joint ventures between foreign investors and state-owned economic enterprises which are under the responsibility of line ministries.

For investments in restricted sectors, the MIC must obtain the opinion of the relevant local population or civil society, regional or state government and Nay Pyi Taw Council, depending on the location of the investment (Article 14). Many activities also require the approval of the relevant ministry before the project is submitted to the MIC, resulting in multiple approvals for investments in key parts of the economy. The Ministry of Agriculture and Irrigation, for example, must first approve all projects involving production and distribution of seeds, fertiliser, pesticides and agricultural machinery, as well as for crop plantation and production and farm mechanisation. Line ministry approval is also necessary for investment in large-scale mining and most forms of transport.

Concerns have also been raised among the business community about the amount of discretion accorded to the MIC under the new legislation to set minimum capital requirements for an individual project or the maximum foreign equity share, as well as to decide when a foreign firm may invest in restricted or prohibited sectors. The authorities are aware that the number of approval requirements and enormous capacity constraints hinder the approval process of investment projects. Criteria for approval are complex and some might be beyond the likely capacity of the MIC to evaluate, *inter alia,* the financial credibility, economic viability and appropriateness of the technology of proposed projects. The Department of Investment and Company Administration (DICA) which handles approvals has faced difficulties in the past year in dealing with the increasing number of investment project proposals. This, together with the insufficient clarity of the legal criteria for restricted businesses, is a major impediment to a smooth approval process. Some have also raised concerns about the FIL giving an excessive mandate to the MIC as the regulatory authority on foreign investment, while others welcome the on-going efforts to centralise the decision making within the MIC rather than further scatter the approval procedures among the MIC, various ministries and local authorities. All investment proposals must be approved by the MIC within an average timeframe of one to two months.

The experience worldwide with screening and the lessons learned are described in Box 3.3. At a time when the rule of law is not firmly established, where the writ of the government may fully not extend to all areas of Myanmar, where government capacity is limited and when there is a perception that corruption is rife, a case can be made both for maintaining a screening mechanism and for centralising the responsibility for such approvals within the MIC. Over time, the government will need to review the extent of its screening given the experience of other countries which suggests that screening might discourage foreign investors.

Box 3.3. **Screening of foreign investment**

Many governments require approval for foreign investors wishing to locate in their country. In OECD countries, screening mechanisms are gradually being phased out. While 75% of OECD countries screened foreign investment 30 years ago, only six (15%) still do today. Screening is still prevalent in emerging economies but some major hosts to foreign direct investment such as Indonesia and Malaysia have largely done away with it. In many cases, screening is becoming more focused, covering only potential threats to national security or investments in strategic sectors such as natural resources.

The approval decision is usually based on a combination of national security, competition, and a net benefit or economic needs test. In many cases, approvals are linked to the provision of incentives. Sometimes the burden of proof is on the investor that the project offers net economic benefits (Canada) and sometimes on the host government to demonstrate that the project would not be in the national interest (Australia). While some countries screen all incoming investment, it is common among OECD countries to screen only large investments above a certain threshold or involving a majority stake in a local company. Screening is usually centralised with the government but a few countries do so at a sub-national level.

It is sometimes argued that having a screening mechanism in place allows governments to secure domestic support for a more open investment regime by reassuring stakeholders that their interests are being protected. While this is certainly a possibility, there is some evidence to suggest that many of those countries with screening also tend to have more restrictions in other areas as well. Screening can also help to ensure that incentives are not wasted and may be necessary for major projects with potentially significant social or environmental impacts, in which case the screening should cover both domestic and foreign-controlled projects.

At the same time, it should be recognised that screening can impose a significant administrative cost on the host government. It also imposes costs on investors in terms of time, legal fees, delays and uncertainty. For this reason, there tends to be a negative correlation between the presence of screening and inward direct investment (based on a sample of 60 countries). An internal review of the New Zealand screening mechanism by the NZ Treasury in 2009 found that "In some cases, experience with the screening regime is completely deterring investors from investing in New Zealand, and some are even actively discouraging other investors considering investing in New Zealand".

Box 3.3. **Screening of foreign investment** *(cont.)*

For those countries wishing to retain screening of foreign investors, the following checklist of good practices applies:

- Are the criteria for approval clear?
- How much discretion does the authority have?
- Do decisions have to be rendered within a specified time?
- Are they within the competence of the agency to assess?
- Are the reasons for rejecting a project published?
- Can the investor appeal the decision?
- Is there a system for monitoring commitments by the investor once established?
- Are screening policies subject to a periodic review of their effectiveness and necessity?

Sectoral restrictions under the FIL implementing notifications

Schedules of the FIL Rules lay out specific sectors and activities that remain prohibited or otherwise restricted to foreign investors. The scope of the three restricted and prohibited categories are detailed in Notifications 1/2013 and 11/2013. Table 3.1 lists sectors prohibited to foreign investors in both these Notifications, as well as those sectors which remain a monopoly of the state under the *State-Owned Economic Enterprises Law* (1989). There is some overlap between the two notifications, but also some discrepancies due in part to the fact that some of the prohibited sectors in 1/2013 are also prohibited for domestic private investors, either because the activity is reserved to the state or because of the environmental damage it may cause.

As for restricted businesses carried out through a joint venture with a Myanmar company, they can be owned up to 80% by the foreign entity. Restricted activities according to Notification 11/2013 are listed in Table 3.2. Under the FIL, foreign investment that does not fall within the list of restricted or prohibited business activities can be made through any of the following: a 100% foreign-owned entity; a joint venture with a Myanmar citizen or entity, at an ownership ratio to be decided between the parties; or through any system contained in a contract approved by the parties.

The MIC notification also sets out a number of investment activities, grouped by sector and subject to specific conditions imposed by the relevant ministries. (including Agriculture and Irrigation, Livestock and Fisheries, Environmental Conservation and Forestry, Mines, Industry, Electric Power, Energy, Telecommunications and Information Technology, Health, Construction, Hotels and Tourism and Information). This last category

Table 3.1. **Sectors prohibited to foreign investors in Myanmar**

	Notification 1/2013	Notification 11/2013	State-Owned Economic Enterprises Law 1989
	Prohibited sectors	*Sectors reserved to Myanmar citizens*	*Sectors reserved to the state*
National security	Arms and ammunition for national defence		Products related to security and defence
Environment	Factories constructed with imported industrial waste Chemicals and other prohibited by international conventions or other hazardous products or using materials such as asbestos Manufacturing which produces smoke, odor, dust, sound, chemicals, minerals and rays which cause pollution and are harmful to public health Businesses which harm the mangrove forests, farm land		
Forestry	Maintenance and management of natural forests	Maintenance and management of natural forests	Extraction and sale of teak Cultivation and conservation of forest plantation
Mining	Exploration/production of jade/gems		Exploration, extraction and export of pearls, jade and precious stones
	Small and medium-scale extraction of minerals Gold and other mineral resources within the campus of inland water route	Small and medium-scale extraction of minerals	
		Extraction of crude oil up to a depth of 1 000 feet Wholesale of semi-finished products and iron ores	Exploration, extraction and sale of oil and natural gas Exploration, extraction and export of metals
Agriculture	Agricultural and manufacturing business not in line with Fertiliser, Seed or other Agricultural Laws	Agricultural business or livestock breeding with small amount of investment capital Traditional agricultural plantation not combined with the milling of crops and traditional livestock breeding not using advanced machinery	
Electricity	Administration of electricity system, trading of electrical power and inspection of utilities	Generation of electric power below 10 MW	Electricity generation except if permitted by law
Transport	Aviation and marine navigation services		Air and rail transport services
Media	Joint establishment of press and media		Broadcasting and television
	Printing and publishing of periodicals in ethnic group languages, including Myanmar language	Printing and publishing of periodicals in ethnic group languages, including Myanmar language	
Fishing		Fishing (deep sea, close distance and freshwater)	Fisheries used for government research
Health		Traditional medicines, ambulance services, traditional hospitals, health centres for elderly	
Other		Herbal plants, traditional food, religious products	
Communications			Postal and telecommunications service
Finance			Banking and insurance services

Source: Foreign Investment Law (2012) and implementing regulations; State-Owned Economic Enterprises Law (1989).

Table 3.2. **Further restrictions under Notification 1/2013**

Sectors requiring a joint venture (maximum 80% foreign equity)	
	Production and distribution of:
Agriculture	Seeds (hybrid, high yield and national originated)
Food and drink	Cereal-related food products Candies, chocolate, etc. Processing, canning of food products except milk products Alcoholic and non-alcoholic beverages, purified drinking water, ice
Chemicals/drugs	Chemical products from local natural resources Flammable chemicals Industrial chemicals in solid, liquid and gas forms Raw materials for pharmaceuticals Vaccines using high technology
Other manufacturing	Ceramic/enamel products, plastic wares, rubber and plastic Leather products Paper and paper products Shipbuilding and repairing Production of locomotives
Mining	Exploration for industrial raw materials and minerals Mass production of minerals
Construction	Infrastructure (bridges, highways, roads, underground trains) Golf courses, amusement parks Construction, selling and leasing of apartments, condos, office/business buildings Development of new town
Transport	Local airline service industry Shipping of passengers and freight
Hotels/tourism	Tourism industry (although 3-star hotels and above are allowed to have 100% foreign ownership)
Other services	Private specialist hospitals
Other foreign equity limitations	
Wood products	Sawn timber production (25%), value-added semi-finished goods production (35%), capital-intensive high-tech production (49%)
Other manufacturing	Chemical paints (70%)
Distribution	Retail (60% and only for large size retailing). Warehousing (60%)
Media	Journals and magazines in foreign languages (49%) except for foreign publishers or media companies (100%)
Joint ventures permitted only with the state	
Mining	Production of rare earth, strategic and radioactive minerals Coal mining Finished products of gems and jewellery
Chemicals	Explosives Flammable liquids and solid chemicals
Drugs	Vaccines
Electricity	Hydro- or coal-generated electric power generation (BOT)
Transport	Agency service for trans-ocean liners Shipyard
	Inland water transport in areas owned by Department of Inland Water Transport

Source: Myanmar Investment Commission Notification Number 1/2013.

appears to add to the list of restricted businesses, although it is still not clear what conditions are attached to these investments.

Even with the clarifications provided by the FIL Rules, however, the scope of activities that are prohibited or restricted for foreign investors remains vague and uncertain. Whether a specific business activity is permitted or limited under the FIL provisions will be subject to the discretion of the MIC, after consulting with relevant ministries before rendering its decision. The FIL states that FDI may be allowed even in prohibited sectors if the MIC so allows.

The extent to which the revision of the investment framework will make investing more attractive depends heavily on the effective application and interpretation of the FIL provisions by relevant public bodies. Existing regulations, even with further clarification brought by the MIC notifications, are sometimes unclear as to what investment activities fall into the category of restricted activities, and therefore leave room for public bodies to act in an arbitrary manner. Although the legal amending process is a welcome and widely applauded endeavour, it remains to be seen how the new framework will work in practice.

Lastly, environmental and social impact assessments are required prior to the assessment of some investment activities by the MIC, although the content and process of such assessments remain unclear. With regards to the protection of environment and other public interests, it is good practice to incorporate into the legal domestic framework for investment a provision obliging investors to preserve the environment and other public policy objectives. For example, Article 70 of Lao P.D.R. *Investment Promotion Law* states that "the investors have the obligation to protect and manage the environment, ensuring that their business activities do not cause severe adverse impacts on the people, national security, public order or health or workers. In the event of any environmental problems, the investors have to undertake timely and necessary measures to solve the problems in accordance with the laws."

Myanmar's ranking under the OECD *FDI Regulatory Restrictiveness Index*

A country's investment climate cannot be captured in a single indicator, whether on the costs of doing business or a measure of statutory restrictions on FDI. Many different policies and practices impinge on investment decisions, and the way – and whether – policies are implemented is arguably as important as the policies themselves. Quantitative indicators have nevertheless proven highly effective in drawing attention to the burdens of business regulation, identifying priorities for reform and communicating success and progress.

The OECD *FDI Regulatory Restrictiveness Index* (*FDI Index*) seeks to gauge the restrictiveness of a country's FDI rules (Box 3.4). The *FDI Index* is currently available for almost 60 countries. The *FDI Index* does not provide a full measure of a country's investment climate as it does not score the actual implementation of formal restrictions and does not take into account other aspects of the investment regulatory framework, such as the extent of state ownership, and other institutional and informal restrictions. Nonetheless, FDI rules are a critical determinant of a country's attractiveness to foreign investors and the *FDI Index*, used in combination with other indicators measuring various aspects of the FDI climate, contributes to assessing countries' international investment policies and to explaining variations among countries in attracting FDI.

With a score of 0.350, Myanmar is the second most restrictive economy for foreign investment in terms of statutory restrictions (Figure 3.1). The impact of lifting FDI restrictions can be quite significant in Myanmar. Based on

Box 3.4. **Calculating the OECD FDI Regulatory Restrictiveness Index**

The OECD *FDI Regulatory Restrictiveness Index* covers 22 sectors, including agriculture, mining, electricity, manufacturing and main services (transport, construction, distribution, communications, real estate, financial and professional services).

For each sector, the scoring is based on the following elements:

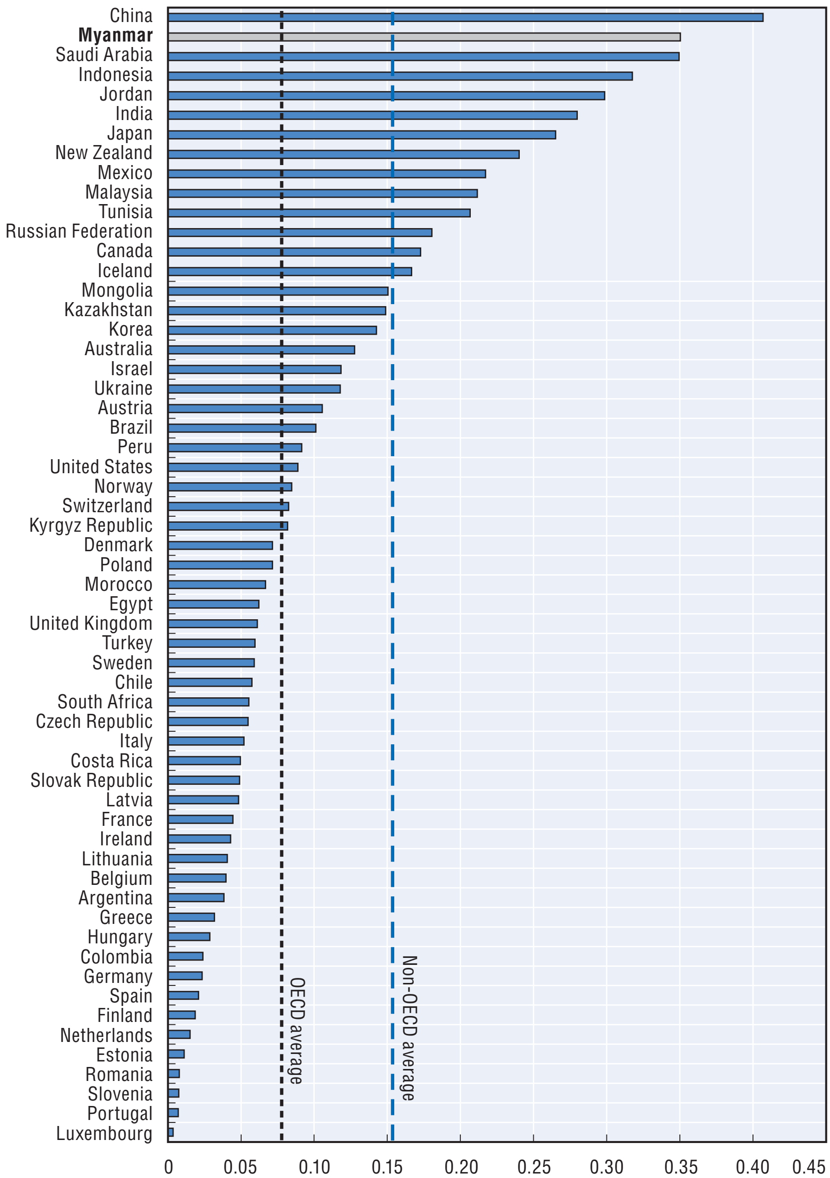
1. the level of foreign equity ownership permitted,
2. the screening and approval procedures applied to inward foreign direct investment;
3. restrictions on key foreign personnel; and
4. other restrictions such as on land ownership, corporate organisation (e.g. branching).

Restrictions are evaluated on a 0 (open) to 1 (closed) scale. The overall restrictiveness index is a weighted average of individual sectoral scores.

The measures taken into account by the index are limited to statutory regulatory restrictions on FDI, typically listed in countries' lists of reservations under FTAs or, for OECD countries, under the list of exceptions to national treatment. The *FDI Index* does not assess actual enforcement. The discriminatory nature of measures, i.e. when they apply to foreign investors only, is the central criterion for scoring a measure. State ownership and state monopolies, to the extent they are not discriminatory towards foreigners, are not scored.

Source: For the latest scores, see *www.oecd.org/investment/index*.

Figure 3.1. **OECD FDI Regulatory Restrictiveness Index by country, 2012**



Source: *www.oecd.org/investment/fdiindex.htm.*

a panel data regression model, Myanmar's stock of FDI would be up to 34% higher if it reduced its restrictions to the average level for non-OECD countries.[3]

The high score for Myanmar under the *Index* is partly the result of the general screening of foreign investment but also the large number of sectors where foreign investment is either prohibited or restricted, whether through limits on the foreign equity share or through joint venture requirements (Tables 3.1 and 3.2). Restrictions in some sectors, such as airline services and shipping, are common in many countries, but Myanmar also has a surprising number of restrictions in the manufacturing sector. While some countries might have restrictions on foreign ownership in the production and sale of alcohol and tobacco, very few governments still impose restrictions in the manufacturing sector, including in the food sector.

Many of these restrictions may have been imposed to appease domestic interests in the short term while the government endeavours to create a propitious investment climate for foreign investors through the FIL and its implementing regulations. Over time, the government will need to review these many sectoral and product-based restrictions to assess their impact not only on the competitiveness of individual sectors but also on the overall investment climate itself. Joint venture requirements are often imposed in order to promote technology transfers, backward linkages and domestic entrepreneurship and to allow local firms to share in the economic rents.

Sometimes investors willingly form joint ventures with local firms in order to help them navigate through the red tape and to help tailor products to local tastes and provide an established distribution network. But there are also significant risks for investors in terms of protecting their intellectual property and reputation in the case of irresponsible or unethical behaviour by the partner, as well as to the brand itself if the partner does not respect quality demands. Partnerships can also involve higher transactions costs associated with principal-agent problems. Empirical evidence has found that joint venture requirements tend to result in less technology transfer and a slower diffusion of technological knowledge, a narrower range of products exported and ultimately lower levels of foreign direct investment.

For these reasons, the government must consider carefully before imposing such requirements and should establish a mechanism for ensuring the periodic review of existing restrictions. Where such requirements are maintained in place, the government should define clearly the objectives of the restrictions. It should also benchmark its restrictiveness against that of its peers, such as through the OECD *FDI Regulatory Restrictiveness Index*. Lastly, it should also limit the scope for arbitrary and unannounced additions to the list of restricted sectors without broad consultations.

Key investment protections provided in the *Foreign Investment Law*

The *Foreign Investment Law* (FIL) aims at reassuring investors that Myanmar is a secure investment destination by providing a number of standards of investment protection that were lacking in the former regime. The new investment framework still has rather few core protection standards, however, and does not appear to constitute a substantial improvement compared to the 1988 Law in terms of legal protection standards granted to investors. Most of the core investment protection standards that are usually provided in countries' investment laws are absent from the 2012 FIL. Myanmar could thus go further in its endeavour to make its investment climate more attractive by incorporating more and stronger key investor guarantees.

As discussed below, the scope of the expropriation provision is unusual and could cover a broader range of events tantamount to expropriation, including indirect expropriations. The "transfer of funds clause" could better clarify what categories of financial rights it covers. Article 29, guaranteeing that no investment activity would be suspended by the government "without any sufficient cause", should also further clarify what constitutes a "sufficient cause". As it is, the clause is vague and does not provide a firm protection against unlawful breach of investment contracts or removal of investment permits by the authorities. As for the dispute settlement provision, it is unclear on what grounds access to alternative dispute resolution, in particular international arbitration, is an available option for foreign investors. Lastly, the law contains no general principle of non-discrimination for investors.

To mark an open and secure legal environment for investment, it is common practice for investment laws to contain a guarantee of free repatriation and transfer of profit and capital after payment of due taxes. They also often provide, as further developed below, a protection against unlawful confiscation of investors' properties (arbitrary nationalisation or any other governmental measure tantamount to an expropriation) and provide a guarantee of prompt, effective and adequate compensation in the event of expropriation. Lastly, investment legislation commonly gives investors the possibility to go before an international arbitration tribunal to resolve investment disputes with public authorities.

The FIL (Chapter 13) provides three types of legal guarantees for investors. First, it states that "the Union Government guarantees that a business formed under the law shall not be nationalised within the term of the contract or the extended term if such term is extended". This clause protecting against nationalisation does not differ from what was provided under the former regime. It remains a basic and rather unusual protection against expropriation, limited to events of nationalisation only and not extending to indirect expropriation and other measures tantamount to expropriation. Investors should be equally protected against events that amount to a taking of investors' property without formally being a nationalisation. Moreover, it does not grant investors the right to compensation in case of a lawful expropriation and does not assert the state's right to regulate in the public interest. Chapter 13 of the FIL is aligned with the constitutional protection against nationalisation, which refers only to nationalisation events. In order to offer a safe and attractive investment destination, Myanmar should improve the level of protection against expropriation and bring it in line with international good practice.

Chapter 13 of the FIL provides foreign investors with a right to repatriate their funds in the following terms: "On the expiry of the term of the contract, the Union Government guarantees investors who invested in foreign capital the repatriation of their rights in the foreign currency used for the investment." Like the expropriation clause, the provision of the new law does not change from the 1988 Law. Myanmar could seize the opportunity of amending its laws to further clarify the scope of the property rights that can be repatriated freely. The right to a free repatriation of capital seems to be limited in practice, as transfers of foreign currency are subject to the permission of the Foreign Exchange Management Department.[4]

Lastly, and most importantly, Chapter 13 on guarantees innovates with a new clause protecting investors against future changes that would affect their right to conduct their activities, in the following terms: "The Union Government guarantees that it shall not cease an investment enterprise operating under a Permit of the Commission before the expiry of the permitted term without any sufficient reason." This could potentially be an interesting step towards enhanced legal predictability and rule of law. As currently drafted, it is unclear what constitutes a sufficient reason to unilaterally terminate investment activities and whether this clause protects against regulatory changes that would have an impact on the investment. This provision seems to refer to indirect expropriations and non-compensable regulatory measures (when the termination is decided for "sufficient reasons", which can be understood as public interest purposes underlying the decision). For predictability and transparency purposes, and to avoid arbitrary decisions, the government should further delineate the notion of "sufficient reasons" and clarify whether the guarantee protects against arbitrary removals of permits or has a broader material scope. When clarified, this new provision could give investors a layer of protection that would add to the stabilisation clauses that are commonly included in investment agreements, in particular in the extractive industry sector, subject to the approval of the MIC.

Another significant innovation in the new legislation is the inclusion in chapter 19 of a dispute settlement provision that recognises the possibility to settle "disputes arising in respect of the investment business". It provides that, when disputes cannot be settled amicably between the parties concerned, they should be settled in accordance with the dispute settlement mechanism, if any, provided in the applicable agreement or, if the agreement contains no dispute settlement clause, in accordance with Myanmar's laws. The exact meaning in the law of the term "agreement" is not clear, although it might merely be a translation issue. It should be clarified whether the term "agreement" refers to contracts concluded between state authorities and individual foreign investors, or whether it also refers to bilateral investment treaties containing an investor-state dispute settlement provision. The clause is therefore vague on what options are *de facto* made available to investors seeking to resolve their disputes.

Consent given by the state to go to arbitration is conditioned on the pre-existence of a bilateral agreement stipulating that an alternative dispute settlement mechanism is available to foreign investors. The incorporation of the dispute settlement clause into the FIL is not sufficient to give investors access to arbitration to challenge violations of the provisions of the law itself. For example, in the absence of a dispute settlement mechanism provision in the relevant agreement, be it a BIT or an investment contract, investors cannot seek redress for violations of the guarantees provided in Chapter 13 of the FIL elsewhere than before Myanmar courts. This provision has no impact on the availability of dispute settlement forums for investors that already benefit from bilateral investment treaty provisions.

The government would send a strong signal to foreign investors by incorporating more core investment protection standards into the investment law to strengthen the existing regime. The affirmation in a law of the non-discrimination principle is a common practice that signals a positive and open investment policy, without prejudice to the possibility for the state to preserve its sovereign right to implement any developmental policies. The guarantee of non-discrimination, which is often provided for in the Constitution, can also be embodied within a Fair and Equitable Treatment (FET) clause. The FET provision protects foreign investors against discrimination and provides due process of law when discrimination is claimed. This standard, which in practice is most important to foreign investors, is sometimes contained in investment laws of host countries to protect legitimate expectations of foreign investors and incorporates principles of transparency, good faith and guarantees against denials of justice. It encompasses the principles of access to justice, the right to bring a claim, the right to fair treatment during the proceedings and the right to enforce the judicial decision.

At the same time, however, although the FET standard is encountered in some countries' investment laws, it presents certain risks, as there is no clear definition in customary international law and in arbitral jurisprudence of what the FET standard encompasses. It remains unclear whether the concept of FET goes beyond what is required by the minimum standard of treatment under customary international law. A government wishing to include a reference to this principle in its investment legislation should define clearly its scope and content so as to avoid giving excessive leeway to arbitral interpretations of its legal provisions and to protect against potentially costly arbitral awards.

The National Treatment standard, which ensures a degree of equality between foreign and domestic investors in like circumstances, is also often, although not automatically, included in investment laws. When contained in an investment law, it is always subject to a number of exceptions, for example, for reasons of national security, developmental purposes, public health or protection of the environment. The Most Favoured Nation principle is another variation of the principle of non-discrimination, which prevents host countries from discriminating among foreign investors. It gives foreign investors the assurance that they will not be discriminated against based on their nationality. The MFN provision does not apply to specific privileges given to an individual investor under an investment contract, however. Moreover, the MFN standard, when provided, is always limited by a number of exceptions. It is common practice to include NT and MFN standards of protection in investment laws.

Beyond providing these substantive investors' rights, the investment law should, to the greatest possible extent, be easily understandable with clear and unambiguous legal provisions. It should provide for a predictable and stable legal environment and be consistently and effectively implemented by the relevant bodies. In this regard, the authorities should continue the move towards greater transparency and predictability of rules and procedures that has been initiated with the publication of Notifications 1/2013 and 11/2013.

Myanmar should also endeavour progressively to bring its domestic legislative and regulatory framework in line with the provisions of ASEAN Comprehensive Investment Agreement (ACIA), although it is noted that ACIA explicitly provides newer ASEAN member states with a special and differential treatment, permitting them to execute their ACIA commitments in accordance with their stage of development.

Scope of the new Foreign Investment Law

Despite the potential legal weaknesses and gaps identified above, the new law substantially improves Myanmar's investment regime. It clarifies the temporal and material scope of the legislation, thus achieving a sufficient level of legal certainty on what investment activities benefit from the new provisions. Article 2(k), for example, provides for an open-ended, asset-based definition of investments covered by the law that is in line with common practice. Investments covered by the law are defined as "various kinds of property supervised by the investor within the territory of Union under this Law". In line with global practice, this broad definition is then illustrated by a non-exhaustive list of assets comprising "mortgages; shares and other rights in a company; financial rights, intellectual property rights; and rights of exploration and production of natural resources". In addition, Article 20 clarifies the temporal scope of the law, which applies not only to new investment, but also to already existing investment.

The government might wish to consider whether to circumscribe more sharply the scope of the law, such as by excluding portfolio investment (i.e., short-term investment that does not imply management control by the investor), as well as trade transactions and monetary operations. Portfolio, or indirect, investment does not involve a lasting interest and active involvement in the management of an enterprise and hence usually implies more speculative and volatile investment which might be less likely to result in spillover benefits such as technology transfers or employment generation. Regardless of whether or not the government decides to include portfolio investment under the provisions of the law, it would be well advised to provide clear definitions of direct and indirect investment.

Here again, the Viet Nam 2005 *Investment Law* provides a good example when defining indirect investment and direct investment, to which specific legal provision apply, notably with regard to the admission requirements and procedures and to the incentives that are offered. While there was no definition, in Viet Nam 1987 *FDI Law*, of the direct investments that were entitled to benefit from the law, Article 3 of the 2005 *Investment Law* defines direct investment as "a form of investment whereby investors use capital for investment and take part in the management of investment activities", and indirect investment as "a form of investment through the purchase of shares, share certificates, bonds, other valuable papers or a securities investment fund or through other intermediary financial institutions whereby investors do not directly participate in the management of investment activities".

As for the definition of foreign investors, it is based not on the residence but on the nationality of investors and does not distinguish between a resident and a non-resident, meaning that Myanmar citizens residing abroad cannot be treated as foreign investors. Some countries, seeking investment from their nationals living abroad treat them as foreign investors to give them an incentive to invest their earnings in their homeland. If the government wants to encourage its non-resident nationals to invest in Myanmar, it could consider incorporating a broad notion of non-resident into its investment framework.

Principle of non-discrimination in laws relating to investment

Myanmar is also the only country in the ASEAN region that still has a separate law governing foreign investment. All other ASEAN countries have adopted holistic investment legislation regulating both domestic and foreign investment under the same general rules. By doing so, they grant foreign investors a minimum standard of non-discrimination that is still absent from Myanmar's legal framework for investment. The authorities recognise that the best approach would be to enact an *omnibus* law governing both domestic and foreign investment under the same provisions. However, in their endeavour to push the reform process forward and to grapple with myriad obstacles within the government, it was decided that the most appropriate approach would be to start gradually by revising the FIL only. The next step, according to the authorities, will then be to reform the legal framework for domestic investment to pave the way for a more holistic, non-discriminatory regime applying to both domestic and foreign investment.

The principle of protection against discrimination, as well as other fundamental rights contained in the Constitution, is granted to citizens of Myanmar only. Foreign investors remain subject to specific restrictions and are not given the same rights and business opportunities as domestic investors. The principle of national treatment has not been incorporated in Myanmar's new investment framework. The insertion of the national treatment principle, which is defined in the National Treatment Instrument of the OECD *Declaration on International Investment and Multinational Enterprises*,[5] as the commitment of a government to treat investments controlled by nationals or residents of another country no less favourably than domestic investments in like circumstances, signals that the government is committed to provide a predictable and non-discriminatory framework to prospective investors. For example, the Lao P.D.R. *Investment Promotion Law*, which governs both domestic and foreign investment, provides that "Investors have equal rights to invest and to have their benefits protected under the laws and regulations of the Lao P.D.R. and international treaties to which Lao P.D.R. is party" (Article 60).

The effect of the national treatment standard is to create a level-playing-field between foreign and domestic investors in the relevant market. No country applies unequivocally the national treatment principle; the scope of the principle, where provided, is always circumscribed by a list of exceptions that must be transparent and clearly defined. The PFI toolkit identifies three types of exceptions and restrictions to the national treatment principle: general exceptions (e.g., protection of national security); subject-specific exceptions (e.g., intellectual property, taxation provisions in bilateral tax treaties); and sector-specific exceptions (e.g., specific industries, such as financial services and transport).

To the greatest extent possible, restrictions that apply specifically to foreign investors in Myanmar should be clearly defined and delineated. Countries providing an open and transparent investment climate adopt a principle of free entry of foreign investment with a well circumscribed negative list of sectors where foreigners are prohibited from investing. The authorities should also ensure that restrictions to foreign investment that are contained in the domestic laws do not conflict with the rights given to foreign investors through bilateral investment treaties.

For example, Myanmar's investment treaties with India and the Philippines provide a national treatment clause that states that: "Each contracting party shall in its territory accord the nationals or companies of the other contracting party treatment not less favourable than that accorded to investments or return of investment of nationals [...]." In line with international treaty practice, this standard of protection is subject to an exception relating to the application of taxation agreements and to custom unions, free trade areas or regional economic organisations. The formulation of this standard provision might be inconsistent with Myanmar's domestic regulations on foreign investment. The government should ensure that its domestic laws are aligned with its international undertakings so that there is no gap between the international and domestic regulatory levels in the legal protection provided to investors.

The Myanmar-China BIT reflects a more cautious approach by providing that the national treatment clause applies without prejudice to the laws and regulations of each contracting party, i.e. national treatment contingent on the domestic legislation of the host country, giving Myanmar ample discretion to enact new legislation in favour of domestic investment. This limitation to the scope of the NT clause prevents foreign investors from invoking their right to non-discriminatory treatment before an arbitral tribunal to contest a regulatory restriction introduced by the government. As a general principle, it is good practice to ensure that treaty provisions are drafted in a way that remains coherent with domestic policy choices.

Steps taken to improve processes of land ownership registration

As a general rule, land ownership in Myanmar is prohibited and land leasing is subject to a number of restrictions which varies depending on the type of land. According to the *Transfer of Immoveable Property Restriction Act* 1987 which governs transfers of real estate property from and to foreign entities, foreign investors are prohibited from purchasing land. Specifically, the Act prohibits the transfer of immovable property by way of sale, purchase, gift, acceptance of a gift, mortgage, acceptance of a transfer by any other means to or from a foreign national or entity or a company owned by a foreign national or entity. Companies benefiting from contracts with the state may be exempt from the provisions of the Act, depending on criteria that remain unclear. Despite these restrictions, the new FIL and its subsequent rules have substantially improved the existing land regime by introducing the right to lease land from both the government and private partners and to take security on land and real estate properties.

The new law relaxes the rules on land lease by extending the initial period for foreign investors from a previous period of 30 years to 50 years, depending on the nature of the business and the volume of the investment. The lease period can then be extended twice, for periods up to ten years, instead of five years previously. The maximum lease period is thus now extended to 70 years. As the FIL prevails over any other existing law, the new legal provisions therefore have tacitly repealed Notification No. 39/2011 on the *Right to Use Land relating to the Republic of the Union of Myanmar Foreign Investment Law*, which provided that the initial leasing period is 30 years, twice extensible for another 15 years. An additional exception applies to enterprises investing in less developed regions, where they may, with the approval of the government, further extend the lease period. As for agricultural land, it is governed by the *Farmland Law* and the *Vacant, Fallow and Virgin Land Management Law* 2012, which allows a different lease period for investors (for further details on land tenure, see Chapter 9).

Land leasing, from either a public or private owner, remains subject to prior approval of the MIC. When foreign investors lease land directly from the government, it is most often done through a Build-Operate-Transfer agreement, which also needs to be submitted to the MIC before being concluded. Most frequently, foreign investors use land through joint ventures with Myanmar nationals who have already leased land from the state. Under the new rules, the MIC can also issue permits for sub-leases of land, provided that the land is used for the same investment project as initially planned.

Notification 11/2013 introduced another welcome improvement by explicitly permitting foreign investors to take security on land and real estate properties. Security may be established with prior approval of the MIC, which issues permits after assessing the reasons for the security and any possible risks to national interests or to the interests of Myanmar citizens. Security must be registered with the Deed Registration Office within three weeks of the transaction. Prior to the enactment of the Notification, the *Transfer of Immovable Property Restriction Act* 1987 prohibited foreign lenders from taking a security interest over land located in Myanmar by way of mortgage. The mortgage of a right of occupancy of a building on leased land to foreign nationals or entities, except if the government had given its prior approval, was also prohibited by virtue of a 1990 Directive. The changes recently introduced are expected to open up opportunities for foreign investors, especially in infrastructure sectors (see Chapter 7).

The land registration system is generally considered to be inefficient; the cadastre is outdated and thus does not provide a reliable source of data. Transfers of titles are often not published, which is partly due to the lack of awareness, among the public, on the submission process to obtain land use certificates. More broadly speaking, there is no governmental land use policy or strategy and the various ministries (e.g. Ministry of Agriculture and Ministry of Forestry) in charge of administering land related issues would need to be better co-ordinated to improve the land registration system.

Protection of intellectual property rights

The regime for protecting intellectual property (IP) rights is very basic in Myanmar and is still far behind international standards of protection. Myanmar has made several international commitments related to IP rights, which have not yet fully been translated into substantial improvements of its legal framework for IP protection. It has not yet ratified the Paris Convention and the Berne Convention. As a member of the World Intellectual Property Organisation (WIPO), Myanmar has been party to the WIPO Convention since 2001 but is not yet a member of the WIPO-administered treaties, which gather together the most important international commitments on intellectual property rights. Myanmar is a member of the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and of a number of IP-related treaties, particularly environment law treaties. Myanmar was required to bring its legislation in line with the TRIPS provisions by the end of 2013. At a regional level, the country is bound by the ASEAN Framework Agreement on Intellectual Property Cooperation and is a member of several regional economic integration treaties that affect the regime for IPs, such as the ASEAN Trade in Goods Agreement.

At a domestic level, the legislative framework for protecting intellectual property rights appears to be weak and extremely outdated and its enforcement is widely regarded as deficient. Pending the enactment of a set of modern IP laws, which has been repeatedly announced since 2006, most of the IP regime dates back to the pre-independence era. It is mainly composed of the *Myanmar Copyrights Act* 1911, which was based on the *British Copyright Act* in force at that time, the *Merchandise Marks Act* 1889, which contains provisions on remedies against trademark infringement, and the *Patents and Designs Act* 1945, the latter being dormant. Myanmar has also enacted, over the past two decades, a few IP-related laws, such as the *National Drug Law* of 1992, the *Traditional Drug Law* of 1994, the *Science and Technology Development Law* 1994, the *Computer Science Development Law* 1996, the *Motion Picture Law* 1996, *the Television and Video Law* 1996*, the Protection and Preservation of Cultural Heritage*

Regions Law 1998 and the *Electronic Transaction Law* 2004. This framework is in need of modernisation and is unsuited to adequately address the protection of IP rights. Article 372 of the Constitution also grants citizens a right to "private invention and patent" in the conduct of their business, subject to the provisions of relevant laws.

The *Copyrights Act* contains basic provisions on the definition of copyrights and the infringement of copyright protection. Under the Act, copyrights are protected for only three years, after which there is no right to sue for copyright infringement. Registration of trademarks must therefore be renewed every three years in Myanmar. For obvious reasons, the Act is not in line with the provisions of the WTO-TRIPS Agreement and will therefore need to be amended within the coming months. Moreover, Myanmar has no dedicated *Trademarks Law*, and the existing legal provisions of the Penal Code and of the aforementioned laws addressing trademark infringement do not provide acceptable standards of protection. The registration of trademarks, which is provided in the *Registration Act* 1908, is done by filing a notarised or certified declaration of the trademark with the Office of Registration of Deeds. The registration is usually followed by an advertisement or announcement in daily newspapers, stating that any fraudulent imitation or unauthorised use of the trademark will result in criminal penalties.

Penalties for infringing IP rights are set out in the Penal Code, which covers individuals using false trademarks, counterfeiting a trademark, or making or possessing any instrument for counterfeiting a trademark. Punishments range from fines to three years of imprisonment. Courts may also order seizure and destruction of infringing articles and goods. As for copyright infringement, the offender may face a maximum fine of 500 kyat and a maximum prison term of one month. Sentences for infringing copyrights of video and musical works can be up to three years of imprisonment.

According to WIPO, new laws on IP rights have been under preparation and were expected to be enacted in the course of 2013, so as to bring the country in line with international standards, particularly with the provisions of the TRIPS Agreement requiring implementation of its provisions by the end of 2013. *Patent and Industrial Designs Laws*, *Trademarks Law, Copyright Law* were prepared and completed by the Attorney General's Office, government ministries and state organisations in 2006, but are still pending Cabinet approval. The preparation of IP laws providing a new, updated framework for the protection of IP rights in Myanmar has included rounds of consultations with industry and NGOs, as well as with the legal community. In 2004, Myanmar established a Committee for IP Rights Implementation, which benefited from technical assistance provided by WIPO, to draft the new IP legal framework.

In the absence of a dedicated set of laws regulating IP rights, there is no judicial court specifically dealing with such rights. Disputes related to the infringement of IP rights are governed by common rules of civil and criminal procedure. Civil courts have no experience in dealing with IP cases. Most often, IP-related disputes are settled amicably or by conciliation. The government is considering establishing dedicated IP courts, and training programmes for judges dealing with IP-related disputes are under preparation. The government also plans to launch, in the near future, capacity-building and raising-awareness initiatives on IP rights and technology transfer. Likewise, there is no institution in charge of supervising the administration, registration and enforcement of IPs. The enactment of the new IP laws will therefore need to be followed by the establishment of a dedicated IP body, as well as by efforts to raise awareness and build capacity for officials to deal effectively with IP-related issues. A robust IP regime will be needed to attract technology-intensive and knowledge-based companies that can act as channels for technology transfers. Viet Nam could provide an informative example of a successful reform towards normalisation of the IP regime (Box 3.5).

Protection against expropriation

Protection against expropriation without fair compensation is one of the most crucial rights of investors and must be granted in the regulatory framework for investment through provisions for transparent and predictable procedures. Article 36 (d) of the Constitution provides that the Union shall not nationalise economic enterprises. Other than this rather succinct constitutional safeguard, there is no specific provision in Myanmar's legislation against expropriation without compensation, except for Chapter 13 of the FIL, and Chapter 12, Article 52 of the *Special Economic Zone Law*, which both simply prohibit nationalisation within the permitted period. Private sector and civil society representatives have expressed concerns over the current nationalisation provision and the lack of protection against expropriation events. In contrast to the usual practice in other countries, the FIL, the SEZ law and the Constitution do not recognise the state's right to nationalise for public interest purposes. At the same time, while nationalisation appears to be prohibited, the laws do not protect against indirect expropriation which is presently the more important concern of investors.

The absence of nationalisation provisions is highly unusual, as it does not preserve the state's sovereign right to take property through nationalisation or expropriation for economic, political, social or other reasons. Under international law, this sovereign right can be lawfully exercised if the property is taken for public purposes, on a non-discriminatory basis, in accordance

Box 3.5. **IPR reform in Viet Nam**

Viet Nam has substantially improved its IP system over the past fifteen years. The government started by developing an IPR Action Plan to bring its IP system in line with TRIPS commitments. IP regulations were first introduced in Viet Nam's legal framework with the entry into force of a new Civil Code in 1995, following which the number of patent applications by foreigners substantially increased. The introduction of a new dedicated IP Law in 2005 was a milestone in the reform process and fully implemented the country's TRIPs obligations. As a direct consequence, the number of patent applications sharply increased. In parallel with reform efforts undertaken at a legislative level, the government initiated a "Modernisation of industrial property administration project", sponsored by Japan, as well as a number or sensitisation campaigns to raise awareness on the legal and institutional IP protection framework among the business community. Following these reforms, the number of IP assets, Vietnamese inventions and utility solutions applications in Viet Nam increased dramatically. Dedicated IP courts were created to deal with IP disputes, and capacity-building programmes were undertaken to train specialised IP officers.

Despite this successful reform process and concrete improvements, enforcement of IP regulations is still weak. Although the authorities have shown strong political will to fight IPR infringements, there remains a problem of trademark counterfeiting and design infringement. Civil, criminal and customs procedures are still regarded as lengthy and poorly implemented. Viet Nam's case is an informative illustration of a successful legal reform process, but also of the imperative to give strong emphasis to enforcing implementation mechanisms, which is a prerequisite for policies and laws to have a real and positive impact.

Sources: www.wipo.int/export/sites/www/about-ip/en/studies/pdf/wipo_unu_07_vietnam.pdf, http://trade.ec.europa.eu/doclib/docs/2009/june/tradoc_143762.pdf.

with due process of law, and accompanied by compensation. These principles represent the common practice in both domestic legal systems and in international investment agreements.

A good expropriation regime also distinguishes indirect expropriation from lawful regulation in the public interest, the latter being non-compensable, even if it has an economic impact on a particular investment. The distinction between expropriation, be it direct or indirect, and regulatory takings, is crucial as it retains the policy space necessary to implement public policy objectives. The FIL does not provide that the amount given as compensation for the expropriation must be determined by reference to the fair market value of the investment.

The few bilateral investment treaties (BITs) that have been both signed and ratified by Myanmar contain a provision protecting investors from partner countries against unlawful expropriations. Specifically, they guarantee that the expropriated investor would obtain without delay a compensation equivalent to the market value of the property before the expropriation occurred. Such clauses are in line with the most common practice on expropriation ("Hull Rule", which provides for a prompt, fair and adequate compensation in the event of an expropriation).

BITs signed by Myanmar also extend the protection against expropriation without compensation to indirect expropriation, in the following terms: "Investment (...) shall not be nationalised, expropriated or subject to measures having an effect equivalent to nationalisation or expropriation". These protection clauses are inconsistent with the expropriation provisions contained in Myanmar's domestic framework. While the protection provided at treaty level allows for expropriation for legitimate interests purposes and provided that the investor is duly compensated, the expropriation provisions in the Constitution and the FIL simply prohibit any acts of expropriation, without retaining the state's sovereign right to take property for public purposes. On the other hand, the treaty provisions provide foreign investors a much greater degree of protection by granting them fair compensation in the event of an expropriation, while the FIL remains silent on the conditions for obtaining compensation.

In addition to BIT expropriation provisions, which only protect those investors from BIT partner countries, investment contracts that are frequently signed in oil and gas sectors between investors investing in Myanmar and concerned ministries, appear often to contain an expropriation clause that provides protection to the private contract partner.

Moreover, Myanmar is currently in the process of fulfilling the requirements to become a member of the World Bank Multilateral Investment Guarantee Agency (MIGA) which will provide an extra layer of political risk insurance guarantees to private sector investors and lenders and will protect investment against non-commercial risks. This will help in building a stronger framework for protecting investors from expropriation.

Another key aspect of the legal protection against expropriation is the transparency of administrative practice and the right to appeal administrative decisions on expropriation and compensation. Myanmar legislation is silent on the issue of administrative and judicial recourse for investors subject to a taking of their properties. It is crucial to improve and clarify the regime for expropriation and compensation in a country where land seizures affecting the poorest parts of the population and without adequate compensation have been constantly reported by international civil society and observers (see Chapters 2 and 9).

Access to justice for investors and alternative dispute resolution

One of the building blocks of a country's investment climate is the ability of its judicial and legal framework to efficiently enforce contractual and property rights and to settle disputes. It is thus crucial for Myanmar to further empower the domestic adjudication of disputes and to strengthen the independence of the judiciary. Myanmar's institutional landscape has been shaped by a dominant executive and a weak judiciary at the orders of the junta. An important first step was introduced by Article 11 of the 2008 Constitution, which embodies a general principle of separation of powers between the three branches of government.[6] The judiciary is frequently alleged to be corrupt, inefficient, and subject to the influence of the executive. Reforming the judiciary has been repeatedly identified as one of the biggest challenges to be faced by Myanmar in its reform endeavour. There is no appeal mechanism against administrative decisions, and domestic adjudication of disputes, even through arbitration, is widely regarded as unreliable. Myanmar is also not yet endowed with a legal framework for bankruptcy.

The organisation of the judicial system is governed by Chapter 6 of the 2008 Constitution as well as by the 2010 *Union Judiciary Law*, which was promulgated by the State Peace and Development Council to revamp the formation of the Courts that were previously governed by the 2000 *Judiciary Law*. Myanmar's judiciary, based on the British model, is organised on four levels. It is composed of a Supreme Court, fourteen Region or State High Courts, courts of the self-administered divisions or zones, District Courts, Township Courts and specialised courts, such as martial courts and a constitutional tribunal. The Supreme Court, which is the highest court of appeals and has supervisory powers over all courts of the country, also has original jurisdiction on matters arising out of bilateral treaties concluded by the state. Under the terms of the Constitution, the Supreme Court is also authorised to issue orders to compel or prohibit state actions to remedy a breach of constitutional provisions. Ordinary cases are settled in Township Courts or District Courts and may be appealed to State Courts and ultimately to the Supreme Court.

Laws are passed by the national parliament, composed of a People's Assembly and a Nationalities Assembly. There are also unicameral assemblies at state level. In all assemblies, 25% of representatives are appointed by the commander-in-chief of the army, which gives the army a *de facto* right of veto over any constitutional amendments, as they require a 75% majority to be adopted. The Attorney General's Office (AGO) also plays an important role in the legislative reform process. Although it is no longer in charge of drafting laws, it remains responsible, among other functions, for checking the consistency of draft laws with already existing legislative instruments and on advising central government on international treaties and investment contracts. Apart from the general provision asserting the separation of powers (Article 11) and that judges of the Supreme Court must be "free from party politics" (Article 300), there is no strong constitutional provision safeguarding judicial independence and impartiality and protecting the functioning of the judiciary against political interference. The 2010 *Union Judiciary Law* merely provides that "justice shall be administered independently according to law".

The Executive appears to continue to exert a great degree of control over the judiciary. There is no Ministry of Justice and the president retains a strong influence on the appointment of judges. The president has powers of appointment of members of the constitutional tribunal, of the Supreme Court, including its Chief Justice, as well as Chief Justices of state and regional courts. The financing of the court system is also heavily controlled by the president. Several NGOs have also raised concerns over the lasting subordination of the judiciary to the military and over the issue of skill shortages and corruption in the legal profession. Reportedly, 200 lawyers are currently disbarred, among which a number have been jailed on political grounds (International Bar Association, 2013).

The authorities are aware of the need to further build capacity within the judiciary. Accordingly, the AGO and the Supreme Court have set up a training centre for judges and communication and transparency efforts are being made to improve the coherence of decisions at all levels of the court system. Another welcome step towards further openness was made with the recent membership of the ASEAN Law Association, a major regional non-governmental organisation that will help Myanmar upgrade its legal and judiciary system and improve co-operation and peer-learning with neighbouring countries.

Legal and procedural requirements for enforcing contracts remain complex and uncertain. International observers are unanimous on the need to strengthen the legal certainty and predictability of the regime for property rights protection. Access to justice is reported to remain rather inefficient, although laudable improvements in procedural transparency have been acknowledged in the past four years.[7] Representatives of NGOs and the business community have raised strong concerns related to the reliability and capacity of local courts and have signalled a structural issue of corrupt courts.[8] Despite recent constitutional and legal amendments, judges are reported routinely to issue unjustified sentences in political cases. The United Nations Special Rapporteur reported in 2012 that "Myanmar lacks an independent, impartial and effective judiciary" and also noted a lack of willingness to address this aspect of the reform process, as well as limited consideration given to challenges and gaps in the capacity and functioning of the judiciary.

The executive and military retain a heavy influence over the conduct of judicial proceedings, and, according to many international observers, the appointment and removal of judges is subject to constant interference from the government.[9] As for the enforcement of judgements rendered by foreign courts, it remains largely subject to the discretion of domestic courts. The lack of capacity and independence of local courts encourages international investors conducting business in Myanmar to seek to resolve potential disputes in a neutral arbitration place rather than before domestic courts. The government will need to adopt a modern framework for arbitration, particularly international arbitration, in order to successfully reassure foreign investors about the enforcement of their contractual rights within Myanmar's jurisdiction.

There are no commercial courts in Myanmar, but the creation of courts mandated to deal specifically with commercial issues is currently under consideration by the Supreme Court. A *Settlement of Labour Dispute Act* was enacted in March 2012, following the entry into force of the *Labour Organisation Act* which allows workers to form trade unions and to go on strike. The new law sets out a new mechanism for settling collective labour disputes. Under the terms of the law, state-level dispute settlement arbitration bodies are established under the Ministry of Labour to resolve labour disputes that have not been settled by conciliation. Parties may challenge the Arbitration Bodies' decisions before the Arbitration Council, or, alternatively, "carry out a lock-out or strike in accordance with the relevant law" (Article 28(b) of the *Settlement of Labour Dispute Act*).

Lack of alternative dispute resolution means

Investors seeking to avoid bringing disputes before an unreliable court system are confronted with a scarcity of suitable alternative dispute resolution means such as commercial arbitration, mediation and conciliation. Contract enforcement can be pursued by investors in accordance with existing domestic laws, according to contract agreements, or by amicable settlement. Companies undertaking business in Myanmar are not yet permitted to conclude arbitration agreements for potential disputes arising out of their business activities to be submitted before an arbitral tribunal held outside of Myanmar. Domestic arbitration is governed by the 1944 *Arbitration Act*, which contains default provisions to be applied in the absence of express provision in relevant arbitration agreements. According to the AGO, the *Arbitration Act* should be updated in the future in order to bring Myanmar in line with modern and harmonised practices on international and domestic arbitration. In a speech in March 2013, President U Thein Sein announced that the government is forging ahead to bring Myanmar's arbitration system in line with accepted international standards. The government has already started amending the arbitration regime, drawing upon on the UNCITRAL *Model Law on International Commercial Arbitration*, as amended in 2006, which is widely used as a model for countries' arbitration laws. The upcoming *Arbitration Act* is expected to cover both domestic and foreign commercial disputes under the same regime.

The *Companies Act* also contains a few provisions governing commercial arbitration. It allows companies to conclude arbitration agreements to resolve future or existing disputes arising out of their business activities, in accordance with the provisions of the *Arbitration Act*. Investor-state contracts traditionally contain an arbitration clause providing that any disputes arising between foreign companies and state-owned enterprises must be settled under the terms of the *Arbitration Act*. So far, it appears that the authorities, namely the AGO and MIC, do not allow arbitration agreements that would provide for non-domestic arbitration to settle such disputes. In practice, disputes between private businesses and public entities are settled by the Myanmar Chamber of Commerce and Industry, based in Yangon. This situation is likely to evolve however with the recent adherence to the New York Convention.

Recent accession to the 1958 New York Convention

A laudable step towards a standardised arbitration framework has recently been taken by Myanmar with the accession, on 15 July 2013, to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[10] The New York Convention is an internationally recognised instrument of international arbitration. It requires courts of contracting states to give effect to arbitration agreements and to recognise and enforce awards made in other states, subject to specific limited exceptions. Although some uncertainties remain with respect to implementing the Convention, the ratification of this major international instrument will give investors greater certainty that foreign arbitral awards can be efficiently enforced within Myanmar's jurisdiction. Now bound by the NY Convention, Myanmar's domestic courts have the obligation to enforce foreign arbitral awards as if they were domestic awards, with very few legal grounds on which to refuse such an enforcement (such as in case of non-arbitrability of the dispute matter).

Prior to the signature of the NY Convention, the enforcement of arbitration awards was governed by outdated legislation under which only the enforcement of domestic arbitral awards was possible. The 1929 Geneva Convention on the Execution of Foreign Arbitral Awards, to which Myanmar is a party, has virtually no effect on the effective enforcement of foreign arbitral awards. The Geneva Convention is translated into domestic law by the *Arbitration (protocol and Convention) Act* of 1937, which applies only to foreign arbitral awards dealing with commercial matters. Under the existing domestic regime, enforcing foreign arbitral awards is virtually impossible, and there has been, so far, no reported case of Myanmar's domestic courts enforcing a foreign arbitral award. The next logical step following the accession to the NY convention will thus be for Myanmar to amend its domestic framework to implement its international undertakings under the Convention. It will then remain to be seen how Myanmar's tribunals interpret the exception of public policy that allow domestic courts to refuse to enforce a foreign arbitral award. A prompt enactment of the new arbitration law and more efforts to train judges on international arbitration matters will be required to give full effect to such a significant development.

As a consequence of the accession of Myanmar to the NY Convention, assets that are held in Myanmar by the losing party to arbitration will be much more easily seized. The ratification of the New York Convention, provided it is effectively implemented, can thus substantially improve investors' confidence in the legal framework regulating their activities in Myanmar. This new international commitment also complements well the FIL provision that allows foreign investors to bring disputes before international and foreign arbitration tribunals. As emphasised by international observers,[11] however, Myanmar's accession to the New York Convention will not suffice to reassure investors if the government does not address the lack of independence of the judiciary. The judiciary, and more generally the legal profession, are reported to suffer from a shortage of skills. To reap the full benefits of the ongoing legislative changes, the government needs substantially to strengthen the independence of the judiciary from the executive.

Absence of regulatory framework for the resolution of investor-state disputes

There is no provision in Myanmar's legal framework for investment that provides for a unilateral consent to go through arbitration to resolve investor-state disputes. The new FIL states that disputes arising out of an investment activity should be settled amicably. If the parties do not reach a settlement, disputes will be settled in accordance with dispute resolution mechanisms stipulated in the relevant contract, if any. If the relevant contract contains no dispute settlement clause, the parties must resolve the dispute according to Myanmar's laws. This vague provision makes no mention of potential investor-state dispute settlement clauses contained in bilateral investment treaties. It is also unclear whether it covers only disputes between a foreign investor and public authorities or if it extends to disputes with domestic companies. In addition, although Article 43 implicitly recognises the ability to settle investment disputes through international arbitration, it remains to be seen whether arbitral awards will be *de facto* enforceable within Myanmar.

Myanmar is not a party to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention). So far, the government has not publicly expressed any willingness to adhere to ICSID, but has instead planned to use UNCITRAL rules, as amended in 2010, for future investment dispute proceedings between the government and foreign investors. Arbitration proceedings conducted under UNCITRAL rules require less procedural transparency than those conducted before ICSID tribunals and are less neutral than ICSID rules with regard to the appointment of arbitrators.[12] Should it wish to make the option of more transparent and more neutral investor-state dispute settlement proceedings available for treaty-based arbitration, the government could consider becoming a member of ICSID, which has 143 member states and is recognised as the leading institution for the arbitration of investor-state disputes. Becoming a member of the ICSID Convention could enhance its perception abroad as an investor-friendly country. The ratification of the Convention would mean that investors will be able to choose ICSID arbitration, provided that they benefit from an investment treaty containing an ICSID clause.

From an investor's view, the availability of ICSID arbitration to resolve potential disputes with host countries significantly increases their confidence, reduces the risk and therefore reduces the cost of deciding to invest in Myanmar. If Myanmar were to become an ICSID member, foreign investors would also see their rights provided in BITs improved. Compared to other ad hoc arbitration forums, ICSID tribunal awards are not subject to national laws on the recognition of foreign arbitral awards and domestic courts cannot interfere with arbitral proceedings. The ICSID system is self-contained, meaning that ICSID tribunals have the power to issue interim measures and are not subject to the control of domestic courts. Moreover, ICSID awards must be recognised and enforced as if they were final judgements of domestic courts. The government therefore needs to be aware of the implications of a possible adhesion, which could potentially lead to costly arbitration proceedings. If envisaged in the future, the adhesion to the ICSID convention could be preceded by an assessment of political and economic costs and benefits.

The government could also consider establishing dispute prevention systems to forestall potentially very costly international arbitration proceedings that may stem from investor-state disputes. Such early alert mechanisms for the prevention of disputes are an increasingly common practice, notably in Latin America. For example, relevant public entities in Peru are required to share any information they have on potential emerging investment disputes to a designated co-ordinator within the Ministry of Economy and Finance. This early warning mechanism to central authorities, set up in a 2006 *Law on the Coordination and Response System of the State on Investment-Related Disputes*, allows for early and coordinated action to be taken. By virtue of the law, the co-ordinator is responsible for centralising information on concluded international investment agreements, in order to keep track of all commitments made by the state, and provides guidelines for the negotiations of dispute settlement processes. Such initiatives are part of a broader effort to optimise the defence of the state in the event of international investment disputes.

International treaty practice

So far, Myanmar has signed bilateral investment treaties with the Philippines, China, Lao P.D.R., India, Thailand, Viet Nam and the United States. Only the treaties with China, India and the Philippines have been ratified and therefore have full legal effect. Myanmar is currently expanding its investment treaty network and has engaged in a round of BIT negotiations with Japan, Russia, Mongolia, Bangladesh, Korea, Iran, Israel, Serbia and Hong Kong, China. Pending the adoption by the European Union (EU) of negotiating directives in early 2014, Myanmar could also start negotiations of an investment protection agreement with the EU by spring 2014. The government has also expressed its interest in becoming a member of the World Bank Multilateral Investment Guarantee Agency (MIGA), which offers investors political risk insurances guarantees.

Through its membership to ASEAN, Myanmar is also a party to the ASEAN Comprehensive Investment Agreement (ACIA) 2009, as well as to the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA), the ASEAN-Korea Free Trade Agreement (AKFTA) and China-ASEAN FTA (CAFTA), which all contain an investment chapter that provides protection standards to qualifying foreign investors. Consequently, all investors incorporated in such countries, as well as in any member of ASEAN, can benefit from the provisions of these agreements. In addition to treaties covering investment matters to which Myanmar is a party, the country has also concluded free trade agreements with Bangladesh, China, India, Korea, Laos, Malaysia, Pakistan, Philippines, Sri Lanka, Thailand and Viet Nam, as well as an economic and trade agreement with Turkey and an economic co-operation agreement with Israel.

Preserving Myanmar's policy space while providing high standards of protection to investors

Concluding more BITs would help to provide foreign investors with an adequate level of protection, thus lowering the perceived political risk faced by investors when investing in Myanmar and thereby promoting Myanmar as an investment destination. While in general, investment treaty practice should not be seen as a substitute or shortcut to a good investment climate, clear and well-drafted BITs can be used to address remaining weaknesses in Myanmar's existing domestic regulations. Since Myanmar is still in a consolidation phase of an enabling domestic framework for investment, international investment agreements can play a crucial role to complement domestic rules that are still being reformed, and thus to reassure foreign investors. At the same time, BITs involve trade-offs that should be considered from the beginning: while providing sound protection of foreign investors rights, the government should also ensure that it does not enter into international treaties that unduly restrain its policy space and regulatory autonomy (Annex 3.A1).

Ensuring full consistency between treaty provisions and domestic regulations

Treaties that have been signed by Myanmar so far contain a set of provisions frequently encountered in global treaty practice. Myanmar must make sure, however, when developing its treaty practice with major partner countries, that its treaty provisions form a legal framework that is coherent with its domestic legislation and with the necessary preservation of legitimate national interests. Treaties should not be drafted out of context, drawing on other countries' treaty template that might not be well suited to Myanmar's developmental policy purposes. When entering into new treaty commitments, negotiators should make informed choices on what investment guarantee they provide and whether it is in line with its domestic legal framework for private sector development. They should avoid creating conflict between national legislation and international obligations that supersede the domestic framework and should carefully check for the consistency of their domestic investment legislation with international commitments that would prevail over domestic legislation. The authorities should notably raise awareness, in the concerned ministries and institutions, of the commitments taken by Myanmar through its BITs and of their potential implications.

Myanmar's three BITs that have entered into force (with China, the Philippines and India) appear to draw on a traditional, "European-type" treaty model that provides for higher standards of investment protection than what is contained within domestic rules. For example, Myanmar BITs contain an expropriation clause that is much more protective than what is granted in the FIL and in the Constitution (see section on expropriation above). Likewise, it is questionable whether domestic regulations and administrative practice meet the level of protection granted to foreign investors through the fair and equitable treatment clause.

When negotiating future investment agreements, it will be crucial to ensure full consistency between the content of protection standards given to investors through treaty provisions and those contained in laws pertaining to investors' activities. To ensure the best level of coherence between Myanmar's development objectives, domestic policies and the content of its international undertakings, the government could either establish a carefully drafted treaty template that would serve as a basis for any treaty negotiations, or have at least clear policy guidelines for entering into investment treaties in the future. The BIT template or guidelines would feature key standard provisions that are fully in line with Myanmar's wider investment regime and whose scope is clearly delineated so as to avoid potentially inconsistent, arbitrary and costly arbitration awards.

Notes

1. See also *Financial Times*, "Myanmar to delay foreign investment law", September 2012.
2. Beyond these minimum capital requirements, the MIC reportedly has the discretion to set a minimum investment threshold on a case by case basis when determining eligibility for FIL benefits (Kluwer, 2013).
3. See Mistura (2014) for a full description of the model.
4. Herbert Smith Freehills, *Myanmar Investment Guide,* December 2012.
5. See: *www.oecd.org/daf/inv/investment-policy/nti.htm*, and *www.oecd.org/daf/inv/36671400.pdf*.
6. Article 11 states that "the three branches of sovereign powers, namely, legislative power, executive power and judicial power are separated, to the extent possible, and exert reciprocal control, check and balance among themselves".
7. IBAHRI (2012).
8. Ibid.
9. See 2013 Burma Investment Climate Statement, US State Department, and *The Guardian*, "Burma's push for freedom is held back by its institutionally corrupt courts", March 2012.
10. See *www.unis.unvienna.org/unis/en/pressrels/2013/unisl183.html*.
11. Ojea Quintana T., *Progress Report of the Special Rapporteur on the situation of human rights in Myanmar* ((United Nations General Assembly, A/HRC/19/67, 7 March 2012).
12. See Gaukrodger and Gordon (2012).

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ANNEX 3.A1

Do bilateral investment treaties promote FDI inflows?

Investors face risks when investing abroad relating to the treatment they will receive in the host country. In this context, bilateral investment treaties (BITs) have emerged to promote certain standards of treatment for foreign investors. BITs usually provide for non-discrimination through national treatment, most-favoured nation and fair and equitable treatment provisions, as well as security for investors and protection against expropriation. BITs also usually contain provisions on the transfer of funds. Since the mid-1990s, the inclusion of investor-state dispute settlement provisions in BITs has offered investors recourse to international arbitration to settle disputes with the host country. To the extent that BITs succeed in making the investment framework and environment of signatory countries more predictable, stable and safe for investors, it is expected that they will help countries to attract more FDI. BITs might also lead to an indirect increase in FDI inflows if they are associated with good institutional quality or signal a country's commitment to reinforce property rights, not only for the treaty partner but for the entire international community.

Econometric studies have examined the relationship between BITs and FDI inflows. Viewed as a whole, results are contradictory, with some recent studies indicating that BITs encourage FDI and others finding little such evidence. Despite data and methodological limitations, these contradictory findings underscore both the importance and the difficulty of doing cost-benefit analysis of BITs (including potential impacts on fiscal positions and on policy making flexibility).

Studies have become more sophisticated over time, narrowing the scope of research better to take into account the conditions under which BITs are expected to affect FDI. One dimension considered is the stage of development of signatory countries. BITs between developed and developing countries are expected more substantially to affect FDI flows than BITs between similar countries.[1] To some extent, this reflects the view that developing countries have difficulty making credible commitments often due to the lack of sound domestic institutions which increase the risks for investors. The evidence on the promotional effects of BITs on FDI inflows into developing countries is mixed, however, with a few studies finding little or no support whatsoever[2] and others finding a positive relationship.[3] Reverse causation, i.e., the possibility that existing flows of FDI between countries actually lead them to enter into BITs, has also been considered but without any clear results.[4]

Another question is whether BITs substitute for weak investor property rights, political risk, the quality of the domestic legal system and respect for the rule of law, or whether they complement domestic institutions in attracting FDI. Governments might be tempted to enter into BITs as a shortcut to improved institutional quality, expecting that they will increase FDI, while refraining from engaging in costly and time consuming domestic reforms. Here again the empirical evidence provides little convincing guidance on the matter. Two studies reviewed here report that BITs sometimes substitute for poor institutional quality,[5] but others find that only countries with relatively strong domestic institutions and lower political risk are likely to benefit from BITs.[6]

More recent studies have begun to take into account the differences in BIT provisions to assess whether BITs with stronger dispute settlement mechanisms or containing market access provisions potentially lead to higher FDI inflows. According to Berger et al. (2010a), BITs with stricter investment protection measures do not necessarily result in higher FDI inflows. With regard to market access rules such as national treatment at the pre-establishment phase, Berger et al. (2010b) find that investors respond positively to BITs whether or not they contain such measures. The authors find that regional trade agreements containing market access provisions play a significant role in promoting foreign investment.

More anecdotally, a recent survey of General Counsels of the top 200 US multinationals sheds light on why there is possibly only a loose link between BITs and FDI.[7] The vast majority reported that BITs are not an important consideration in the typical FDI decision and did not view BITs as particularly effective protection against adverse regulatory measures and expropriation. Many were also unfamiliar with BITs. Similar results have been found in larger surveys by the World Bank (2005) and Shrinkman (2011). Even if BITs might not influence investment decisions, they might influence how the investment is structured once the decision to invest is made. Sachs (2009) notes that treaty shopping cases, where a company invests in one country via a third country in order to benefit from a BIT between those two countries, suggest that at least some firms deliberately seek the protection of a treaty.

Despite these ambiguous findings on whether BITs help to attract FDI, developing countries continue to enter into BITs. Sachs (2009) argues that governments sign BITs in the belief that at the very least it will not harm FDI flows and out of fear that investors may avoid countries without them. They may also face pressure from companies that have already invested and that wish to protect their assets (including domestic enterprises investing in the other country) or may want to signal that they are willing to bind domestic policies to international agreements. To the extent that these agreements cannot be changed unilaterally, foreign investors will be more comfortable in investing.

Countries should be mindful, however, of the possible costs – financial, political and reputational – associated with entering into BITs. Financial costs include the legal costs of defence and possibly major compensation in the event that the country is found liable for treaty breaches. A recent OECD survey (2012) shows that legal and arbitration costs for the parties to investor-state arbitration have averaged over USD 8 million, with costs exceeding USD 30 million in some cases. Claims for compensation if the country is found liable can amount to billions of dollars. The reputational costs of non-compliance with BIT commitments can also be severe. Allee and Peinhardt (2011) find that BITs increase FDI flows to signatory countries but only if those countries are not subsequently challenged before ICSID. Upon becoming a respondent in an ICSID case, countries face large declines in FDI inflows regardless of arbitration results. If the case is lost, the magnitude of the decline in FDI inflows is larger. The careful evaluation of the implications of a BIT, possibly by high-quality legal advisors from outside the government, should thereby be standard practice before entering into a BIT, as the costs associated with a bad treaty can be very significant, particularly considering that BITs generally remain in force for 10 years and usually continue to be in force for another 10 years after termination.

Signatories also reduce their policy-making flexibility. Signing a BIT implies partially sacrificing some domestic regulatory autonomy as any measure affecting foreign investors can eventually be challenged through the dispute settlement provision included in the BIT. Much depends on the exact treaty language in a BIT and on the ability of host countries to adopt public management practices that promote treaty compliance and, when facing an investor claim, to organise and finance an effective defence. Developing countries often face asymmetries in their bargaining power in BIT negotiations and may have problems implementing government-wide treaty compliance programmes. For these countries, legal risks associated with BITs may be considerable. Traditional BIT proponents that have recently been sued have to some extent rebalanced treaties to accommodate more policy space. BITs also favour foreign investors over domestic ones by providing foreign investors with the possibility of recourse to international arbitration for disputes, to which domestic investors do not have access.

Looking broadly at the full range of studies of the costs and benefits of BITs, BITs appear to play a secondary role in promoting FDI inflows after economic and institutional fundamentals. To the extent that the positive effects of BITs on FDI inflows are conditioned on economic and institutional characteristics, it might often be better to invest in reforms to improve economic fundamentals and institutional quality. Evidence of the positive effects of good institutional quality in attracting FDI inflows is rather consistent.[8] BITs should be considered as a complementary instrument to help sustain momentum for reform, by locking in domestic policies when appropriate, and perhaps even contributing to magnify the effects of economic and institutional policies in attracting FDI. Governments should not rely on BITs as a substitute for long-term improvements in the domestic business environment, however. Careful evaluation of whether a country is in a position to benefit from a BIT, given its institutional and economic characteristics, and the risks associated with such a treaty, should be a standard government practice before entering into BITs, as these conditions may determine the success of the BIT in achieving its proposed objectives.

Notes

1. It is assumed that developed countries, which normally have predictable and stable domestic judicial systems, do not need BITs because investors in these countries feel sufficiently comfortable with the domestic regulatory framework. BITs between two developing countries are usually of a more symbolic nature for several reasons, but new trends in international investment might change the importance given to these in future research work.
2. Hallward-Driemeier (2003),Tobin and Rose-Ackerman (2005), Aisbett (2007) and Yackee (2007).
3. Busse et al. (2008), Tobin and Rose-Ackerman (2006), Neumayer and Spess (2005) and Banga (2003).
4. Berger et al. (2010a and 2010b), Busse et al (2008) controls for endogeneity and find that BITs attract FDI, while Aisbett (2007) finds opposite results.
5. Busse et al. (2008) and Neumayer and Spess (2005).
6. Tobin and Rose-Ackerman (2005 and 2010) and Hallward-Driemeier (2003).
7. Yackee (2010).
8. For instance: Anghel (2005), Daude and Stein (2007), Arbatli (2011), Walsh and Yu (2010), Battat, Hornberger and Kusek (2011) and Wagle (2011).

Chapter 4

Investment promotion and facilitation in Myanmar

As part of a process to develop a sound, broad-based business climate, investment promotion and facilitation can help attract new investors and retain existing ones, especially in smaller, more remote markets or those countries with a recent history of macroeconomic and political instability. Effective investment promotion highlights profitable investment opportunities, by identifying local partners and by providing a positive image of the economy. Promotion should not be seen as a substitute for more general policy reforms or try to camouflage underlying weaknesses in the investment climate. This chapter analyses Myanmar's efforts to promote its private sector, in particular through investment promotion and facilitation measures. It also addresses the role of special economic zones, SMEs and investment linkages in the country's overall private sector development strategy.

Within an overarching strategy to improve the investment environment, investment promotion and facilitation can help to increase both domestic and foreign investment and enhance their contribution to national economic development. Success in promoting investment requires a careful calculation of how to employ resources most effectively and how to organise investment promotion activities within the government so that the overriding goal of economic development remains at the forefront of policymaking. Investment promotion and facilitation measures, including incentives discussed in Chapter 5 on Tax Policy, can be effective instruments to attract investments provided they aim to correct for market failures and are developed in a way that can leverage the strong points of a country's investment environment. This chapter looks at such aspects, as well as Myanmar's recent efforts to promote the small and medium-sized enterprise (SME) sector, and the role of special economic zones in the government's investment promotion strategy.

Myanmar's government is embarking on an ambitious path of reform. The promotion of private investment as a source of capital, technology, knowledge and innovation to support economic development is a vital element in the policy mix. The government is also well placed to learn from its ASEAN peers, who are rich in experience in promoting and facilitating investment in key sectors to boost their economies.

The country has many favourable factors to attract foreign investors' attention. It is strategically located between two economic giants, China and India, bordering other growth markets like Thailand, has access to the Bay of Bengal, the second largest surface area in Southeast Asia and a relatively youthful population. These exogenous factors need to be matched with endogenous ones, contributing to an attractive investment climate.

Investment promotion and facilitation depends by and large on the quality of the investment-related policies and the overall investment climate. In the context of ambitious reforms, with numerous investment-related laws and regulations under review, the private sector needs an avenue to interface with the government. The most effective investment promotion agencies in terms of attracting investment devote considerable resources to policy advocacy (Morisset, 2003).

Experience has shown that countries that intensify their investment promotion efforts go through a process of at least three stages: liberalising investment policies and related regulations, establishing dedicated investment promotion agencies, and lastly targeting investment for specific activities and sectors. At a stage of policy overhaul and ambitious investment policy liberalisation, Myanmar needs to consider the various options for effective investment promotion and facilitation carefully. Thanks to its reform momentum, the country is on the radar screens of many investors. It should thus emphasise facilitating business operations, alleviating administrative burdens – both for investors and its own public administration – and soundly manage its reform process to instil transparency and efficiency, while avoiding granting large and unnecessary fiscal incentives to foreign investors. Forgone tax revenue from incentives for a country at the stage of development of Myanmar can lead to financing gaps for critical reforms and programmes, such as in the areas of infrastructure, education and health (Chapter 5).

This chapter looks at some fundamental elements of investment promotion and facilitation as they relate to Myanmar. It seeks to identify some guiding principles for Myanmar as it looks to intensify its investment promotion and improve its facilitation efforts. Any investment promotion effort will only be effective with the appropriate policies to improve the overall investment climate. Promotion in isolation will not achieve any sustainable results for the economy. Focus should thus be on instilling a liberal investment climate, open to companies of all size and types.

Decentralisation is often hailed as a strategy to improve effective investment promotion and facilitation. It should be a long-term objective of the government. The right sequencing of decentralising power and regulations is critical as the process entails complex implementation challenges, requiring building capacity at the local level, strong and transparent monitoring capacity at the central level, good co-ordination among the different agencies country-wide, and balancing and harmonising national and local development priorities.

One of the strategies Myanmar has embarked upon to attract investment is based around special economic zones (SEZs). The *Myanmar Special Economic Zone Law,* currently under review, and the *Dawei Special Economic Zone Law* of 2011 contain their own provisions for investment, including an incentive scheme that is generally more generous than the one stipulated in the *Foreign Investment Law*. The SEZs in Myanmar could be used as effective pilot schemes for testing new approaches to boost the investment climate, such as in the area of building capacity for monitoring the environmental, social and economic impact of investments in the zones, streamlining registration and licensing procedures, effectively managing incentives, and promoting linkages. Nevertheless, SEZs are no substitute for improving the general investment climate and tackling the fundamental economic development challenges the country faces, and sound measures to promote the local economy should be integral to SEZ schemes.

Dedicated units within government or semi-public agencies should be strengthened as policy advocates for the private sector. The aim should be to ensure that the private sector's concerns are adequately channelled into policy making processes. Investment facilitation can only be undertaken effectively in an environment where the private sector's concerns are taken on-board and acted upon swiftly by government and public institutions. Close interaction and consultation with the private sector and other stakeholders is also vital for aligning investment projects with local development needs. This includes developing the absorptive capacity for the local economy to acquire new technology and know-how (IDE-JETRO, 2013).

Formulating a private sector development strategy would contribute significantly to sequencing private sector development reforms, allocating responsibilities among agencies, and elaborating a strategic vision with all relevant stakeholders. Myanmar is part of a region that has generally undertaken effective investment promotion and facilitation measures, with its neighbours being among the top business regulation reformers in the world. Myanmar can go a long way through international co-operation in this field to tap into the vast experience of its peers as well as into the services available from bilateral and specialised multilateral organisations.

The country finds itself at a crossroads of development, aiming to solidify political reforms and simultaneously implement economic reforms that would lead to inclusive growth and offer widespread economic benefits for Myanmar's population, especially the poor and vulnerable segments of society. Increasing both foreign and domestic private investment, through promotion and especially facilitation, is an important element of that vision.

Myanmar has launched measures to improve the investment climate

A regulatory system that is clear, transparent and simple is the backbone of a good investment climate. The government has taken a self-critical view of its structures and on numerous occasions has highlighted heavy procedures currently in place.[1] As a result, it has stepped up efforts to improve the investment climate, through both legislation and procedural measures. Chapter 3 discusses the *Foreign Investment Law* (FIL) and its impact on investor protection, a central element of the investment climate. Beyond that, the FIL has generated unprecedented momentum around improving the investment climate in Myanmar. The resulting law has its shortcomings, as described in Chapter 3, yet nevertheless represents a strong signal of commitment to improving doing business in the country.

The government has also recently been developing initiatives to strengthen the role of the private sector in the economy. It is working closely with the World Bank and the IFC to improve the investment climate, including by strengthening public-private dialogue. For instance, the IFC is working with the government and the UMFCCI to establish a business forum. The current work of the World Bank and the ADB on an investment climate assessment based on company surveys will also contribute to this.

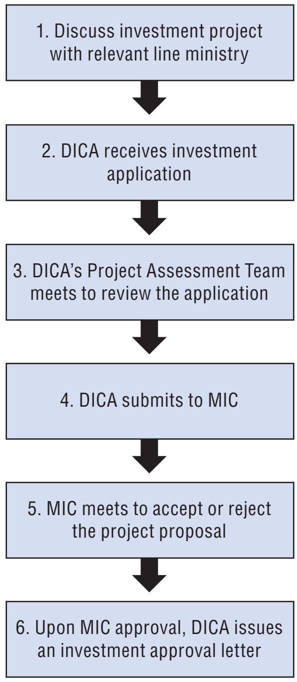
The Directorate of Investment and Company Administration (DICA) in the Ministry of National Planning and Economic Development (MNPED) is the designated authority to manage and thus streamline regulations and procedures for business. It has taken significant steps over recent months to improve its operations and efficiency, driven by its investment administration department, including reducing administrative layers and waiting time for foreign investors from months to a few weeks.[2] The *Doing Business 2014* report of the World Bank ranks Myanmar 182 out of 189 economies.[3] This is the first time Myanmar was ranked according to this methodology and it illustrates the early stages of business climate reforms in the country. This initiative allows Myanmar to benchmark itself against regional peers and global reformers.

A number of steps in the investment registration process should eventually be merged or removed. The cost of a procedure is directly correlated with the number of steps it involves. For now, DICA should be the first point of contact for the investor, rather than individual line ministries as is currently the case, to avoid overlapping approval processes as seen earlier. Also, delegating licensing to the provincial level may contribute to swifter management of investment application, as was the case in Viet Nam.[4] In the meantime however, a certain degree of clarity has emerged through the reforms, as is illustrated in Figure 4.1 below.

In April 2013, DICA launched a service centre in Yangon to facilitate company registration for foreign investors. Currently in full operation, the centre serves as a one-stop shop, inspired by Thailand's One Start One Stop Shop Investment Centre, hosting representatives from relevant ministries. This decentralisation of bureaucratic procedures should greatly contribute to easing procedures for investors, particularly SMEs.

One key challenge DICA has been facing in establishing an effective one-stop shop is in extending full decision authority to government officials assigned to the unit, but high-level political support has helped address this. Developing country experience with one-stop shop models is mixed, with many dedicated units just adding additional layers of bureaucracy due to a lack of capacity and designated authority. Good practice suggests establishing single-point authority over other government units in core areas through legislation (World Bank, 2008). The experience of some ASEAN peers can be useful to Myanmar. For instance, Malaysia's MIDA one-stop-shop for investors hosts representatives from the Immigration Department, Tenaga Nasional

Figure 4.1. **Administrative steps to invest in Myanmar in non-resource sectors**



Source: DICA.

Berhad (Malaysia's main power provider), Royal Malaysian Customs, Telekom Malaysia Berhad, the Department of Labour Peninsular Malaysia, and the Department of Environment (MIDA, 2012). The effectiveness of Myanmar's one-stop shop will be an important indicator to measure the government's efforts to tackle the burden on business.

Decentralisation

Other difficulties are linked to processes of effective decentralisation in general. Viet Nam for example has set up three investment promotion centres under the Foreign Investment Agency at the Ministry of Planning and Investment, in the north, centre, and south of the country, as well as teams charged with facilitating FDI in each provincial Department of Planning and Investment. Their experience has been mixed, with significant challenges remaining in the co-ordination of the different agencies, while aiming to be consistent with the national and provincial development plans (OECD, 2009a). The delegation of managing procedures linked to investment was not accompanied by sufficient capacity building of local officials, hence hampering an effective decentralisation strategy. The central government also faced difficulties in monitoring investment flows in the overall territory as local provinces were inadequately reporting on investment figures (IDE-JETRO, 2013). The government of Viet Nam has reportedly determined that decentralisation led to a degradation of overall planning and monitoring of environmental impacts from investment projects.[5]

In Indonesia, studies have shown that decentralisation has not contributed to improving the national trade and investment climate – in fact, most regulations managed at the local level, which tended to be levy-related to finance local budgets, proved to harm price competitiveness of local products and the investment climate. It is also advisable to establish co-ordinating bodies to support an effective articulation of national and local regulations. The Philippines' Regional Development Council and its representation in each administrative region is a good example of improving co-ordination.[6]

Easing administrative burdens

The government can also take a number of more informal measures to ease the administrative burdens for investors, while improving efficiency and cross-government mechanisms for reform. DICA's website has significantly improved over recent months, containing relevant information for business incorporation, laws and regulations (Box 4.1 shows the documents required for an investment proposal as found on DICA's website), and news updates. The establishment of a task force made up of 17 agencies under the auspices of the MNPED to undertake this *Investment Policy Review* also contributes to

Box 4.1. **Documents required for an investment proposal in Myanmar**

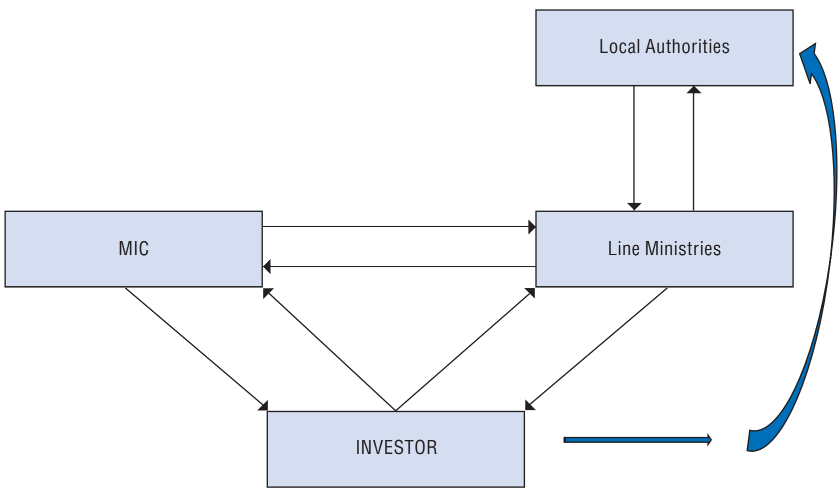
- An application for exemptions and tax relief defined under Section-21 of the FIL.
- If the investment is to be a joint venture, a draft contract with the partner is required.
- A draft land lease agreement (if required).
- Draft Memorandum and Articles of Association if it is a limited company.
- Detailed calculation relating to the economic justification of the proposed project.
- Bank reference and recommendation regarding the potential foreign investor's business standing.
- Business profile.

Source: DICA website.

addressing investment reform challenges informally and collectively. Creating awareness among different institutions that can affect the investment climate through their policies and programmes is an important contributor to transparency and open exchanges on investment policy making, especially if it systematically involves the private sector.

Despite the various initiatives to streamline business registration and procedures, the current system remains heavy, with the investor needing to make a number of contacts with different ministries and local authorities (Figure 4.2). Any procedure that provides significant discretion defeats efforts to promote transparency and efficiency in the system. The government of Mauritius for example has introduced electronic application systems through its Board of Investment to reduce face-to-face interactions, in view of reducing opportunities for bribery and corruption (see OECD *Investment Policy Reviews: Mauritius*).

Figure 4.2. **Main contact points for investors**



Source: DICA.

A central feature of Myanmar's investment regime is the Myanmar Investment Commission (MIC). Notification 42/2013 from 3 May 2013, in order to monitor the provisions of the FIL, reorganised the MIC to take the leading role in investment screening in Myanmar for any investment under the FIL (Table 4.1).

Figure 4.1 showed that the process of screening of investment projects remains exposed to significant discretion by government entities. This creates a system based on negotiations instead of a clear set of criteria applicable to all investors. Step 5 implies a veto power by the MIC on investment projects.

Table 4.1. **Composition of the Myanmar Investment Commission**

H.E Win Shein Union Minister, Finance and Revenue	Chairman
H.E U Win tun Union Minister, Environmental Conservation and Forestry	Member
H.E. U Zayar Aung Union Minister, Energy	Member
H.E Dr Htun Shin Union Attorney General	Member
Dr. Aung Tun Thet Economist	Member
U Nyunt Tin Ambassador (Retired)	Member
U Win Khaing Chairman of the Myanmar Engineering Association	Member
Daw Mya Thuza Deputy-Director General (Retired), Ministry of National Planning and Economic Development	Member
Daw Khine Khine Nwe Entrepreneur	Member
H.E. Dr. Kan Zaw Union Minister, National Planning and Economic Development	Secretary
H. E Thura U Thaung Lwin Deputy Minister (Retired), Ministry for Rail Transport	Joint Secretary

Source: DICA.

Future reforms should reconsider the excessive discretionary powers currently extended to the MIC. With increasing investment and hence numbers of investment proposals in Myanmar, such a system will in any case become unsustainable, as the scarce time of the high-level officials on the MIC may be not be solicited on a weekly basis to make investment permit decisions. In the 1990s, the government of Viet Nam suffered from an overload from managing foreign investment at the central level. This led to a bias for large-scale investment projects, ignoring smaller investments, which could have significantly contributed to the development of smaller and poorer provinces (IDE-JETRO, 2013).

As the government moves forward in its aim to improve the investment climate through widespread business climate reforms, it needs to establish concrete milestones. A gradual move from a system based on discretionary powers vetted in the MIC for foreign investments to one based on clear criteria should be envisaged. This would involve restructuring so as gradually to decentralise procedures, while increasing efforts to strengthen the capacity and legitimacy of the units mandated with investment and company administration. Different laws dealing with investment create confusion for investors in their legal due diligence work (see Chapter 3).

While investment promotion activities in Myanmar are important, as will be seen below, the current administrative burden on the private sector needs to be tackled as a priority. Government entities are making progress in this regard, and such reforms should be intensified as Myanmar seeks to capitalise fully on its investment potential.

Need for a private sector development strategy

A vibrant private sector is vital for developing countries to meet their development objectives and can contribute to sustained and rapid growth. Putting in place a coherent policy framework is a priority for developing a sound business environment, a crucial determinant for both domestic and foreign investment. The absence of appropriate regulatory institutions may reduce the motivation of the private sector to engage in economic activity, thus reducing growth (OECD, 2004).

A private sector development strategy requires a consensus across all stakeholders on the respective roles of government and the private sector. This is particularly pertinent to the case of Myanmar, where decades of closed economy policies have led to the rise of powerful parastatal enterprises, some controlled by the military. To promote the entry and growth of new players in the domestic private sector, space and opportunities must be created through a level-playing field (see Chapter 8 on corporate governance). There needs to be a clear allocation of responsibilities for government agencies to implement this strategy, which includes investment promotion and facilitation measures.

While Myanmar currently lacks a well-defined vision for its private sector development, it has incorporated elements in this regard in different laws. For example, the *Myanmar Special Economic Zone Law* of 2011 mentions, as part of its objectives, the creation and absorption of high technology. These laudable goals need to be matched with appropriate measures, such as activities to strengthen the competitiveness of local SMEs to be able to partner with MNEs as suppliers, to have effective environmental provisions in place, and to encourage MNEs to train local staff and suppliers to facilitate knowledge and technology transfer. These are addressed further below.

As seen above, the revision of the FIL sent an important signal to the international business community that the government is serious about improving the investment climate. The government is taking genuine steps to improve the investment climate but faces implementation challenges. These range from reaching consensus among all parts of government on the role of the private sector, delineating clear responsibilities and effective mechanisms, ensuring overall policy coherence – such as in reconciling the need to boost domestic resource mobilisation and relying heavily on fiscal incentives as a strategy to attract FDI – to building capacity within the government for private sector reform.

Involving the private sector and its associations, particularly the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) is essential. Today it has some 25 000 members, companies, including some foreign companies, co-operatives, associations and individuals. It thus represents an important segment of the private sector in Myanmar and as such should play a strong role in policy formulation geared towards strengthening the investment climate. The government should ensure that segments of society that are remote from the hubs of economic reform, such as the largest cities, are kept abreast of policy developments. This includes public awareness campaigns and associated capacity-building activities. For example, any measures to develop an *SME Law* should consider steps to educate SMEs on the possible impact of such legislation.

The elaboration of a clear private sector development strategy would significantly contribute to addressing the above challenges. In most cases, bits of a strategy are found in different policies. In Viet Nam, for example, guiding private sector development elements are found in the Poverty Reduction Strategy Paper, the 10-Year Socio-Economic Development Strategy, and the 5-Year and annual Socio-Economic Development Plan.[7]

The experience of South Africa in developing a National Industrial Policy Framework can provide useful guidance, such as with regard to cross-government co-ordination and policy mixes of sector specific and cross-sectoral measures (Box 4.2). Its "core objective is to set out government's approach to South Africa's industrialisation trajectory and hence to help align private and public sector efforts towards this end".

The role of donors is critical. The Nay Pyi Taw Accord on Effective Development Cooperation of 2013[8] stresses the importance of developing the private sector in Myanmar. This is an important signal to donors, as until 2012, there were no neither bilateral nor multilateral private sector development programmes – most were aimed at supporting humanitarian aid and disaster relief. Numerous bilateral and multilateral agencies are now developing private sector development programmes with the government. GIZ, for example, has announced a EUR 4.5 million bilateral SME development programme, while the World Bank has unveiled USD 40 million in credit to improve the domestic business climate.[9] These efforts also need to be co-ordinated so as not to overburden the government with donor relations. Development partners have joined up in a private sector development co-ordination group, as it is common in many developing countries, to streamline the delivery and enhance the effectiveness of donor-supported programmes.

Box 4.2. **South Africa's NIPF strategic programmes**

The South African National Industrial Policy Framework (NIPF) addresses cross-cutting and sector-specific challenges, rather than a "one-size-fits-all" approach. It covers sectors as well as process, such as providing guidance on intra-governmental co-ordination. The thirteen strategic programmes of the framework are:

- Sector Strategies.
- Industrial Financing.
- Trade Policy.
- Skills and Education for Industrialisation.
- Competition Policy and Regulation.
- Leveraging Public Expenditure.
- Industrial Upgrading.
- Innovation and Technology.
- Spatial and Industrial Infrastructure.
- Finance and Services to Small Enterprises.
- Leveraging Empowerment for Growth and Employment.
- Regional and African Industrial and Trade Framework.
- Co-ordination, Capacity and Organisation.

Key Action Plans and measurable key performance indicators support the monitoring of the different initiatives.

Source: Government of South Africa, Department of Trade and Industry.

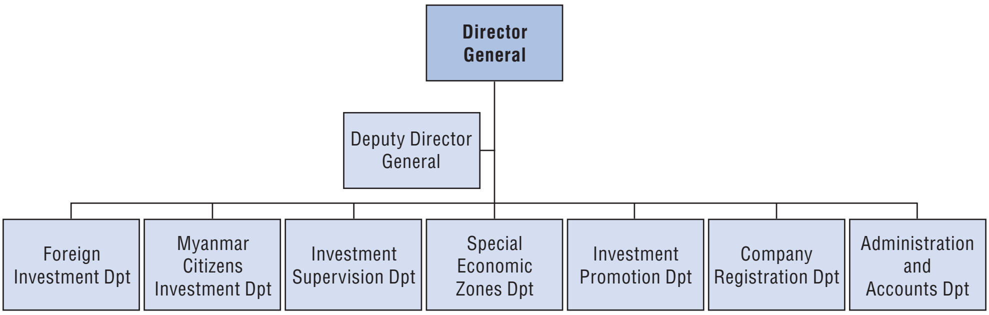
Investment promotion and facilitation

Numerous agencies promote investment into different sectors, such as the Ministry of Hotels and Tourism promoting responsible tourism investment. With economic liberalisation gaining ground and gradual decentralisation, different actors can become more independent in setting their own agendas, which can be a strong driver of innovation and reform. However, the government needs to ensure a certain level of co-ordination among actors so as to avoid duplication, while at the same promoting public awareness and transparency in various initiatives.

DICA is officially mandated to co-ordinate investment promotion, and thus currently acts as Myanmar's Investment Promotion Agency (IPA), although its structure and operations go beyond the classic functions of an IPA. DICA has dedicated units to undertake some functions of an IPA, including promotion and facilitation under its Foreign Investment

Department (Figure 4.3). The government has formed an Investment Promotion Department under DICA. Creating a focused unit for promoting investment into Myanmar also frees up other DICA resources to focus on core company administration duties.

Figure 4.3. **Organisational structure of DICA**



Source: DICA.

As stipulated in the FIL, the Foreign Investment Department undertakes the following functions:

- Providing market information and data to potential foreign investors.
- Answering any requests for clarification of investment-related laws and regulations.
- Hosting the Investment Information and Promotion Team (established in July 2011) under the guidance of the MIC.
- Reviewing all investment proposals before recommending a decision to the MIC (Figure 4.1).
- Issuing an investment approval letter once MIC approves the recommendation.
- Producing and publishing marketing material for investment promotion purposes.

With the increasing interest in Myanmar as a potential investment destination, different line ministries are increasingly solicited for information related to their sectors and on modes of investment. DICA's role as a co-ordinator of investment attraction to the various sectors thus becomes vital to avoid duplication of government efforts, and uphold standards of practices in dealing with investors. According to DICA, the directorate is adequately funded to undertake its core activities. To ensure efficient use of its resources in investment promotion and facilitation, the performance of each unit needs to be monitored and evaluated.

Box 4.3. Implementing business climate reforms, lessons from Malaysia

In 2007, when Malaysia ranked 25th in the World Bank's *Doing Business* indicators, the prime minister formed the Special Task Force to Facilitate Business (PEMUDAH) to simplify business operations in Malaysia by improving the government delivery system. It is composed of 14 heads of selected ministries and departments and 10 corporate leaders, and co-chaired by the Chief Secretary to the Government and the President of the Federation of Malaysian Manufacturers. The task force oversees different working groups, by and large reflecting the *Doing Business* categories and acting as a private sector feedback mechanism. The results are clear: in 2013, Malaysia ranks 12th in the *Doing Business* indicators.

PEMUDAH also launched the "Modernising Business Licensing' initiative to review all procedures related to the application of business licences in 23 ministries. As of October 2012, 548 licences were streamlined into 323 licences, while 8 were eliminated. The initiative is expected to reduce an estimated RM 729 million in business licence compliance cost by project completion in November 2013.

Malaysia's reforms are characterised by remarkable pragmatism, guided by a series of Industrial Master Plans. To enhance the efficiency of its investor relations, the country's investment promotion agency, the Malaysian Investment and Development Agency (MIDA), has developed Key Performance Indicators (KPIs) and has gone as far as elaborating a Client Charter which tracks the efficiency of the delivery of licenses and operating permit against established targets.

Source: OECD (2013a).

While DICA's performance in attracting investment is reviewed at meetings of the MIC, it has yet to implement fundamental best practices linked to investment promotion, from regular evaluation of IPA performance in terms of FDI flows and impact, through seeking feedback from clients. At the current stage, DICA's performance should be measured in terms of reducing the administrative burden on the private sector. The government needs to carefully balance its priorities and should avoid attempting to do everything at once. Ensuring smooth, efficient and speedy business licensing procedures allowing companies to set up shop easily is vital to improving Myanmar's investment climate.

Investment objectives require reliable data on FDI and local investment, which would also support measuring the effectiveness of DICA in reaching these objectives. Such data and the capacity to analyse it to distil effective policies and measures are at the heart of effective policy reform. The government should thus seek to improve the data collection and analysis of investment statistics. DICA could be a logical depository for such information, including studies that could be made publicly available through its website.

Many countries at similar stages of economic development to Myanmar have significant experience with investment promotion and facilitation, including on which parts of the strategy – promotion, facilitation, after-care, advocacy – to focus and when, as well as on institutional structures. For example, some governments have placed their IPAs directly under the presidency as is the case in Rwanda (Box 4.4), others have established completely independent investment promotion bodies, while others have opted for maintaining dedicated units within ministries.

The government should also communicate its investment climate reforms and new investment opportunities to potential foreign investors through its diaspora and network of embassies. Also, given the vast pool of experience available in the ASEAN region and beyond, Myanmar should consider participating in global IPA fora, such as the World Association of Investment Promotion Agencies (WAIPA).

Box 4.4. **Improving a post-conflict investment climate: The example of the Rwanda Development Board**

Rwanda's challenging history makes its governance and economic progress over the past decade even more impressive. Part of its economic reform package included the *Investment Law* of 2006, through which the Rwanda Development Board (RDB) was established in 2008 to boost new development projects and to promote new investment. It has an independent status and reports directly to the President of Rwanda.

By combining and bringing under one roof numerous agencies formerly undertaking investment promotion and facilitation activities – such as the Rwanda Investment and Export Promotion Agency, the Rwanda Commercial Registration Service Agency, the Human Resource and Institutional Capacity Development Agency, the Rwanda Information and Technology Agency, and the Rwanda Office of Tourism and National Parks – it now covers the activities linked to business registration, investment promotion, environmental clearances, privatisation and specialist agencies which support the priority sectors of ICT and tourism. Its website provides in-depth sectoral information for designated priority clusters: agriculture, services, tourism and conservation, ICT, trade and manufacturing, all of which have designated units in RDB. The RDB's one-stop investment services centre assists foreign investors in securing required approvals, certificates, work permits, tax incentives, and land registrations.

While some challenges with regards to online registrations and visa requirements for foreign investors remain, the establishment of the RDB has contributed to increased transparency and has simplified procedures. It is not surprising that Rwanda jumped an impressive 76 places – from 143 to 67 – on the World Bank's *Doing Business* 2010 report, thus becoming the first African country to be the world's biggest business reformer. Today, Rwanda ranks 52rd out of the 185 countries covered by the World Bank's report.

Source: US State Department, World Bank (2013), *http://rwanda.usembassy.gov/investment_climate_.html*, and *www.theeastafrican.co.ke/Rwanda/Business/In-Rwanda-investors-say-registering-business-online-difficult/-/1433224/1753084/-/view/printVersion/-/3xobkbz/-/index.html*.

Active SME promotion in Myanmar is in its infancy

SMEs in Myanmar, like in most countries, make up the majority of the private sector, with 90% of the industrial sector and 92% of the manufacturing sector. Two thirds are in the food and beverage sector (Than, Win, 2007). While official statistics on the subject are poor, it is estimated that over 80% of all businesses are informal, most are family-owned or self-employed workers (OECD, 2013b).

Recent business climate assessments point to a number of impediments that are particularly significant for SMEs, including: access to finance, heavy business licensing and permit procedures, access to and state of infrastructure, including electrical power, and poor support services such as business development services and trade facilitation measures. Support measures for SMEs generally address some or a combination of the above, but Myanmar currently lacks a unified SME policy. The government is aware of the need to develop such guidance and the UMFCCI is working with UNIDO towards this end. Any SME promotion initiative has to be part of a wider private sector transformation programme, and hence linked to a private sector development strategy advocated above. An important element to consider in such a policy is the definition of SMEs. The current definition is based on the 1990 *Private Industrial Enterprises Law*:

Table 4.2. **SME categories in Myanmar**

Small Scale Industrial Enterprise	1-50 workers	Or has capital of up to MMK 1 million	Or has yearly production value of up to MMK 2.5 million	Or uses between 3-25 horse power
Medium Scale Industrial Enterprise	51-100 workers	Or has a capital of MMK 1-5 million	Or has a yearly production value of MMK 2.5-10 million	Or uses between 25-50 horse power

Source: UMFCCI.

While SME definitions vary by country, the definition in Myanmar is rather complex, thereby hindering the implementation of policies targeting SMEs. The definition should be simple while reflecting economic realities. A SME definition is of critical importance to guide SME financing policies and other supporting measures. The current SME definition could benefit from being more specific, either by having categories by subsectors, as is the case in Thailand, or by including microenterprises, as in Malaysia and Indonesia. This would help design more targeted SME support and promotion measures. The legal framework covering company administration, from SME regulation to broader corporate governance (see Chapter 8 on corporate governance), is fragmented and lacks consistency and should be revised. Statistics on local business activity should also be improved, as mentioned earlier, to contribute to developing a realistic private sector development strategy.

The Ministry of Industry established the SMEs Development Centre in Yangon in April 2012. The Centre aims to support local SMEs and to provide training, business development services, and market information for business opportunities. This initiative goes in the right direction by providing incubation services to SMEs in urban areas. Table 4.3 below highlights some basic types of business support services for SMEs.

One of the most prominent recent measures by the government has been to develop an SME Law, which awaits approval from the parliament. While details about the draft law are unknown, it could effectively address some of the main challenges outlined above. It is in any case important that SMEs be informed adequately of the consequences the law will have on their status, including how they can benefit from such legislation.

Table 4.3. **Basic types of SME support services**

Type of service	Target enterprise	Features
Business Development Services	Start-ups and SMEs	General business support, demand-driven training and advisory services to individual businesses BDS centre often liaises with other specialised service providers Economies of scale can be achieved through networks of BDS providers
Business Advisory Services	Start-ups and SMEs	General business support, demand-driven training and advisory services to individual businesses Often primary provider of specific service
Business Incubation	Start-ups and SMEs with growth potential	Selection process to admit businesses with high growth potential Mix of strategic training and operational support Often involves providing businesses with office space and basic infrastructure and facilities Sometimes linked with research institutions
Industrial Parks	Emerging and established business, sometimes targets specific industries	Focus on relatively mature businesses Ideally, linked to research institutions and R&D centres Often linked to cluster-oriented development strategies
Industry Clusters	Inter-related businesses, supporting a specific industry, value chain or export activity Different sectors, mostly in the manufacturing and technology industries	Ideally, linked with research institutions May use incubation techniques to source clients Often linked to national competitiveness strategies (e.g. Malaysia, Singapore)

Source: Adapted from infoDev: *Global Good Practice in Incubation Policy Development and Implementation*, 2010.

Experience gathered from different transition economies points to the following characteristics constituting an SME friendly environment (OECD, 2004):

- Clear property rights and effective contract enforcement.
- A simple, fair, transparent and low-compliance-cost tax system.
- Ability to register with authorities through a simple and inexpensive system (even online).
- Minimal business licensing requirements, except to uphold consumer and labour health and safety safeguards.
- Balanced and flexible labour regulations, protecting the rights of labour and the firm equally.
- Streamlined customs administration for both exporting and importing SMEs.
- Easy company establishment and access to membership organisations.
- Financial sector regulations (banking, insurance, leasing) that recognise SME constraints and have legal and regulatory instruments that facilitate access to finance for SMEs.
- SMEs can easily set up and join membership organisations.
- Fair bankruptcy legislation.

New SME financing schemes have recently been introduced by the government allowing SMEs to obtain loans on favourable conditions from the Small and Medium Industrial Development Bank (SMIDB, renamed from the Myanmar Industrial Development Bank in 2011). However, there are still challenges in operationalising the loans for SMEs from SMIDB at the suggested 8.5% interest rate – below the normal 13% rate – due to objections from the Central Bank (IDE-JETRO, 2013). The procedures for obtaining SME loans also seem to be burdensome, with some 22 documents required (see Chapter 6 on financial sector development). The newly established SME Centre aims to support SMEs in addressing these challenges. While the centre can provide training and hand-holding in the application process, through activities like assisting in developing business plans, the issues of lack of collateral and overall funds to cover the interest rates and loan processing charges are structural and require additional attention from the government.

Special economic zones are central to Myanmar's investment attraction strategy

The government has embarked on an ambitious programme to establish special economic zones (SEZs) and industrial parks to help move its economy in the long run from an exporter of raw material to one that produces competitive semi-manufactured or manufactured goods with significant local value addition, following the experience of some ASEAN peers and China. If accompanied by the right mix of supporting policies and measures aimed at strengthening local companies to partake in the economic activities generated in the promoted areas, such a policy could lead to the creation of new local enterprises, economic expansion and diversification, and the creation of dynamic business networks and clusters.

Many economies have opted for free zones to meet various development objectives, from job creation, increasing export and government earnings, to attracting investment, especially FDI. Common features include a geographically defined area, streamlined procedures – such as for customs, special regulations, tax holidays – which are often governed by a single administrative authority. Free zones are far from being a new model, as evidence dates back to 1704 in Gibraltar, or more relevantly, 1819 in Singapore.[10] By the latter half of the 20th century, they had become a tool to promote economic development. The development of the Chinese Shenzen free zone in 1979 is particularly well-known for marking this trend (OECD, 2009b). By 2008, there were over 3 000 SEZs in 135 countries (World Bank, 2008).

Free zones generally fall within one of four categories: free trade zones, export processing zones (EPZs), special economic zones or industrial zones. The government has designated three SEZs, 18 smaller industrial zones to attract investment in non-natural resource sectors, 34 sub-industrial zones, and has recently established seven new zones (IDE-JETRO, 2013). These recent initiatives were undertaken by the newly reformed Industrial Development Committee, made up of several sector sub-committees (Min et al., 2012). SEZs follow a multi-sector approach, and sometimes include other free zone models, such as an EPZ within an SEZ, while industrial zones are usually industry-specific with adapted infrastructure.

It is the more indirect benefits of potential skills upgrading, technology transfer, enhanced trade efficiency of local companies and demonstration effects that can strongly contribute to sustainable industrial development. These benefits are also more difficult to achieve as they rely on a set of framework conditions that can spur industry-driven cluster development, whereas many SEZs stem from a top-down approach with strong government involvement (Zheng, 2011).The Myanmar industrial zones are managed by an Industrial Zone Management Committee. Currently, just a few industrial zones are fully operational and meet international standards. The Mingaladon Industrial Park in Yangon developed by Mitsui Corporation of Japan has received significant international attention. Most industrial zones however only have partial land plots completed.

High prices of land in these zones have led many companies to sell their plots and take their operations outside the zones, defeating any strategy behind zone development. Reportedly only about 20% of the plots are used for manufacturing and processing purposes. Also, the location of some industrial zones is questionable, as some are not ideally connected to markets and trading routes (IDE-JETRO, 2013). The larger SEZs are Thilawa, Dawei (also known as the Dawei Port Project), and Kyaukphyu (Box 4.5).

Box 4.5. **Myanmar's Special Economic Zones (SEZs)**

Thilawa: The governments of Myanmar and Japan aim to establish a joint venture (51% Myanmar ownership) to develop the SEZ. In order to implement the Thilawa SEZ by 2015, 25 kms from Yangon, the government will form a Public Limited Company consisted of 9 Core Myanmar Public Companies – Golden Land East Asia Development Ltd.; Myanmar Sugar Development Public Co., Ltd.; Myanmar Edible Oil Industrial Public Cooperation; First Myanmar Investment Co., Ltd.; Myanmar Agricultural and General Development Public Ltd.; National Development Company Group Ltd.; New City Development Public Co., Ltd.; Myanmar Technologies and Investment Corporation and Myanmar Agribusiness Public Corporation. The planned 2 000 hectares project eventually aims to include both high-tech and labour-intensive industries, including textiles.

Dawei: To develop this 44 850 acres zone near the Thai border, the governments of Myanmar and Thailand signed the Comprehensive Development in the Dawei Special Economic Zone and its Related Project Areas on 23 July, 2012. According to this Memorandum of Understanding, the Myanmar-Thai Joint Higher Committee led by both governments was established and the Myanmar-Thai Joint Cooperation Committee formed. Aimed for completion in 2014 it will integrate the Dawei Port with road and rail connections to Thailand. The SEZ is aimed to attract infrastructure projects such as building a deep-sea port and a Myanmar-Thai highway, power plants, a dam and residential housing.

Kyaukphyu: In the southwest of the country, this zone is still at the planning stage.

Source: DICA.

As in some other Asian countries, a large segment of future manufacturing FDI into Myanmar is expected to go SEZs as opposed to the broader economy, owing partly to the generous terms and incentives that are provided to investors willing to invest in the SEZs. This will depend on the quality of the infrastructure and efficiency of the services in the SEZ. In the

Philippines, the share of FDI flows destined to the country's zones increased from 30% in 1997 to over 81% in 2000 (UNCTAD, 2003), while a third of the FDI in Bangladesh is registered in EPZs (World Bank, 2008).

In Myanmar, the fiscal incentives schemes under the current Myanmar *Special Economic Zone Law* (2011) is more generous than the one stipulated in the FIL. There are also nuances as to whether zones are privately or publicly managed. In Thailand and Viet Nam, most FDI and export activities take place in privately-run industrial zones and EPZs, which also tend to have a better record of social and environmental impact than government-owned zones (World Bank, 2008).

China, Malaysia and other developing and emerging economies, including Jamaica and Jordan, have effectively used zone-based strategies to test the impact of new policies and measures to improve the investment climate. In Shenzen, the SEZ was used to test free market economy policies. Chinese free ports tested financial, legal, labour, and pricing policies before extending these to other parts of the economy (Zeng, 2011).

The SEZs in Myanmar could thus be used as effective pilot schemes for testing new approaches to boost the investment climate. This could be in the area of building capacity for monitoring the environmental, social and economic impact of the investments in the zones, streamlining registration and licensing procedures (testing the effectiveness of the one-stop services stipulated in the SEZ laws), effectively managing incentive schemes extended to investors, and promoting linkages with local companies to trigger skills upgrading, technology and knowledge transfer. Myanmar could also consider developing eco-tourism zones based on good practices on its islands in light of expected increases of tourist arrivals.[11]

However, the government needs to recognise that attracting domestic and foreign investors into SEZs is no substitute for improving the general investment climate and tackling the fundamental economic development challenges the country faces. SEZs often miss broader development goals, creating enclaves with limited connections to the local economy, where foreign companies mainly contribute to export hubs, rather than fostering dynamic industry clusters. Activities in SEZs have sometimes even had negative socio-economic impacts. These include exploitation of workers in low wage industries, suppression of overall labour standards and core rights – such as banning rights to assemble or impeding trade unionisation – and low environmental, health and safety standards (Milberg et al., 2008). In East Africa for example, EPZs have been identified as problematic as many have turned into microeconomies with poor linkages with other parts of the economy, while also having encouraged transfer pricing.[12]

The SEZ laws in Myanmar mention that environmental and labour standards in the zones should not be below those stipulated in the national legislation. The challenge lies in monitoring the practices within the zones and effectively implementing national legislation. This reinforces the message in other parts of the Review that Myanmar should continue to strengthen mechanisms to promote observance of ILO labour standards and align itself to other internationally recognised principles, such as the ones stipulated in the *OECD Guidelines for Multinational Enterprises*.

These zones can also sometimes divert policymakers' attention from broad-based economic reforms. Challenges lie in effectively managing the costs of developing and running SEZs, which includes avoiding subsidising utility services and high infrastructure costs on the side of the government. The Republic of Korea, Indonesia, and Malaysia are often referred to as examples where cost-benefit analyses have shown positive results from their zone-based strategy (World Bank, 2008).

Management deficiencies in the running of SEZs in Myanmar need to be addressed from the onset. The SEZ laws (Chapter IV of the Myanmar *Special Economic Zone Law* and the *Dawei Special Economic Zone Law)* call for the composition of the management board to be made up solely of government officials and do not foresee any private sector representation. This should be re-considered in light of the private sector's experience which could be invaluable in managing zones. The lack of autonomy of management boards and effective one-stop service in certain EPZs in Viet Nam, for example, caused significant problems in everyday operations (IDE-JETRO, 2013). International good practice (Box 4.6) recommends that members of trade unions be part of the zone management boards, as is the case in the Philippines, Singapore and Trinidad and Tobago (World Bank, 2008).

Public-private partnerships have also been used extensively in zone development all over the world. In the Philippines, the development of the Subic Industrial Estate saw the public sector assume the financing of all external infrastructure, providing long-term land leases, and holding an equity stake in industrial estates, while the private sector financed all zone-internal infrastructure and managed the zone. In the Vietnamese Tan Thuan EPZ, the public sector also provided long-term land leases and right of way development rights on access roads, while the private sector financed all internal and external infrastructure and managed the zone (World Bank, 2008).

While SEZs and cluster-oriented policy options can go a long way in tackling short and medium-term structural weaknesses in economies, they are by no means substitutes for wider private sector and investment climate reforms advocated throughout this Review. Based on the vast experience

Box 4.6. **SEZ policy good practices**

Foreign/local ownership	• No limitations • Equal treatment
Catering to the domestic market	• Liberalised • Criteria based • Subject to regular, non-zone, import regulations
Purchases from domestic market	• Companies eligible for exporter benefits since these should be treated as exports from domestic markets
Eligibility for benefits	• No minimum export requirements • Foreign and domestic companies • Private zone developers • Manufacturers and service providers
Labour policies	• Full consistency of international norms, including ILO labour standards and OECD *Guidelines for MNEs*
Private zone development	• Competition with government managed zones on a level playing-field • Developers eligible for full benefits • Clearly defined in legislation, include criteria

Source: OECD findings and adapted from World Bank, 2008

worldwide, the government should be mindful of a number of challenges linked with the adopted approach. It is critical that local capacity be upgraded – capacity to manage zones, regulate and monitor activities in the zones, and of local companies to participate in the activities in the SEZs, especially manufacturing activities. Should a particular zone prove successful, the public objective should be to extend its regime and benefit to the rest of the economy (OECD, 2009).

Promoting linkages with local SMEs

New technology, know-how and capital are all ingredients foreign investors can bring to an investment destination. These companies can be effectively used to upgrade the supply-side capacities for manufacturing and boost the domestic private sector through business linkages, i.e. supplier-buyer relationships that can channel technology and knowledge transfer to local suppliers. Investment linkages, including various types of business relations, from SME-MNE linkages, SME-larger local business linkages, through linkages among larger local enterprises, must form an integral part of Myanmar's investment policy. There are numerous examples from ASEAN economies of business linkages that have effectively used FDI to foster domestic enterprises.

Supporting the development of linkages entails effectively designing and implementing measures to strengthen the competiveness of local companies to partner with larger companies as suppliers. Measures should also be put in place to facilitate larger companies' efforts to partner with, and source from, local suppliers.

Special incentives and tax refunds for companies that have invested in training local suppliers can be considered. Such schemes are widely used. Malaysia's Industrial Linkages Programme (Box 4.7) is one example of effective linkages promotion efforts. Below are some factors that have contributed to successful linkages promotion in Korea, Singapore and Chinese Taipei (Battat et al., 1997):

- Subsidised credit for SMEs in supplier relationships with larger companies.
- Regulations that motivate commercial banks, especially state-owned banks, to have a specific percentage of credits extended to SMEs (e.g., some banks extended up to 30% of their credits to SMEs in Korea in the 1970s).
- Careful selection of promising SMEs and entrepreneurs in public linkages and SME promotion programmes.
- Establishing credit worthiness of SMEs participating in public programmes.
- Export orientation.
- Extensive training and advisory services made available and affordable to SMEs.
- Efficient government programmes with limited "red tape" to motivate SMEs to use them.

Fostering linkages in SEZs is no easy endeavour.[13] Local SMEs must also be supported in their agglomeration efforts to contribute to competitive local business networks. If Myanmar is to see the formation of dynamic clusters, the connectivity among the zones – both SEZs and industrial zones – and surrounding industries needs to be developed.

Training and business advisory services are crucial in providing tailor-made services to local SMEs. It is not customary for such provisions to be included in the legal framework governing SEZs, and the current Myanmar *Special Economic Zone Law* does not do so. It could nevertheless have made such references, given that it includes broader objectives linked to technology transfer and development of high technology industries in Myanmar under its Chapter II.

At the time of this Review, a new SEZ Law has been prepared for approval by parliament. It aims to cover all SEZs and is likely to include important provisions addressing some of the concerns raised above. For example, it foresees the establishment of free zones and promotion zones within SEZs. While the former are to be tailored for export processing activities, the latter would aim to support cluster development with active participation of domestic companies. The new law also foresees longer tax exemptions (7 years), custom duty exemptions in the free zones, and other non-tax incentives. While extending tax exemptions from an already generous incentives scheme under the current SEZ laws would not necessarily be an effective measure to attract investment (see discussion on incentives in Chapter 5), some incentives could be justified if they are to support linkage creation between MNEs and local companies.

Box 4.7. **Malaysia's Industrial Linkage Programme (ILP)**

Objective: To develop domestic SMEs into competitive manufacturers and suppliers to MNEs and large companies.

Activities: Matching services supported by SME Corp's (former SMIDEC) financial and developmental programmes.

Incentives for SMEs: Pioneer Status with 100% tax exemption on statutory income for 5 years and investment tax allowance of 60% on qualifying capital expenditure within a period of 5 years. To qualify for the incentives, SMEs must manufacture products or undertake services in the List of Promoted Activities and Products in an ILP. They should also be supplying to MNEs and large companies.

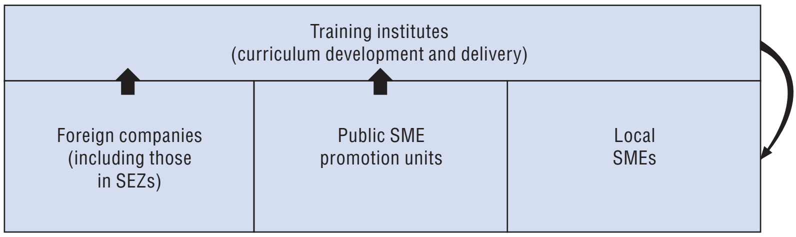
Incentives for MNEs: MNEs can deduct from their income tax expenses incurred in developing SMEs through activities like training, product testing and development, auditing and other forms of technical assistance.

Source: OECDa, 2013.

Strengthen local training and R&D capacity

A vital link in developing effective business development and advisory services is establishing a dynamic nexus between local companies, MNEs, training institutes, public SME promotion units and universities (Figure 4.4). Foreign companies must be involved in the curriculum development of training institutes for these to deliver appropriate modules that reflect industry demands. To generate the capacity for local business development and adaptation to changing demands, such a model should lead to effective business development services, and eventually to a dynamic R&D infrastructure.

Figure 4.4. **Developing and delivering business knowledge to SMEs**



Source: OECD findings.

Partnering with universities in developing and offering technical training must not be limited to local universities. Many governments have used foreign universities in their schemes, such as the UAE linking up with the Massachusetts Institute of Technology in the MASDAR project. Another example of an effective enrolment of foreign investors in local training initiatives is the Renault Tangier initiative in northern Morocco. Myanmar should thus support the development of training facilities, in partnership with technical schools, universities and the private sector, within the SEZs.

Such efforts would significantly contribute to upgrading the capacity for business development and innovation among local companies, key to breaking away from low-skill equilibriums which are common in SEZs. Countries with successful SME development initiatives, such as Malaysia, Chinese Taipei and Thailand, were able to uplift their zone activities from low-skill textiles and apparel manufacturing into higher value-added manufacturing and services. These were successful in promoting and expanding their export bases through attracting investment and encouraging exports in diverse industries, ranging from electronics components assembly and manufacturing to chemical processing and automotive assembly (World Bank, 2008).

Monitoring social, economic and environmental impact

In moving forward with its SEZ policy, the government should establish a monitoring system that measures the impact of SEZs through clearly defined objectives and targets. The targets should go beyond strict export volume objectives to measure the development of local manufacturing know-how, participation of local companies in export activities, and the creation of new local companies to support SEZ activities. Monitoring the environmental impact of activities in SEZs is also critical. This goes from measuring the environmental degradation linked to the physical development of SEZs to keeping track of the impact on the environment of the economic activities in the zones, such as industrial waste. While the current Myanmar *Special Economic Zone Law* states that: "The developer or investor shall take responsibility for not causing environmental pollution and air pollution in respect of his enterprise", the legal framework governing SEZs remains vague in this regard and could benefit from clear links and references to national environmental legislation and guidelines for SEZ investor compliance.

Avoiding a race to the bottom

In line with the discussion on investment incentives in this Review, the government should be cautious not to extend ineffective financial incentives to foreign companies – a risk that is often associated with a zone-based strategy, given the innate difficulty to measure the cost-benefit of incentives and the fact that SEZ schemes sometimes are more favourable than general incentive schemes – as is the case in Myanmar. Besides their lack of effectiveness overall in promoting zone performance (World Bank, 2008), these often erode important resources for to develop physical and soft infrastructure, such as much needed training for local companies discussed above.

It is thus important that the government be careful not to be caught in a race to the bottom where it offers unreasonable incentives to attract companies to its SEZs. Such incentives, if granted, should effectively contribute to increasing the technology and knowledge transfers to the local economy, an objective that is difficult to achieve in the short-run. Chapter V of the Myanmar SEZ Law cover the special privileges granted to investors, including incentives. As mentioned above, the incentive scheme under this Law is more generous than under the FIL, yet it does not link the incentives provision to any obligations of training or support to local enterprises, which could have underpinned an objective of using the technology and knowledge available through foreign companies in the SEZs to upgrade the domestic private sector.

Notes

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13. For example, free zones in the UAE have so far failed to manifest significant technology transfer, and the important backward and forward linkages with the local economy – all of which are critical spill-over effects that should be achieved when aiming to use SEZs to promote the local economy (El Shimy, 2008).

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Chapter 5

Myanmar's tax policy

This chapter explores the question of how Myanmar can make its tax system more efficient at mobilising revenue, while creating a business-friendly regime conducive to investment and growth. It looks at the bottlenecks within its current tax system, especially its tax incentives regime, and at how the efficiency of the system could be improved.

Myanmar is embarking on political and economic reforms at breathtaking speed, and growth forecasts by the ADB are 6.5% in FY2013 and 6.7% in FY2014. This optimism could be undermined, however, by a weak macroeconomic framework; low fiscal resources; limited access to finance; deficient infrastructure; and weak human, technical and implementation capacity. To make its tax system more efficient at mobilising revenue to fill these capacity gaps, while creating a business-friendly regime conducive to investment and growth, Myanmar needs to generate adequate resources to fund infrastructure, improve labour skills, strengthen governance and address other elements of the business environment that are the real impediments to investment. Increasing tax revenue to fund these priority development needs will have the greatest positive direct impact on both investment and economic growth. Taking action in the following three areas will help:

Tax policy. The tax system needs to be simplified and the tax base broadened to generate more revenues for development spending. Streamlining tax incentives for investment will be essential; credible cost-benefit analyses of tax exemptions and special tax provisions should help decide which wasteful tax incentives to eliminate. Until Myanmar's institutional and human capacity in fiscal analysis is built, technical assistance by multilateral organisations like the OECD could help with this type of analysis. To inform the policy-making process, the revenue loss attributable to tax incentives as well as allocation of tax relief across different taxpayer groups needs to be regularly estimated and reported, ideally as part of an annual Tax Expenditures Report (covering all main tax incentives).

Tax administration. A key to improving compliance will be to strengthen the Internal Revenue Department's institutional and human capacity. A rational, modern, and efficient tax administration will require well-trained and well-paid staff supported by modern computerised tax administration systems. The organisation must also adapt to an electronic data processing environment. Among other things, establishing an identifier for taxpayers will allow for better documentation, control, and consistency, as well as enabling critical tax policy analysis. Another key to better tax compliance and self-reporting will be substantial taxpayer education and awareness efforts.

Institutional and human capacity. Substantial effort, including by the international community, needs to be concentrated on building Myanmar's human and institutional capacity. If the fruits of reform are to be sustainable, Myanmar should consider: 1) establishing a Fiscal Analysis Unit within the Ministry of Finance, with staff trained in modern fiscal analysis techniques and equipped with the necessary tools for putting those techniques to practical use; and 2) addressing urgently the limited quantity and quality of data.

This chapter explores the question of how Myanmar can make its tax system more efficient at mobilising revenue, while creating a business-friendly regime conducive to investment and growth. It looks at the bottlenecks within its current tax system, especially its tax incentives regime, and at how the efficiency of the system could be improved.

What factors matter to investors in Myanmar, and how should tax policy makers respond?

Improving the business-enabling environment is fundamental for achieving Myanmar's policy priorities outlined in its *Framework for Economic and Social Reform*.[1] As such, fiscal policy makers need to carefully evaluate the relative advantages and disadvantages of alternative tax policy choices that may negatively or positively influence investment. One key area is Myanmar's tax incentive regime. By lowering the tax burden on investment and subsidising investors, Myanmar is losing revenues that could instead be used to build up infrastructure, improve labour skills, strengthen governance, and address other elements of the business environment that are the real impediments to investment. The central question is what level of tax burden is consistent with Myanmar's investment attraction strategy and its broader development objectives? Would forgone revenue resulting from tax concessions generate more investment activity and growth in the long run than direct spending on improving infrastructure, telecommunication, education and specialised vocational training?

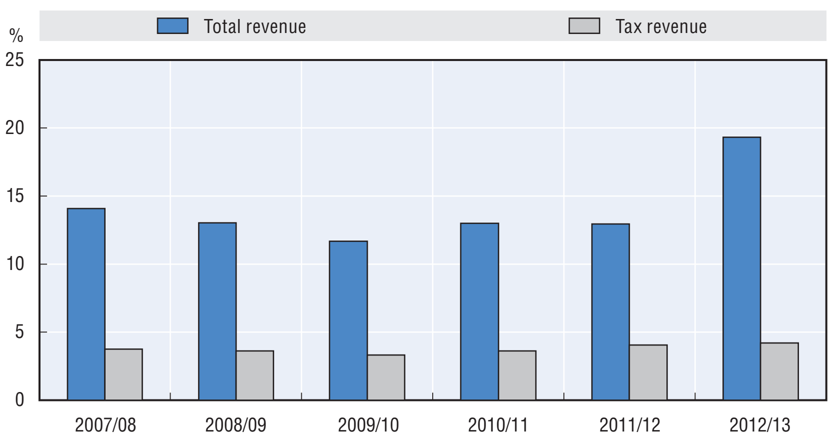
Worldwide experience and analysis show that the level of tax burden is only one of the many factors considered by potential investors. Of greater importance to potential investors are the costs and risks associated with underlying macroeconomic conditions; the cost of complying with laws, regulations and administrative practices; and, above all, location-specific profit opportunities. Four issues – some positive, others less so – will influence potential investors in Myanmar. Understanding these can help assess whether the country's tax burden is either too high to attract investment or too low to generate enough revenue for the country. This section outlines these four issues and considers their policy implications:

1. **Abundant opportunity for location-specific profits.** Myanmar offers abundant location-specific profit opportunities – opportunities that require a physical presence in Myanmar and cannot be realised by locating in

another country or jurisdiction. These include its natural resources, such as large industrial quantities of natural gas; the country's strategic position between China and India; and low-cost labour that is competitive considering the upward wage pressure experienced by other low-cost manufacturing countries, such as China. Investors will gladly embrace these factors in a stable, liberalised Myanmar. Global experience shows that investors will accept a higher tax burden in countries that possess such location-specific profit opportunities. To avoid tax revenue losses, policy makers may want to resist pressures to adjust to a relatively low tax burden.

2. **Weak fiscal framework.** Investors require stability. A stable fiscal framework is a key part of the investment equation and also a critical factor for steering the Myanmar economy towards long-term inclusive growth. A stable framework will require chronic fiscal deficits to be contained. This, in turn, requires significant improvement in domestic resource mobilisation. The most recent International Monetary Fund (IMF) Staff Monitoring Report for Myanmar (IMF, 2013) indicates that the consolidated revenue collection – which includes both the Union budget and the State Economic Enterprises – has averaged 14.1% of GDP over the last six years (Figure 5.1). Tax revenue collection has been abnormally low, trailing at around 3.8% over the same period. Clearly, the tax system does not generate enough revenue to ensure fiscal stability or to curb budget deficits, and the current tax burden should be adjusted to improve revenue collection.

Figure 5.1. **Myanmar's revenue as a percentage of GDP, FY2007/08 to FY2012/13**



Source: IMF (International Monetary Fund) (2013), "Myanmar: Staff-Monitored Program", January 2013, *IMF Country Report* No. 13/13, IMF, Washington, DC.

3. **Poor infrastructure.** As discussed in Chapter 7, to improve the country's business climate and lay the foundations for sustainable development and growth, Myanmar must improve its infrastructure. Substantial investment in physical and social infrastructure is needed to improve the investment climate and unleash Myanmar's growth potential. This calls for tax policy choices that considerably improve revenue mobilisation.
4. **Human capital constraints.** Good quality human capital is a critical component of an investment-friendly environment, especially for high value-added investment. There is plenty of evidence that countries that manage to sustain high growth for long periods put substantial effort into the education and health of their citizens. Myanmar's under-investment in its human capital – and specifically its limited educational and health financing – will become a major obstacle to growth and development in the future. The government recognises that the current state of human capital in Myanmar is a "binding constraint",[2] affecting the employability of the labour force and discouraging investment in high value-added activities. In fact, the FY2012/13 budget that was debated in the Parliament for the first time increased spending on social development, health and education. The 10-point *Framework for Economic and Social Reform* also states health and education reforms to be the key objectives of the President's "people-centred development approach". Even so, according to ADB, education and health spending may still account for less than 2% of GDP in the FY2012/13 budget (ADB, 2012). Myanmar must generate adequate resources to fund education and health in order to relieve its human capital constraints. Increasing tax revenue to fund these priority development needs will have the largest positive direct impact on investment and economic growth.

Tax measures for improving the investment climate

The above four issues are of key importance to potential investors in Myanmar. Table 5.1 summarises suggested policy responses to these challenges that would be consistent with the country's investment attraction strategy and its development goals.

Table 5.1. **Proposed policy responses to increase Myanmar's investment potential**

Factor	Possible policy response
Prevalence of location-specific opportunities	Could allow for a higher tax burden
Weak fiscal framework	Requires higher revenue mobilisation
Poor state of infrastructure	Requires higher revenue mobilisation
Human capital constraints	Requires higher revenue mobilisation

To ensure an investor-friendly environment Myanmar needs to improve its revenue mobilisation. The situation should be helped in FY2013 by the revenue collected from the sharp increases in gas production and exports from the Shwe and Zawtika gas fields once the fields and pipelines are operational. However, higher and more stable revenues stemming from non-natural resources will need to be mobilised if Myanmar is to improve its business-enabling environment and fund its high priority needs, including investments in infrastructure and human capital.

Tax system constraints

Overly-complicated tax structure. Fifteen different types of tax are collected in Myanmar (as shown in the box below). The personal income tax contains 12 brackets and progressive rates with increments of 1% to 2% between one bracket and the next. Table 5.A1.1 provides a general overview of Myanmar's tax system. The commercial tax, which is a turnover tax on goods and services, contains nine different rates and is also very complicated. These tax rates could be simplified, especially the commercial tax. Streamlining the tax regime will make it easier for businesses and entrepreneurs to comply, thereby improving the business climate and increasing revenue mobilisation. Replacing the commercial tax with a single-rate sales tax should become a priority for fiscal policy makers. Authorities have been contemplating replacing the current commercial tax value-added tax (VAT) for a number of years.[3] Policy makers should make use of the presence of multiple international organisations and donor agencies eager to provide fiscal policy technical assistance during the technically challenging transition from one tax type to another.

Similarly, simplifying income tax by reducing the number of different tax rates and perhaps setting an even higher exemption threshold would make it considerably easier to administer, reduce compliance costs and decrease the incentives and opportunities for evasion and avoidance.

Tax base erosion through tax incentives. Tax incentives are often viewed as a relatively easy way to promote investment, especially foreign direct investment. Indeed, Myanmar's new *Foreign Investment Law* (FIL), which aimed to signify the country's transition to a more open economy, increased the tax holiday for foreign companies from three to five years. However, ample evidence from around the world suggests that where macroeconomic and fiscal framework conditions are relatively weak, tax incentives have a limited effect on investment decisions. Given Myanmar's particular context, discussed in the previous section, policy makers might wish to consider eliminating inefficient incentives so as to increase tax revenues for financing infrastructure development and human capital programmes important to business.

- Taxes on Income and Ownership
  - Income Tax
  - Profit Tax
- Taxes on Production and Public Consumption
  - Commercial Tax
  - Excise Duties
  - Import License Fees
  - State Lottery
  - Transportation Tax
  - Stamp Duties
- Customs Duties
  - Customs Duties
- Taxes on the use of State Properties
  - Land Revenue
  - Water and Irrigation Tax
  - Tax on Extraction of Forest Produce
  - Tax on Extraction of Minerals
  - Tax on Fisheries

Table 5.A1.2 presents the tax incentives offered through the *Foreign Investment Law* and the *Special Economic Zone Law*. A large number of tax incentives erode the tax base and reduce much-needed tax revenue. Further analysis is necessary to re-design the tax incentive programme to maximise the impact on investment and growth while minimising the costs: in other words, encouraging investment without forgoing significant tax revenues. An analysis of the international experience with various tax incentives, including a comparison with regional peers, could be a useful first step in assessing Myanmar's incentives programme. Table 5.2 compares international lessons on the advantages and disadvantages of common tax incentives, while Table 5.A1.3 offers a more detailed discussion.

It is important to make a clear distinction between beneficial and wasteful tax incentives. The effectiveness of each tax provision should be evaluated to help decide which incentives to keep and which to let go. Performance reviews should analyse both the *costs* and the *benefits* of the tax preference measures. They should ask:

- Does the tax incentive meet its intended goals?
- Could other measures achieve the same goals more cost-efficiently?
- What alternative measures could address the country's most pressing priorities and what would their fiscal burden be?

A good place to start would be to conduct a comprehensive inventory of all tax preferences (incentives, exemptions, concessions). This should

Table 5.2. **Global lessons on the advantages and disadvantages of tax incentives**

Type of tax incentive	Advantages	Disadvantages
Tax holidays	• Relatively low cost of compliance • Low administrative costs	• Costly and inefficient overall • Create tax planning opportunities • Attract short-run projects • Only targeted to new investment • Revenue costs are not transparent
Preferential Corporate Income Tax rates	• Relatively simple to administer • Revenue costs are relatively lower	• Represent a windfall to existing investment • Invite profit shifting through transfer pricing, domestic and/or international • Discriminate against other businesses
Investment allowances and tax credits	• Flexible mechanism to target tax relief • Limited revenue loss	• Distort investor choice towards short-lived assets • Invite abuse through assets-churning[1] • Greater administrative burden
Accelerated depreciation	• Flexible mechanism to target tax relief • Limited revenue loss • Does not discriminate against long-lived assets	• Some administrative burden • Advantageous only with loss carry-forward provisions
Export Processing Zones	• Allow to avoid contact with tax administration	• Tax base erosion through leakages of untaxed goods into domestic market • Distort locational decisions

1. A well-known anecdote which illustrates this practice is of Bolivia's "tourist cows". In July 1987 Bolivia established a scheme that gave tax credits to exporters based on the growth of their export receipts over the previous year. This led to the emergence of what was called "tourist cows" ("*vacas turistas*"). Farmers were generating tax credits by moving their herds back and forth across the border in order to maintain or increase the growth of their "export" receipts. The scheme was eliminated in April 1991.

document the source, duration, type, policy justification and estimated cost of each tax expenditure measure. To evaluate the impact of the various tax incentive measures on investment trends in the country, policy analysts could develop a Marginal Effective Tax Rate (METR) model which would allow the authorities to assess the impact of the various tax incentive measures on the rate of return for representative investment projects (at the margin). METRs can also be used to analyse investment's sensitivity (elasticity) to taxation and to evaluate the amount by which the level or rate of investment will be affected by tax provision changes. Impact assessments of tax provisions could be conducted vis-à-vis Myanmar's overall fiscal policy objectives, including public expenditure plans under its *Framework for Economic and Social Reform*.

While the need for cost-benefit assessments of tax incentives is urgent, such assessments are demanding in terms of data, time and resources. Authorities may also lack sufficient data to evaluate the overall effects of tax incentives. It is therefore highly advisable that Myanmar collect data systematically to support such an assessment and to monitor the overall effects and effectiveness of individual tax incentives.

In conclusion, Myanmar must institutionalise a comprehensive and systematic evaluation of special tax provisions. This will address the current lack of transparency around the cost and benefits of tax incentives and will help policy makers decide whether to continue, abolish, or amend a given tax incentives programme.

Tax administration

The 15 types of tax in Myanmar are collected by 7 departments falling under 6 ministries: the Internal Revenue Department (IRD) and Customs Department at the Ministry of Finance; the General Administration Department (GAD) at the Ministry of Home Affairs; the Directorate of Trade at the Ministry of Commerce; the Department of Road Transport Administration at the Ministry of Rail Transport; the Forest Department at the Ministry of Environmental Conservation and Forestry; the Settlement and Land Records Department, the Irrigation Department and the Water Resources Utilisation Department at the Ministry of Agriculture and Irrigation; and, finally, the Department of Fisheries at the Ministry of Livestock and Fisheries (Table 5.3).

Table 5.3. **Who administers which tax?**

Type of tax	Administered by
Income tax	IRD
Profit tax	IRD
Commercial tax	IRD
Excise duties	GAD
Import license fees	Directorate of Trade, Ministry of Commerce
State lottery	IRD
Transportation tax	Department of Road Transport Administration, Ministry of Rail Transport
Stamp duties	IRD
Customs duties	Customs Department, Ministry of Finance
Land revenue	GAD
Water and irrigation tax	GAD
Tax on extraction of forest produce	Forest Department, Ministry of Environmental Conservation and Forestry
Tax on extraction of minerals	GAD
Tax on fisheries	Department of Fisheries, Ministry of Livestock and Fisheries
Tax on rubber	Forest Department, Ministry of Environmental Conservation and Forestry

Note: IRD: Internal Revenue Department, Ministry of Finance.
GAD: General Administration Department, Ministry of Home Affairs.

The IRD has a principal role in tax revenue collection; according to the latest data available[4] the share of total tax collected by the IRD stood at 93.5% in FY2009/10. The IRD's performance and its institutional and human capital development are therefore of critical importance to overall domestic resource mobilisation and ultimately the success of the current tax reforms.

The tax administration system faces the following key constraints:

- *Tax avoidance, especially by the largest taxpayers*. Anecdotal evidence suggests that compliance in Myanmar is very weak, with the largest taxpayers operating outside the tax net. The authorities have stressed the difficulty of enforcing compliance, especially in the natural resources extraction industry, which is dominated by the military and the elite. A recent article in the *Irrawaddy* magazine[5] discusses the frustration of the Myanmar business community with the "lack of accountability that has allowed more than half of taxpayers, including many wealthy cronies, to avoid paying their dues. Some of Burma's biggest tycoons are conspicuously absent from a list of top-paying taxpayers released by the country's Internal Revenue Department (IRD) last year" (*Irrawaddy*, 2013). To improve compliance, the IRD must strengthen its institutional and human capacity. A rational, modern and efficient tax administration requires a well-trained and well-paid staff with access to a modern, computerised tax administration system. The authorities are acutely aware of this issue and its importance for successful revenue mobilisation. Plans to modernise the tax administration are underway, starting with the establishment of a Large Taxpayer Office (LTO) in 2014. The introduction of a self-assessment system for large taxpayers is planned to be completed at the same time.[6] A Medium Taxpayer Office (MTO) is planned to be operational by 2015.
- *Overly complex and costly compliance*. Simplicity and low compliance costs are of key importance to investors. The complexity of Myanmar's numerous tax codes and their accompanying rulings significantly increases the costs and risks to business and deters investment. The significant cost of compliance also encourages tax avoidance which, coupled with a weak tax administration, results in low revenue mobilisation. The tax system should become much clearer and more transparent. This should be a key goal of the tax reforms, which should pay particular attention to ensuring that the tax legislation can be properly understood by every taxpayer which will ultimately reduce the cost of compliance.
- *Data constraints*. Myanmar's tax administration has several critical institutional constraints which must be addressed as soon as possible:
  - ❖ *Insufficient and poorly-organised data and a lack of electronic taxpayer records* which prevent policy makers from effectively assessing either the performance of the existing system or the implications of introducing

new policies. The organisation must adapt to an electronic data processing environment and establish data and process-controls to prevent e-records from being lost, altered or destroyed.

- ❖ *Lack of a common and unique data identifier for each Myanmar taxpayer* (such as a taxpayer identification number or TIN). Among other things, establishing a taxpayer identifier will allow for improved documentation and control, reduced data redundancy, and consistency in data use.

- *The need to educate taxpayers.* In addition to building the capacity of the tax administration, substantial taxpayer education and awareness efforts are needed to improve tax compliance and self-reporting. Even if they have the desire and necessary skills, small firms often do not have enough information to be able to enter the tax net. Effective programmes of community information dissemination and outreach would help to build a "culture" of tax compliance in Myanmar.

Institutions and human capital

Over 50 years of military rule have weakened Myanmar's institutions and their human capacity. A great deal of work, including by the international community, must concentrate on this area. Individual ministries have frequently expressed their need to build human and institutional capacity in order to keep up with current reforms and manage a rapidly changing economy.

One striking feature of Myanmar's fiscal policy scene is that the Ministry of Finance and Revenue (MoFR) does not set fiscal policy. The MoFR is largely seen – both within and outside – as a policy-implementing, rather than policy-making, body. For example, the level and composition of investment incentives in the FIL were decided outside the MoFR, in an ad hoc manner, despite these being major fiscal policy decisions. They were established without a careful assessment of consistency of Myanmar's tax burden with the country's broader development goals, or its investment attraction objectives.

On a more general level, any efforts to reform Myanmar's tax system, if they are to lead to sustainable long-term benefits, should include establishing an institution, such as a Fiscal Analysis Unit (FAU) within the MoFR to support sound tax policies, as well as exposing any deficiencies in tax reform proposals. The unit's staff would need to be trained in modern fiscal analysis techniques and equipped with the necessary tools for putting these techniques to practical use.

Human resource constraints and institutional constraints, such as the limited quantity and quality of data discussed earlier, significantly restrict effective policy making in the country. The IMF has also noted the poor quality of Myanmar's statistical and national accounts data (IMF, 2013). The important role of the international community in building the country's institutional and human capacity cannot be overemphasised.

Recommendations

The tax regime is a key policy instrument that can either encourage or discourage investment. Myanmar's fiscal policy embodies an especially pronounced trade-off: reducing the tax burden to encourage investment is depriving the country of much-needed revenue for building infrastructure, improving labour skills, strengthening governance and removing other significant impediments to investment. Proposals in this area can be grouped into three main categories:

Tax policy

- Simplify the tax system and broaden the tax base to generate more revenues for spending on development. This includes streamlining the tax incentive regime by eliminating wasteful tax incentives identified through a credible cost-benefit analysis of tax exemptions and special tax provisions.
- Conduct a systematic tax expenditure analysis to identify the revenue losses from tax incentives. Use this to focus policy makers' attention on the fact that tax expenditures are quite similar to direct spending programmes and have to compete with other government spending priorities when the government makes its budget decisions.

Tax administration

- Improve compliance by strengthening the IRD's institutional and human capacity and overall efficiency of the tax administration.
- Adapt the IRD to an electronic data processing environment and introduce an identifier for taxpayers to improve documentation, control, and consistency as well as critical tax policy analysis.
- Educate and build the awareness of taxpayers to improve tax compliance and self-reporting.

Institutional and human capacity

- Concentrate international community support on building Myanmar's human and institutional capacity in all tax-relevant ministries and agencies.

- Establish a Fiscal Analysis Unit within the MoFR, with staff trained in modern fiscal analysis and equipped with the necessary tools for putting those techniques to practical use.
- Address institutional constraints, such as limited quantity and quality of data, as soon as possible.

Notes

1. *www.president-office.gov.mm/en/*.
2. The concept is defined in Hausmann et al. (2005).
3. A presentation made by officials of the Internal Revenue Department at the ADB course in Cambodia in March 2006 clearly indicates introducing VAT as part of the tax reform package (IRD, 2006).
4. *www.ic.keio.ac.jp/en/download/jjwbgsp/2011/2_Myanmar2011.pdf*.
5. This paragraph draws heavily on this article.
6. Myanmar has no self-assessment system for tax reporting purposes. The tax administration conducts official tax assessments of income earned in the preceding year.

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ANNEX 5.A1

Table 5.A1.1. **An overview of Myanmar's tax system**

Legislation, main provisions	• The *Income Tax Act* 1974 as amended; Income Tax regulations, Income Tax Rules, Income Tax notifications • The *Commercial Tax Law* • The *Foreign Investment Law* (FIL), 2012 • *Special Economic Zone Law* (Myanmar SEZ law) • *Dawei Special Economic Zone Law* (Dawei SEZ Law) • Customs Tariff of Myanmar • *Myanmar Stamp Act*	
Tax period	Fiscal year from April 1 to March 31 of the following year	
Tax rates	*Corporate income tax*	
	Enterprises operating under the *Foreign Investment Law* and those formed under the *Myanmar Companies Act*	25%
	Non-resident foreign entities, including Myanmar registered branches of foreign companies	35%
	Foreign organisations engaged under special permission in a state-sponsored project, enterprise or any undertaking	25%
	Salaries	
	Nationals and resident foreigners	Progressive rates from 3% to 30%
	Non-resident foreigner	35%
	Individual foreigners under special permission in a state-sponsored project, enterprise or any undertaking	20%
	Professional income	
	Capital gains	
	Resident taxpayer	10%
	Non-resident taxpayer	40%
	Transfer of assets in oil and gas industry	40%-50%
	Commercial tax	
	Tax on manufactured and imported goods and services	0%-100%, depending on the nature of the goods and services (described in Schedules 1-7 of the Commercial Tax Law)
	Exported goods, except for natural gas, crude oil, jade, gem stones and wood	Exempt
	Services, e.g. trading, transport, entertainment, insurance, etc.	5% of the total receipts
	Goods produced locally, listed in Schedule 1	Exempt
	Goods produced locally, listed in Schedule 2-6, not exceeding MMK 10 million	Exempt
	Service income not exceeding MMK 10 million	Exempt
	Goods produced in industrial zones	3%
	Customs duty	0% to 40%

Table 5.A1.1. **An overview of Myanmar's tax system** *(cont.)*

Stamp duty	
Sale or transfer of immovable property	5% (7% in Yangon)
Sale of transfer of shares	0.3%
Lease of immovable property (less than a year)	1.5% of entire rent
Lease of immovable property (1-3 years)	1.5% of annual average rent
Lease of immovable property (more than 3 year)	5% of annual average rent
Property tax (levied on land and buildings in the Yangon development area)	
General tax	Not exceeding 20% of annual value
Lighting tax	Not exceeding 5% of annual value
Water tax	Not exceeding 12% of annual value
Conservancy tax	Not exceeding 15% of annual value
Other taxes include: import license fees, state lottery, transportation tax, stamp duties; taxes on the use of state properties, tax on extraction of forest produce, tax on extraction of minerals, tax on fisheries, tax on rubber	

Table 5.A1.2. **Investment incentives in Myanmar**

Incentives under the Union of Myanmar's Foreign Investment Law (MFIL)	
Companies registered under the MFIL with Myanmar Investment Commission (MIC) permits are entitled to the following exemptions and tax incentives. The benefits and incentives are granted by the MIC at its discretion. a) Exemption from income tax for a period of five consecutive years for an enterprise producing goods or services. The exemption may be extended by the MIC for a further reasonable period, depending on the success of the enterprise. A further application to MIC is required to obtain the following exemptions and tax incentives: b) Exemption or relief from income tax on profits accrued from the business which are kept in a reserve fund and subsequently re-invested within one year. c) Depreciation of machinery, equipment, building or other capital assets used in the business at the rate stipulated by the Union of Myanmar. d) Relief from income tax of up to 50% of the profits on exported goods. e) The right to pay income tax on the income of foreign employees at rates applicable to Myanmar citizens. f) The right to deduct expenses incurred in Myanmar on research and development that are required and are carried out within the Union. g) The right to carry forward and set off losses sustained within two consecutive years after the application of exemption or tax relief from income tax as defined in section a) for up to three consecutive years from the year the loss is sustained. h) Exemption or relief from customs duty or other internal taxes or both on machinery, equipment, instruments, machinery components, spare parts and materials used in the business which are imported and required for use during the construction period of the business. i) Exemption or relief from customs duty or other internal taxes or both on imported raw materials for the first three years of commercial production following the completion of construction. j) If the volume of investment is increased and the original business is expanded, with the approval of MIC, exemption or relief from customs duty or other internal taxes or both on machinery, equipment, instruments, machinery components, spare parts and materials used in the business which are imported and required to be used in the expanded business. k) Exemption or relief from commercial tax on the goods produced for exports.	
Special Economic Zones (SEZ)	
Foreign investors may invest under the *Myanmar Special Economic Zone Law* of 2011 (Myanmar SEZ Law) and the *Dawei Special Economic Zone Law* of 2011 (Dawei SEZ Law). The *Myanmar SEZ Law* is applicable to any SEZ within Myanmar; the Dawei SEZ applies only to the Dawei SEZ.	
The main regulatory body handling foreign investment under the *Myanmar SEZ Law* and the *Dawei SEZ Law* is the Central Body for the Myanmar Special Economic Zone, formed by the President's Office in April 2011. Subordinate regulatory bodies are the Central Working Body and the Dawei SEZ Temporary Supporting Working Body, as formed by the President's Office in April 2011. In general, investment projects in the Dawei SEZ must be approved by the Central Body. Tax exemptions or relief may be granted under the Dawei SEZ Law upon application by the investor.	
Incentives under SEZ	• Tax holidays for the first five years. • 50% income tax relief on revenue from products sold overseas for the next five years. • 50% income tax relief on reinvestment obtained from export sales for the following five years. • Exemption on customs duty for certain goods (e.g. machinery and vehicles) for five years. A 50% exemption applies for the next five years.

Table 5.A1.3. **Design of tax incentives: what works and what doesn't?**

Types of tax incentives	Advantages and disadvantages
Tax holidays	• Regarded as the most inefficient and damaging form of tax incentive. All returns over the holiday period on investment – including returns covering initial investment costs as well as normal and "super-normal" profits – are earned tax-free. • The most open to tax planning, leading to significant revenue leakages – considerably higher than the revenue that would have been forgone from a legitimate activity. Tax holidays invite opportunities for tax avoidance, for instance by using transfer pricing to shift profits into holiday companies. Enterprises can manipulate the cost of inputs because of the difficulty in establishing the true, "arm's-length" market value of inputs purchased from a related entity. Thus, income and deductions can be shifted across entities with different tax treatments either domestically or internationally. As a result, tax revenues can be significantly eroded. Another way to erode profit is through fictitious foreign-ownership (e.g. a domestic company incorporates offshore and reinvests home as if it were foreign-owned). • Encourage the artificial collapsing and establishment of firms to extend the length of the holiday period. Usually tax holidays are granted to new firms only, so an incentive exists for an old firm to re-establish itself as a new one towards the end of the holiday period to qualify for further tax benefits. • Most attractive for footloose industries. "Fly-by-night" or short-term investment is in a favourable situation in a tax holiday environment compared to long-term investment. Since tax holidays benefit the industries that start making profits during the holiday period a favourable tax bias exists for short-term projects and short-term assets. • Tax holidays (or other favourable corporate tax treatment) targeted at export activities could be inconsistent with World Trade Organisation (WTO) rules, except for the lowest income countries. • The impact of the holiday may be diluted once profits are repatriated if the home country operates a worldwide system of taxation. Any reduction in liability in the host country will be offset by increased liability in the home country. However, in practice, concerned firms are quite successful in avoiding such payments by delaying repatriation and/or routing it through third countries. They therefore still benefit from tax holidays. • Could actually discourage some investment. To maximise depreciation allowances a firm might postpone the investment until later in the holiday period when full deductions may be claimed.
Preferential Corporate Income Tax rates	• Preferential CIT rates are tax-rate reductions that apply to targeted sectors or activities. Since the lower rates are not applied uniformly, the set of beneficiaries is restricted; therefore the revenue cost is relatively lower. The revenue costs are also more transparent than for tax holidays since the investors remain within the tax net. • The administration is relatively simple, but the criteria to identify the beneficiaries must be clearly defined and transparently applied to avoid discretionary decisions on the part of tax administration. • Open the door to abuse through aggressive tax planning, such as transfer pricing and financial arrangements, both intra-country and internationally. For example, with a differential tax treatment across industries, a high tax rate firm borrows from a low tax rate firm. The borrowing firm deducts interest expense at a high tax rate, and the lending firm receives interest income that is lightly taxed. The overall tax liabilities are reduced, and the two companies split the profit from this transaction. • Induce a substitution of investment activities either among domestic investors or between domestic and foreign investors. Within a sector, firms enjoying the benefits of the incentive may competitively overwhelm other firms that are denied incentives benefits. The expansion of beneficiary investors may either drive up industry costs (by increasing the demand for scarce factors of production) or reduce the price obtained by non-beneficiaries affecting their profit margin and investment prospects. • Benefit the high-return firms most by simply rewarding investors for what they would have done in the absence of any incentives, having no significant impact on investment behaviour.

Table 5.A1.3. **Design of tax incentives: what works and what doesn't?** *(cont.)*

Types of tax incentives	Advantages and disadvantages
Investment allowances and tax credits	• Considered better targeting instruments as they provide a relatively flexible mechanism for tax relief on specific types of investment: for example capital used in targeted areas or business activities. • Help limit the amount of revenue loss by possibly limiting the amount of credit to some fraction of (pre-credit) tax payable, or limiting the amount of allowance to some fraction of (pre-allowance) taxable income. • Can distort the choice of capital assets in favour of short-lived ones, and may be abused by taxpayers through, for example, "churning" of qualifying assets to enable multiple access to tax relief. See the Bolivia "*vacas turistas*" example in endnote 7. • Compared to other types of tax incentives, they create a greater administrative burden as they require separate special accounts to track unclaimed balances.
Accelerated depreciation	• A relatively simple and efficient means to encourage investment as enterprises cannot depreciate capital costs if the investment hasn't taken place and if the capital costs haven't been incurred. • May be an attractive investment incentive if a general accelerated depreciation is applied to a streamlined system of capital cost allowance categories, and combined with relatively generous (e.g. five to seven years) loss carry-forward rules. Accelerated depreciation will be of limited interest to investors if the basic capital cost allowance system is complex or restrictive (e.g. mandatory depreciation claims combined with limited loss carry-forward rules). • Does not discriminate against long-lived assets; there is little favouring of short-term assets as accelerating depreciation of an asset does not increase its total allowable nominal depreciation beyond its original cost.
Reinvestment allowances	• Provide a tax deduction equal to some percentage of (pre-tax) profit that is reinvested. As such, reinvestment allowances discriminate against investment financed by debt or new share issue by giving preference to financing through retained earnings. • Add complexity to the tax system and are costly to administer as they require rules to track the use of retained earnings. • If not carefully followed-up, reinvestment allowances may result in the tax relief being used to increase dividends rather than investment.
Export Processing Zones (EPZs)	• A widespread form of tax incentive, especially in developing countries. They aim to promote exports and attract certain footloose, labour-intensive industries, such as textiles and electronics. EPZs vary in their characteristics, but relief from both direct and indirect taxes is common. When direct taxes are exempt, the revenue losses can be especially pronounced, especially if profits shift to these zones or goods leak from these zones into the domestic market. • By relieving profit-related taxes (e.g. corporate income tax, withholding tax), EPZs tend to attract highly mobile labour-intensive activities (as opposed to long-term capital intensive ones). These activities do not normally rely on local sources of supply and create few linkages with domestic firms. They normally rarely transfer technology. Given their footloose nature, these enterprises tend to move out as soon as tax holidays expire. • Many export-oriented investment incentives do not comply with WTO subsidy rules (except for least-developed countries and developing countries with less than USD 1 000 per capita gross national product; these are exempt from prohibited export subsidies). • EPZs tend to distort locational decisions often causing capital to be diverted from elsewhere in the country; the result is overall low incremental investment. • The main advantage of EPZs is that they avoid or reduce contact with the tax administration. When the tax administration is seen as corrupt or the tax system is seen as too complex, the creation of an EPZ could be perceived as an impediment-removing measure.

Chapter 6

Developing Myanmar's financial sector

This chapter looks into Myanmar's challenges for developing its financial sector and current reforms being implemented by the government. It begins with a brief description of Myanmar's financial sector stage of development, followed by an assessment of regulatory deficiencies that have prevented the development of the banking sector. It looks into regulatory asymmetries between private and state-owned financial institutions that prevent greater competition in financial sectors and examines briefly some current institutional framework challenges that discourage the development of financial services in the country. This chapter also outlines the government's recent reform efforts to modernise Myanmar's financial sector and expand access to finance, including recent reforms to introduce more competition to the banking sector by allowing the entry of foreign banks. This chapter also briefly covers challenges and reforms being implemented to build Myanmar's capital market.

Developed financial sectors provide payment services, mobilise savings, and allocate financing to firms wishing to invest. When they work well, they give firms the ability to seize promising investment opportunities, especially small and innovative enterprises and entrepreneurs that need external funding to expand and develop their business ideas. Well-functioning financial markets also impose discipline on firms to perform, boosting efficiency, both directly and by facilitating new entry in product markets. They also enable firms and households to better manage risks.

The new policy orientation of the government since 2011 will require strong reform efforts to remove structural barriers to growth and ensure that an appropriate and facilitative environment is in place for such potential benefits to occur. Among important areas of reform, developing Myanmar's financial sector should be a government priority as the country's financial sector remains strongly underdeveloped and repressed, with financial intermediation almost entirely dominated by an unsophisticated banking sector. The country has no private debt market and the equity market is virtually non-existent. A deep and sound financial sector can contribute to Myanmar's economic stability and the emergence of entrepreneurial activity through a more efficient mobilisation and allocation of resources and an environment facilitating the development of business linkages.

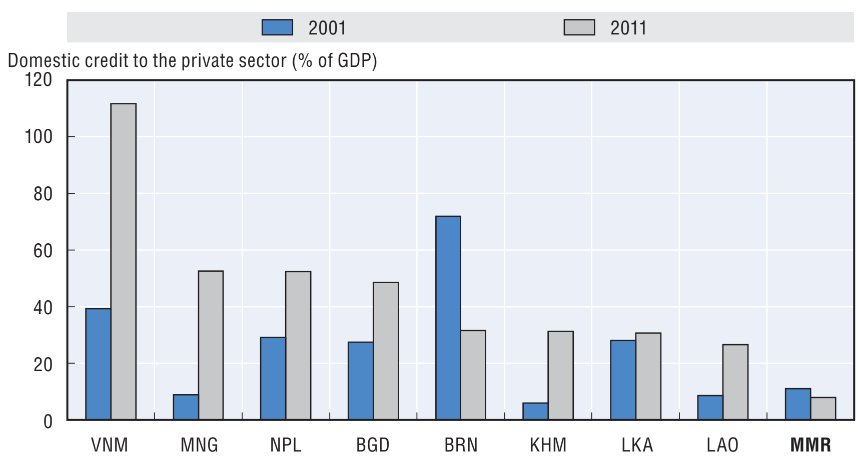
The process of opening and liberalising the economy entails a number of risks to economic stability during the transition. In the absence of appropriate financial sector supervision and regulation, financial institutions may end up undertaking risky activities in excess of their capacity to manage them. Moving forward in this process while minimising risks will require a wide range of reforms to upgrade Myanmar's monetary and fiscal management capability and to modernise its financial sector, particularly its supervisory and regulatory framework. An important step has already been taken as an initial effort to unify its multiple exchange rates, with the managed floating of the *kyat* (Myanmar's currency) in April 2012 and the lifting of key foreign exchange restrictions in August 2012, including the requirement to use only export proceeds for imports and all the restrictions on current payments and transfers for international transactions. Following these reforms, the market exchange rate has been relatively stable, and as of May 2013 was around 921 kyat per dollar.[1] Reforms to improve macroeconomic management capacity and a gradual financial liberalisation have begun to be implemented.

The government has also prepared a roadmap to modernise the financial sector and expand access to finance. This includes strategies to: foster monetary development with a new foreign exchange management law; further open the banking sector to foreign participation; and develop the country's capital market with the launch of a stock exchange expected in 2015. International organisations, such as the IMF and the World Bank, are assisting the government in implementing the roadmap. The careful design and sequencing of reforms will play an important role in creating the environment for the development of a sound financial sector capable of supporting Myanmar's economic transformation.

Myanmar's financial sector is still at an early stage of development

Credit to the private sector is very much limited in Myanmar compared to regional peers (Figure 6.1). In 2011, credit flowing to the private sector accounted for only 8% of GDP. In the other countries selected for comparison, credit to the private sector accounted for not less than 27% of GDP as in the case of Lao PDR. While credit to the private sector remains low, it has started to grow in response to recent reforms. Following the crisis in Myanmar's private banking sector in 2003 (Box 6.1), the growth rates of credit to the private sector were sharply reduced and continued to decline until 2008, at which time the level of credit to the private sector was estimated at only 3.2% of GDP. With the prospects of economic reforms since 2009, growth rates returned to an increasing trend. Recent cuts in loans and deposit interest rates have also supported credit growth.

Figure 6.1. **Domestic credit to the private sector (% of GDP)**



Source: IMF International Financial Statistics, *IMF World Economic Outlook*, *IMF Financial Access Survey* and *Asia Development Bank Statistics Database*.

Box 6.1. **Myanmar's banking crisis of 2003**

In early 2003 Myanmar experienced a severe banking crisis.* The trigger was the collapse of several informal finance companies that were little more than ponzi schemes and that brought about direct losses for some authorised banks. Exacerbating the crisis were rumours of large-scale money laundering, bank losses on investments in China and withdrawals of deposits. As the panic began to spread, even the state-owned banks were affected and banks soon found themselves short of liquidity and, as a consequence, attempts were made to maintain reserves by limiting depositor access to their funds. A flight to currency ensued, which led to a shortage of kyat supplies. The means of exchange created by banks (checks, remittance facilities, and credit and debit cards, electronic transfers) ceased to function.

The banking crisis led to severe disruptions to production and distribution. Though most people in Myanmar did (and still do) not have bank accounts, many employers and businesses did and large numbers of workers went unpaid for considerable periods, as did suppliers and distributors. Even firms earning foreign exchange were harmed, as they could no longer convert foreign exchange earnings into kyat to settle local costs. The situation was worsened further when the authorities allowed private banks to recall loans, forcing firms and individuals to meet loan calls by selling assets. A growing secondary market in frozen bank accounts emerged, with a going price of between 60 and 80% of face value. The banks themselves continued their efforts to acquire liquidity by selling their properties.

The key reason why the crisis ran out of control was the failure of the monetary authorities to provide credible and visible liquidity support to stop the crisis, and that there was no depositor protection via a deposit guarantee. As a result, the costs of the crisis ended up with the depositors and borrowers. The associated disruption not only led to the temporary losses of employment and financial wealth, but also produced a permanent loss of wealth associated with the destruction of physical capital, knowledge and skills. Perhaps worst of all, the faith in monetary and financial institutions, which is a necessary prerequisite for Myanmar's economic development, was severely damaged.

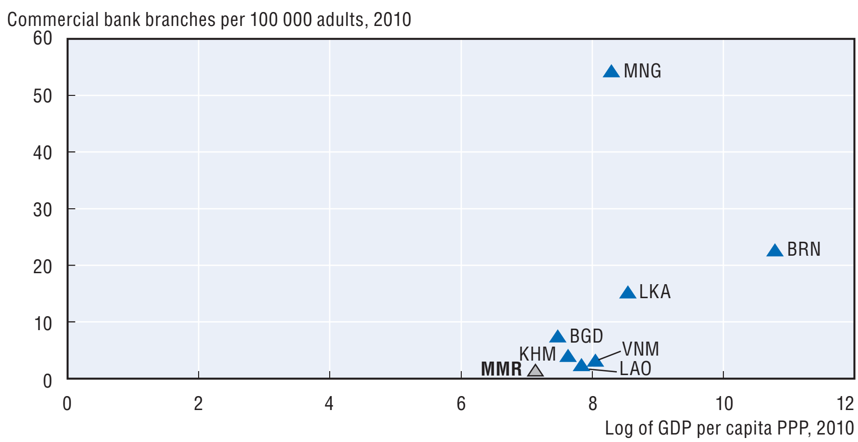
* Although there is little documentation available on the crisis, a commendable attempt to reconstruct the events can be found in Turnell (2003).

Source: Reproduced from OECD (2013).

The overwhelming majority of credit creation in Myanmar is directed towards financing the public sector. In 2011, according to data from the IMF, about 70% of the credit by financial institutions was directed to the public sector. To a certain extent, this represents the opposite situation of the group of countries used for comparison. In all these economies, the private sector held the largest share of the credit provided by banking institutions. In comparison, in Sri Lanka, the country with the second highest share of credit being directed to the public sector among the countries compared, about 34% of credit was directed to the public sector.

Formal financial intermediation is almost entirely concentrated in the banking sector, but the depth and reach of the sector are limited, and services are basic and towards the top end of the market. The poor penetration of financial services (Figure 6.2) hinders the mobilisation of domestic financial resources. In 2010, there were only 1.5 commercial bank branches per 100 000 adults. For comparison, the second lowest bank penetration rate among the compared countries is of Lao PDR, which had a bank penetration rate of 2.5 commercial bank branches to 100 000 adults. Myanmar's bank density ratio is also low at 0.85 branches per 1 000 km^2, and is particularly accentuated in rural areas, which host roughly 70% of the population. Public mistrust in the banking system following the 2003 banking crisis, during which many informal finance companies and some of the largest banks in the country collapsed, also contributes to the rather low penetration rate of financial services.

Figure 6.2. **Financial access (% of GDP)**



Source: IMF International Financial Statistics, *IMF World Economic Outlook*, *IMF Financial Access Survey* and *Asia Development Bank Statistics Database*.

Financial infrastructure is another constraint for developing the financial sector. Myanmar remains a cash-based economy, with some government departments and large companies still relying on cash for financial transactions (Reuters, 2012). The country's current payments and settlement system, for instance, does not facilitate transactions between parties as banks still operate through a manual clearing system, using a paper-based system for interbank transfers (CBM, 2012a). Plans to develop the country's electronic payment and settlement system are under way to allow electronic interbank transfers, as well as the use of debit and credit cards.[2] The Central Bank of Myanmar (CBM), with the support of the IMF and the Japanese Investment Co-operation Agency, is working to establish an auto clearing system; a real time gross settlement system; and the banking network for electronic fund transfer, as well as the necessary reporting system by 2014-15.

Reforms in these areas are advancing rather fast. A payment union for interbank settlements has been established and debit and credit cards and automatic teller machines (ATMs) introduced. The Myanmar Payment Union, comprising 17 private-owned banks, is working together with the CBM to establish a debit card network and a nationwide ATM network allowing banks to share ATM machines and offer a wide array of services. ATMs are a novelty in the country. Introduced in early 2012, there were about 395 ATMs in Myanmar by October 2013. Banks were still not allowed to share networks. The acceptance of international bank cards is expected to take place in 2013 (*Financial Times*, 2012). In addition, CBM plans to authorise e-banking and mobile banking in the near future, but no concrete steps have been taken so far. Adequate telecommunications infrastructure for mobile banking is not yet available, but there are prospects for its development in the short-to-medium term.

Regulatory deficiencies have prevented the development of the banking sector

Myanmar's banking sector underdevelopment is a result of administrative controls on financial intermediation and burdensome regulatory and supervisory measures that have historically distorted and inhibited the expansion and modernisation of the sector. The government has begun to lift some of these restrictions and has plans to further liberalise in the near future.

Administrative controls on lending and deposit interest rates have often led to negative real returns over the past decade,[3] accentuating deficiencies in the banking sector. In Myanmar, interest rates on loans and deposits are set administratively by the Central Bank. In 2011, the Central Bank reduced the interest rate on loans from 17% to 15% per annum, and permitted some flexibility in setting deposit interest rates by banks who were allowed to set deposit interest rates within a band between 10% and 12% per annum, whereas previously a 12% per annum flat rate applied. In 2012, the Central Bank reduced once again the per annum lending rate to 13% and the minimum interest rate on deposit to 8%, securing a 5% margin. The government has plans to liberalise the setting of interest rates once domestic institutions build the necessary skills to control and manage the associated risks.

High asset-based requirements, including for overdrafts, have further limited the expansion of financial services. Eligible collateral was historically restricted to property and fixed deposit accounts valued at least equally to the loan requested, preventing many from accessing credit from formal financial institutions (Turnell, 2003). Recently, the government has extended the list to include agricultural crops, gold and diamonds in 2012 and machinery in 2013, but some banks still seem reluctant to extend credit on such a basis, being properly concerned with enforcement procedures (*The Myanmar Times*, 2013). The loan-to-value ratio no longer applies, but banks continue a self-imposed 50% ratio standard, reflecting the sector's conservative position.

Government guidelines on credit allocation to foster certain sectors and restrictions on the extension of loans with maturities longer than one year, hampering maturity transformation by banks, have distorted credit allocation and hindered the expansion of financial services in the country. The limited list of eligible property and the short term maturities available have made access to finance by SMEs particularly difficult. Many SMEs end up relying on much more costly informal sources of funds. Restrictions on the expansion of bank branch networks that applied until 2012 only made access to formal banking services more difficult. Access to finance by SMEs in Myanmar is also affected by issues other than regulations (e.g., inadequate accounting and lack of financial statements, poor management quality and entrepreneurial deficiencies), but regulatory restrictions represent significant barriers for their development.

In addition, regulatory asymmetries between private and state-owned banks have discouraged competition. For instance, private banks are required to put aside 25% of their net profits into a general reserve and, until 2012, were not allowed to extend credit to farmers as the Myanmar Agricultural Development Bank (MADB) was the single institution allowed to provide rural credit in the country (see Chapter 9). In response to the 2003 banking crisis, the government subjected private banks to a deposit-to-capital ratio requirement that limited deposit-taking up to 10 times of paid-up capital, limiting their ability to raise funds and extend credit. In March 2011 it was raised to up to 25 times and later lifted in 2012. Until end-2011, private banks were equally forbidden from entering into correspondent banking relationships with foreign banks and were not allowed to operate foreign currency accounts (IMF, 2012). The government is aware of the distortions introduced by these regulations and has begun to implement reforms to modernise its financial sector (Box 6.2).

These regulations have affected private and state-owned institutions rather differently. In the case of private banks, the burdensome regulation to raise deposits combined with the restriction on lending on longer maturities and the restrictions on uncollateralised lending, have strongly limited private

Box 6.2. **Government efforts to modernise Myanmar's financial sector**

The authorities are currently committed to modernise Myanmar's financial sector and expand access to finance in the country, notably to SMEs and rural populations (about 70% of the total) as these have been disproportionately affected by the lack of financial infrastructure and pervasive regulations. A wide range of administrative controls on interest rates, bank lending restrictions and credit allocation directives have imposed significant inefficiencies on the banking sector and hindered its development.

Developing Myanmar's financial sector requires government efforts to enhance the Central Banks' regulatory and supervisory capacity so that it can undertake careful and timely financial liberalisation, as well as to upgrade credit reporting and financial information regulations to facilitate the extension of credit to the private sector in the country. Aware of the challenges that this entails, Myanmar has requested World Bank and IMF assistance to draft and implement a financial sector reform plan. Since Myanmar embarked on the process of economic transformation towards openness and integration with the world economy, the government, most notably the Central Bank, has begun implementing a series of reforms to liberalise the foreign exchange market, improve fiscal and foreign exchange management capability, phase out administrative controls on the financial sector, and upgrade the financial institutional framework and infrastructure for the modernisation of the financial sector. The reform efforts since 2011 are presented below (IMF, 2013):

Reforms affecting banking activities:

- the Central Bank phased-out the deposit-to-capital ratio requirement and allowed some flexibility in the setting of deposit interest rates by banks;
- 15 private banks have been authorised to operate foreign currency accounts and undertake foreign banking business since 2012. According to the authorities, authorised private banks can now operate international current payments and transfers without prior approval from the Central Bank, and are submitted to the same regulations as the state-owned banks on this matter. Previously this right was reserved to only three state-owned banks, and a few regulatory asymmetries remained soon after private banks were authorised to operate foreign currency accounts;*
- the administratively set list of eligible collateral was expanded to include key agricultural export goods, gold and diamonds in addition to real estate and fixed deposit accounts;
- the additional capital requirement for branch network expansion was lifted and four new commercial banks were licensed to enter the market;
- a deposit insurance scheme of up to 500 000 kyat (USD 570) per account is expected be enacted soon, with the ceiling expected to double next year, further safeguarding stability;
- a credit bureau is expected to be established to pave the way for credit card issuance.

Box 6.2. **Government efforts to modernise Myanmar's financial sector** *(cont.)*

Reforms affecting the supervisory and regulatory framework:

- a new *Central Bank Law* was enacted on July 11, 2013. The new law aims at establishing operational autonomy and proper accountability to the Central Bank of Myanmar and limiting the management of foreign exchange reserves to only the Central Bank. Currently this is also undertaken by some state-owned banks;
- authorities have reported the intention to modernise and strengthen the regulatory and supervisory framework by bringing the definition of capital and non-performing loans closer to international standards, improving regulations regarding connected lending and their enforcement, building capacity to improve banks' risk management systems to allow the liberalisation of lending rates and maturities.

Reforms affecting the capital market:

- The government is preparing a draft of a securities law and expects to establish the Securities and Exchange Committee following its enactment. The establishment of a stock exchange is envisaged for 2015.

* For instance: private banks were not allowed to operate foreign currency accounts for all private entities and international organisations; the authorized frequency that foreign exchange cash withdrawals with private banks can be undertaken were not aligned to that of state-owned banks, and CBM's prior approval was required for undertaking transfers abroad by private banks.

Source: IMF (2013).

banks' exposure to risks. This has been particularly detrimental to the development of SMEs and new firms. Private Banks operate essentially in the more selective top end of the market, such as large trade and construction companies, who are able to provide collateral and a credit track record, partially explaining the relatively high quality of assets they hold. As of March 2009, non-performing loans of the 15 private banks operating in the country represented 2.85% of their total loan portfolio based on Myanmar's definition of non-performing loans (Win, 2010). On the other hand, state-owned banks operate very closely with the government and lack proper lending incentives. They are often induced to extend credit on a non-commercial basis to SOEs, which partially affects the quality of assets they hold. As of March 2009, it was estimated that non-performing loans of the four state-owned banks accounted for 27% of their total loans (Win, 2010).

The limited penetration and the deficiencies of the formal banking system are also reflected in the recurrent use of informal sources of finance for loans and remittances by both the public and SMEs (IFC, 2013). Despite higher interest charges, informal sources of finance offer an alternative to the limited loan services offered by banks, which provide almost only short-term credit for trade on a limited basis and require collateral. Remittances are also often made through a well-developed informal network of money carriers (*hundi* system) covering Southeast and West Asia, the Middle East and Africa. Besides the avoidance of taxes and banking fees, the use of informal channels is associated with the lack of an interbank market and banks' connectivity with financial institutions outside the country. This might change, however, with the recent reforms implemented by the government to unify formal and informal market-based exchange rates and to develop an interbank market infrastructure integrated with world markets. The government has already begun establishing the SWIFT system and has already authorised the operation of Visa, MasterCard and Western Union.

State-owned financial institutions play a dominant role in the financial sector

Myanmar's formal financial sector consists essentially of the banking sector and to a lesser extent a few non-banking financial institutions, which include one state-owned insurance company, one state-owned SME financing company and one private-owned finance company. A significant informal financial sector adds to this panorama, including state-owned and private pawnshops, credit co-operative societies and microfinance institutions, which have rapidly expanded in recent years and remain without appropriate supervision due to lack of supervisory authority.

Private participation in the banking sector has been permitted since 1990 following the enactment of the *Financial Institutions of Myanmar Law* 1990. Until then, the *State-economic Enterprises Law 1989* reserved banking and insurance activities to SEEs. The private banks that emerged from liberalisation are mainly owned by large business conglomerates, often with close relationships with the government. Private banks expanded fast in the 1990s mostly through the absorption of public deposits and the expansion of real estate sector, but substantially contracted as a consequence of the 2003 domestic financial crisis (Box 6.1). Foreign participation in the banking sector is limited to representative offices that are only allowed to engage in commercial liaison activities. As of March 2013, there were four state-owned banks and 19 private commercial banks operating in the country, of which four entered the market in 2010. No new bank licence has been issued since then. There are also 30 representative offices of foreign banks in the country. A large share of the foreign banks established their representative offices after 2010.

Competition in the banking sector is weak as banks are segmented by industry, and the four state-owned banks dominate the sector. As of March 2008, they held 54% of total banking assets in the country (Win, 2010). The Myanmar Economic Bank (MEB) is the largest and specialises in nationwide commercial and investment banking services. The Myanmar Foreign Trade Bank specialises in foreign banking business and commercial foreign exchange transactions for the private, co-operative and state sectors. The other two are the Myanmar Investment and Commercial Bank, which plays a development bank role in addition to its commercial and investment banking activities, and the Myanmar Agricultural Development Bank (MADB) that specialises in seasonal short term loans to farmers through a network of township offices. Until 2012, the MADB was the only provider of rural credit in Myanmar, although in practice the MEB also operated in the market indirectly (see Chapter 9).

These four state-owned banks dominate banking branch networks as a consequence of the above mentioned restrictions on private banks' branch expansion and business. To give an idea, the MEB alone had more bank branches than all private banks in the country as of December 2009, with 325 bank branches against 219 respectively. However, private banks have been upgrading and expanding quickly since the government eased restrictions on branch expansion. As of March 2013, state-owned banks had 504 branches, while private banks had 485 branches. This renewed impetus of private banks, combined with improved economic prospects, led to an increase of roughly 1.9 times in the total loans of the banking system from March 2010 to March 2011. Confidence in the banking system also seems to be rising particularly since 2008, with total deposits of the banking system increasing roughly 3.2 times from March 2008 to March 2011 (Hteik, 2012).

Some of these private banks are moribund, operating with a tiny equity base. Many also lack banking technology capacity and appropriate risk management systems, with several back office activities still being conducted manually. It is likely that some consolidation would be beneficial for the modernisation and stability of the sector. A minimum capital requirement, as established by the *Financial Institutions of Myanmar Law* of 1990, of USD 5 million is low, facilitating the entry of small institutions that are likely to be less efficient and less resilient to any eventual shock and that overwhelm the supervisory authority capacity. Many of the private banks are owned by large conglomerates, having few incentives and capacity to lend money beyond their own conglomerates and state-economic enterprises. Regulations limit to 20% of a financial institution's capital and reserve the amount of loans that can be disbursed to one single entity or economic group, but the enforcement of connected lending limits needs improvement.

State-owned institutions also dominate the non-banking financial sector, although the sector is rather small. The biggest institution is Myanma Insurance, which held the monopoly of insurance activities in the country until 2013, when the government opened the sector to private participation and issued 10 new insurance licences to private investors. Until the opening of the sector, Myanma Insurance had a network of 38 branches and underwrote all types of insurance business. The opening of the sector has not come without some protection to Myanma Insurance. Private investors have not been allowed to hire professionals that are working for the SOE; Only retired employees are allowed to be hired. Myanmar Small Loan Enterprise is the other non-banking state-owned financial enterprise. It is a finance company that provides financing for SMEs and individuals through a network of about 182 branches throughout the country (Hteik, 2012).

Foreign banking institutions are expected to be allowed to entry in the near future

About 16 foreign banks and insurance companies operated in Myanmar before 1963, but following the change in the political regime, all financial institutions were nationalised. The process involved restructuring them into a single financial institution, the People's Bank of the Union of Burma, in charge of carrying both central bank and commercial bank activities, as well as insurance operations beginning in 1969. The government restructured again its financial system in 1976 to improve the management of financial activities by decentralising the responsibility over these functions. The Union Bank of Myanmar kept the responsibility over central bank functions. The Myanma Foreign Trade Bank took over the foreign exchange operations. The MEB provided general commercial banking services to businesses, including state-economic enterprises. The MADB overtook lending for agriculture development and crop financing. Insurance activities were allocated to a newly created entity, Myanma Insurance Corporation (Hteik, 2012).

In 1988, the government began to implement market-oriented reforms throughout the economy and this was accompanied by structural reforms to the existing financial system. In 1990 the *Financial Institutions of Myanmar Law* was enacted and marked the re-opening of the sector to private participation, as well as providing for the gradual opening to foreign participation. Based on the law, the Central Bank established a gradual liberalisation programme that would primarily allow the entry of domestic private banks and the establishment of representative offices of foreign private banks. In a second phase, selected domestic banks would be allowed to enter into joint ventures with foreign banks. In the third phase, foreign banks would be allowed to establish fully owned operations in Myanmar. The programme was never fully implemented and only phase one was accomplished (Turnell, 2003).

The Central Bank issued the first banking licence to a domestic bank in 1992 and allowed the first representative office of a foreign bank to establish in 1995. At the time, foreign banks rushed into the country with the expectation that the government would engage in further opening reforms as initially planned. From 1992 to the Asian crisis, 43 foreign banks opened representative offices in Myanmar. However, with the crisis, the Central Bank revoked private banks' foreign exchange trading licences and foreign banks began leaving the country as the prospects for banking opening did not materialise. By 1998-99, the number of representative offices had shrunk to 36, and by 2010 there were only 17. As of March 2013, there were 30 representative offices in the country, only allowed to engage in liaison activities.

Myanmar is now reconsidering opening its banking sector to foreign competition. The plan is structured around three phases. Firstly, foreign banks would be allowed to enter into joint-venture with local banks. For the moment, no equity limitation has been specified, but it is likely that foreign banks will be allowed to own up to 80% of the joint venture equity capital (*Financial Times*, 2013). In a second phase, foreign banks would be permitted to establish 100% owned subsidiaries. Finally in a third phase, foreign banks would be allowed to open branches. No timeline has so far been specified and discussions about how to move on with the plan are on-going. Nonetheless, under the ASEAN Comprehensive Investment Agreement, Myanmar has committed to open up its financial sector in 2015 to foreign institutions from ASEAN member countries.

Foreign banks are more likely to add to competition and to expanding financial access in the country once some building blocks are implemented. In this case, foreign banks can contribute to the modernisation of the sector by introducing modern technologies and methods and by pressuring domestic banks to raise productivity. Therefore regulators must seek to strike a balance between protecting domestic banks in the short term and allowing the entry of foreign banks. Relying too much on domestic banks in the short-to-medium term might come at the expense of a faster development of the banking industry and the development of the private sector in general if foreign banks were allowed to enter.

However, while foreign bank entry is most likely to increase the efficiency of Myanmar's financial sector and access to finance in the medium to long term, there are risks and downsides associated with the coverage and speed of this strategy that need to be carefully considered and addressed upfront (Box 6.3). Inappropriate sequencing of reforms can lead to excessive risk taking and financial instability. Issues such as institutional quality, appropriate macroeconomic policies, trade openness and local financial institutional development are pre-conditions for financial integration into world markets to minimise the risks of macroeconomic and financial volatility.

At this stage, there are probably realistic concerns over the capacity of Myanmar's domestic banks to compete against foreign banks, but ownership does not seem to be the main impediment for financial sector development at this moment. The focus of reforms should be on building the institutional and regulatory environment for enabling a level playing field between state-owned

Box 6.3. **The development role of foreign banks**

The opening of the financial sector to foreign participation is often accompanied by concerns from national authorities and local players. The typical fear is that foreign-owned banks will not serve SMEs and rural clients, and that their likely superior performance will allow them to cherry-pick clients, weakening local banks. While it is true that often the client profile of foreign-owned banks differs considerably from that of local banks (especially when foreign-owned banks face regulatory restrictions limiting their retail presence or their business strategy), it is often the case that a higher penetration of foreign-owned banks in the market is associated with greater access to finance by SMEs from local banks. When facing higher competition by foreign banks in the upper segments of the market, often local banks tend to increase their emphasis on the SME sector.

In general, foreign banks have positive effects on competition, stability and financial development in host countries. The positive effects of foreign banks are associated with lower costs of financial intermediation, as well as lower rents; increased access to financial services, even for SMEs as explained above; enhanced economic and financial performance of borrowers as a result of the introduction of new and more diverse products and services, as well as up-to-date technologies, improved marketing skills and corporate governance, and know-how spillovers; accelerated domestic reform as a consequence of pressures on governments to increase transparency, and improve regulation and supervision to international best practice levels; and greater financial stability as foreign-banks are generally more capable of absorbing shocks occurring in the host market, and hence providing a more stable source of capital, particularly in the case of greenfield subsidiaries. Foreign banks also contribute to reduce connected lending as these banks are usually not as politically-connected as local banks.

Foreign bank presence can sometimes have a potentially disruptive effect, however, particularly depending on foreign banks funding strategy. Allowing foreign-owned banks to access local deposit markets to fund its host country operations is likely to be beneficial for financial development and stability in times of crisis. Internationally funded foreign-owned banks are likely to reduce lending more than domestic banks in the case of shocks to the parent bank, such as in times of global or home country crisis. However foreign banks can contribute to financial stability in times of host country crisis through their internal capital market.

The magnitude of the effects of foreign bank entry on development and efficiency in the financial sector also depends on some conditions. Limited general development and entry barriers can hinder the effectiveness of foreign banks in facilitating the expansion of financial services. Limited participation of foreign banks, relative to total banking system, also seems to produce fewer spillovers, suggesting a possible threshold effect. For instance, in relation to risk management practices, foreign banks are likely to enjoy superior risk management capacity, which the local supervisor can draw on to accelerate technology transfer to the local market. Also when a larger number of foreign banks relative to domestic ones exist, foreign banks seem to play a more important role in financial intermediation. In contrast, they tend to be niche players when less important in

Box 6.3. **The development role of foreign banks** *(cont.)*

number. The size of institutions also matters. Larger foreign banks are associated with greater effects on access to finance by SMEs, as well as healthier parent banks are associated with higher credit growth. In certain cases, cherry-picking by foreign-owned banks can also undermine overall access to financial services, particularly in low-income countries where relationship lending is important, by worsening the remaining credit pool left to domestic banks, which can hurt their profitability and willingness to lend. These are only a few characteristics of foreign bank entry implications for financial sector development. Other home and host country characteristics, as well individual bank characteristics, play a role in the impact of foreign bank entry on host country financial development and should be carefully taken into consideration by regulators.

Source: Based on the literature review in Claessens and van Horen (2012), as well as on the World Bank and IMF (2005) and presentations by Stijn Claessens, Ralph De Haas and Maria Soledad Martinez Peria during the OECD Experts Meeting on Financial Services held at the OECD on 30 November 2012.

and private banks, and gradually increasing contestability and competition in the banking sector by allowing the entry of foreign banks. The crowding-out of the private sector, the regulatory restrictions that give no incentives for private banks to lend to more risky businesses and the lack of appropriate credit reporting systems to facilitate information sharing to support business decisions would probably affect foreign banks in the same way as it affects domestic ones. Under this context, it is likely that foreign banks would continue to serve the most affluent clients, and hence contribute only marginally to, or even hinder, financial sector development, as research shows has been the case in low-income countries (Detragiache, Tressel and Gupta, 2008).

Aware of these issues, the government seems to have chosen a gradual plan towards opening up its banking sector. The careful approach of authorities to allow time for domestic banks to catch up with international banking standards is appropriate at this stage. However, the joint venture proposal for allowing the entry of foreign banks might not result in the expected outcomes. Foreign banks may consider delaying their entry to establish 100% owned subsidiaries and branches in a second moment, eventually slowing down the development of the sector. In addition, the IMF (2013b) alerts that the structure of the proposed joint-venture bank separated from wholly-owned domestic entities may create a parallel banking system which runs against international good practice and increases supervisory and corporate governance risks. Allowing financial institutions to choose whether to form joint ventures or establish fully-owned subsidiaries can possibly lead to better outcomes, as both domestic and foreign banking institutions are in a better position to assess what works best for them.

Strengthening the banking sector requires upgrading the institutional framework

The Central Bank of Myanmar is the supervisory and regulatory institution for the banking industry, besides being responsible for formulating and implementing monetary policy. Established in 1945 under the *Union Bank of Myanmar Act* of 1947, the Central Bank has since 1990 been governed by the *Central Bank of Myanmar Law* of 1990. The law was one of many intended to support Myanmar's transition towards more market oriented policies. It conferred upon the Central Bank the responsibility for monetary and foreign exchange policies, as well as supervision and regulation of Myanmar's banking sector, covering both state and private institutions. However, in spite of a growing degree of operational independence, the Central Bank has not been functionally independent, operating under the guidance of the Ministry of Finance and Revenue.

On-going reforms to the financial sector are being implemented by the new civilian government elected in 2010 to enhance the role of the Central Bank as regulator. The new Central Bank of Myanmar Law was drafted with IMF technical assistance and was enacted on July 11, 2013. The new law aims at establishing operational autonomy and proper accountability for the Central Bank of Myanmar (CBM), providing it with the authority to supervise banking institutions, including state banks which are currently beyond CBM's supervision, and reserving the management of foreign exchange reserves to the CBM only. Currently this is also undertaken by some state-owned banks. Despite important advances, developing the foreign exchange market will still require active support from the CBM. Effective reserve requirement regulations have yet to be issued. The Central Bank is also planning to establish a deposit insurance scheme in the near future to enhance the stability and confidence in the banking system.

The government is working with the World Bank to reform the *Financial Institutions of Myanmar Law* of 1990. The law provides the legal framework for the establishment of financial institutions with the permission of the Central Bank. The Central Bank is authorised to inspect, supervise and regulate banks and other financial institutions, except for insurance companies which are regulated by the Insurance Business Supervisory Board of Myanmar. The new drafted law is expected to improve the regulatory and supervisory environment by introducing a gradual approach towards implementing Basel standards and establishing risk based supervision in the near future. It is also expected to specify CBM's supervisory powers and improve disclosure standards for financial institutions. The IMF (2013b) points to the following priorities for enhancing regulation and supervision: licensing and foreign bank entry; regulating foreign exchange positions; establishing market-determined interest rates; modernising prudential regulations and developing supervisory capacity; addressing Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT) regulation deficiencies.

Under the current framework, the Central Bank conducts regular off-site supervision and on-site inspection and has issued prudential regulations on capital,[4] liquidity and loan provisioning requirements to ensure the stability of the banking system. However, the Central Bank supervisory system fails to comply with most Basel Core Principles (IMF, 2012).[5] Financial institutions are also required to report audited information periodically to the Central Bank and to publicly disclose audited financial statements. International accounting standards seem to be used following the establishment of a national accounting system by Myanmar's Accountants Council in 2004, but the extent of disclosure of financial information to the public and its enforcement is relatively deficient (World Bank, 2010).[6] Myanmar also lacks a corporate governance code to assist the disclosure of critical information to outside investors and to ensure responsible business conduct (Chapter 8).

Anti-money laundering regulations have been in place since 2002 when the authorities issued the *Control of Money Laundering Law*. In 2004 and 2005 the Central Bank issued a number of instructions to banks to strengthen the anti-money laundering framework in the country to address the accusation of involvement in money-laundering activities by two important domestic private banks. At the time, authorities responded rather quickly by revoking their banking licences and by closing a third bank also suspected of involvement in money laundering.[7] Since then, many other instructions on AML/CFT were issued by the Central Bank. In recognition of government efforts to enforce its anti-money laundering regime, the Financial Action Task Force removed Myanmar from its list of Non-Cooperative Countries and Territories in October 2006, while recommending that Myanmar enhance its financial sector regulation in order to strengthen compliance with internationally accepted AML/CFT regulations (USDS, 2010). In October 2012, the FATF recognised Myanmar's high-level commitment to align domestic regulations with international standards but noted that certain AML/CFT deficiencies remain and that little progress had been made in implementing the related action plan (FATF, 2012).

Other institutional weaknesses contribute to limiting access to finance in the country. Myanmar has no collateral registry system in place to allow lenders to ascertain a borrower's ownership of collateral and to consult if any potential claims already exist against it. The lack of a sound collateral infrastructure and enforcement system raises the risks of financial intermediation and prevents the extension of credit to riskier groups of borrowers, affecting also lending terms and interest rates. In the process of moving forward with financial liberalisation, having a collateral registry system will become an important policy area for reform in order to support the expansion of credit in the economy. Myanmar can learn from the positive experience of other countries in the region, such as Viet Nam, to foster reforms in this area (Box 6.4).

Box 6.4. **Secured transaction reforms in Viet Nam**

Over the past two decades, Viet Nam has implemented a series of reforms to modernise and strengthen its financial sector as part of a move towards a more market-oriented and open economy. In the context of Viet Nam's accession to the WTO in 2007, reforms to the banking sector accelerated. These reforms have focused on bringing the country's regulations closer to international standards, restructuring and capitalising its banking system, gradually opening the sector to foreign investment, and partially privatising state-owned banks. Such reforms allowed the banking sector to expand rather rapidly, improving access to financial services throughout the economy.

One of the important reforms that contributed to expanding access to credit in Viet Nam was the development of better and more reliable informational infrastructure, which facilitated the work of financial institutions in accessing the riskiness of a borrower. A study conducted by the IFC in 2006, revealed that the lack of reliable credit information was a major constraint for smaller firms and individuals to secure a loan from a financial institution. For most SMEs, bank financing was essentially the only possible source of formal external financing, but banks applied stringent collateral requirements that often did not match with SMEs' assets. Most banks required real estate, machinery and equipment as collateral. However, assets of SMEs are usually of a movable nature, such as account receivables and inventory. The lack of an appropriate secured lending regulatory framework, and of an effective credit information system, did not provide financial institutions with enough safeguards for extending credit to business in other than a business-as-usual manner.

With the assistance of the IFC, Viet Nam implemented a series of reforms to its secured transactions legal framework that had a substantial positive effect in the financial sector. A new secured transactions law improving the legal framework was implemented in January 2007. The new law expanded the scope of assets that could be used as collateral, made the registration of security interest easier, improved the protection of secured creditors, established a clear priority scheme in case of default and facilitated the enforcement mechanisms. The government has also put in place a web-based registration system that facilitates credit appraisal by lenders, reducing their credit risk and operational costs. These reforms have opened the way for SMEs to capitalise on billions of dollars of movable assets to secure financing from financial institution and expand their business. Following the reform, the National Registration Agency for Secured Transactions, under the Ministry of Justice, saw an increase in the number of registrations, from 43 000 in 2005 (when reform started) to 120 000 by end 2008, confirming a significant increase in financing operations against movable property.

Box 6.4. **Secured transaction reforms in Viet Nam** *(cont.)*

Despite this notable progress, Viet Nam has still many challenges to overcome, which are not discussed here, including new ones that come with the development of the sector and the economy. Viet Nam still needs to further strengthen banking sector institutions and regulations, notably the capacity to manage the risks of such fast acceleration of credit and to continue expanding access to finance in the country.

Source: IFC (2012 and 2013).

Likewise, there is no law on data privacy and protection, nor is there a credit reporting law in place (Kyaw, 2008). In the absence of such regulations, Myanmar's financial system does not provide for an effective sharing of credit information among financial institutions and gives space for the misuse of such information by participants. Without a credit reporting system that facilitates the lending process, financial institutions rely heavily on the collateral requirement established by the law and on the informal relationship between lender and borrower. In such an environment, the necessary easing and broadening of collateral requirements for promoting financial inclusion by the regulatory authorities is more difficult to implement, as the risks of possibly inciting imprudent lending with lower collateral requirements would not be counterbalanced by enhancements in the flow of credit information. The government is planning the establishment of a credit bureau to pave the way for introducing credit cards and the general extension of credit in the economy.

Equity and corporate debt markets have yet to be developed

Capital markets in Myanmar are virtually non-existent. There is no private debt market and almost no activity takes place on the country's unregulated stock market, except from the primary government bond market established in 1993. Nonetheless, there is no secondary market for government bonds as these are essentially held to maturity. While the current priority is to develop Myanmar's banking sector, the government should not lose sight of removing impediments and strengthening instruments for the development of a capital market in the medium-term. Building institutional and regulatory capacity and infrastructure is important for allowing institutional investors to emerge and the capital markets to develop faster.

Myanmar's first attempt to establish an organised capital market came in 1996 with the establishment of Myanmar Securities Exchange Centre (MSEC), a joint venture between the Myanma Economic Bank and the Japanese Daiwa Institute of Research.[8] Since then MSEC has been the country's stock exchange and the selling agent for CBM's treasury bonds through its over-the-counter market. Until now, MSEC has attracted the listing of only two companies jointly owned by the government and private investors: a forestry company and a bank,[9] and almost no trading activity takes place as investors hold stocks for their annual dividends. Most public companies in Myanmar are not listed. Instead, they have their shares traded over-the-counter following provisions in the *Companies Act* that permit such transactions. MSEC infrastructure is basic with share prices updated manually on a whiteboard (Reuters, 2011). Most of the trading activity comes from non-listed public companies, which are traded among a small group of investors. These companies were mainly created or transformed into public companies since October 2012, when the Directorate of Investment and Company Administration eased the rules on their establishment.

The absence of a securities law and a securities regulator to ensure that investors are protected and that a fair, efficient and transparent market is in place discourages the development of the capital market. Absence of regulations is particularly worrisome as companies end up applying their own rules, making any due diligence on these companies particularly complicated. The lack of clear rules on shareholders' rights is a growing concern as trading activity of non-listed public companies begins to pick up with the renewed economic prospects.

Myanmar also lacks a private debt securities market. The lack of institutional, regulatory and market infrastructure, combined with only a nascent treasury bonds market help explain the absence of private debt markets. Since 1993 the Central Bank of Myanmar has been issuing 3- and 5-year local currency treasury bonds and 2-year bonds from 2010 onwards, but it does not follow a previously established calendar. The Ministry of Finance issues shorter maturity T-bills, usually of 3-months, that can be rolled over to finance short-term budget needs, but there is no proper market demand for T-bills as they are issued at extremely low annual interest rates. The Central Bank is almost the sole investor in short term treasury instruments (Win, 2010). Domestic private banks used to be the main investors in government bonds, holding roughly all bonds outstanding. Since 2009, however, state-owned banks have become the main players as they were given permission to invest in treasury bonds to reduce their excess liquidity. Domestic investors other than banks, as well as individuals, are also allowed to participate in the market but their shares are insignificant (Win, 2010).

Further development of the government debt markets is necessary for enabling a private debt market to emerge. The limited maturities and the inconsistent issuance of government bonds make it difficult to form a reliable benchmark curve to be used for pricing private debt securities. The opening of the insurance sector to competition is also likely to build demand for long-term assets and can contribute to accelerate the development of a debt securities market in Myanmar in the medium to long term.

Against this challenging environment, the government has been working on a plan to develop the country's capital market and address its main bottlenecks. It set up the Capital Market Development Committee in 2008 to draft a roadmap for developing the securities market and to facilitate the raising of long-term capital for companies. The Committee has stipulated the objectives of enacting a securities law and establishing a stock exchange in 2015, which are in line with the plans under the ASEAN Integrated Capital Market. A *Securities Exchange Law,* prepared with the assistance of the Policy Research Institute of the Ministry of Finance of Japan, was enacted in July 2013. The Central Bank has also partnered with Daiwa Institute of Research to develop the market infrastructure needed for the new stock exchange. Daiwa has already approached a number of domestic companies to list on the emerging exchange, including from gas, oil, mining, and agriculture sectors. Only a few firms though should be ready to list by the time of the launch of the new stock exchange, since listing requirements are expected to be relatively stringent to build investor confidence in the exchange.[10]

Notes

1. Before the reforms, the parallel exchange rate was around 800-850 kyat per dollar, while the official rate was set at 8.51 kyat/SDR or about 5.33 kyat per dollar (IMF, 2013).
2. The Central Bank of Myanmar is working to establish an auto clearing system and the banking network for electronic fund transfer, as well the necessary reporting system for allowing financial institutions to use the system.
3. As of January 2013, the annual deposit and lending interest rates were capped at 8% and 13% respectively.
4. For instance, banks are required to maintain a capital adequacy ratio of 10% of total capital, higher than Basel's capital requirements, and are subject to a liquidity requirement of 20% of deposits. However, Myanmar's capital adequacy regime does not follow Basel I or II definitions of capital and risks associated with the different types of capital.
5. Among other reasons for non-compliance with Basel Core Principles: banking supervision is still compliance-oriented other than risk-based, and is not carried on a broad consolidated basis (Win, 2010); connected lending is not fully addressed by regulations, with many private banks operating on tight relation with large companies in the country; fit-an-proper tests for bank managers are not properly applied (Turnell, 2003); legal framework on anti-money laundering remains weak (IMF, 2012); reporting of related interests is not required; and the Central Bank lacks independence.
6. *World Bank Global Financial Development Database* – Bank Regulation, 2010.
7. Myanmar Universal Bank, Myanmar Mayflower Bank and Asia Wealth Bank were closed in March 2005.
8. Up to 1962 Myanmar had an unofficial stock market where a few securities were traded over-the-counter as preferred stocks. This market was closed with the

centrally planned system established by the military government (Central Bank of Myanmar, 2012b).

9. Forest Products Joint Venture Corporation Ltd. involved in timber extraction, wood-production and saw-milling, and Myanmar Citizens Bank.

10. A recent draft of the listing requirements suggests that only companies meeting a minimum capital requirement of about kyat 500 million (or roughly USD 530 000), having two years of profit and a minimum of one hundred shareholders and at least 10% of minority shareholders will allowed to list in the exchange (Irrawaddy, 2013).

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Chapter 7

Developing Myanmar's infrastructure

This chapter examines the challenges for advancing private sector participation in infrastructure in Myanmar. It looks into the challenge of infrastructure access and financing in the country, as well the prospects for infrastructure investments following Myanmar's transition to a more open economy. The chapter also reviews recent and announced reforms and the remaining obstacles for creating an institutional and regulatory environment suitable for private participation in infrastructure. These issues and other sector-specific issues are then discussed for three key infrastructure sectors: transport, telecommunications and electricity. Green infrastructure is addressed throughout the chapter and in balance with Myanmar's need to build infrastructure assets for growth.

Introduction and summary

As Myanmar opens to the outside world and its growth prospects improve, it finds itself with an infrastructure stock which is both antiquated and inadequate. Years of economic isolation have limited the country's sources of finance for infrastructure development. Access to infrastructure is currently one of the weakest in the region and is an important obstacle to meeting the needs of society and to broader enterprise and economic development. At the same time, the low stock of existing infrastructure means that marginal improvements can be particularly growth-spurring. With almost 70% of the population living in rural areas, infrastructure connecting rural areas to cities and townships and facilitating communications, for instance, can substantially contribute to raise the standards of living of a large share of the population.

Investment needed to rehabilitate and build new infrastructure is substantial and the government cannot finance it alone, but the prospects for infrastructure development are likely to improve as the government moves forward with reforms. Independent estimates suggest that infrastructure investment needs are around 6% of GDP. Until now public capital expenditures in energy, transport and communications have been at much lower levels, around 1.3% of GDP on average from 2003 to 2010 according to official statistics. So the renewed interest by the donor community and the private sector in the country will be central to expand and modernise infrastructure networks and unlock this important barrier to socio-economic development. At a first stage, investments are necessary to rehabilitate and update the existing infrastructure so that it can better absorb the initial flow of investment. In the near to medium term, however, the country will have to significantly raise investments in infrastructure to build the necessary assets to support its integration into the world economy. Although foreign direct investment is increasing rapidly, some investors will only come at a second stage once basic infrastructure is made more secure and adequate, with the easing of water and electricity shortages for instance. Currently, Myanmar's limited connectivity and the poor condition of trade-related infrastructure pose challenges for many businesses.

Encouraging private sector participation can contribute to both expand infrastructure services and promote efficiency in the provision of such services by incumbent state-economic enterprises (SEEs). Private companies can introduce newer technologies and bring in the much needed capital for long-term projects. The government has shown interest in relying more on the private sector and has taken initial steps to make this happen. Telecommunication services are now open to private participation and other regulatory enhancements are expected in other sectors to create a credible and stable environment for safeguarding private interests. The *Framework for Economic and Social Reforms* 2012, which broadly outlines the goals and policies the government will pursue, makes reference to significant institutional and regulatory reforms in the energy, transport and communications sectors, such as opening up of sectors to private investment, creating and restructuring regulatory agencies, establishing new sector-based laws and development plans, deregulating prices, among others.

The broad outlined reform plans touch upon many of the remaining challenges for creating a sound framework for private investments in infrastructure. The lack of clear sector plans to guide the expansion and development of infrastructure sectors poses an important challenge. Comprehensive sector development plans would help clarify government priorities and the role expected from the private sector, reducing policy uncertainty and sending appropriate signals for investors. Institutional fragmentation in transport and electricity sectors and agencies' generally limited planning and assessment capacity also need to be addressed. Adequate project prioritisation and co-ordination would mobilise private investment in infrastructure more efficiently and allow better management of the risks associated with projects delivered under PPP arrangements.

Regulatory uncertainties arising from the lack of credible regulatory agencies and appropriate price setting mechanisms also pose a challenge for private participation. Currently, the competent authorities are often exposed to political influence and conflicts of interest due to the vertical relationship between regulators and operators. To some extent, this has led to under-pricing in many sectors, affecting the financial capacity of state economic enterprises operating in infrastructure sectors and undermining the expansion of infrastructure services in the country. Price and subsidies reforms that allow prices to better reflect costs would facilitate infrastructure development.

Moreover, reforms introducing more competition and ensuring a level playing field between incumbent public operators and private ones are necessary. The presence of vertically integrated SEEs directly linked to sector Ministries limits competition in many infrastructure sectors and discourages private investment. SEE links to relevant regulators and their integrated operations across sector segments raise concerns over the fairness of the regulatory environment applicable to private investors. Corporatising SEEs and subjecting them to improved corporate governance rules and similar regulatory regimes as for private companies – with the proper adjustments to account for the specificities of state-owned enterprises – would help establish a level playing field for private investors and improve SEE efficiency. Promoting more transparent and competitive tender processes, in line with the recent tender for telecommunications licences, would contribute to greater competition and efficiency of infrastructure providers.

Finally, Myanmar would benefit from establishing objectives and policies to foster greener infrastructure systems. As a major part of the infrastructure required to meet development objectives is yet to be built, Myanmar has the opportunity to leapfrog to greener and climate-resilient infrastructure systems that would allow it to avoid been locked-in in carbon-intensive and climate vulnerable development pathways. Infrastructure choices are long-term and difficult to reverse. Therefore, Myanmar should take advantage of the possibility of favouring green infrastructure solutions at an early stage. Low-carbon and climate-resilient solutions are particularly important given Myanmar's vulnerability to climate change and natural disasters.

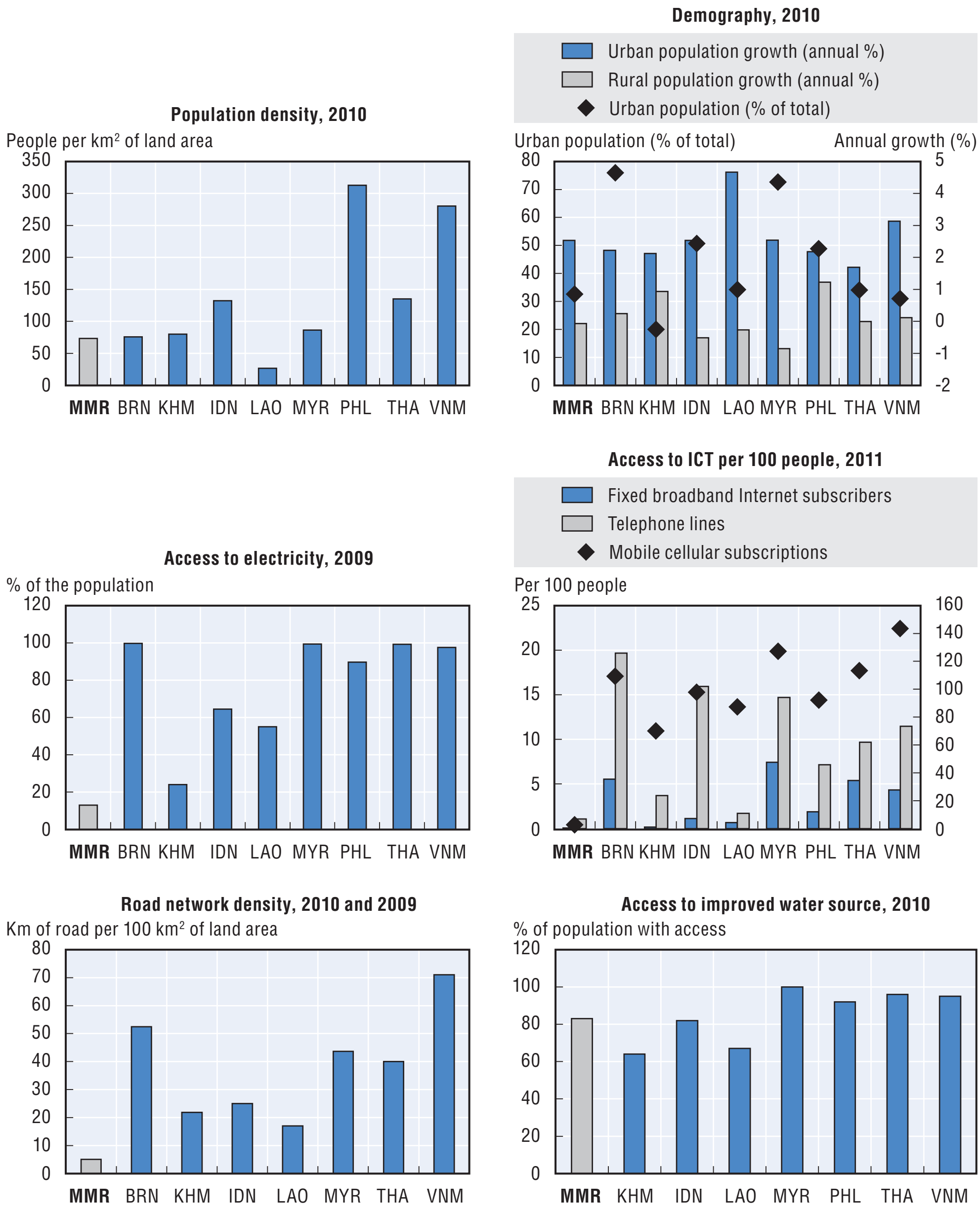
Beyond the climate change challenge, investing in green infrastructure can help address the infrastructure challenges associated with Myanmar's growing urbanisation and industrial development, in order to achieve Myanmar's development objectives. Low-cost, efficient green energy infrastructure such as off-grid renewable energy systems for instance can improve access to energy in remote and rural areas where economic growth is more limited. In fast-growing cities, where local air pollution and health issues are likely to rise in upcoming years due to growing transport emissions, investment in public transit systems can help improve local air quality, reduce traffic congestion and enhance mobility. Green infrastructure solutions are therefore critical for ensuring an efficient and sustainable use of Myanmar's resources while supporting long-term growth.

Access to infrastructure is one of the weakest in the region

Myanmar has one of the most limited infrastructure networks in the region, particularly in ICT, electricity and transport (Figure 7.1). Access to, and quality of, infrastructure has suffered from years of underinvestment as a consequence of Myanmar's limited access to international finance and limited fiscal revenues. The resulting infrastructure deficiencies have significant costs for Myanmar's development. A recent UNESCAP (2011) study shows that the costs resulting from poor maritime connectivity and ICT infrastructure account for up to 25% of bilateral comprehensive trade costs[1] in Asia, imposing significant barriers for trade and economic development.

Myanmar has the lowest rates of telephone and Internet penetration in Southeast Asia, with only 2.6 people for every 100 having access to mobile

Figure 7.1. **Access to infrastructure**



Notes: MMR: Myanmar, BRN: Brunei Darussalam, KHM: Cambodia, IDN: Indonesia, LAO: Lao PDR, MYS: Malaysia, PHL: Philippines, THA: Thailand, VNM: Viet Nam. For the road network, data was not available for all countries for the same period. Hence, both 2009 and 2010 data were used for comparison.
Source: World Bank WDI Database.

telephone, 1.08 having access to fixed telephone lines and 0.06 having broadband Internet subscriptions. The poor quality of Internet infrastructure, limited to one access to the global fibre optic network and 1GB per second of bandwidth until recently, is inadequate given Myanmar's population and territory and is particularly a concern as the country is hosting the Southeast Asian Games at end-2013 and the East Asia Summit in 2015. Around 25GB per second and at least three gateways to the global fibre optic are considered necessary to comfortably handle the Games and up to 100GB are potentially required for the Summit (Rieffel, 2012).

Access to electricity in 2009 was limited to 13% of the population. More recent estimates reported by the ADB (2012a) show a higher penetration rate of 26% of the population in 2011, but still among the lowest in the region. In spite of being rich in natural resources and one of the largest exporters of energy in the region, Myanmar faces frequent power supply shortages, notably in Yangon. More than half of the primary energy supply is exported, particularly to Thailand and China.[2] The lack of access to electricity is particularly acute in rural areas and brings severe consequences to public health and the environment, as households which represent the largest energy consumers in Myanmar end up relying on poor substitutes for electricity, such as firewood and charcoal. Biomass consumption saw the lowest growth rate during the past decade, but represented 73% of total energy consumption in Myanmar in 2009 (ADB, 2012b).

The transport sector is also underdeveloped by regional standards, particularly considering that the country's population density and the share of urban population are similar to some other countries in the region. The poor condition of transport infrastructure partially explains Myanmar's weak performance in the World Bank's 2012 *Logistics Performance Index*, ranked 129 out of 155 countries. Transport costs are high and road density in Myanmar is low, with only 21% of the roads paved to all-weather standards (ADB, 2012a). Most of the public investment in the transport sector in Myanmar over the past 20 years has been linked to the government's national integration plan that sought to extend road and railway infrastructure to remote areas. As such, limited funding has been directed to operating and maintaining the existing networks. Notwithstanding, the core road network is in relatively good condition, with about 48% of it adequately paved, compared to only 8% of the non-core secondary and local road network. This relatively good condition of the core road network partially reflects the low number of heavier vehicles and the limited loads transported in the country. About 82% of vehicles in Myanmar are motorcycles (ADB, 2012c). The prospects of urbanisation and of economic development as the country integrates into international trade are likely to increase traffic volume much more rapidly than road capacity, particularly in urban centres.

Railway network expansion in the last 20 years has followed the government's integration plan without giving much importance to the economic costs and benefits. The network extension increased 75% between 1988 and 2010 while traffic has been relatively limited. Railroad freight in 2011 stood at roughly the same level as in 1993 (3 million tonnes) and its importance in terms of its share in total freight transport, considering all transport modalities, has significantly declined during the period (ADB, 2012c). Many of the new railroad lines were built in areas with limited population and in difficult terrain, making their construction very costly and in several cases redundant to existing parallel road networks. The limited traffic and costly development of the railroad network have limited the availability of resources for investments in maintenance and improvement of the network over the years. As a result, the network is inadequate and in poor condition (ADB, 2012a).

Myanmar has an important inland waterways network that is 43% larger (5 000 km in total) than the extension of the railroad network and that in 2011 transported approximately 66% more tonnes of freight (5 million tonnes in total). The primary inland waterway routes are about 2 400 km (ADB, 2012c). However, infrastructure is poor with very few river ports disposing of cargo handling facilities and many having limited capacity for larger vessels. The eight existing coastal ports are also only equipped with basic facilities but are capable of handling the volume of trade at its current limited level (ADB, 2012c).

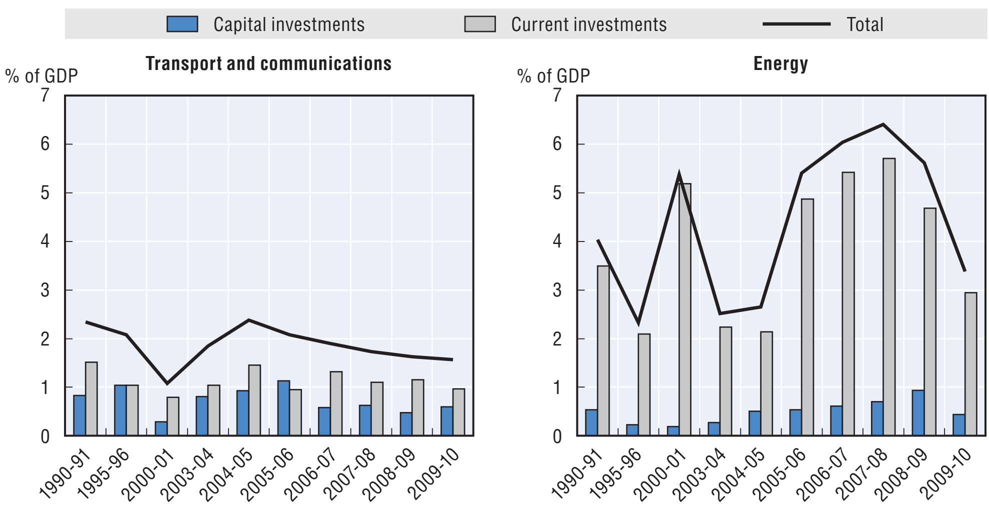
In terms of access to water and sanitation, Myanmar performs relatively better. Over 80% of the population has access to improved water sources and 76% has access to improved sanitation facilities. This is in line with peer countries in the region with similar income levels. Nevertheless, water infrastructure within Myanmar is disparate. For instance, in the two largest cities, Yangon and Mandalay, water supply is often below acceptable standards (ADB, 2012a). Access to drinking water piped onto premises is estimated at 19% of the population living in urban areas and 3% in rural areas in 2010, having changed only slightly since 1990. However, access to other improved water sources has increased by roughly 20% and 60% respectively (WHO and UNICEF, 2013).

Investment needed is substantial but prospects for infrastructure development are improving

For almost three decades, economic sanctions prevented the country's access to international markets and to economic assistance from international organisations, making public finance virtually the only available source of fund for infrastructure investments. As a result, the investment required to rehabilitate and build necessary infrastructure is now substantial and the government cannot finance it alone.

The country's infrastructure investment needs are estimated to be around USD 22 billion for the 2010-20 period, or roughly USD 1.9 billion per year. This represents roughly 6% of Myanmar's estimated 2010-20 GDP (Battacharyay, 2010). Official estimates are not available for comparison. Until now, public capital expenditures in infrastructure sectors by the government from 2003 to 2009 were on average around 0.7% of GDP for transport and communications and 0.6% of GDP for energy according to official statistics (Figure 7.2). State-economic enterprises (SEEs) are the dominant investors in infrastructure, but state-level departments are also relevant. Current expenditures have been around 1.1% of GDP for transport and communications, and 4% of GDP for the energy sector. Although starting from a very low level, the government has recently been allocating higher shares of its budget to capital investment in the energy sector to cope with the increasing consumption of electricity, which doubled between 2001 and 2011. Capital investments, particularly in the transport sector, were preferred in budget allocations in the 1990s and early 2000s.

Figure 7.2. **Public expenditure in infrastructure sectors by the Union Government[1] (% of GDP), 1990-2009**



1. Includes State Administrative Organisations, State Economic Enterprises and Development Committees. Military SEEs are not included.

Source: Budget Department of Myanmar.

Outlined reforms and renewed interest by the donor community and the private sector can help boost infrastructure investment

The government is now planning to establish medium to long-term plans for key infrastructure sectors and an adequate regulatory framework for increasing investment. In the *Framework for Economic and Social Reforms* 2012, which broadly sets out the goals and policies that the government will pursue, significant institutional and regulatory reforms are planned for energy, transport and communications sectors (e.g., opening sectors, creating and restructuring regulatory agencies, establishing new sectoral laws, deregulating prices). The government expects that with these reforms it will be able to finance the vast majority of new infrastructure projects through FDI and foreign aid.

The total amount of infrastructure investment needs to be raised substantially. Total public capital spending on infrastructure of 2% of GDP on average over 2003-09 is possibly in line with the experience of other countries in the region but is relatively low compared to countries that have rapidly expanded infrastructure assets.[3] The government can possibly rationalise public spending and allocate more resources to infrastructure, but investments will also have to come from other sources.

Other sources of funds are now becoming available as the government continues advancing with its reform agenda. Official Development Assistance (ODA) has once again become a potential source of funds for infrastructure projects with governments and international organisations around the world lifting their restrictions on co-operating with Myanmar. The World Bank, for instance, has committed to provide USD 80 million for community development services from 2012 to 2019, of which about 65% should be directed towards rural services and infrastructure (World Bank, 2012a). The Asian Development Bank (ADB) has not yet determined its lending programme, but has already established its policies for engaging with Myanmar. One area of focus relates to access and connectivity and will include support for the development of energy and transport infrastructure and urban development (ADB, 2012d). The ADB has already published two initial assessment reports that will serve as a basis for building its support strategy.

Bilateral donors are also likely to increase their involvement in infrastructure projects. The Japanese government, for instance, has already committed to allocate USD 22.4 million in ODA to infrastructure projects in 2013, about half of which is supposed to go to rehabilitating existing power plants and infrastructure related to the Thilawa Special Economic Zone (*Myanmar Times*, 2013). Other bilateral donors, such as Korea, India and China, which have been active donors in the recent past, are also likely to accelerate contributions to Myanmar (Rieffel, 2013).

In the near term, multilateral lenders and donors can play a particularly important role in facilitating the involvement of private investors in infrastructure projects by backing up government commitments towards private investors and providing investors with risk guarantees. Political and credit risks affecting infrastructure projects are still a major concern for investors, and the involvement of such organisations can help improve infrastructure projects' bankability. The World Bank's Multilateral Investment Guarantee Agency's political risk insurance mechanism, for instance, can help investors to secure financing at more competitive rates and facilitate project implementation. International lenders and donors can also back government guarantees covering payment obligations of infrastructure contracts, such as power purchase agreements, and contribute to ensuring that social and environmental issues are respected. Donors can likewise help strengthen regulators infrastructure planning and implementation capacity by financing technical assistance and capacity building, and by financing specific project needs, such as feasibility studies and environmental impact assessments for instance.

Private participation in infrastructure has been so far limited,[4] but investors, including foreign ones, have already demonstrated interest in investing in the country, as many see it as a rare opportunity to enter one of the few remaining untapped infrastructure markets in the world. The foreseen liberalisation of infrastructure sectors is already attracting the attention of private investors worldwide, as exemplified by the recent bidding for telecommunications licences.[5] While the absence of laws governing the sector has not prevented most firms from participating in the bidding process, a few potential investors appeared to be uncomfortable in committing at this stage as considerable uncertainty remains, as seen by the withdrawal from the bidding of Vodafone and China Mobile (*Financial Times*, 2013b). The regulatory environment emerging from reforms will be crucial to determine the level of private sector involvement.

Overview of policy challenges for attracting private investment in infrastructure

The government is aware that attracting private investors in infrastructure will require significant reforms to create an appropriate regulatory environment for private investors, but also one that will meet the country's long-term development goals. Currently, there a number of common policy challenges across sectors that pose challenges for raising private sector participation.

Establishing long-term plans to guide the expansion and development of infrastructure sectors

Comprehensive sector development plans, indicating government priorities and clarifying the role expected from the private sector and SEEs, are needed to guide the expansion and development of infrastructure sectors. These plans should also reflect Myanmar's long-term green development goals and strategies to address identified risks associated with climate change to facilitate the alignment of infrastructure investment with these goals. Currently, private investors and local government agencies have no clear guidance and understanding of the Myanmar's long-term vision and policy goals for infrastructure sectors (ADB, 2012b, 2012c; WEF, 2013). Sector plans contribute to reduce the uncertainty over policy and regulatory frameworks that directly affect business economic fundamentals and are a useful tool for transmitting appropriate signals to investors. In building such plans, particular attention should be given to the process. Reliable and effective plans and strategies are more likely to emerge from broad consultation with stakeholders at all different stages, be it at the policy making level or at the project level.

Addressing institutional fragmentation and enhancing agencies' planning and assessment capacity

Facilitating private sector participation in infrastructure will also require addressing institutional fragmentation in some sectors (Table 7.1), as well as agencies' weak planning and assessment capacity. Until now projects have mostly been developed without much co-ordination or prioritisation, as the institutional framework is fragmented and agencies at different government levels lack the capacity to properly assess the costs and benefits of infrastructure projects (ADB, 2012b, 2012c; EU, 2012; WEF, 2013). Cost-benefit analysis of projects should be carried out systematically for deciding whether it would be better financed with budget resources or through PPPs for ensuring the best value for money, taking into account all the involved risks and their actual allocation between parties, including any contingent liability for the public sector. Private investors in infrastructure are concerned with the economic fundamentals of projects, and cost-benefit analysis can contribute to deciding which projects are likely to generate the interest of private investors and help the government adequately prioritise investments. Distinguishing between unprofitable but socially desirable projects and commercially viable projects also contributes to the design of more efficient mechanisms to channel needed financial support.

Myanmar could consider designing a comprehensive institutional structure to enhance the planning and execution of infrastructure development plans and facilitate the involvement of the private sector. It

Table 7.1. **Overview of infrastructure sectors in Myanmar**

	Transport	ICT	Energy and electricity
Number of agencies	6	1	7
which:	Min. of Transport	Min. of Communications, Posts and Telegraphs	Min. of Energy
	Min. of Rail Transportation		Min. of Mining
	Min. of Construction		Min. of Agriculture and Irrigation
	Min. of Defence		Min. of Electric Power[1]
	Min. of Home Affairs		Min. of Science and Technology
	Min. for Progress of Border Areas, National Races and Development Affairs		Min. of Environmental Conservation and Forestry
			Min. of Industry
			Township Rural Electrification Committees
			Inter-ministerial Rural Energy Development Supporting Committee
Independent regulatory agency	No	No (but ind. regulator expected in 2 years with new sector regulation)	No
Market structure	Road, air and water transport: SEEs dominate, but private investors allowed Railroad transport and railroad, air and water infrastructure: state monopoly Road and port infrastructure: SEEs dominate, but private investors allowed	Private investment allowed in 2013. Before, telecom was a state monopoly.	Power generation: SEEs dominate, but private investors allowed Transmission and distribution: state monopoly Energy exploration: private investment allowed in coal and oil and gas. Some restrictions apply to the exploration of natural resources in other industries (see Chapter 3)
Type of private participation	Local type of BOT contracts (30-40 years, renewable for 5 years up to 3 times)	Upon liberalisation, licences of up to 20 years renewable	Joint venture and BOT contracts (30 years renewable for 5 years at a time) in power generation Joint venture and PSC contracts (Investment carried by the private party and profits shared – 70% private and 30% government) for the exploration of reserves
Pricing	Tariffs set by the state at non-commercial levels	Pricing expected to be flexible (coverage and tariff requirements expected)	Power tariffs set by the state at non-commercial levels, and re-negotiated annually
State-economic enterprises	Road Transport Agency	Myanma Posts and Telecommunications (telecom operator) Yatanarpon (mainly an Internet Service Provider)	Myanma Electric Power Enterprise
	Myanma Railways		Electric Supply Enterprise
	Myanmar Inland Water Transport		Myanma Oil and Gas Enterprise (exploration)

Table 7.1. **Overview of infrastructure sectors in Myanmar** *(cont.)*

	Transport	ICT	Energy and electricity
	Myanma Airways		Myanmar Petrochemical Enterprise (refinery)
	Myanma Shipyards		No.3 Mining Enterprise (coal production)
	Myanma Five Star Line		Myanmar Petroleum Products Enterprise (distribution)
			Hydropower Generation Enterprise (hydro and coal)
			Myanmar Electric Power Enterprise (transmission and gas turbine)
			Yangon Citiy Electricity Supply Board (distribution)
			Electricity Supply Enterprise (distribution)

1. The Ministry of Electric Power is a result of the merger in September 2012 of the Ministry of Electric No. 1 (hydropower and coal-power generation) and the Ministry of Electric Power No. 2 (transmission and distribution, gas-fired generation and mini-hydro).

Source: ADB (2012b, 2012c) and EU (2012).

would ease the management of risks associated with PPPs, including for instance the adequate treatment in the budget of any contingent liabilities. Establishing a PPP unit capable of co-ordinating PPP projects preparation, management and execution, could contribute to overcome some capacity constraints in the government and facilitate the interaction with the private sector. In this, Myanmar could learn from the experience of peer countries in the region. The Indonesian experience is an interesting example of a conceptually overarching institutional structure to mobilise private investments in infrastructure (Box 7.1). Although implementing such a structure has proved to be difficult in practice, its design theoretically provides for enhanced co-ordination of infrastructure policies across ministries and between the central and local governments, as well as better project preparation and execution.

Building credible regulatory agencies for infrastructure sectors

Infrastructure reforms should include establishing credible governance structures to address regulatory uncertainties that arise from the lack of independent regulators. Currently, the competent regulatory entities are often exposed to political influence and conflicts of interest due to the vertical relationship between regulators and operators, resulting, in a certain extent, in prices being set at uncompetitive levels in many sectors, undermining the expansion of infrastructure services. To attract and benefit from private participation into infrastructure, the government will need to entrust regulatory power to institutions that are not only competent and well-resourced but also that are shielded from undue influence by relevant parties for them to be credible for stakeholders (Box 7.2).

Box 7.1. **Indonesia's institutional structure to mobilising private investment in infrastructure**

The experience of Indonesia offers a good example of a comprehensive approach towards building the institutional structure for facilitating private investment in infrastructure, while at the same time managing any contingent liabilities. The Indonesian government has created an adequately staffed PPP Unit, the Centre for Government-Private Co-operation, within the infrastructure inter-ministerial committee (KKPPI) and the Ministry of National Development and Planning (Bappenas), responsible for formulating policy, and co-ordinating and assessing PPP projects in infrastructure. In addition, Indonesia has created structures to facilitate the management of risks associated with PPP projects, including political, performance and demand risks, and to provide long-term financing for infrastructure projects to overcome some limitations of the local debt market.

The **Centre for Government-Private Co-operation** (PKPS) within Bappenas is to prepare and formulate policy, as well as co-ordinate, synchronise and evaluate government-private sector collaboration in infrastructure. Through the PKPS, prospective investors in infrastructure projects can obtain information on offered projects, including investment procedures and the rules of the game. The Centre has published a PPP Book containing a list of the country's infrastructure projects that are being offered to private investors and is intended partly to gauge investor interest. A 2009 edition has been followed by a 2010-14 version.

A **Project Development Facility** (in operation under Bappenas) funds project preparation so that government agencies can prepare detailed feasibility studies and bidding documents up to international standards before tendering the project.

A **Risk Management Unit** within the Ministry of Finance evaluates projects prepared by the PPP Unit and decides on the appropriate level of government financial support.

Infrastructure Guarantee Fund. The Fund was established at the end of 2009 to improve the creditworthiness of PPP projects by providing guarantees of financial compensation in the event of changes in government policies causing projects to be cancelled. The Fund is also expected to allow the government better to manage its own fiscal risk by ring-fencing government obligations *vis-à-vis* guarantees. It has been established as a state-owned company and funded through the state budget together with loans from the ADB and the World Bank. According to the Minister of Finance, the fund enables parliament to participate in setting the aggregate resource envelope for guarantees while allowing KKPPI and the Ministry of Finance to decide on the allocation to individual projects.

Indonesia Infrastructure Financing Facility. The IIFF, established on 15 January 2010, acts as a non-bank financial intermediary to mobilise mostly local financing for infrastructure and to help develop capacity in both the government and the domestic financial sector to develop viable PPP projects. The facility conforms to international best practices concerning corporate governance and risk management. The government holds a minority share, together initially with both the ADB and the IFC (with the World Bank providing a subordinated loan). Ultimately, the private sector is expected to take a share in the IIFF, once it has demonstrated its effectiveness.

Source: Reproduced from OECD (2010).

Box 7.2. **Building an effective regulatory agency**

Attracting private investors to infrastructure sectors requires a stable and credible regulatory framework. Among other pre-requisites, a credible regulatory environment involves having independent regulatory bodies, adequately staffed and with clear responsibilities and powers, to ensure regulatory coherence overtime. Regulators should be free from political influence to circumvent pressures from politicians seeking to avoid unpopular measures, such as tariff increases, but should be responsive to an elected administration's policy goals. Having an independent regulatory agency is one way of insulating regulatory decisions from the political process. It also ensures independence of the regulatory body from operators. Without this independence, operators would be able to influence regulations to the detriment of competitors or new entrants. Where regulatory decisions are made without political interference, private investors are more likely to believe that they will earn sufficient revenues to cover their costs, and hence are more likely to undertake new investments.

Establishing an independent regulatory agency requires securing a credible institutional design for the agency to act independently. Rules for selecting and dismissing directors should be fair, clear and transparent; funding should preferably come from independent sources beyond government influence (e.g., annual fee from regulated companies); the agency should be adequately staffed in number and skills to allow the agency to work at the level required by the industry; legislation should prevent the government's ability to pressure the regulator through legislative changes or the threat of changes; systematic consultation with operators should take place to inform and gather information for policy formulation; decision-making rules should be clear and transparent to ensure accountability, predictability and to avoid undue personal influence.

Regulators should be accountable for their decisions to avoid opportunism, corruption and inefficiencies. Striking a balance between independence and accountability of regulators is necessary. Independence cannot protect regulators from not complying with their responsibilities in an adequate manner. To ensure accountability, independent auditors or legislative committees could formally review regulators' performance. Regulators could also be required to publicise their decisions and reasons behind them. The regulatory process should also be made transparent and predictable, with all rules and agreements accessible to the public, and with consistency and respect for precedent decisions. Moreover, investors should be given the right to appeal and dispute resolution mechanisms should be in place.

Source: GTZ (2003) and World Bank (2005).

Promoting competition and ensuring a level playing field between public and private operators

Ensuring private participation in infrastructure will require establishing regulations that create a competitive environment for companies to operate, including ensuring a level playing field between incumbent SEEs and private investors, and promoting structural reforms to expose activities to commercial pressures with adequate price setting mechanisms.

Vertically integrated SEEs benefiting from implicit budget subsidies are dominant in infrastructure sectors, posing a challenge for private sector participation. Their corporatisation and their subjection to similar regulatory regimes of private companies – with proper adjustments to account for the specificities of state-owned enterprises – would help improve SEEs efficiency and ensure a more transparent environment for private investors. In addition, prices and subsidies reforms, allowing tariffs to be set at cost-covering levels where feasible and setting subsidies that, to the greatest extent possible, mimic the role of prices in a normal market, would help create a more attractive environment for investors. Enhancing competition in infrastructure sectors by reducing barriers to entry and promoting transparent and competitive tender processes where appropriate are also likely to contribute to greater efficiency of infrastructure providers. While the recent tender process for telecom licences has generally been perceived as good, tenders in other sectors have faced complaints. A way of strengthening these processes is to involve international expertise throughout the process and to subject tenders to independent reviews, for instance, in line with what has been done in the latest telecom tender.

Integrating green policy goals and long-term targets in infrastructure development plans

The building of a policy framework for enhancing investment in infrastructure should be accompanied by objectives and policies to foster greener infrastructure systems. As a major part of the infrastructure required to meet development objectives is yet to be built, Myanmar has the opportunity to leapfrog to greener and climate-resilient infrastructure systems that allow it to avoid been locked-in to carbon-intensive and climate vulnerable development pathways. Infrastructure choices are long-term and difficult to reverse. Therefore Myanmar should take advantage of the possibility of favouring green infrastructure solutions at an early stage.

Low-carbon and climate-resilient solutions are particularly important given Myanmar's vulnerability to climate change and natural disasters, and critical for ensuring an efficient and sustainable use of Myanmar's resources. According to the *Long-Term Climate Risk Index* 2013, Myanmar ranked the second most vulnerable country to climate risks and natural disasters (behind Honduras), based on annual averages from 1992 to 2011 (Harmeling and Eckstein, 2013). Extreme weather events such as Cyclone Marla (2006), Cyclone Nargis (2008) and Cyclone Giri (2010) and recurrent floods in the past several years highlight the need to take into account climate change risks to avoid losing the benefits of development activities (ADPC, 2013). Long-lived infrastructure systems can be particularly vulnerable to extreme weather events such as cyclones, especially in flood-prone or coastal areas (Corfee-Morlot et al., 2012).

Beyond the climate change challenge, investing in green infrastructure can help address the infrastructure challenges associated with Myanmar's growing urbanisation and industrial development, in order to achieve Myanmar's development objectives. For instance, in the transport sector, the planning of infrastructure structure should account for climate change risks, such as vulnerability to natural disasters, as well as encourage sustainable transport solutions, such as bus rapid transit systems and light rail, that can particularly deliver environmental, social and economic benefits in face of growing urbanisation challenges. In the energy sector, Myanmar could leverage climate finance from donor agencies and international finance institutions to drive private sector investment in clean energy infrastructure; phase out inefficient fossil fuel subsidies to better level the playing field across alternative energy sources; and promote off-grid renewable energy systems to improve access to energy in remote areas.

Despite significant challenges, the government is strongly committed to reform infrastructure sectors and reforms outlined so far are a step in the right direction

Despite these important challenges, Myanmar is moving fast to improve its regulatory capacity and to enhance the institutional environment for attracting private investors. Building an enabling environment for infrastructure development is a priority for the current administration. Under the National Comprehensive Development Plan 2011-31 expected to be announced by end 2013, the government has set as priority the development of energy and telecom sectors, and has already started preparing the preparation of sector development plans. The Ministry of Transport has also demonstrated interest in preparing a comprehensive transport sector master plan, integrating plans of different transport modes, focusing on exploring new opportunities to increase domestic and regional connectivity, and promoting private sector participation in the sector (ADB, 2012b). These plans are expected to provide the needed long-term guidance for developing infrastructure sectors, as well as plans to address regulatory and institutional challenges in all these sectors.

The government has also taken an important step towards facilitating the use of offshore financing for infrastructure projects as the domestic financial market is still undeveloped. Until early 2013, the *Transfer of Immovable Property Restriction Act* 1987 prohibited foreign investors in Myanmar from creating security interests over land or any other form of immovable property in favour of offshore lenders, with significant implications for the cost of infrastructure financing in the country. However, the new *Foreign Investment Law* 2012 and its regulations, notably the Notification 11/2013, allow foreign investors to contract offshore loans and to create a security interest in favour of foreign lenders subject to the approval of the Myanmar Central Bank and Myanmar Investment Commission. The repayment of principal and interest also requires approval from the Central Bank. As the FIL prevails over any other existing law, it is now supposedly easier for investors to secure offshore financing for their projects in Myanmar (see Chapter 3). Borrowers still have to withhold a 15% tax rate on any interest paid to a foreign lender according to Myanmar's tax law.

While this transition period provides Myanmar with a propitious moment for implementing reforms, the government must be careful not to advance faster than what it can handle to avoid incurring undesirable risks, such as in the telecom sector discussed below.

Transport

Limited capacity has often led to inadequate prioritisation of transport infrastructure investments

Transport is one of the infrastructure sectors that suffers the most from a fragmented institutional framework. Six agencies are responsible for the planning, construction, maintenance and operation of transport infrastructure services, with sometimes overlapping responsibilities. Co-ordination is also lacking in the design of policy priorities for the transport sector, partially contributing to the absence of a national integrated transport development plan and exemplifying the shortcomings of such a fragmented institutional environment. Plans exist at the subsector level – more of a list of projects than a proper guiding strategy for developing the transport sector – but these are not properly co-ordinated. Sector agencies also lack the capacity to select, prepare and implement transport infrastructure projects and have until now inadequately prioritised investments.

In many cases the expansion of transport infrastructure has followed the national integration policy of extending roads and railroads to remote areas. But this expansion has often been carried out without proper cost-benefit assessments and co-ordination between agencies, resulting in inadequate prioritisation of projects. There are cases of redundant investments in the transport network or investment above needed levels in some areas, and cases of underinvestment in productive and economically important parts of road and railroad networks located in priority areas. Further, Myanmar lacks appropriate infrastructure to facilitate handling cargo in transitioning from transport modes as a consequence of minimal investment in multimodal transport network until now (ADB, 2012c).

Weak regulatory environment and vertically integrated SEEs discourage private investments in transport sectors

Transport infrastructure development suffers from the lack of independent regulatory agencies. Many agencies perform more than one role in infrastructure services with large potential for conflict of interests. They hold regulatory and policy-making functions and also perform the role of operators in infrastructure markets through directly linked SEEs. The Ministry of Rail Transport (MORT), for instance, is responsible for regulating road transport service provision and, at the same time, is directly responsible for the SEE offering freight and passenger transport services, namely the Road Transport Agency. MORT is also responsible for regulating the railroad sector, while holding the ownership of Myanma Railways, the state-owned monopoly operator. SEEs are vertically integrated with their parent ministries and, as a result, suffer from strong political influence and operate not much differently from public departments (see Chapter 8). Their revenues are integrated into the central treasury and are allocated through the budget (ADB, 2012c).

Transport prices are set and controlled by the central government, making investments in transport infrastructure unattractive. To compensate, as in other infrastructure sectors, the government offers implicit cross-subsidies to infrastructure operators as it directly finances SEE deficits through the central budget. This mechanism does not hold SEEs accountable for poor performance, leading them to operate on a non-commercial basis and in an inefficient manner (Kubo, 2012). While most transport infrastructure remains in the hand of SEEs and public departments, some private infrastructure companies operate in Myanmar. But in such a context, private participation has been limited, with the existing private involvement in transport sectors mostly reflecting a close relationship between the government and the selected concessionaire (ADB, 2012c).

The climate change challenge in the transport sector is particularly important in Myanmar

Transport infrastructure in Myanmar is particularly vulnerable to climate change impacts, including a high flood risk for roads due to extreme weather events. According to the *Long-Term Climate Risk Index* 2013, Myanmar suffered severe damage to its roads and bridges from Cyclones Naris and Giri, including from heavy rains and tidal surges in coastal areas (e.g. in Rakhine State).

Transport is also a significant source of fine particulate matter, nitrogen oxides and ozone, which pose serious risks to public health. Air pollution is a growing problem in cities, due to local emissions from industries, waste burning and vehicles. The energy sector is responsible for 10.6% of total CO_2 emissions, behind agriculture (30.7%) and land use, land-use change and forestry (LULUCF, 54.3%) (IGES, 2012; INC, 2012). Within the energy sector, transport accounts for the second largest share (30% as of 2005) of GHG emissions in the country, even though GHG emissions remain very low.

As travel needs increase (the number of vehicles doubled between 2004 and 2009), the country will face increasing challenges associated with transport (IGES, 2012). Myanmar can benefit from leapfrogging opportunities in the transport sector to avoid locking-in long-lived transport infrastructure in carbon-intensive and climate vulnerable development pathways. Investments in more sustainable transport infrastructure solutions can deliver environmental, social and economic benefits such as reduced traffic congestion and improved local air quality and associated health benefits (Ang and Marchal, 2013). This is particularly critical in fast-growing cities. Future transport planning should encourage and steer investment into more sustainable transport modes and solutions (Myint, 2012). To support such leapfrogging opportunities, climate change goals and other environmental, social and economic priorities need to be integrated into transport infrastructure planning and budgeting of national and local governments (IGES, 2012).

Road transport is the main transport mode in Myanmar, but density and quality are low

Road transport is currently the most important transport mode in Myanmar, but road density and quality is rather low for a country with the level of income and population density of Myanmar. The country has about 142 000 km of roads or about 2 000 km of road per thousand people. Only 21% of the roads are paved to all-weather standards (ADB, 2012a). Since the late 1980s, network developments have followed the government's priority of expanding the east-west network in line with its national integration policy. The costs of developing infrastructure in these regions are much higher due to the numerous mountains and wide rivers that run from north to south and that require the building of expensive tunnels and bridges. Some regions also have relatively low population density. As a result, this network expansion has come at the cost of lower investments in constructing, maintaining and operating the core network in more economically important areas, with possibly higher net benefits for the country.

The government has historically been the main investor in road infrastructure but has faced budget constraints and limited access to international markets and foreign aid. To illustrate, according to ADB (2012c), the level of public investment in primary and secondary roads administered by the Ministry of Construction, which is responsible for roughly 26% of Myanmar's road network, has been rather low at around USD 8 500 per km in

2011. The largest share has been allocated to constructing new infrastructure, with little remaining for maintaining the existing network (ADB, 2012c).

Some private sector involvement in road construction and maintenance has occurred through concession agreements similar to Build-Operate-Transfer and Maintain-Operate-Transfer contracts since the late 1990s. About 8 000 km of roads, roughly 6% of total road length, have been constructed and operated under these terms. According to the government, BOT projects face limited land acquisition issues as these are mainly to build or upgrade roads in already existing road tracks. BOT contracts for roads and bridges are usually for 30-40 years renewable for five years three times. Further, BOT operators are free from taxation on machinery and equipment imports necessary for the project and enjoy decreasing tax incentives throughout the project lifecycle. Around 29 local companies operate under these terms (Han, 2012). Many of these concessions are likely to be unviable as toll rates are set and controlled by the government at very low levels, typically USD 0.01-0.02 per km. The selected concessionaires seem to have a close relationship with the government, which might explain why these investments have occurred in this context (ADB, 2012c).

Private investment in road transport can help leverage Myanmar's connectivity potential

Increasing private sector participation in road infrastructure is necessary to extend and upgrade Myanmar's road network, enabling it to leverage its strategic location between important Asian markets, namely China, India and Southeast Asia. Until now, this potential has been underexploited due to the deficient quality and connectivity of the network, resulting in high transport costs and discouraging trade. Improving the connectivity with neighbouring economies to boost regional economic integration has now become a priority for the government according to the *Framework for Economic and Social Reform*.

Seven ASEAN Highway Routes pass through Myanmar, as do nine GMS Economic Corridors linking Southeast and East Asia to South Asia. Myanmar also has four Asian Highways passing through its territory, linking it to Thailand, India, and China and providing access to Yangon Port. However, some of the roads in the national network that form part of these highways are still earth or gravel roads and need to be upgraded. As of March 2011, roughly 60% of the 3 018 km network was still at the minimum agreed standard (class three), 30% was below class three level, and parts have still to be built (Myo, 2011). All of this contributes to higher road transport costs in Myanmar than in other neighbouring countries. For instance, road transport cost per km from Vientiane to Yangon is estimated to be almost two times higher in Myanmar than in Lao PDR (Banomyong, 2010).

Although the government has been working to upgrade parts of the network on its own and has managed to involve the private sector to some extent, it needs to mobilise more private investment. Many challenges to greater private participation remain, however. Myanmar has no comprehensive long-term road transport development plan that clearly states the vision and targets for road infrastructure development in line with national transport policy and defines the government's role and priorities in the provision of services, as well as the role expected from the private sector. Establishing such a plan is necessary to provide investors with a clear, stable and coherent policy vision for achieving infrastructure goals. Policy goals in transport plans should also take into account Myanmar's vulnerability to climate change and natural disasters and should encourage and steer investment into low carbon and climate resilient infrastructure solutions. This requires adequately identifying and prioritising projects to be developed by private operators, taking into account the government's social-economic development goals, but also based on an independent assessment of their feasibility, focusing on traffic and tariff policy, multimodal integration, risk allocation, financing options and implementation challenges.

Involving the private sector in road infrastructure must be accompanied by regulations that replicate a competitive market (competitive bidding and clear rules for tariff revision for instance) to the best extent possible, taking into account the risks and costs undertaken by operators, including those associated with climate change. In the absence of competition, private investors will not have the incentive to innovate and to expand the coverage and quality of roads in an efficient manner. Moreover, private participation is likely to occur where traffic is the greatest, so that commercial risks are reduced, and where prices are allowed at cost-covering levels. In Myanmar, this may be a particular challenge as toll rates have been historically low and willingness-to-pay is rather limited. Cost-reflective pricing allows investors to undertake the appropriate planning for infrastructure investment without considering any fiscal transfer or subsidies from the state. Where cost-covering prices are not feasible, which is likely in Myanmar, the government should establish compensation mechanisms considering a social cost-benefit analysis, reflecting the role of prices in a normal market and adequately sharing risks between parties.

Upgrading the institutional environment by separating the regulator from operators and policy-makers is also necessary so that private investors feel confident of the stability and predictability of rules that will apply over the investment lifetime. An independent regulatory institution is often better prepared to design and govern road transport contracts, helping to reduce the incidence of contract renegotiation. After contracts have been awarded, renegotiation is often in favour of the operator as the possibility of abandonment or suspension of the contract could be seen as failure of the government, which is under public scrutiny. Hence, having clear rules for revising conditions as stipulated up-front by an independent regulator can significantly reduce the risk of disruptive renegotiations and the associated costs (World Bank, 2004). It is also important to have staff with the technical and negotiating skills to support infrastructure project development.

Urban transport development plans should take into account sustainable transport solutions

Myanmar should also further plan urban transport needs in major cities. Congestion in major cities is still at relatively reasonable levels, mainly because few households can afford private vehicles. This situation is changing rapidly with greater economic integration and increasing urban population growth, notably in Yangon. The city already suffers from a lack of proper traffic management in some areas. Public transport is mainly provided by buses, which carry about 80% of passengers, and by an urban rail system, which accounts for another 6% (Myint, 2012). Buses are operated by both private and public companies, but little investment has been made to upgrade the fleet as tariffs are probably too low (USD 0.06-USD 0.25 depending on the distance) to allow for their renewal. As a result, buses are generally old and unsafe and often overcrowded. The Yangon Division, which is the responsible agency for regulating bus fares and routes, estimates that tariffs would have to double to allow for profitable bus services operations, capable of renewing and extending the fleet. But the increase would not have to be as large if the government eased bus import duties and business taxes applying to bus operators (Bok, Gómes-Ibáñez and Thành, 2012).

Unlike in other major Asian cities, motorcycles are not allowed in Yangon for safety reasons. If the public transport system is not upgraded, the pressure to allow motorcycles as an alternative is likely to become much greater, particularly if migration to the city begins to increase at faster rates with economic development. This would not only increase traffic congestion, but also local air pollution and carbon emissions. According to national statistics, the transport sector is estimated to be responsible for the largest share of CO_2 emission in the country (Myint, 2012). The government is aware of the need for increasing the standards of vehicles in the country and mitigating the environment effects of such an old fleet, e.g. by improving vehicle emission standards and guidelines for vehicle performance, as well as enforcement mechanisms. With the support of Japan, it established a programme in 2011 to replace old vehicles. Until now, most replacements have involved private vehicles but very few trucks and buses (Myint, 2012).

While mitigation of environmental effects is laudable at this stage, the government should also take into account disaster risk management strategies and low-carbon transport solutions in further planning urban infrastructure in the country. Greener urban transport solutions, such as public transit systems (e.g. bus rapid transit systems or light rail) can help reduce traffic congestion and local air pollution from private vehicle use, provided that they are integrated within land-use planning strategies. Yangon, for instance, already benefits from having an orderly grid urban development that can facilitate leveraging the use of the existing urban rail system and integrating it with a rapid transit bus network. The government is already planning and constructing two bus rapid transit systems in Yangon and Mandalay (Box 7.3). Recognising the need to improve public transport systems, Yangon Region government and Yangon City Development Committee are developing a Strategic Urban Development Plan of the Greater Yangon by 2040, with support from the Japan International Cooperation Agency (JICA). The plan proposes to develop Yangon into a "green and gold metropolis by 2040" by developing public transport, roads, water supply and housing projects to accommodate more than 10 million residents by 2040. JICA identified the need to develop a bus rapid transit system to improve daily commuting within Yangon's townships, as well as Yangon's circular railway to meet current and future transport demand while limiting traffic congestion, although urban railway tends to be much more capital-intensive and costly than BRT systems.

Box 7.3. **Creating a Bus Rapid Transit (BRT) system in Yangon**

Yangon authorities are planning a new bus rapid transit (BRT) system, scheduled to run on Pyay Road in Yangon, from Kha Yay Pin Junction to downtown. Effective BRT systems are typically characterised by dedicated bus lanes and stations, pre-board fare collection and verification, user-oriented modal and fare integration and competitive tenders. Yangon's planned BRT system will include fixed fares, cleaner buses using CNG (compressed natural gas), specific bus stops, improved traffic lines, and tenders to allow for private companies to operate the BRT line. Yangon's BRT system is part of the Greater Yangon Strategic Development Plan, undertaken by the Yangon City Development Committee in co-operation with JICA.

More than 120 cities across the world are using BRT systems and bus corridors. BRT systems are often considered as cost-efficient "quick-wins" because their profitability and high social benefits deliver results in the short run for sustainable transport. In terms of profitability, BRT capital costs are much lower than for metros or light rail transit systems, especially since BRTs are typically set up on specific lines with high passenger volumes. Revenues from BRT systems can sometimes cover operational costs without requiring subsidies.

Lessons can be learned from other BRT systems in Asia, for instance in Jakarta, Indonesia, which initiated its BRT system with a limited single corridor of solely 12.9 km, Box 7.3. **Creating a Bus Rapid Transit (BRT) system in Yangon** *(cont.)*

with limited success so far. Key success factors include: strong political will and clear policy goals; stakeholder engagement and co-ordination; robust enabling environment, e.g. through public-private partnership regulations and laws; innovative financing schemes; capacity building and knowledge sharing on BRT design and implementation; public awareness campaigns on the benefits generated by BRT systems, including in terms of reduced local air pollution and traffic congestion.

Sources: The New Light of Myanmar, 2013; Eleven, 2013; Ang and Marchal, 2013; Sakamoto et al., 2010; UNEP, 2011.

In addition, implementing reforms that increase the productivity of buses and trains by increasing the speed of the service would reduce the operating costs of the transport system and increase service quality. Improving the enabling environment for investment in public transit systems is also critical to allow for private sector participation (Box 7.4).

Box 7.4. **Mobilising private investment in sustainable transport infrastructure**

The OECD is helping developed and developing countries identify the key enabling policies and instruments needed to mobilise private investment in land-based sustainable transport infrastructure such as metros, bus rapid transit systems and railways. Key priorities include:

1. **Setting long-term targets and clean policies goals,** and integrating them within national plans and strategies. In particular, integrating land-use and transport planning is a key enabling condition to encourage the creation of dense, mixed-use development patterns in urban areas well connected to public transport.
2. **Reforming policies to enable investment and strengthen market incentives.** Fuel and vehicle taxes, fossil-fuel subsidy reform and congestion charges are pricing mechanisms that can help price externalities such as local air pollution and traffic congestion. Regulations are also needed, for instance through zoning policies and land-use planning (e.g. dedicated bus lanes), standards or public procurement programmes.
3. **Establishing financial policies and instruments to improve access to finance.** Public-private partnerships (PPPs) are procurement methods that can allow for private sector participation and risk sharing, provided that they offer sufficient "value for money" compared to traditional public procurement and the right institutional capacities and process are in place. In addition to PPPs, donor agencies and international finance institutions can provide risk-mitigating instruments such as loan guarantees to finance railways and urban public transit systems. Experiences to date suggests that PPPs are particularly suited for bus rapid transit (BRT) systems) and highly-used and specific rail links.

Box 7.4. **Mobilising private investment in sustainable transport infrastructure** *(cont.)*

4. **Harnessing resources and building capacity.** In particular, climate risk assessment is needed to mainstream climate resilience in transport planning (e.g. roads and railways in flood-prone coastal areas).
5. **Promoting green business and consumer behaviour,** such as with public awareness campaigns.

Policy mixes need to be adapted to specific country contexts. The OECD is working with national governments to tailor this policy toolkit and adapt it to specific domestic context.

Source: Ang and Marchal, 2012.

Railroad transport has seen its competitiveness reduce overtime

Myanmar has about 3 500 km of rail network that are operated by Myanma Railways, the state-owned enterprise under MORT. The company owns the rail infrastructure and holds the monopoly over freight and passenger rail transport services. As with road infrastructure, the expansion of the rail network has followed the political goals of extending connections to remote areas in the country in the past 20 years, even though these regions presented limited commercial activity and involved high construction costs due to difficult topographic conditions. To have an idea of the economic burden of such policies, while the rail network expanded about 78% from 1988 to 2010, transport freight volume has remained at roughly the same level as in 1993, about 3 million tonnes. Rail freight has lost importance relative to other transport modes which have increased during the period partially due to the inefficiency of the railroad system. To some extent this has contributed to Myanma Railways' weak financial condition. From 2006 to 2011, its revenues covered only 60% of operating expenses on average (ADB, 2012c).

As the maintenance and enhancement of the core network have not been a priority, the railway network is in poor condition and the fleet needs upgrading. About 25% of locomotives are 40 years old and speeds are low due to the poor condition of tracks. As a result, while it takes five hours to travel from Yangon to Nay Pyi Taw by car, it takes almost 9 hours by train. All this has undermined the sector competitiveness in relation to alternative transport modes, such as roads and inland waterways (ABD, 2012c). The remaining users of Myanma Railways freight transport services are essentially other SEEs, which are probably captive customers.

Connectivity to neighbouring countries takes place through four rail lines that integrate the Trans-Asian Railway Network and total about 1 740 km. However, roughly 380 km are still needed to complete connections with neighbouring countries. Construction costs for these parts are estimated at roughly USD 823 million (Myo, 2012). Once built, these links should significantly facilitate trade and increase transport on these lines. For instance, building the missing link to upgrade integration with India would reduce the transit time from 22 to 9 days and the cost per TEU[6] from USD 2 000 to USD 800. Nonetheless, the economic viability of these four connections is limited and the government will probably have to commit to financing at least part of the network expansion. A study by the Korean Investment and Co-operation Agency, found that the missing link needed to connect Thanbuyzayat in Myanmar to Three Pagoda Pass in Thailand (about 110 km), for instance, is not economically viable considering a medium demand level scenario (Han, 2012).

Some degree of competition would likely help in fostering the railroad transport sector

There might be space for introducing some degree of competition in the railroad market by unbundling the ownership of infrastructure assets and the operation of railway facilities and vehicles. Myanmar is rich in minerals and other heavy-load commodities which are adaptable to rail transport. The economic corridors related to these activities could permit greater private participation in the provision of rail infrastructure. With investment needed to rehabilitate existing tracks and build new ones and with limited regulatory experience, introducing competition will not be simple, but maintaining the vertically integrated market structure with a state monopoly may be worse. The new *Foreign Investment Law* authorises foreign participation in constructing infrastructure facilities, although only through a joint venture with the national operator which can be a constraint. But ensuring private participation in the sector will require a credible environment for private competitors, which entails, as in the case of other infrastructure sectors, establishing an independent regulatory agency to govern the sector, as well as strengthening corporate governance measures for the incumbent state-owned operator.

Many other developing countries have benefited from introducing private participation in the operation and maintenance of existing rail networks, with requirements to make the necessary investment to rehabilitate tracks. For this to occur, the role of the private and public sector in the supply of rail infrastructure needs to be revised, and the allocation and use of subsidies need to be made transparent. Experience also shows that reforms that increase pricing and structural flexibility in the industry and enhance managers' ability to compete with other transport modes have been the most successful strategies to revamp railroad assets (World Bank, 2004).

Enhancing Myanmar's railroad network is in the interest of its trading partners, not only to facilitate commercial relations with Myanmar, notably for raw materials, but also to facilitate trade from and to Southeast Asia, China and India. They would most likely support reforms improve the quality and quantity of railroad connectivity, transforming Myanmar into a rail hub for the region. China has already demonstrated interest in the 232 km link from Muse-Lashio-Kyaukpyu, and Myanmar is currently in negotiations with the state-owned China Railway Engineering Corporation (Naing, 2012). While Myanmar can benefit from this, the government needs to adequately plan and co-ordinate support to avoid unproductive solutions. In the past, uncoordinated policies have for instance led to the use of locomotives from different manufacturers associated with different donor countries, making the maintenance and operation of the rail fleet much more costly and difficult (ADB, 2012c).

Inland waterway transport is an important transport mode but needs upgrade

Myanmar is well endowed with natural river resources, with about 5 000 km of inland waterway network, of which 2 400 km are the primary network (ADB, 2012c). Inland waterways are almost one and a half times as large as the railroad network and are relatively low cost, making the inland water system competitive for accessing some regions in the country where the available road and rail transport infrastructure is limited or poor. The network is an important transport system for bulk commodities, such as cement, petroleum, fertiliser, teak logs, rice and building materials.

The Ministry of Transport is responsible for maintaining inland channels and navigation facilities, through its Directorate of Water Resources and Improvement of River Systems. Very limited financial resources have been allocated to upgrade and extend inland channels to ensure they remain navigable, although the network requires constant and extensive dredging, particularly during the low water season. Only about USD 5 million has been spent on the two main rivers since 2000. Most of the inland ports lack proper cargo handling facilities, except for a few locations where specialised facilities for handling bulk commodities exist (ADB, 2012c).

Inland Water Transport, the vertically integrated state-owned operator, is the dominant passenger and freight transport provider, but private companies are also present in the sector. In 2011, IWT handled about 28 million passengers and roughly 5 million tonnes of freight. This is almost 50% more than what was handled by Myanma Railways, but the amount of freight has not changed much since 2000, when IWT handled about 4 million tonnes of freight (ADB, 2012c). The company also constructs vessels both for its own use and commercialisation. Nonetheless, IWT's vessels and maintenance facilities in its shipyards are old and lack modern equipment due to its limited financial resources. Only 20 vessels were built from 1988 to 2008 for its own use, while another 18 vessels were constructed for private companies. As of May 2013, the company had 476 vessels, of which slightly more than half had power engines (IWT, 2013).

The company suffers from government fixed tariffs set below cost-covering levels, both for passengers and freight. Prices are also set below costs for touristic water tours provided by small IWT passenger vessels mostly targeting international tourists (ADB, 2012c). Freight tariffs in 2006-07 for instance were about USD 0.65-0.86 per tonne per mile (600-800 kyats) (Myint, 2008). The lack of pricing flexibility to allow for cost-covering tariffs has prevented the government from upgrading inland channels infrastructure and from modernising IWT's fleet and facilities. As in other transport sectors, below cost tariffs and the lack of separation between the main operator and the regulator are a constraint for private participation in the sector. Besides addressing these issues, the government could envision rationalising IWT's activities. The government already has plans to transform IWT into a public company, expecting to sell its shares in 2013, initially only to government employees (Thura Swiss, 2012). Private investors could be allowed to take over some of IWT's operations and maintenance of vessels activities, and the Ministry of Transport could promote a competitive market for the extension and maintenance (dredging and navigation facilities for instance) of the inland waterway network.

Port infrastructure enjoys a relatively high degree of private participation and is expected to expand

Port infrastructure comprises nine ports along the Western and South-eastern coasts, with Yangon's port handling about 90% of Myanmar's total cargo. The Yangon area hosts the majority of Myanmar's production facilities due to its numerous industrial zones, making of Yangon port a critical link to international trade. The port is located about 30 km inland from the sea and comprises several terminals, including private and foreign-owned ones. Private investors manage around 75% of the port's facilities by quay length, mainly through BOT contracts lasting 25 to 30 years (MPA, 2012). Access channels to both the Yangon port and the other eight ports are not deep enough for large container and conventional vessels, and in most cases they lack modern handling facilities. The Thilawa container terminal, about 20 km downstream of the Yangon port, is capable of handling relatively larger container vessels but access from the port to Yangon remains poor. The Thilawa terminal is a private investment of almost USD 102 million under a 25-year BOT contract developed and operated by Hutchison Port Holdings of Hong Kong, China. The terminal handles about 13% of vessels calling at the

Yangon port, despite having the highest capacity among port facilities in Myanmar, partially due to higher container transportation charges. The facility is adjacent to where the Thanlyin-Kyauktan SEZ is expected to be created and includes a rail terminal, which should facilitate the arrival and departure of containers.[7]

The rapid economic transformation of the country will very quickly surpass the capacity of existing infrastructure. There is a need to upgrade current port facilities and to build new deep sea port infrastructure to support the increase in international trade. Yangon's port, for instance, has seen its cargo handling activities grow at double digit rates since 2009, compared to single digit growth from 2002 to 2008. The volume of containers handled in the port has grown 15% every year since 2006. Growth at these rates will very rapidly reach the limits of the port's cargo handling facilities and overall capacity.

Myanmar Port Authority (MPA), the regulatory agency in Myanmar, has plans to construct six new domestic ports along the two main rivers (Chindwin and Ayeyarwaddy) and further develop the Yangon port area by establishing five new international shipping terminals in the Thilawa port area. The expansion of the Thilawa port will have support from the government of Japan, as part of a larger project being conducted by JICA to draft a 40-year upgrading plan for the city of Yangon. Among other things, such as improving the city's drainage system and urban transport, the plan foresees upgrading and expanding the Thilawa port to transform it into a deep water port and establishing the Thilawa SEZ in the port area.[8] The construction of the new terminals is expected to start in 2014 and will be financed by a USD 205 million ODA loan from the government of Japan. It is expected to be completed by 2016.

Deep sea commercial ports will soon become essential to handle Myanmar's rapidly increasing international trade, and four sites have already been considered, particularly the Dawei port project. The project has already started and will be developed by a private company, the Ital-Thai Development Company, under a 60-year BOT contract with MPA with a land lease period of 75 years. The port facilities are expected to accommodate large container vessels ranging from 50 000 to 300 000 DWT, compared to the current capacity of only 20 000 DWT for vessels at the Thilawa port. The agreement with MPA covers construction of the Dawei Deep Sea Port and facilities, the establishment of the Dawei SEZ and the creation of industrial infrastructure in the area, including a petrochemical plant, oil refinery and steel mill, and the building of cross-border road, rail and oil pipeline links to the Thai border. Total investment in infrastructure for the first phase of the project is estimated at USD 8.5 billion, expected to be completed in 2019, and the entire Dawei SEZ is estimated at USD 50 billion. The project has only progressed slowly due to financing uncertainties and civil society resistance related to its potential impacts on the environment and local communities (Reuters, 2013a).

Myanmar has the opportunity to ensure that new ports are built to be climate-resilient, to account for inevitable climate change impacts such as rising sea levels and extreme weather events in the planning, construction and operations of new ports, thereby avoiding future costs from increased climate change vulnerability (IGES, 2012). According to an OECD study, 3% of the global population exposed to sea-level rise, storm surge and subsidence by the 2070s is located in Myanmar, highlighting the high climate change vulnerability of port cities in Myanmar, including port infrastructure. Yangon ranks among the top 20 world port cities by population exposure to climate change impacts by the 2070s (Nicholls et al., 2008). Integrating climate change concerns in the design, planning and location of future and existing port infrastructure is thus critical in Myanmar.

Air transport expansion is expected to come with more private investment

Air transport is relatively well developed. The country has three international airports capable of handling relatively large turbofan aircraft and 30 other domestic airports with adequate air control facilities (ADB, 2012c). As in other transport sectors, the state-owned operator, Myanma Airways, is the dominant air transport provider and also provides international flights through Myanmar Airways International, a joint venture with a local investor. Another five companies, of which four are totally private-owned and one a joint venture between Myanma Airways and Singaporean and Malaysian investors, also provide domestic air transport services (ADB, 2012c). Fourteen international airlines serve Myanmar (Myint, 2012).

The government's priority is to increase the supply and improve the efficiency of airport infrastructure and safety regulations to meet the rising demand for air transport services. The number of passengers grew 10% in 2009 and more than 20% in 2010 and 2011, despite air safety lapses (Reuters, 2013b). While the number of international passengers flying on international flights has seen the greatest increase, domestic air travels have also been significant. To cope with the growing number of tourist and business travellers, the government plans to transform some domestic airports into international ones and to construct and operate a new international airport under a PPP arrangement. Foreign investment is allowed only through joint ventures with Myanmar nationals, and therefore all the international consortia have to partner with a local company for delivering the projects.

The main airport in the country, Yangon International Airport, is to be upgraded to expand its capacity from 2.7 million passengers per year to

5.5 million passengers, having registered 3.1 million passengers in 2012. The expansion and modernisation of the airport is estimated at USD 150-170 million. The government has sought to do so through a PPP arrangement for the design, construction, operation and maintenance of the airport and its facilities over a 30-year concession period. Nineteen firms have submitted applications and 11 international and domestic consortia have been pre-qualified for the project by the Department of Civil Aviation within the Ministry of Transport, with six of them been selected for the final round. The contract was finally awarded to a consortium led by Pioneer Aerodrome Services, an affiliate of the domestic conglomerate Asia World Group, along with firms from Singapore, Malaysia and China. The tender process however has been criticised for the lack of transparency in the selection process.[9]

The government has also tendered a project to upgrade the Mandalay International Airport through a PPP agreement. Sixteen consortia have submitted applications and seven have been pre-qualified. The contract was finally awarded to a consortium led by Japan's JALUX Inc and Mitsubishi Corporation, along with the local company SPA Project Management. The French company VINCI Airport was selected as the backup bidder. The Mandalay airport already serves as a domestic hub and is expected to become an international cargo hub.

The government has also tendered the construction of a new international airport situated around 90 km from Yangon under a 50-years PPP agreement. Out of the thirty companies that expressed interest in the project, seven were pre-qualified and four have submitted formal bids. The consortium led by the South Korean company Incheon International Airport Corporation came out as the winning bidder. The new Hanthawaddy International Airport is expected to cost USD 1 billion and be completed in 2018. The airport will be able to handle about 12 million passengers a year, expandable to 35 million passengers, and will be roughly nine times bigger than the Yangon International Airport. The government expects that these two projects will meet the expected demand for such services arising from tourism and business in the Yangon region. There also plans to transform the Dawei Airport into an international one to support the Dawei SEZ development.

Telecommunications

The telecommunications sector offers great opportunities for Myanmar's economic development. In other countries, the development of mobile telecommunications services, including mobile banking, has been associated with economic growth and enhancements of people's lives across different economic segments. In Myanmar, Deloitte (2013) estimates that the economic impact of the mobile sector over the first three years after liberalisation can be around 1.5%-7.4% of GDP under a medium penetration scenario. The industry is expected to employ approximately 66 000 full time equivalent employees.

The impact reflects the need to develop ICT infrastructure, which is apparent in the low penetration level of telecommunications services, with only 2.6 people for every 100 having access to mobile telephone, 1.08 for fixed telephone lines and 0.06 having broadband Internet subscriptions. These figures confirm Myanmar's deficient performance in ICT infrastructure relatively to other countries in the region (Figure 7.1). The cost of owning a mobile connection is high and telecom infrastructure coverage is biased towards large cities, where penetration is higher, while the largest share of the population still lives in rural areas. Connection to the Internet is still mostly through slow dial-up connections (around 63%), with only 26% taking place through faster ADSL networks (MPT, 2010).

The expansion of telecom services is a national priority reflected in the government's ambitious reform

The government has set ambitious targets for expanding data and voice services across the country to bridge the gap in ICT infrastructure. The *Framework for Economic and Social Reforms* calls for a 50% mobile phone penetration rate by 2015, i.e. an annual growth rate of more than 130% in the number of subscribers starting in 2012. It also plans to introduce 3G and 4G data connections in the period. Although targets are probably overly optimistic for a three-year period, the government has engaged in a comprehensive reform to move rapidly towards this goal. It has also set as a priority in the National Comprehensive Development Plan 2011-30 the development of a telecommunications sector master plan to guide the sector expansion. Reforms to the sector can serve as an example for impending reforms in other infrastructure sectors (Box 7.5).

Box 7.5. **Lessons from telecommunications reforms**

The importance of telecommunication services in fostering economic growth across countries in recent decades is evident. The declining costs and improved quality of mobile telecommunications and broadband technology have made possible the access to such services by distant communities and have revolutionised commerce across industries. The development of these technologies has allowed the expansion of new commercial modes for the provision of services, such as financial services, facilitating transactions across multiple regions and markets, and reducing services costs by increasing competition in these industries.

Box 7.5. **Lessons from telecommunications reforms** *(cont.)*

In many cases, the expansion of telecommunication infrastructure has been associated with the deregulation of these industries. Prior to deregulation, telecom networks were regarded as natural monopolies and were heavily regulated by the government. The responsible authorities were usually Ministries of Post, Telegraph and Telecommunications. With the telegraph's significant decline, these services and postal services were normally dissociated from telecommunication regulators.

New regulators pursued the deregulation of the industry by removing or relaxing barriers to new entrants, often accompanied by privatisation of state-owned operators. As result of increased competition, prices for these services declined and quality improved, permitting rapid increases in the penetration rate of such services and supporting economic growth in many countries. A couple of unique characteristics of telecommunications not seen in other network sectors made the deregulation of telecom networks easier, although technically more challenging than in other network industries. For instance, in the case of water services, regulation is essentially related to the monopoly provider in a certain area. In telecommunication, regulation needs to cover competitive and non-competitive segments and their interfaces, as well as interconnection challenges associated with multiple operators. These characteristics make its regulation more complex and demanding. Yet in many countries the expansion of telecommunications has been much more impressive than of water systems, even though water access ranks usually higher in governments' priorities as it is widely recognised as an essential good for living.

One of the main regulatory explanations for this divide is how prices are set in these two sectors. While in telecommunications deregulation allowed prices to be set at competitive levels, allowing operators to cover costs and providing them with the incentives to expand systems, in water infrastructure regulation has typically set prices below operating costs at about 30% of total costs, providing little incentive for expanding the services. Subsidies provided have often worked to the detriment of those most in need, who end up not having access to the limited available water infrastructure and having to rely on costlier alternative water sources.

The advent and expansion of mobile telecommunication has also pushed for efficiency of competing services, such as fixed telephony. Similarly to the water system, prices in landline telephony were normally set below cost levels providing operators with little incentive to expand their services, notably due to the high network deployment investment needed up-front. Facing competition from mobile operators, fixed telecommunication providers had to restructure their management practices to cut costs and become more efficient. Competition kept prices in balance and provided incentives for improving the quality of service. Technology also contributed to facilitating the expansion of services. But essentially, these two characteristics of the deregulation process of telecom networks, prices and competition, were key for the success of expanding such services.

Box 7.5. **Lessons from telecommunications reforms** *(cont.)*

The experience of the telecommunication sector cannot be generalised to other network industries, but it sets out a way of approaching deregulation and liberalisation of other networked industries. Competition should be sought where feasible, and whenever price flexibility is not possible, prices should be kept as close as possible to cost-reflective levels. Often regulators focus too much on the ownership of infrastructure assets and on the available financial instruments to enhance investment in infrastructure services and end up neglecting structural issues affecting cash flow in these industries and consequently investments. The way the market is structured and how prices are regulated are the most important dimensions for enhancing private investment, as they determine how and at which level prices are set, and consequently the financial sustainability of projects.

Source: Araral et al. (2011), Klein (2012) and World Bank (2004).

Myanmar's telecommunications reform programme is in line with international experience. It aims to introduce private competition to the incumbent state-owned operator as a way of improving services and financing the expansion of ICT infrastructure. The new *Telecommunications Law*,[10] enacted in October 2013, opens mobile telecommunication to private investment, including foreign, and foresees the establishment of an independent regulator within two years after its entry into force. Further, the lifting of Myanmar Post and Telecommunication's (MPT) monopoly over telecom services[11] is expected to be accompanied by its corporatisation. Under the new law, four telecom licences are foreseen, including one to MPT and one to Yatanarpon Teleport Internet Service Provider,[12] which are currently the only telecom licence holders in the country. The other two licences were the subject of an international auction, under which Norway's Telenor and Qatar's Ooredoo came out as winners in June 2013. The consortium formed by France Telecom-Orange and Japan's Marubeni Corporation was selected as the backup applicant, should one of the winners fail to meet the requirements (*Financial Times*, 2013a).

The untapped potential of Myanmar's telecommunications market makes it a very attractive destination for investors, notably foreign ones, even if some regulatory uncertainties exist. The tender for the two new licences has generated an intense competition among international mobile services providers, with a total of 91 companies and consortia from around the world expressing interest in participating in the tender (Bloomberg, 2013). Twelve international consortia were shortlisted for the final round based on the standards established by Myanmar's Telecommunications Operator Tender Evaluation and Selection Committee, and in June 2013 the Selection Committee announced Telenor and Ooredoo as winners.

The conditions under which licences were awarded, as expressed in the invitation for telecom providers to submit an expression of interest, involved requirements to meet or exceed specified population and geographic coverage targets; to commit to reasonable tariffs and low initial registration fees; for both new and existing licensees to enter into infrastructure and facilities sharing agreement to achieve rapid and cost efficient network deployment. The new licences are valid for 20 years renewable, but the conditions for renewal haven't yet been specified. Under the licence agreement, operators are given nine months to launch commercial services upon the effective issue of the licence (Myanmar, 2013).

In early November, the government issued a first draft of the *Proposed Rules for Telecommunications Sector* for consultation. This draft contains only a first set of implementing rules and procedures on which the Ministry is seeking consultation, notably on licensing, access and interconnection, spectrum management, numbering and competition. These are mostly in conformity with international standards and are expected to promote competition and facilitate the roll-out of telecom network. The proposed rules adopt a multi-service licencing framework and technology-and-service neutral rules; establish cost-oriented interconnection and access price regulation; and adopt a liberalised and competitive spectrum management framework, among other. However, a more careful approach is taken in relation to number portability, so to allow MPT, the incumbent operator, some time to adapt to competition and protect it from excessive harm at this initial stage of market liberalisation. It is proposed that number portability be introduced only after the market begins to stabilise and market trends become clearer. A revision of this provision is nonetheless allowed after 18 months from the introduction of competition.

Having clear provisions regulating the tariff setting mechanism, including for network interconnection, is key for ensuring private investors' appetite to invest in the sector. Rules for network sharing also contribute to optimise the deployment of infrastructure by operators and facilitate reaching targeted penetration rates. While new operators can roll out their own network independently, there may be an interest in co-ordinating network development to avoid redundancy in services expansion. This may pose some institutional challenges as over 80% of the existing fibre optics lines are controlled by the military. The rest is owned by MPT, which has begun to install a new 2 000 km link from Yangon to Mandalay as it prepares for the new competition. A revision to regulations on number portability in the near future should also be considered to enhance competition and better protect consumers' interests.

High prices have been a major barrier for telecom penetration, but the opening up of the sector to private investment should help bring prices down

The decision to open up the sector is likely to ease one of the main barriers for telecom penetration so far, namely the high prices of owning a mobile phone. Handset prices are artificially high and registering mobile lines is expensive and lengthy (up to 2 years). Handset prices have come down in recent years as MPT has invested in expanding infrastructure capacity, but retail prices for mobile phones at USD 600-1 800 remain relatively high. Some low-end handsets can be found at USD 50 on the black market, but even these are relatively expensive compared to in other regional markets where they cost around USD 20 (Nomura, 2012). Domestic calling rates are also rather expensive at nearly USD 0.60 per minute (Deloitte, 2013). In addition, until recently, the official retail price for SIM cards was extremely expensive at USD 150-200 and the waiting period long. As a result, these were sold at USD 600 on the black market. In 2008, MPT introduced pre-paid SIM cards for USD 20, circumventing the need for registration, but these could not be recharged and users could not keep the number after expiry. As such, the number of pre-paid lines has been low (Nomura, 2012). In April 2013, MPT started selling SIM cards for only USD 2 through a lottery system as the demand was high and availability of SIM cards was initially limited.

While telecom opportunities in Myanmar are substantial for private investors, the challenges and risks are not to be underestimated. The new entrants are expected to provide much-needed long-term capital for building the country's infrastructure, but recovering the costs of those investments is not straightforward. Myanmar is a large country with limited population density and one of the poorest countries in the region. The current regulatory framework is still relatively uncertain for such long-term investments decisions, despite the current administration's commitment to support the private sector. Vodafone and China Mobile, for instance, withdrew from the bidding for the new telecom licences citing difficulties in meeting their internal investment criteria (*Financial Times*, 2013a). Among other, there are uncertainties in relation to the lease of rural land for rolling out the network, as well as in the capacity of the government in handling approvals in a timely manner. It is also unclear if additional permits will be necessary for the construction and operation of the telecom network and which Ministry or authority at which governmental level will be in charge of issuing them. In addition, the current inadequate power infrastructure may require running telecom towers under alternative power solutions, which would raise operational costs and upfront investments. Using alternative power solutions may also require additional permits for the import of material and its use (VDB-Loi, 2013).

The investment required to support the expansion of telecom services in the country is also noteworthy. Currently, the existing network coverage is limited,[13] being mainly concentrated in Yangon and Nay Pyi Taw, and the lack of interconnectivity of networks[14] obliges users to have multiple SIM cards to secure a network signal (DBS Vicker Securities, 2013). As of 2013, Deloitte (2013) estimates that only about 14 000 km of fibre lines and 1 800 towers were available.[15] To meet the targets established by the government, at least 15 000 towers and thousands of kilometres of fibre would need to be installed, requiring investments of about USD 4 billion according to Deloitte (2013). In the future, Myanmar could consider introducing more licences to foster greater competition in telecommunications, particularly for Internet services and accelerate the building of the fibre optic network.

Establishing an independent regulator should be a priority in the near future

Enhancing private sector participation in a sustainable manner requires addressing some institutional and regulatory uncertainties. The experience of Asian countries that have relaxed the entry of mobile telephone firms reveals that greater improvements in the sector's performance were attained when reforms were accompanied by a favourable macroeconomic environment and an independent regulator (Chalita et al., 2010). Entry relaxation usually generated better outcomes in cases where an independent regulator was established before restrictions to entry were eliminated or relaxed. Up to now, the Ministry of Communications, Post and Telegraph (MCPT) has acted both as the regulatory agency and the operator through MPT. Creating an independent regulatory agency, separated from the incumbent operators, namely MPT and Yatanarpon Teleport, and protected from political influence is necessary to provide investors with a credible institutional environment for safeguarding private investors' and customers' interests. The creation of an independent communication commission to execute the provisions of the *Telecommunications Law* is expected within two years after the legislation enters into force.

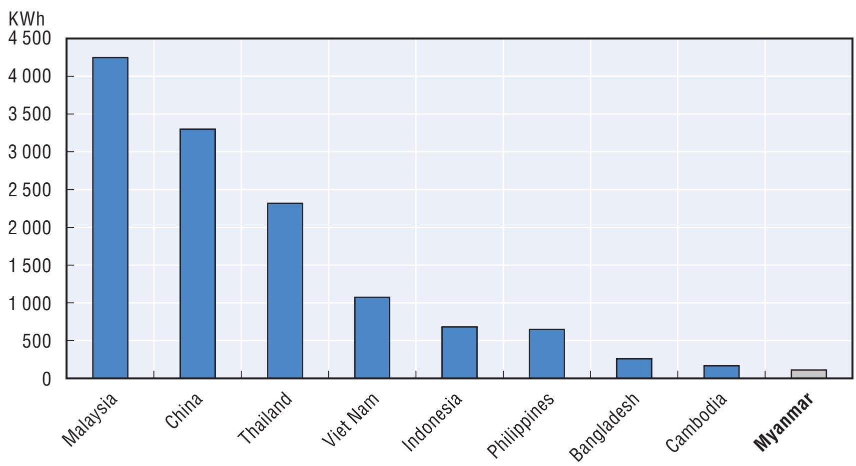
Strengthening the governance of MPT and establishing adequate rules to foster efficient network expansion and better protect consumers' interests

The role that MPT is likely to have in the telecom sector after liberalisation is still unclear. The government should avoid granting MPT preferential conditions and should seek to introduce competition in all service areas where feasible. Corporatising MPT and establishing corporate governance measures to ensure transparency and efficiency in its management would also help level the playing field between MPT and the new entrants. In pursuing these goals, the government of Myanmar could make use of the OECD *Guidelines on Corporate Governance of State-Owned Enterprises* to manage more effectively its responsibility as company owner, thus helping to make state-owned enterprises more competitive, efficient and transparent. In the near future, the government could possibly privatise MPT partially or entirely to induce more private sector participation in the sector. The experience of other countries with telecom privatisation is reasonably positive (World Bank, 2004).

Electricity

Inadequate and unreliable electricity supply is a major constraint on socio-economic development in Myanmar. Despite considerable energy potential, particularly in hydropower and natural gas, per capita consumption of electricity is among the lowest in Southeast Asia, reflecting the lack of access to electricity (Figure 7.3). In 2011, only 26% of the population had access to electricity, but penetration rates oscillate considerably between 67% in Yangon and 54% in Nay Pyi Taw, and only 16% in rural areas (ADB, 2012b; WEF, 2013).

Figure 7.3. **Electricity consumption per capita, 2011**



Source: *World Bank World Resources Indicators Database.*

Connectivity is only part of the issue, as frequent power shortages, particularly during the dry season, imply having to rely on costlier provisional energy sources to cope with scheduled and non-scheduled black-outs. There are 29 power stations available in the country: 18 hydropower plants, 10 gas-fired and 1 coal-fired plant. Around 76% of the total electricity installed capacity is from hydropower, 21% from gas-fired capacity and 4% from coal-fired plants.[16] Total capacity is superior to the peak load, but during the dry season hydropower plants cannot generate electricity at full capacity. Besides, the poor maintenance of coal and gas power plants reduces their available capacity, also contributing to power shortages. For instance, Myanmar's single coal power plant operates at an average of 31% of its capacity. Ultimately, only about 60% of installed capacity is actually available (WEF, 2012). In addition, technical and non-technical losses of about 27% on transmission and distribution systems aggravate the situation (ADB, 2012b).

Myanmar's export-oriented energy strategy has considerably limited power available for the population

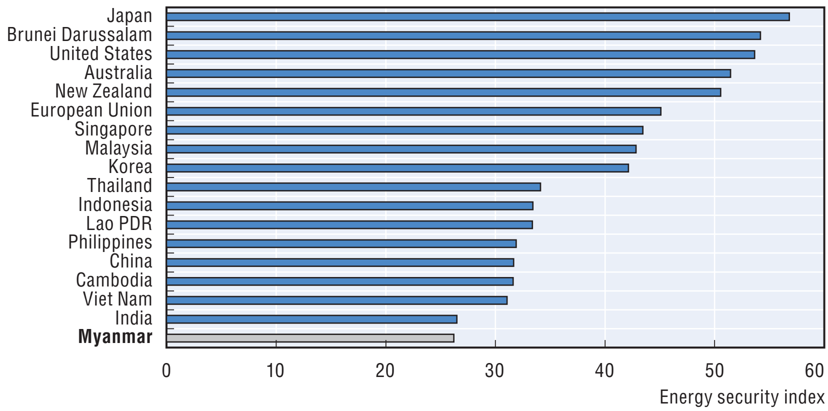
About a third (34% in 2009) of the total energy production is exported, particularly to China and Thailand, limiting the amount of energy available for electricity (ADB, 2012b). Myanmar entered into contracts with its neighbours to export natural gas and oil as a way of overcoming the international sanctions that prevented it from raising finance in international markets and multilateral organisations. Currently, natural gas is Myanmar's main export product and source of foreign currency. These arrangements have allowed Myanmar to accumulate foreign currency while expanding installed capacity, but only a share of the added production has been made available for domestic use.

This strategy partially explains the limited electricity access of the population. Only 4% of the population rely on electricity for cooking and the national power grid covers only 7% of villages in rural areas, as discussed further (UNDP, 2012). This strategy has also important implications for Myanmar in terms of energy security. According to a study that assessed the performance of 18 countries in Asia and the Pacific on energy security (including all Southeast Asian countries), Myanmar ranks lowest in terms of energy and environmental performance over the period 1990-2010 (Figure 7.4; ADB, 2013; Sovacool et al., 2011).

The government is strongly committed to increase electricity generation capacity

Therefore, there is an urgent need to improve electricity volume in and off the grid. The problem of inadequate electricity supply is expected to worsen with economic liberalisation. Industrial development and urbanisation are likely to rapidly increase demand for electricity, and pressures to expand household access to electricity across the country will intensify. According to Dapice (2011), information from the Ministry of Electric Power No. 2 presented in 2011 already stated that electricity supply met only about half of projected demand. Demand growth over the next five years is

Figure 7.4. **Energy and environmental performance absolute score for selected countries, 1990-2010**



Source: Sovacool et al., 2011.

expected to double or triple, while planned investments mainly in hydroelectricity are expected to expand capacity by only 5% per year. The report estimates that even if electricity output doubled every five years, which would imply a 15% annual growth rate, it would take five years just to meet today's demand. In the same period, demand would already have grown by 12% a year.

The government has put a priority on increasing electricity generation capacity particularly for metropolitan areas and is in the process of developing a national energy and power plan with assistance from international organisations. The ADB and JICA are helping Myanmar develop an appropriate cost-benefit analysis of power generation options, taking into account long-term environmental implications, to guide the development of the power plan. The government plans to rely on private sector participation for expanding power capacity and expects investment in the energy sector to become an important driver of economic development.

A few reforms supporting this goal have already been outlined in the *Framework for Economic and Social Reform,* including plans to further liberalise the sector by deregulating prices, eliminating across-the-board subsidies and adopting appropriate taxes. A National Energy Management Committee (NEMC) and an Energy Development Committee (EDC) were created in early 2013 to enhance co-ordination and planning among institutions in energy sectors. The NEMC is a minister-level committee under the Vice-President No. 2 responsible for policy making. The EDC is responsible for implementing the directives and plans established by the NEMC. Establishing such structures may help alleviate inefficiencies arising from the current fragmented institutional environment, but an institutional reform is likely to be necessary to facilitate planning and implementation in the sector. As shown in Table 7.1, seven ministries are involved in the energy sector, which often have unclear mandates over certain subsectors (WEF, 2013). Table 7.2 below summarises the main energy policies, targets and plans in Myanmar.

Table 7.2. **Major energy policies, targets and plans in Myanmar**

Name	Year	Description
Petroleum Act	1934 (Amended 1937 and 1946)	To consolidate regulations concerning the importation, transport, storage, production, refining, and blending of petroleum and petroleum products
Electricity Act	1948 (Amended 1967)	To declare the statutory powers and functions of the state's electricity boards and generating companies with the goal of providing the rational use of the production and supply of electricity
Territorial Sea and Maritime Zone Law	1977	To implement the United Nations Law of the Sea treaty defining maritime and contiguous zones (essentially setting the boundaries for Myanmar's offshore oil and gas reserves)
Myanmar Electricity Law	1984	To maximize the rational generation, production, transmission, distribution, and usage of electricity
Private Industrial Enterprise Law	1990	To avoid environmental pollution in the face of rural development and industrialization, and to promote the use of energy in the most economical matter
Forestry Law	1992	To prevent dangers of destruction to forests and biodiversity and to conserve and establish forest plantations (partially for fuelwood supply)
National Environmental Policy	1994	To establish sound environmental policies in the utilization of water, land, forests, mineral resources, and other natural resources to preserve the natural environment and prevent its degradation
Atomic Energy Law	1998	Set the legal foundations for cooperation with Russia over building a nuclear research reactor
Conservation of Water Resources and Rivers Law	2006	To conserve and protect the water resources and rivers for beneficial utilization by the public, and to prevent serious environmental contamination
National Sustainable Development Strategies	2009	To promote social, economic, and environmental growth and achieve sustainable development

Source: UNDP, 2013.

Investors and stakeholders expect clearer plans and a more adequate regulatory framework

The WEF (2013) reports that consultations with stakeholders indicate the energy sector has weak institutional capacity and lacks reliable data, making comprehensive planning difficult. Stakeholders argue they need clearer prioritisation and sequencing of reforms. A comprehensive energy plan, developed in collaboration with stakeholders, would facilitate communicating a clear vision and sending appropriate signals for investors and other stakeholders of the government priorities. Delivering on such a plan requires creating an appropriate institutional and regulatory framework. Investors require a transparent and predictable regulatory environment for carrying out lengthy and costly operations. This important issue is part of the government's agenda to reform the energy sector. As of March 2013, the NEMC had asked ministries to identify deficiencies and update related regulations to modernise Myanmar's current legal framework. The expectation is to build an overarching *Energy Act* as a result of this process.

In the power sector, the regulatory framework is given by the *Electricity Act* (1948, as amended in 1967), the *Electricity Rules* (1985) and the *Myanmar Electricity Law* (1984). According to BLP (2013), these laws do not reflect modern electricity frameworks as they are rather limited or silent on the licensing and approval process, tariff setting mechanisms, dispute resolution and on the responsibilities of the licence holder and of public institutions. The ADB is supporting MOEP in the revision of the *Electricity Act* to appropriately separate sector segments (generation, transmission and distribution), establish an independent regulator, and provide a framework for private sector participation in power generation among other things.

Myanmar has great renewable energy potential to be leveraged

Myanmar's development plan to overcome shortages in energy supplies and improve electricity access for the population should support the introduction and deployment of clean energy infrastructure, especially as Myanmar is rich in renewable energy sources. Supporting the deployment of renewable energy creates opportunities for Myanmar, including: improving energy security and facilitating cost-effective access to energy in rural and remote areas, as renewable energy generation is more decentralised than fossil-fuel based power generation; relieving budget pressure from fossil-fuel subsidies, which represent around 9% of total government expenditures in Myanmar (Box 7.6); and fostering international FDI in Myanmar (OECD, 2013a; IMF, 2013).

Myanmar has abundant renewable energy[17] sources, particularly hydropower, although these have been relatively unexploited so far. Hydropower potential is estimated at more than 100 000 MW, out of which less than 10% has been harnessed so far and about 46 GW have been identified for development through 92 large hydropower projects. By 2020, the Ministry of Electric Power (MOEP) plans to build 13 new hydropower plants with capacity totalling 2.5 GW. Another nine projects with a total capacity of 580 MW are expected to be developed by local companies, and joint ventures with foreign investors are planned for developing an additional 42.2 GW.

Box 7.6. The case of Dapein Hydropower Clean Development Mechanism (CDM) Project

Global carbon markets have played an important role in financing low-carbon projects in developing countries, including through two offset mechanisms operating under the Kyoto Protocol – Joint Implementation (JI) and the Clean Development Mechanism (CDM). In 2008, primary transactions in the carbon offset market (i.e. CDM, JI or voluntary project-based transactions) amounted to around EUR 5.2 billion. Although the CDM has suffered a 90% price drop over the past three years, least developed countries – unlike emerging economies – can still qualify for offset credits through the CDM. Recognising the potential for carbon markets to leverage access to financing for green investment projects, Myanmar has recently signed a deal with China to develop CDM projects in Myanmar, with the support of China's Sunshine Kaidi New Energy Group in developing and funding projects.

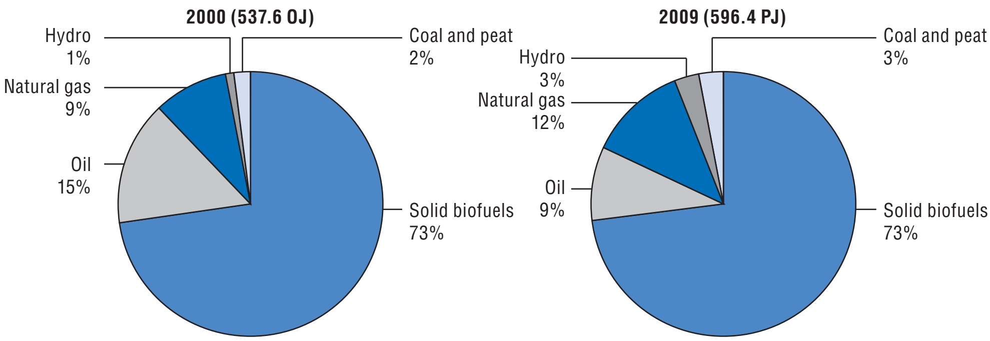
So far the United Nations Framework Convention on Climate Change (UNFCCC) has approved only one CDM project in Myanmar, but six other projects are under development. The Dapein Hydropower Project was approved in 2010 by the UNFCCC, in partnership with China and the Netherlands. It consists of a new built hydropower project located along the Dapein River in Bhamo city, near the Chinese border, with an installed capacity of 240 MW. The project was prepared and constructed by a Chinese state-owned enterprise, Datang United Hydropower Developing Company Ltd., through a Develop-Operate-Transfer (DOT) procurement contract, and in co-operation with the Department of Hydropower Planning Ministry of Electric Power (DHPP) and the Ministry of Forestry. The total GHG emission reductions of the project were estimated to be around 709 360 tCO_2 equivalents annually. China Datang Company has agreed to build a second dam on the Dapein River near the Chinese border. 90% of the electricity produced will be sold to China. A key challenge therefore is to ensure that future clean energy projects contribute to improving energy access to the population in Myanmar.

Sources: Reklev, S. 2013; JCI, 2012; *Myanmar Times*, 2012; Clapp et al., 2010; CDM, 2006.

Hydropower has been the only renewable energy source used commercially so far and is currently responsible for 76% of the total electricity installed capacity in Myanmar. However, large hydropower projects take a long time to become operational and are unlikely to be a solution to meet the increasing energy demand in the short and medium-term, requiring Myanmar to balance this against the use of other energy sources available for power generation. The average construction time of large hydropower projects is around four years once the final investment decision is made (UNEP, 2013). Some projects take even longer, e.g. with the 7.1 GW Tasang dam, the largest of five proposed dam projects along the Thanlwin River in Eastern Myanmar (*Myanmar Times*, 2012). By contrast, solar PV projects take an average of three-to-six months to build, and onshore wind projects nine months (UNEP, 2013).

Despite a large hydropower potential, it has had only a modest participation (3%) in total domestic energy supply. In 2009, about 73% of Myanmar's primary energy supply came from solid biofuels, mainly consumed by households as a substitute for the lack of access to electricity (excluding electricity trade; see Figure 7.5). Nonetheless, biomass consumption is forecast to decline despite population growth as a consequence of greater availability of alternative power sources and rural exodus. Natural gas and oil accounted, respectively, for another 12% and 9% of the energy supply for the domestic market, and coal and peat the remaining 3% (IRENA, 2013).

Figure 7.5. **Total primary energy supply, 2000 and 2009**[1]



1. Excluding electricity trade.
Source: Adapted from IRENA, 2013;

Other renewable energy sources, such as solar, wind and geothermal energy, as well as biofuels, are still at an early development stage in Myanmar, despite high resource potential (ADB, 2012b). Potential available solar energy is estimated to be 51 974 TWh/year.[18] In May 2013, Green Earth Power, a Thailand-based renewable developer, signed a memorandum of understanding with Myanmar's Ministry of Electric Power to develop the first solar power plant project in Minbu, Myanmar. If the construction is completed, it should become one of the largest solar plants globally, with an installed capacity of 210 MW (Feng and Ali, 2013).

The government can play a key role in mobilising private investments for clean energy infrastructure, which can be particularly helpful in expanding access to electricity in rural areas

Mobilising the additional investments needed to introduce and deploy renewable energy in Myanmar will entail leveraging both national and international private financing. Governments have a key role to play in strengthening the enabling environment for clean energy investment (OECD, 2013a; Box 7.7). This can be done by adopting long-term, credible targets for renewable energy, and by providing incentives for renewable energy investment through investment promotion and facilitation. At the third ASEAN Energy Outlook in February 2011, Myanmar set a target to generate 15-20% of its total installed electricity from renewable sources by 2020 (SOME-METI, 2011; Feng and Ali, 2013). A large share is likely to come from large hydropower. Unlike other Southeast Asian countries, Myanmar's target does not specify the share of other renewable energy sources such as small hydro, solar, biogas, biomass and municipal solid waste. The government has also announced that it would develop a "new energy policy based on the current Japanese model", with support from Japan's Ministry of Economy, Trade and Industry. In January 2013, the New Energy and Industrial Technology Development Organisation of Japan and the Myanmar government signed a co-operation agreement to support introducing renewable energy and energy conservation technologies in Myanmar (Feng and Ali, 2013).

A key challenge is to account for the full costs of fossil-fuel use – including externalities such as GHG emissions, local air pollution and health – and the benefits of clean energy, to level the playing field between renewable and conventional energy. Resource allocation to energy sectors could be revised in light of environmental priorities and resource efficiency, and spending re-distributed accordingly if necessary. Taxes or royalties on natural resource extraction for instance could be used to increase efficiency in environmental management and use of natural resources (OECD, 2012). Energy infrastructure projects are long term and difficult to reverse, thus Myanmar needs to embrace as a priority the opportunity to incorporate green policy objectives from the beginning. Efforts should be made to build a sound framework of fiscal, financial and regulatory instruments to encourage investments in clean energy (Box 7.7). In addition to the need to mobilise private finance, the private sector can bring greater technological capacity and management experience.

Furthermore, environmental and social risks should be taken into account when planning and constructing infrastructure projects and above all to ensure that new built energy infrastructure is resilient to climate change risks, including extreme weather events, which is particularly critical given the long lifetime of electricity generation facilities such as coal-fired power plants (Corfee-Morlot et al., 2012). Accounting for environmental and social risks is also required to assess the possible impacts of infrastructure projects, such as large hydropower dams, on Myanmar's rural population livelihoods, biodiversity, natural ecosystems and safety. Several dam projects are likely to displace hundreds of thousands of people in rural areas, sometimes without compensation (BEWG, 2011), and can have severe impacts on a number of environmental issues, raising concerns by the local population.

Box 7.7. **Policy guidance for investment in clean energy infrastructure**

Several obstacles, resulting from market and government failures – including fossil-fuel subsidies, the lack of supportive policies as well as outstanding barriers to international trade and investment – still hamper investment in renewable energy. A key challenge for host-governments to catalyse investment flows in clean energy is to design and implement clear and predictable domestic policy frameworks. The OECD has developed the *Policy Guidance for Investment in Clean Energy Infrastructure*, a non-prescriptive tool to help host governments – particularly in developing countries and emerging economies – identify ways to mobilise private investment in clean energy infrastructure. Key areas for policy makers to consider include:

1. Investment policy: Transparency, property rights protection and non-discrimination are investment policy principles that underpin efforts to create a sound investment environment for all.
2. Investment promotion and facilitation measures can be effective instruments to attract investment provided they aim to correct for market failures and are developed in a way that can leverage the strong points of a country's investment environment. They include: phasing-out of fossil-fuel subsidies; long-term policy goals (e.g. renewable energy targets); policy incentives for investment (e.g. predictable feed-in tariffs); licensing; and policy coherence and co-ordination within and across levels of government.
3. Competition policy: Levelling the playing field for IPPs and SOEs through sound competition policy (e.g. electricity market structure, non-discrimination in access to finance, and a competition authority) can support innovation, contribute to conditions conducive to new investment in clean energy, and help to transmit the wider investment benefits to society.
4. Financial market policy: Strengthening domestic financial markets and facilitating access to long-term finance can help enhance investment opportunities for both domestic and foreign investors in renewable energy infrastructure. In low-income countries, key financial instruments include: credit lines (for liquidity support); concessional financing from development finance institutions (e.g. through blended instruments, credit guarantees and political risk insurance); dedicated debt funds; and export credits.
5. Public governance: Improving governance in areas particularly relevant for promoting investment in clean energy infrastructure, such as the governance of electricity markets.
6. Cross-cutting issues include: Regional co-operation (e.g. regional integration of national electricity markets); national treatment and trade-related concerns; and SOE governance (e.g. type of provision of clean energy infrastructure between public, private or PPP provision).

Sources: OECD, 2013a; Miyamoto and Muzenda, 2012; World Bank, 2012.

Clean energy solutions can also be a useful instrument for expanding access to electricity in rural areas, where around 70% of the total population live. A number of cost-effective alternatives to building expensive transmission and distribution lines reaching rural areas exist and could be employed in the short-term for such a purpose (Box 7.8).

Box 7.8. **Promoting off-grid renewable energy to improve electricity access in rural areas**

Supporting the development of clean energy infrastructure creates opportunities for Myanmar, including facilitating cost-effective access to energy in rural and remote areas, as renewable energy generation is more decentralized than fossil fuel power generation. This is particularly critical since the electrification rate can be as low as 16% in rural areas, where about 40 million people live. So far the national power grid covers only 7% (4 550 villages) of the 65,000 villages in Myanmar; the remaining 93% still do not have access to electricity, which explains why more than 70% of Myanmar's population relies on biomass/biofuels for cooking. Unlike the relatively long timeframe and high costs to achieve grid extension and on-grid electrification from hydropower, natural gas and coal-fired power plants, off-grid renewable energy systems can deliver fast, cost-effective and flexible solutions. This is partly because renewable energy resources are available locally in rural areas. To meet the pressing needs for electricity access in rural areas, there is thus a strong case to develop in the short-term off-grid renewable energy systems, e.g. using renewable energy mini-grid systems at the village level. Off-grid mini hydropower, as well as wind and solar energy, could contribute to extend access to electricity while reducing the current use of biomass (mostly fuel-wood). Stand-alone local mini-grids systems can be later integrated to the national grid once the latter reaches the area.

Off-grid renewable energy projects can have significantly improve the lives of rural populations, but requires the implementation of appropriate policies for their development (e.g. dedicated institutional structures, clear power purchase regulations for small power producers, capacity-building measures for proper operation and management of systems, removal of ineffective subsidised programmes undermining the development of market-based solutions, promotion of energy efficient technologies and microfinance services among others). Key barriers to off-grid renewable energy electrification include: lack of supportive policy and regulatory environment; capacity, information and awareness gaps; access to finance; technical barriers; and lack of private sector participation in the financing and implementation of projects. Access to finance is particularly challenging for households and communities. Currently, the Myanmar Agricultural Development Bank (MADB) is the only bank providing rural credits. Loans and other financing packages could help rural inhabitants to purchase off-grid renewable energy equipment. Donor agencies and international finance institutions can play an important role by providing credit support to such projects, through the MADB and other private financial institutions in Myanmar.

Box 7.8. **Promoting off-grid renewable energy to improve electricity access in rural areas** *(cont.)*

Recognising the potential for renewable energy to support off-grid electrification, the Ministry of Science and Technology (MOST) has been working on providing support to R&D for hybrid renewable energy systems, including biogas and small-scale solar power systems, with a capacity of around 30 kW. The focus of the government is on improving electricity access in rural areas through off-grid electricity generated using biogas, hydropower or solar energy. The government is also working to revise its 1984 *Electricity Law* to promote off-grid solutions, with support from Norway and the Asian Development Bank (ADB). To date, Myanmar counts at least 17 mini-hydro facilities (representing about 5.23 MW of installed capacity) and 29 microhydro facilities (378 kW of capacity). The government estimates that at least 60 new sites could be developed, with a total installed capacity potential of 170 MW, to generate off-grid electricity through microgrids for 50 to 200 homes.

Lessons learned and good practices on planning, developing and implementing off-grid electrification using renewable energy can be drawn from experiences in Lao PDR, Viet Nam and Cambodia. In Lao PDR for example, more than 10 000 solar home systems and several village mini-grids were installed, leading to a significant improvement in electricity access since 2000. Lao's Rural Electrification Master Plan for instance set a National Electrification Target of 94.7% by 2020 (on a household basis), to be achieving using grid extension (90.9%) but also by off-grid systems using mini hydropower and solar home systems (3.8%), based on affordability criteria.

Sources: OECD, 2013a; WEF, 2013; UNDP, 2013, 2012; ADB, 2013; MercyCorps, 2012; GIZ, 2013.

Increasing the use of conventional energy sources for power generation may be needed to meet short to medium-term demand, but should be accompanied by efforts to foster energy efficiency

Conventional energy production, particularly of coal and natural gas, has grown more rapidly than renewable energy sources and it is likely that much of the short and medium-term power demand will be met by these resources. From 2000 to 2009, coal and natural gas production increased nearly 15% and 10% on average per year respectively, while hydropower production increased roughly 9%. Moreover, their use in electricity generation will increase as a result of new investments planned in the near future. The government has plans to start constructing three new coal-fired power plants in 2012 and 2013 to help meet the growing electricity demand in the country.[19] These projects will add another 876 MW in electricity capacity. In addition, an 800-1 000 MW coal-power plant is also expected to be constructed by a Japanese consortium in the Thilawa SEZ.

In 2009, about 42% of total coal produced was used for power generation, the rest was largely used in the cement and steel industries (52%) and 6% elsewhere (WEF, 2013 and ADB, 2012b). There are also plans to construct a 500 MW gas-fired power plant through a consortium from the Republic of Korea, which would more than double the existing installed capacity (470 MW) and of which only about 70% is available. In addition, two recent investments in natural gas production are to come online in 2013, which will boost exports and the available amount of natural gas for power generation in the country. The two fields, Shwe and Zawtika, are expected to double the current levels of production in the country, but the largest share is earmarked for exports. Currently, around 90% of Myanmar's natural gas production comes from two offshore gas fields and is mainly exported to China and Thailand. In 2011, exports of natural gas were six times the amount consumed domestically. Around 60% of the total amount available for the domestic market (60 billion cubic feet) was directed towards 10 gas-fired power plants for electricity generation (ADB, 2012b).

Overall, energy generation has followed the trend of consumption, both growing at 2.4% CAGR from 2000 to 2009. But the consumption of non-renewable energy sources grew the fastest in the 2000s. Natural gas and coal consumption increased each by nearly 15% annually in 2000-09, while electricity which is mainly generated by hydropower grew only 4%. Consumption by the commercial and industrial sectors has grown the most at an annual average rate of 5.4% and 4.8% respectively. The residential sector continues to be the largest energy consumer in the country, mainly of biomass, consuming over 70% of the total, but growing more modestly at 1.3% on average per year (ADB, 2012b).

The associated environmental costs of building power supply based on non-renewable resources to meet short to medium-term demand should be carefully addressed by the government. This needs to be accompanied by efforts to increase energy efficiency to reduce the use and potential waste of energy, as well as to mitigate its environmental and social impacts. The government could also focus on rehabilitating the existing coal and gas power infrastructure and distribution networks, which currently operate below capacity. In the longer-term, however, the focus of large scale power infrastructure should be on advancing the renewable energy sector for supplying electricity in the country.

Moving away from an energy export-oriented development model needs careful planning

Addressing Myanmar's power supply shortages will require not only an increase in capacity but also transforming its current energy export-oriented development model into one with a focus on supplying the domestic market.

Currently much of the future energy capacity planned is already committed to export markets under long-term gas sale contracts. For this reason, the government has expressed the intention that new gas project be directed towards meeting domestic demand. According to the authorities, there are also on-going negotiations with energy exporters to revise contracts and re-balance the use of energy towards the domestic market but this is rather unlikely (BLP, 2013).

While moving away from an energy export-oriented development model is necessary, it must be balanced against possible shortcomings. Opportunities to explore the domestic market are relatively narrow at this stage due to the limitations of Myanmar's industrial park, petrochemical industry and power plants. Requiring new investments to only serve the domestic market may result in unwanted outcomes. In the long run, it may induce the development of uncompetitive industries, and may reduce the opportunity for accumulating revenues from export sales, which could be otherwise used by the government in its broader national development projects (WEF, 2013). Dapice (2013) alerts to the possibility of potentially exploring alternative solutions with partnering countries to balance meeting domestic and export demand, particularly by exporting electricity in the wet season when there could be a surplus and using it domestically in the dry season. In spite of the approach taken, greater transparency on the use of energy export revenues is needed. The local population needs to see the benefits from these projects if they are to accept them, particularly at this moment where there is relatively little trust on the government's capacity to secure that revenues be allocated to development priorities.

The government expects the private sector to strengthen its role in the power sector, but this will require implementing important regulatory and structural reforms

Until now private participation has occurred mainly in the exploration of coal and oil and gas reserves[20] (Box 7.9) and only to a lesser extent in power generation, but the government expects the private sector to strengthen its role in the power sector. A few investments in hydropower, coal and gas-fired power plants are expected to be developed by the private sector. But Myanmar has no formal public-partnership framework to facilitate private participation in the power sector. Unlike in other more advanced developing markets, or even in the gas and oil sector in Myanmar, private investment in power generation occurs without a formal bidding process. It is carried through BOT contracts or joint venture agreements negotiated on a case-by-case basis by the government as there are no standardised joint venture and power purchase agreements (BLP, 2013).[21] Developing a framework for PPPs and standard contracts for independent power producers, consistent with

Box 7.9. **Private participation in energy supply in Myanmar**

In the hydrocarbon market, private participation came with the enactment of the former Foreign Investment Law of 1988. Foreign firms were allowed to bid for the exploration rights of offshore and onshore natural gas reserves and onshore oil reserves, which took place through production sharing agreements. Gas discoveries have since been quite significant and many projects have been identified for development. As of August 2011, there were 41 concessions on both offshore and onshore blocks in the country. No offshore oil production is undertaken in Myanmar.

The government has intensified the number of tenders for developing onshore and offshore blocks in recent years and has been keen on developing and upgrading pipeline infrastructure for supporting the expansion of the industry. Tenders for oil operations released in January and April 2013 received 75 expressions of interest by foreign companies increasingly interested in Myanmar's opportunities. The construction of a new pipeline serving Yangon has been concluded and is expected to ease power shortages in the city due to leakages from the old gas pipeline. China has also committed to finance almost entirely an oil pipeline to bring down the costs of importing oil from Myanmar through tank vessels. A subsidiary of CNPC, a Chinese SOE, is in charge of the design, construction, operation and maintenance of the pipeline. The project is a joint-venture with the state-owned Myanma Oil and Gas Enterprise, which holds a 50.9% stake in the project. The government has also tried to incentivise the development of natural gas as a way of mitigating carbon emissions. An Environmental Conservation Committee was re-established in 2011, and has been working on initiatives to increase natural gas using in the industrial sector and in transport by supporting the use of natural gas vehicles.

The state-owned Myanmar Petroleum Enterprise is responsible for petroleum products and operates three refineries in Myanmar. These are old and inefficient, but the government has plans to upgrade two of them with the support of Indian government and to build a new refinery plant to process crude oil from the new Myanmar-China oil pipeline. The price of petroleum products is still controlled by the government, which heavily subsidises motor gasoline and high speed diesel for the government sector. Gasoline and diesel prices for other sectors were liberalised in 2012 and the Ministry of Energy is planning further liberalisation, including on the import and distribution of gasoline and diesel. Up to now, Myanmar Petroleum Products Enterprise has been the main distributor of gasoline and diesel in the country, but the commercialisation has been transferred to private initiatives with a series of privatisation of MPPE petrol stations. Imports of petroleum products by private companies have also been allowed, subject to using foreign exchange earnings from their business.

Private participation in coal production occurs through production sharing contracts with the state-owned company (No.3 Mining Enterprise) responsible for coal production. The government privatised all its mines and no longer takes part in the production of coal. Permits to private companies have been issued under the Myanmar Mines Law of 1994. By late 2011, there were 32 locally based private companies operating 43 coal production licences. Coal prices are set by the market and have facilitated the development of the industry.

Box 7.9. **Private participation in energy supply in Myanmar** *(cont.)*

Myanmar's renewable power potential is not confined to hydropower and modern biomass, but also wind and solar. Until now, however, only hydropower has been commercially developed with scale. Biomass energy in Myanmar is mostly related to fuel-wood use by households coming from natural forests, which accounts for more than 90% of biomass energy production. For this reason, the government has been trying to establish a more sustainable use of forestry resources by establishing fuel-wood plantations and community forests for energy generation. The latter is expected to fulfil 25% of the projected demand for fuel-wood by 2030. The government has also implemented policies to promote the use of efficient cooking and heating stoves, as well as the use of alternative energy sources to mitigate the use of natural forests.

In the government's energy plan, the use of biofuels is also expected to grow to meet increasing global green growth expectations. Sugarcane producers have already began to divert surplus sugar output to the production of bioethanol. The first biofuel plant in the country was launched in 2000, but production costs were twice the price set by the government for gasoline. The plant was privatised in 2007 following the increase in gasoline prices by the government. While the private sector is well represented in the sector, the Myanmar Economic Cooperation, a state-owned enterprise remains the leading player. Biodiesel is another fuel alternative that the government has committed to develop. In 2005 it created the Jatropha Plantation Project for Biodiesel Production, which is expected to provide an alternative to imported petrol diesel and allow significant foreign exchange savings. Since then, local farmers and entrepreneurs have been encouraged to grow jatropha. Its cultivation is now widespread and can be found in large-scale plantations, community forests and roadsides. Results have been limited so far due to a variety of reasons, including low productivity and low pricing. As seen in other countries, the use of biofuels may raise concerns over food security and the government may wish to address such issues in regulations governing biofuels production. The increasing global demand for biofuel has boosted the use of crops for such purpose in competition with food needs, increasing pressures on agricultural markets and driving up food prices. Besides, it may increase pressure on the use of fragile natural resources, potentially leading to land degradation and water supplies stress. Hence, careful planning is required when designing policies to promote the industry.

The development of other renewable sources, such as wind and solar, is still at a research stage. In the case of wind power, the lack of reliable data appears to impede an appropriate appraisal of potential sites for wind production. The government has however signed an MOU in 2011 with two foreign companies to undertake a feasibility study for developing wind power in the country. Solar energy production is at similar stage. Some photovoltaic panels have been installed in some remote rural villages by the Ministry of Electric for own consumption, but no commercial project has been undertaken. Current subsidised power and petroleum prices make it difficult to bring alternative renewable solutions, like solar and wind, to the market.

Source: ADB, 2012b; KPMG, 2013.

international standards, is likely to facilitate private sector involvement in the sector. The new *Electricity Law* may contribute to push reforms in this matter.

Joint venture contracts are normally based on 30-year concessions that can be extended for 5 years at a time. At the end of the concession period, ownership is transferred to the government. The Hydropower Generation Enterprise is the counterpart and takes part in the operation of the joint venture, contributing to one-third of the operation costs and maintenance staff. As a general rule, in every joint venture, the government is entitled to at least a 25% free share and 10% free power (equivalent to royalties) in addition to tax revenues, and to buy up to 50% of the generated electricity. The purchase price is re-negotiated annually during the concession period (ADB, 2012b).

Vertically integrated SEEs and unattractive prices discourages investments in the power sector

The presence of vertically integrated SEEs is also an impediment to further private participation as it does not contribute to a level playing field between private and public operators. Myanmar's power sector is based on a single buyer model, with the Myanmar Electric Power Enterprise holding the monopoly over the transmission of electricity. However, MEPE is also responsible for operating power generation plants. Electricity distribution is shared between the Electricity Supply Enterprise, which is the national distributor, and the Yangon Electricity Supply Board, which is responsible for the distribution in Yangon city. Both companies are also engaged in the generation of electricity. ESE operates small off-grid generation systems (mini hydro and diesel), and YESB runs diesel plants. The Hydropower Generation Enterprise is the only SEE involved only in the generation of electricity, running hydropower and coal-fired plants.

Under this environment, private investors may be more reluctant to invest. The single-buyer model with vertically integrated SEEs exacerbates the risk of MEPE's transmission subsidiary favouring its own generation subsidiary over other independent power producers. Moreover, the lack of clear separation of functions between SEEs operators and the regulator, since most of SEEs involved in the sector are under the direct authority of the Ministry of Electric Power, adds to the uncertainties faced by private investors. As such, Myanmar is likely to benefit from the corporatisation of SEEs operating in the power and energy sector and their separation along functional lines (generation, transmission and distribution) in a transparent and efficient manner. Combined with the establishment of an independent regulatory agency, these reforms would contribute to enhance the governance of the power sector and enable greater private participation in the sector.

Additionally, there is a need to revise the price setting mechanism and related subsidies (Box 7.10). Private participation is discouraged by low electricity prices averaging USD 0.05/kWh.[22] The costs of electricity production from gas and diesel were recently estimated to lie between USD 0.09 and USD 0.35 per kWh.[23] Currently, there is no standardised price setting system for electricity and natural gas, and the purchase price for electricity is re-negotiated on an annual basis without appropriate mechanisms. The government is aware of the need to establish an adequate pricing mechanism and announced plans in December 2012 to implement

Box 7.10. **Fossil-fuel subsidies in Myanmar**

Fossil-fuel subsidies remain a key distortion to energy markets and have increased considerably in recent years, despite international efforts. In 2011, while renewable energy subsidies amounted to USD 88 billion globally, fossil-fuel consumption subsidies amounted to USD 523 billion in emerging and developing economies while support for fossil fuel production and consumption in OECD countries amounted to an estimated USD 55-90 billion per annum in recent years. In Myanmar, fossil-fuel subsidies mostly take the form of electricity and utility subsidies. In addition, pre-tax subsidies for petroleum products represented 9.4% of government revenues in 2011 (post-tax subsidies amounted to 16.9% of government revenues).

Phasing-out inefficient fossil-fuel subsidies is important to: price the full cost of energy access in support of grid electrification and remove distortions to energy prices, which are below the cost of producing electricity, thereby encouraging cost-efficiencies in the production and distribution of electricity, especially for SOEs; reduce government expenditures; and level the playing field between renewable energy investment and fossil-fuel based alternatives. Implementing a policy reform of fossil-fuel subsidies however is politically challenging, as it can impose heavy short-term costs on low-income households and lead to strong public opposition. The decision of the Myanmar government in 2007 to remove fuel subsidies was the immediate cause of a series of anti-government protests. The government should set a gradual, sequenced phasing-out of fossil-fuel subsidies, particularly for electricity and utility subsidies.

Reforming fossil-fuel subsidies requires careful implementation to mitigate the impacts on household affordability through appropriate measures (e.g. means-tested social safety net programmes). To achieve intended social benefits, it is preferable to target the support directly to those who most need it, rather than to maintain an across-the board subsidy to all fuel users. Direct cash transfers or energy coupons can ensure that the poorest have access to electricity and gas in a more effective manner than inefficient fossil-fuel subsidies, combined with public awareness campaigns and public consultations. Reforms should also be carefully sequenced and phased-in with advance notice to allow businesses and consumers to adapt to new market prices.

Sources: Corfee-Morlot et al., 2013; IEA, 2012a, b; OECD, 2013b; GSI and IISD, 2013; WEF, 2013; IMF, 2013.

such a system in accordance with international practices. It also plans to revise tariffs upwards to stimulate investment, but this may prove difficult due to the unpopularity of such measure.

The revision of electricity subsidy schemes is necessary as they most likely fail to meet their purpose of ensuring that the poorest population has access to electricity. In Myanmar about 75% of the population lacks access to electricity and most of those who have access are not the poorest (ADB, 2012a). In this context, the purpose of subsidies is probably largely unmet. Blanket subsidies could be gradually replaced by other more efficient mechanisms that would extend access to the poorest. Subsidy reform decisions however are politically delicate and must be carried out with caution as they may disproportionately affect those relatively poorer households with access to electricity. The government is wary of potential public unrest of such reforms as it fears a similar public reaction to when it pursued the removal of subsidies and the liberalisation of petroleum prices for some sectors in 2012 (WEF, 2013). Therefore, in pursuing such reforms, it is important that the government develop a clear communication strategy and holds ample consultations with stakeholders.

This is an important step to rehabilitate SEE's financial accounts. Underpricing has led to general underinvestment in both generating and grid infrastructure. Capital constraints have translated into poor technical equipment and the inability to attract and retain talented people, affecting the efficiency of SEE operations. The revision of prices among other things can facilitate bringing connection charges down. Getting connected to the grid for a private household is extremely costly, about USD 640. Besides, having access to the grid does not mean getting quality electricity as frequent power shortages require users to rely on much costlier alternative power sources (EU, 2012). Many industrial, commercial and residential entities would be willing to pay more if they were provided with a more reliable supply of power (WEF, 2013).

While challenges are significant, the government is strongly committed to boost electricity access in the country and has begun working on many of the challenges discussed in this section. Institutional and regulatory reforms broadly outlined by the government are likely to bring important transformations to the power sector, and help create a more attractive environment for private investors. Moving forward, however, will depend on the implementation of such reforms and on other broader economic aspects that affect long-term investment decisions such as these.

Notes

1. Bilateral comprehensive trade costs include all additional costs involved in trading goods internationally rather than within borders. It captures international trade costs in its wider sense, including not only international and domestic transport costs associated with imports and exports and tariffs but also other trade cost components, such as direct and indirect costs associated with regulatory import and export requirements and resulting from differences in language, culture, currencies and geographical distance (UNESCAP, 2011).
2. Due to the international sanctions, Myanmar has long been isolated from international markets, with only a limited possibility to raise finance for infrastructure investments. To overcome this challenge, the government entered into contracts for the generation and exports of natural gas to China and Thailand. Investments increased total energy supply, although limited its availability for domestic use.
3. In 2003 Myanmar's public expenditures on transport and communications and energy, respectively 2.4% and 2.7% of GDP, were similar to the average of many Asian countries, which averaged approximately 2.6% and 2.4% of GDP for the following countries: Cambodia, China, Indonesia, Lao PDR, Mongolia, Philippines, Thailand and Viet Nam (World Bank, 2005). But countries that have expanded infrastructure assets more rapidly, such as Viet Nam, already invested much above the average in 2003.
4. Although the available data on private investment in infrastructure may be limited, probably underestimating reality, the extremely limited number of projects identified in the *World Bank PPI Database* over the last 20 years suggests that private involvement has been indeed very limited. From 1990 to 2011, only five infrastructure projects with private investors were compiled in the database.
5. For instance, Myanmar has received 91 expressions of interest for the bidding of the two mobile telecom licences the country issued in June. Twelve applicants were shortlisted for the final round, including mainly international consortia and a few joint ventures with local enterprises. Norway's Telenor and Qatar's Ooredoo came out as the winners of the auction process and will be the first two international mobile operators to launch telecom services in Myanmar (InvestMyanmar, 2013; *Financial Times*, 2013a).
6. TEU refers to twenty-foot equivalent unit.
7. Containerised cargo in Myanmar represents only a minor share of cargo handled in ports. According to the Myanmar Port Authority, in 2006 only about 25% of the total cargo was containerised.
8. In late 2012 a Letter of Intent was signed between the government of Japan and MPA to undertake a preliminary study for national port development in Myanmar, and to properly forecast demand for the port sector in Myanmar. Building on this, JICA would undertake a feasibility study on the expansion of the Thilawa port and enhancement of port facilities.
9. The competing bidders allege corruption in the selection process. The bidding process was based on a scorecard system taking into account the financial and technical capacity of the participants as in most international tenders. The scores made public by the Japanese experts hired to evaluate the bidders, however, did not support awarding the contract to the winning participant. Three other consortia were supposedly better graded than the winning bidder (Eleven, 2013b).

10. The new law replaces the former two laws governing the ICT sector in Myanmar: the *Telegraph Act* 1885 and the *Wireless Telegraph Act* 1933 as amended.
11. Services provided by MPT comprise the installation, operation, maintenance and management of all kinds of telecommunication equipment and allied facilities.
12. Yatanarpon Teleport is a joint venture between local private companies and the Ministry of Communications, Post and Telegraph.
13. Just over 400 domestic base stations and only one international base station are available in the entire country, giving the country limited capacity, particularly for international traffic as submarine cable links are few and far between (DBS Vicker Securities, 2013).
14. Three types of mobile networks are operated by MPT in Myanmar. CDMA mobiles were the first to be introduced in 1999, followed by GSM mobiles in 2002 and 3G mobiles in 2008, which has about 60-70k subscribers (Nomura, 2012).
15. Transmission systems consist mainly of microwave links and satellite links, except in the Yangon-Mandalay route where fibre optic is available. About 80% of exchanges in the country are still carried by manual switches, although the number of automated switching system has increased. International connectivity is limited with only one submarine cable and two international satellite earth stations. International fibre links to China, India and Thailand have yet to be established (Nomura, 2012).
16. As of August 2012, there were 30 power stations in the country with installed capacity of 3 495 MW.
17. Renewable energy as defined in this report includes the primary energy equivalent of hydro (excluding pumped storage), geothermal, solar, wind, tidal and wave energy. It also includes energy derived from solid biomass, biogasoline, biodiesel, other liquid biofuels, biogas, industrial waste and municipal waste (OECD, 2010).
18. AsiaTradeHub, *www.asiatradehub.com/burma/energy6.asp*, last accessed 12 September 2013.
19. One plant located in Kalewa has 600 MW potential; one in Yangon with 270 MW and a small with 6 MW in Tanintharyi Division.
20. Nonetheless, the public sector remains dominant in the energy sector. In 2007, the state was responsible for about 76% of the value-added in the energy sector. In turn, in the mining sector the private sector was responsible for 97% of the value-added (Mieno, 2013).
21. Foreign investment, notably Chinese, has been mainly in large electricity exporting projects. For instance, the 240 MW Dapein-1 hydropower plant completed in 2002 by Chinese investors supplies only 10% of the total electricity generated to Myanmar's grid. Another example is the recent large-scale hydropower plant commissioned by the government to Chinese investors. The agreement foresees that three of the six generating units will feed power to Myanmar's grid and that 50% of the total electricity generated will be provided at no cost, while an additional 15% if required will be provided at cost (EU, 2012).
22. Prices are between USD 0.05/kWh for households and USD 0.09/kWh for industrial and commercial users, and USD 0.12/kWh for foreigners in Yangon. However, in end-2011 the average price paid was USD 0.05/kWh, partly because of the very low rates charged to state and military consumers (Dapice, 2012).

23. According to Dapice (2012), the use of diesel generators, for instance, based on diesel prices in early 2012, would cost roughly 30 to 35 cents per kWh, about five or six times the average price charged by the government utility for electricity. Hence, the most efficient way to meet demand in the short-run would be to use any spare capacity of existing gas generators and to apply more efficient energy systems to explore further available natural gas supply for domestic use. Under more efficient gas generators, the cost would be expected around 9 cents per kWh without taking into account delivery cost. This would add a few more cents to the final price.

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Chapter 8

Other aspects of the Policy Framework for Investment in Myanmar

This chapter considers briefly three other policy areas contained in the Policy Framework for Investment *(PFI): corporate governance of state economic enterprises, trade policy and human resource development.*

Corporate governance of state economic enterprises

Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders; good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and its shareholders and should facilitate effective monitoring. The degree to which corporations observe basic principles of sound corporate governance is a determinant of investment decisions, influencing the confidence of investors, the cost of capital, the overall functioning of financial markets and ultimately the development of more sustainable sources of financing. Of particular relevance is the relation between corporate governance practices and the increasingly international character of investment: international flows of capital enable companies to access financing from a much larger pool of investors. Corporate governance arrangements must therefore be fully disclosed and credible, well understood across borders and adhere to internationally accepted principles if countries are to reap the full benefits of the global capital market, and attract long-term "patient" capital. Corporate governance is therefore one of the key elements in improving economic efficiency and growth, as well as in enhancing investor confidence.

Need to establish a national corporate governance framework

Myanmar has still virtually no regulatory framework for the governance of companies, including those that are owned by the state. The few laws that touch upon the governance of companies, namely the *Myanmar Companies Law* 1914, *Companies Rules* 1940, *Companies Regulations* 1957, *Shops and Establishments Act* 1951 and the *Workshop Act* 1951, have not yet encompassed internationally recognised principles of corporate governance.

The progressive introduction of corporate governance principles into Myanmar's corporate legal framework would be an important aspect of broader reforms aimed at securing an environment attractive to both domestic and foreign investors and at increasing private sector participation in the economy. Reforming the corporate governance framework would also enhance the benefits of investment to society. The absolute amount of available capital is not the only determinant of the ability to increase economic welfare through capital formation. Equally important is the effectiveness with which it is allocated among alternative investment opportunities and, not least, how well the corporation's final use of it is actually monitored. If household savings and available corporate funds do not reach their best possible use, society will forgo opportunities that would have generated additional economic welfare. Under such circumstances, entrepreneurs will not find appropriate funding for profitable projects, existing companies will not be able to expand their operations, and potentially profitable innovations will never be commercialised. Moreover, necessary re-structuring of individual companies and entire industries will be impaired, and productive assets will be locked into underperforming activities.

Eleven Asian countries have already undertaken an assessment of their regulations for corporate governance, drawing on the OECD *Principles of Corporate Governance* as well as outputs of the Asian Roundtable on Corporate Governance. These evaluations, which provide a benchmark for prioritising reforms, are either done through a World Bank Report on the Observance of Standards and Codes, an IMF Financial System Stability Assessment, OECD Corporate Governance Committee peer reviews, Asian Roundtable reports or a self-assessment. Asian countries have also measured their corporate governance practices, using scorecards based on the OECD *Principles*. For example, the 2013 ASEAN Corporate Governance Scorecard has been used for corporate governance assessments of publicly listed companies in six ASEAN countries – Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Viet Nam. The assessment is useful to improve corporate governance in the region collectively and to brand ASEAN as an asset class.

State of play of SOE reform in Myanmar

In many economies, including in several OECD countries, state-owned enterprises still represent a non-trivial share of the productive economy: on average across OECD countries, SOEs account for 2.5% of national dependent employment. SOEs' employment share exceeds 6% in Norway, France and Slovenia. SOEs are also often present in crucial segments of the economy, with 50% of the SOEs by value in network industries (electricity and gas, telecommunications and other utilities, and transportation). The governance of SOEs is thus critical to ensure their positive contribution to the overall economic efficiency and competitiveness of the country. The important scale and scope of SOEs in Myanmar, as well as in many Asian countries, call for specific attention to their corporate governance.

The *SOE Law* 1989 delineates the boundary between private and public activities. It provides that state economic enterprises (SEEs) have the exclusive right to carry out the following economic activities:

- Extraction of teak and sale in the country and abroad.

- Cultivation and conservation of forest plantations, with the exception of village-owned firewood plantations cultivated by villagers for their personal use.
- Exploration, extraction, export of pearls, jade and precious stones.
- Breeding and production of fish and prawns in fisheries reserved for research by the government.
- Postal and telecommunication services.
- Air transport and railway transport services.
- Banking and insurance services.
- Broadcasting and television services.
- Exploration, extraction and export of metals.
- Electricity generating services, other than those permitted by law to private and co-operative electricity generating services.
- Manufacturing of products relating to security and defence which the government has, from time to time, prescribed by notification.

Exceptions to the provisions of the SOE law may be decided by the MIC, provided that they are "in the interest of the state". The MIC has made numerous exceptions to this list of monopolies and has regularly issued, after Cabinet's approval but still in a rather discretionary manner, permits to conduct private investment, notably through joint ventures in banking, mining, extraction industries, and broadcasting.

The dominant position of SOEs in Myanmar creates market distortions, as they benefit from preferential access to finance in the domestic financial market and enjoy a lower cost structure. For example, SOEs benefit from preferential land allocation, low utility prices, low-interest loans, and easy licensing processes. Despite such preferential treatment, the majority of SOEs are not commercially viable. They face a stringent problem of financial losses that lead to increasing deficits in the state budget, a shortage of funds for business expansion, heavy debts, operating shortages and inefficiency.

The inefficiency of SOEs led the authorities, starting in the mid-1990s, to adopt a corporatisation strategy and to undertake a fundamental restructuring of state enterprises. Since then, corporatisation and, later on, privatisation strategies have been continuously implemented and the current government has further accelerated the reform process. It has issued calls for tender for the sale or lease of SOEs and plans to continue doing so. As a consequence, the SOE contribution to GDP has been declining, although SOEs still represent more than half of government revenues and over 40% of exports. In 2012 alone, the number of industrial SOEs decreased from 142 to 49. The Ministry of Industry aims to reduce the number of industrial SOEs to only four essential companies by the end of 2014. Government officials stated that the medium-term objective was to achieve full privatisation of all SOEs.[1]

Liberalisation has had only a rather limited impact on the domination of SOEs in many economic sectors, however, such as in industry, telecommunications, construction, energy, agriculture and mining. Even after the rounds of privatisation and the consequent decline in their shares since the 1990s (from 21.1% of GDP in 1990 to 8.7% of GDP between 2004 and 2010), SOEs still represent a significant part of the economy, with 639 SOEs in various industries,[2] from light manufacturing to heavy industry. In addition to traditional forms of SOEs, military enterprises are active across a broad range of sectors in Myanmar. The Central Statistical Office of the Ministry of National Planning and Economic Development, in charge of compiling statistics on Myanmar's enterprises, does not provide any information on military enterprises, making it difficult to estimate their importance.

Partnerships and joint ventures between SOEs or military enterprises and private domestic and foreign businesses have been encouraged by the government to increase private-sector participation in SOE-dominated sectors and do not require the approval of the MIC, unless they apply for incentives provided by the *Foreign Investment Law*. The absence of supervision of these joint ventures, which are also exempt from line ministry registration, leads to a serious lack of transparency in the management and finances of enterprises with public participation, including military enterprises.

In this regard, the new FIL and its implementing rules will facilitate connections between the private sector and SOEs, as they broaden the possibilities for foreign companies to participate in domestic companies, including those that are publicly owned. Joint ventures and partnerships between SOEs and the private sector are likely to acquaint SOEs with corporate governance principles that are more widely applied in the private sector, notably in the event of joint ventures with foreign investors that may be more sensitised to such principles. On the other hand, OECD experience has shown that good corporate governance of SOEs is an important prerequisite for economically effective privatisation, as it will make the enterprises more attractive to prospective buyers and enhance their valuation (OECD, 2005).

Need to establish principles of SOE governance in the privatisation and corporatisation context

Structural transformation of the economic landscape in Myanmar can only occur if Myanmar continues its corporatisation and privatisation efforts to provide a level playing field for all businesses, be they public or private, domestic or foreign. In this respect, corporate governance of SOEs is a critical and yet undeveloped issue in Myanmar. Given the importance of SOEs in

Myanmar's economy, it is crucial to improve the framework for SOE governance, in parallel with the privatisation reform, to lay the foundations for a vibrant economic landscape. The government recently took a first step towards the inclusion of corporate governance principles for SOEs to give state enterprises more financial autonomy and requiring more accountability, in order to facilitate their corporatisation and potential privatisation. In the wake of the 2009 privatisation round, which was undertaken to tackle the issue of excessive reliance of SOEs on government, budget support for financing SOEs has also been reduced.

With the expected entry of further foreign investment into Myanmar's economy in coming years, SOEs will face higher pressure to increase operational and financial performance. The restructuring and privatisation of SOEs, financial sector liberalisation, technological changes and international commitments lead to a more demanding environment with greater competition. In response to such changes, many developing countries have embarked on wide-ranging corporate governance reforms of state-owned sectors. Improvements to SOE governance allow the state to better protect its assets and enhance the performance of SOEs through improved board practices, a robust control environment, and better disclosure practices.[3] Strong corporate governance is of critical importance to underpin sound economic growth and help reduce risks. To lay the foundations for an efficient and sound market-oriented economy and to achieve an economic level playing field, Myanmar needs to undertake in-depth corporate governance reforms. The gradual insertion of SOE corporate governance principles must be accompanied by a change in the attitudes and behaviour of market participants.

Transparency and accountability go hand-in-hand with autonomy. They reassure investors that government agencies, including SOEs, exercise their powers responsibly and help to instil confidence that investors entering new markets compete on an equal basis. Following some basic corporate governance principles, including the same accounting and auditing standards as for listed companies, can help SOEs to raise their standards of accountability and transparency. SOEs should develop efficient internal audit procedures and be subject to an annual independent external audit based on international standards. Adequate disclosure of material information is also important to foster accountability, in particular relating to any financial assistance received from the state, commitments made on behalf of the state and any material transactions with related entities. Such transactions are often an important source of an uneven playing field for investors, particularly in weak institutional environments. Publishing annually an aggregate report on SOEs, focusing on their financial performance and their valuation, and giving an overview of their evolution also helps to ensure public accountability of SOEs.

A good corporate governance framework includes high levels of transparency and disclosure and well-defined shareholder rights. Secondly, the ownership function of the state has a strong influence on the overall investment environment. The involvement of the state in SOEs needs to be clearly separated from other state functions, including regulatory oversight, to help ensure a level playing field for all investors, especially with regards to complying with laws and regulations. The state, while being an active and informed owner, should not interfere in the day-to-day management of SOEs, leaving their boards with full operational autonomy to realise their defined objectives and fulfil their function of strategic guidance and monitoring of management. Board members should be nominated through transparent processes, based on competencies and experience and should act in the best interest of the company as a whole, rather than as representatives of the constituencies that appointed them.

Following the path already taken by many of its Asian peers, the government would be well advised to develop and implement a reform of the corporate governance framework for SOEs, drawing on international best practices as reflected in the OECD *Principles of Corporate Governance*, and, more specifically, on the *Guidelines of Corporate Governance of SOEs*. The *Guidelines* are the first and most recognised international benchmark to help governments in improving the corporate governance of SOEs. They are based on, and fully compatible with, the *Principles of Corporate Governance*, but are explicitly oriented to issues that are specific to the corporate governance of SOEs. More recently, the OECD has also developed a *Guide for State Ownership*,[4] which provides viable policy options, a step by step road map and concrete examples for good practices that Myanmar could use to upgrade the governance of its SOEs. The authorities could also usefully raise awareness on international best practices identified in the OECD *White Paper on Corporate Governance in Asia* 2003 and its 2011 update,[5] which formulate common policy objectives and a practical reform agenda that adapts the OECD *Principles* to the specific conditions and needs within Asia. Using these non-prescriptive policy tools when enacting and implementing laws and rules dedicated to corporate governance of SOEs would allow Myanmar's policy makers to improve the quality of disclosure requirements, including information about beneficial ownership and control. When establishing a legal framework for SOE governance, particular attention should be given to the rules governing board nomination and election, which have been identified as the nexus for improving corporate governance.[6]

Myanmar could also draw on ASEAN peer countries' experiences in modernising their SOE sectors. In this regard, Malaysia could provide an informative example of SOE reform with the implementation of its transformation programme of government-linked companies.

Box 8.1. **The Government-linked Companies Transformation Programme in Malaysia**

Starting in 2004, Malaysia embarked upon a programme to transform the investee companies of its GLICs into high performing companies. The Transformation Programme for GLCs is part of a broader and long-term modernisation programme of the national economy, based on benchmarking of performance against the experience in other countries. The programme aims to be realistic, performance-focused and highlight governance issues and shareholder value. Implementing this reform programme is managed, tracked and monitored by the "Putrajaya Committee on GLC High Performance"-PCG, chaired by the Finance Minister, including representatives from all key GLCs. Khazanah serves as a secretariat for this committee.

The first phase (2004-05) introduced key performance indicators (KPIs), performance-linked compensation, as well as changes in board and senior management composition. The work of the PCG culminated in a "Transformation Manual", which includes the overall policy guidelines of the PCG to address some of the core challenges facing GLCs.

In the second "Generate Momentum" phase (2005-06), ten initiatives were identified for launch and implementation across all GLCs, with the development of in-house guidelines including enhancing board effectiveness, strengthening directors' capabilities, enhancing GLC monitoring, improving the regulatory environment, reviewing and revamping procurement, and intensifying performance management practices. This second stage provided a series of reference books, such as the Green Book on enhancing board effectiveness and revamping board practices and processes, the Silver Book, which clarifies social obligations, the Red Book to review and revamp procurement, the Yellow Book about enhancing operational effectiveness, the Purple Book on optimising capital management practices and the Orange Book on managing and developing human capital.

The GLC Transformation Programme has yielded positive results: Total shareholder return of the top 20 GLCs (the G20*) outperformed the rest of non-G20 FBMKLCI (FTSE Bursa Malaysia Kuala Lumpur Composite Index) by 0.8% per annum (p.a.) from 14 May 2004 to 18 May 2012, growing at 13.7% p.a. compared with non-G20 FBMKLCI at 12.9% p.a.. Market capitalisation of the G20 has more than doubled from RM 140 billion to RM 319 billion over the same period. G20 net income grew 18.2% p.a. from RM 9 billion in FY2004 to an all-time high of RM 20.1 billion in FY2011.

Source: OECD (2013b).

Need to establish a framework for privatisation

In the context of the privatisation round undertaken by Myanmar, it is important to ensure that processes for transferring shares and corporate assets are well structured, competently managed and held to high standards of corporatisation (OECD, 2011). SOES that are under privatisation would need to be put on a corporate footing prior to the sell-off, taking into account the corporate governance framework in which the enterprises will operate following the transfer to the private sector. It is important that the rationale behind each SOE's privatisation is communicated to the public in a transparent manner. According to the OECD *Guidelines on Corporate Governance of State Owned Enterprises,* it is particularly important that the administrative unit entrusted with privatising SOEs is competent and well-resourced and subject to high standards of accountability and transparency. Setting up a specialised privatisation agency is recommended where the expected volume of privatisation is large and justifies its cost. The OECD also calls for an independent valuation of SOEs to be undertaken prior to privatisation.

Another important consideration for policy makers is whether to undertake the restructuring of the SOEs prior to the sell-off. OECD countries' experience shows that good practice would rather be to avoid pre-privatisation restructuring. On the other hand, some degree of pre-privatisation restructuring may help widen the scope of potential buyers and hence facilitate the privatisation process.

Embedding privatisation in the legislative process can also have important beneficial impacts on the transparency and predictability of the process. Even if the government does not need specific legal authorisation to privatise state assets, it may be useful to pass an act that formalises the modalities of privatisation to send a positive signal to investors that there is a strong political commitment to privatise.

The broader legal framework bearing on SOEs should provide for a periodic reassessment of whether companies eligible for privatisation are better operated under public or private ownership and should establish in a transparent manner which entities are authorised to make privatisation decisions. Corporatisation of SOEs shall also come with the introduction of competition, which requires the establishment of an independent regulator. These regulatory functions should be separated from the unit in charge of the privatisation as well as from the executive. To the greatest extent possible, a competitive bidding should be conducted when privatising Myanmar enterprises.

To be credible, the privatisation process must be initiated on a sound SOE corporate governance footing. SOEs' boards should be independent to be able to protect minority shareholders. In particular, the government should prevent SOE managers during the privatisation process from becoming incentivised by third parties, especially where new owners are identified prior to the actual transfer of control. Lastly, privatisation needs to be supervised by an auditing body which is well resourced and independent from the executive.[7]

Trade policy

Trade policies determine the size of markets for the output of firms and hence strongly influence both foreign and domestic investment. Over time, the influence of trade policies on the investment climate is growing. Changes in technology, liberalisation of host country policies towards trade and investment and the growing organisation of global production chains within multinational enterprises (MNEs) have all served to make trade policies in home and host countries alike a crucial ingredient in encouraging both foreign and domestic investment and in maximising its contribution to development.

The Myanmar government is currently undergoing its first WTO *Trade Policy Review*. This part of the Review thus provides a brief overview of the current state of play in Myanmar's trade policy, including in trade facilitation. It discusses the links between efforts to improve the investment and trade policy regimes, links that should support Myanmar in becoming part of global value chains (GVCs) and ultimately help reach its overall development objectives.

Global and regional trade policy context

Myanmar was a member of the General Agreement on Tariffs and Trade since its foundation in 1947 and one of the countries that formed the WTO in 1995. It signed on to the Global System of Trade Preferences in 1988. As a member of ASEAN since 1997, it is a signatory to ASEAN agreements on trade in goods, services, and investment (see Chapter 3). Myanmar also participates in numerous sub-regional groupings, such as the Bay of Bengal Initiative on Multi-Sectoral Technical and Economic Co-operation, Ayawardi-Chao Phaya-Mekong Economic Co-operation Strategy, and initiatives within the context of the Greater Mekong Sub-region. The general levels of applied tariffs for imports in Myanmar are lower than the average tariffs in East Asia-Pacific economies and low-income countries (UNESCAP, 2012). The maximum applied tariff is 40%, while the overall average MFN tariff is 5.6%. However, the service sector is highly protected with an overall GATS commitment index of only 4.9 out of 100 from 2006 to 2009.[8]

Myanmar's trading structure is changing

The changes in Myanmar's trading structure over the past decade or so have undoubtedly been influenced by trade sanctions, especially those by the United States and the European Union. Two noticeable trends are apparent in export patterns between 2000 and 2011 (Table 8.1, Figure 8.1): firstly, the removal of the United States from the top destination for Myanmar exports as a result of sanctions (replaced by Thailand and China); and, secondly, Myanmar's loss of competitiveness in the apparel and clothing industries, which had been the main US import from Myanmar. Knitted apparel and clothing used to make up 27% of Myanmar's exports and non-knitted apparel and clothing 15% in 2000. In 2011 only the non-knitted apparel and clothing featured as part of the top 10 exported product clusters, with 10% of the total share of exports.

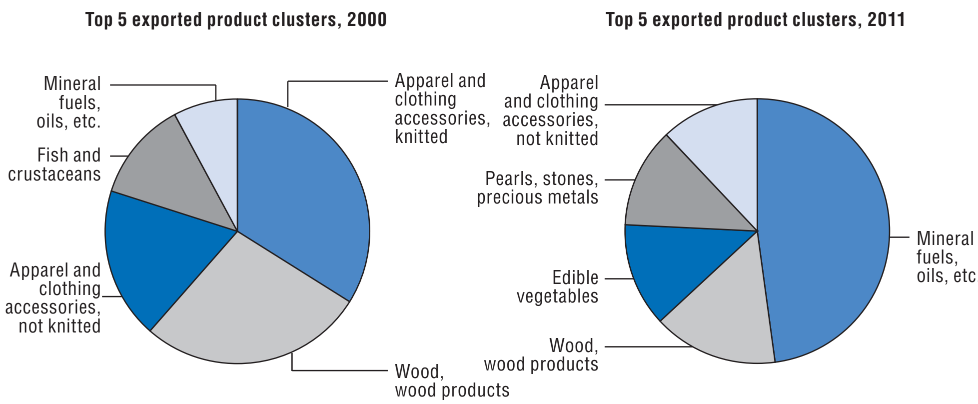
In 1998, the Myanmar garment industry saw a boost in exports due to skyrocketing demand in EU and US markets. After 1999, garments became the top export item (30%). This trend started reversing in the early 2000s, when

Table 8.1. **Myanmar's export destinations, 2000 and 2001**

2000		2011	
Importing country	% of total export	Importing country	% of total exports
United States	26.7	Thailand	40.4
Thailand	13.7	China	20.8
India	9.4	India	15.6
China	6.6	Japan	7.3
Japan	6.3	Republic of Korea	3.7

Source: UNESCAP, 2012.

Figure 8.1. **Top 5 exported product clusters**



Source: UNESCAP, 2012.

importers in the US anticipated sanctions from the US government. Myanmar's clothing exports to the US declined 40% the year after Congress imposed the ban in 2003 and have declined steadily since. Another blow to Myanmar's garment industry was the dismantling of the Multi-Fibre Agreement in 2004, and hence the associated competition from Chinese and other countries' textile products in global markets. Myanmar's garment industry paid a heavy price for the lack of significant trade and industrial reforms, matched with the loss of the US as a major export market. By 2005, some 80 000 jobs had been lost in the garment industry (Kudo, 2005).

Garment exports were quickly eclipsed by those of mineral fuels, especially natural gas, which has seen a significant increase over the past decade, notably to Thailand and China from 2001 onwards. In 2005, gas exports represented 40% of Myanmar's total exports (Kudo and Mieno, 2007). With regards to natural gas, Yadana and Yetagun are two fields developed with large participation of Total/Unocal and Texaco respectively.

Sanctions

Sanctions were imposed by western governments in stages beginning in 1989-90 after the military government in Myanmar nullified the results of the election and placed Daw Aung San Suu Kyi under house arrest. Different governments have adopted different approaches, but most sanctions have covered one or several of the following: imports from (or exports to) Myanmar; direct investment; financial transactions with local banks; aid; and the foreign assets of key officials and state-owned enterprises. This section will not discuss whether sanctions were successful or whether their removal was appropriate. The general view of many observers today seems to be that "to insist on solutions to all the country's problems before sanctions can be eased would be self-defeating" (Clapp and DiMaggio, 2012).

Western investors already operating in Myanmar when sanctions were first imposed were allowed to continue their operations. The EU adopted a common position on Myanmar in 1996. Sanctions were strengthened over a decade later, following further political unrest. In 2003, the US government imposed curbs on Myanmar exports, including textiles. Some trade sanctions were also imposed at the state level, such as by the US state of Massachusetts. Key changes in sanctions are described in Box 8.2.

Most sanctions against Myanmar were removed in 2012, in some cases provisionally or partially, including by Australia and Norway in January, the European Union in April and the United States in July. For the United States, the six federal laws and five Executive Orders which impose sanctions on Myanmar remain in place, but new investments in Myanmar were permitted in July 2012 with the issuance of OFAC of General License No. 17 which lifted but did not revoke the 1997 prohibition on such investment.

The removal of sanctions and the reinstatement of GSP status have sometimes been accompanied by measures to further encourage the government on its reform path. In the case of the United States, the easing of sanctions has also implied conditionality for US investors wishing to enter Myanmar. They now must report annually on their activities and the measures they have taken to address issues relating to responsible business conduct (see Chapter 2 on responsible business conduct).

Trade

Prior to 2012, many OECD countries had sanctioned Myanmar by way of restrictions on imports and exports. The United States banned all imports from Myanmar, Canada prohibited all imports and exports, and the European Union banned imports of timber, coal, metals and precious stones. The EU also restricted the export of equipment used in industries affected by the import ban. Neither Australia nor Japan implemented sanctions specific to imports or exports. Beginning in April 2012, most import and export bans against Myanmar were lifted by all OECD member countries. However, as per the 2008 *Jade Act*, the United States maintains a ban on the import of jadeite or rubies mined or extracted from Myanmar, as well as jewellery containing these minerals. The extraction of these minerals is usually undertaken by state-owned enterprises controlled by the military, involving alleged violations of workers' rights (EarthRights International, 2012).[9]

Finance and investment

Prior to Myanmar's recent liberalisation, many OECD countries had restricted investment in, or financial dealings with, Myanmar. For example, the US banned all new investments and business transactions in Myanmar for its nationals or entities and restricted the provision of financial services in Myanmar. Australia also banned the provision of financial services or financial assistance to Myanmar that was related to military activities. Canada froze Myanmar assets, prohibited the acquisition of property and real estate, and banned the provision of financial services – a significant step given that, prior to 2007, several large Canadian companies such as mining giant Ivanhoe conducted important operations within the country. In 2008, the European Union froze the assets of Myanmar officials and individuals involved in anti-democratic policies. While Japan never formally implemented sanctions against Myanmar, it did suspend its official development assistance (ODA) to Myanmar which had been Myanmar's largest source of foreign aid,[10] marking a sharp turn in the two countries' previously close diplomatic and commercial ties.

Since 2012, many of these sanctions have been lifted. The United States suspended measures barring the provision of financial services, Australia has lifted its financial sanctions, and the EU suspended the freeze of assets of government officials, as well as the ban on the financing of Myanmar state-owned enterprises. In April 2012, Japan announced it would resume its ODA to Myanmar, as well as forgive a large portion of its loans. However, several countries remain wary in their dealings with government officials. The United States maintains its ban on business transactions with any Myanmar entity or individual blocked under the sanctions programme, and Canada has maintained both its asset freeze and business dealings restrictions with designated Myanmar government officials.

Generalised System of Preferences (GSP)

On 16 April 2013, the office of the United States Trade Representative (USTR) announced it would be conducting a formal review to potentially reinstate GSP trade benefits to Myanmar, a scheme that was suspended 1 July 1989. Products that are eligible for duty-free treatment under GSP in the United States include manufactured items, chemicals, minerals and building stone, jewellery, carpets, as well as certain agricultural and fishing products. Significantly, textiles are not included. Similarly, the European Union suspended Myanmar from its Everything but Arms[11] scheme in 1997 but reinstated Myanmar in mid-2013 after the Conference of the ILO lifted its negative opinion (European Commission, 2013).

Most OECD member states have implemented a rigid arms embargo against Myanmar which remains in place today.

Despite sanctions, Myanmar actually increased its exports from 2002 to 2006 as a result of its evolving regional trading schemes and intensified efforts to establish trading links with China and Thailand. Despite capacity challenges and the competition from regional peers, Myanmar has an opportunity to revive its garment industry given its lower wages compared to its immediate competitors and untapped production opportunities. Considering the responsible business conduct arguments put forward in this Review, Myanmar has an opportunity to set a positive example as an answer to challenges faced by some of its neighbours in this sector (Chapter 2).

Other policy advances and efforts to boost the private sector in Myanmar are also expected to create export opportunities for manufactured and semi-manufactured goods. Myanmar is currently designing a national export strategy with the support of the International Trade Centre (ITC) and GIZ. Should the recent policy reforms and accompanying measures lead to an influx of foreign investors in SEZs or other parts of the economy, one could

Table 8.2. **Sanctions against Myanmar are slowly being phased out**

	Previous sanctions	Removal of sanctions
United States	**1 July 1989**, Myanmar's GSP benefits are suspended **20 May 1997**, the US Congress – bans all new investments and business transactions in Myanmar for its nationals or entities – ceases all humanitarian assistance to Myanmar – instructs US representatives in international financial institutions to vote against loans or funding to Myanmar **2003**, the *Burma Freedom and Democracy Act*: ● bans all trade that supported Myanmar's military regime such as imports from any company or successor entities related to the SPDC, the UMEHI, MEC, or USDA[1] ● freezes the US assets of regime officials[2] **2008**, the *Jade Act* effectively: – bars the import of jadeite and rubies mined or extracted from Myanmar via third party countries. **August 2012**, Congress formally renews sanctions but allow for waivers.	**17 May 2012**, sanctions on investment and the provision of financial services are suspended. **September 2012**, imports from Myanmar to be allowed through a waiver of the sanctions law. Sanctions remaining in place: – the import of jadeite or rubies or of articles of jewellery containing jadeite or rubies mined or extracted from Myanmar. – the ban on the provision of security services and transactions with any Myanmar entity or person blocked under the Myanmar sanctions programme. **16 April 2013**, public hearings on reinstating Myanmar's GSP benefits begin in June 2013
Canada	As per the *Special Economic Measures Act* (Burma) ratified **13 December 2007**, Canada: – prohibits Myanmar imports and exports – freezes Myanmar assets – prohibits acquisition of property and real estate – bans the provision of financial services – implements an arms embargo covering the export of arms and related material to Myanmar	**24 April 2012**, Canada eases the sanctions regime following several reforms in Myanmar. Sanctions that are removed: – prohibitions on import, export, investment, the docking of ships and landing of aircraft and the provision or acquisition of financial services Sanctions remaining in place: – arms embargo – the ban on the provision of associated technical and financial assistance – an assets freeze and dealings prohibition on designated persons
Australia	Under the Autonomous Sanctions Regulations of **2011**, Australia: – bans the provision of financial service or financial assistance to Myanmar related to military activities or an activity involving export sanctioned goods – implements an arms embargo	**3 July 2012**, Australia lifts its autonomous financial sanctions on Myanmar Sanctions remaining in place: – Arms embargo
Japan	**1988:** Japan suspends all of its ODA to Myanmar following the country's military coup **2003**: Japan freezes USD 5.8 billion in development loans and grants	**April 2012**, Japan announces that it will resume development aid to Myanmar, as well as forgive about USD 3.7 billion in Myanmar's debt[3]

Table 8.2. **Sanctions against Myanmar are slowly being phased out** *(cont.)*

	Previous sanctions	Removal of sanctions
European Union	**1997**, the EU suspends Myanmar from the GSP benefit scheme **2008**, The EU's Council Regulation No. 194/2008 effectively: – ban imports and investments in timber, coal, certain metals and precious/semi-precious stones – restrict exports of equipment used in industries affected by import ban – freeze funds and economic resources of people involved in policies deemed to be anti-democratic	**16 May 2012**, the EU Council Regulation No. 409/2012 comes into effect which suspends: – the freeze of the assets of government officials and their families – a ban on financing of certain state-owned enterprises Sanctions remaining in place: – the provision of security services and transactions with any entity or person still blocked under the sanctions programme to reflect human rights risks **Mid-2013,** Myanmar reinstated in the Everything but Arms trading scheme[4] **3 May 2013,** financial sanctions lifted

1. *www.treasury.gov/resource-center/sanctions/Documents/bfda_2003.pdf* (117 Stat. 866).
2. *www.treasury.gov/resource-center/sanctions/Documents/bfda_2003.pdf*.
3. United Nations Civil Society Participation (iCSO), *http://esango.un.org/ldcportal/development/news/-/blogs/japan-to-forgive-myanmar-debt-and-resumes-oda*.
4. *http://europa.eu/rapid/press-release_IP-12-971_en.htm*.

also expect the trading structure to change significantly over the next years with the emergence of semi-manufactured and manufactured goods.

Myanmar faces numerous trade-related challenges

Trade policies which are predictable, consistent and transparent lower the risks for investors, implying a lower hurdle rate for any given project and hence more investment overall. This applies to all investors but is particularly important for foreign firms. Many empirical studies find that FDI is lower when policies are unpredictable. Policy certainty does not mean that policies should never be changed, merely that it should be done in a transparent manner with ample prior consultation with all interested stakeholders, including foreign businesses.

Non-tariff barriers in Myanmar are significant due in part to cumbersome procedures. Another problem is the quality of trade-related infrastructure. For example, studies found that, while it costs USD 100 for a 20-foot container to be transported from Port Klang in Malaysia to the Port of Yangon, the inland costs to get the container to Yangon-based industrial zones, which are only about 20 kms from the port, cost between USD 120-180 (IDE-JETRO, 2013).

Myanmar exporters have benefited from various trade liberalisation measures at the global and regional levels: From 2006 to 2009 the trade-weighted average of applied tariffs for Myanmar were only 5.9% for agricultural goods and 1.7% for non-agricultural products (UNESCAP, 2012). Also, the previously applicable export tax was recently abolished (Ministry of Commerce, 2013). However, exports face significant impediments related, *i.a.*

to infrastructure deficiencies. Myanmar ranks a low 129th in the World Bank's 2012 *Logistics Performance Index* (LPI). Its score of 2.37 is lower than the average for East Asia-Pacific countries (2.84).[12]

There is widespread recognition by governments and business that national procedures relating to the international delivery of goods are probably one of the major bottlenecks in trade today. This problem can have widespread implications due to backward and forward linkages throughout the global chains for supply, production and marketing. Estimates of trade transaction costs range from 7% to 15% of the value of world trade (OECD, 2013). In some product sectors, this additional burden may entirely neutralise some of the past tariff reductions and damage firm and country competitiveness. Among countries with similar economic endowments, differences in border efficiency may be a critical factor in firms' investment location decisions, especially where the domestic market is not sufficiently large to justify production exclusively oriented towards domestic consumption. For national economies, as well as for the international economy, more efficient procedures and lower transaction costs provide benefits by promoting trade, competition, innovation and productivity. For the public sector, benefits include reduced paperwork, a net increase in revenue from more efficient collection and a greater ability to focus on key issues, such as security. The benefits of trade facilitation are likely to be relatively greatest for SMEs and enterprises in developing countries (OECD, 2013c).

These trade facilitation challenges are compounded by broader investment climate weaknesses, especially those affecting SMEs and entrepreneurs, highlighted in Chapter 4. These include limited capacity to produce according to global market standards (safety, quality and hygiene), weak market information, difficulties in access to finance to support export-oriented activities, capacity challenges in trade promotion institutions. For example, only 13 out of 50 applicants for fishery product exports in Myanmar received an EU certificate of international standard, required for exporting to the European market.[13]

An additional challenge threatening local producers is competition from cheap counterfeit products that are smuggled in from Myanmar's neighbouring countries. This links back to the institutional capacity constraints the government is facing. In this context, weak border control measures combined with the inability of customs officials to detect counterfeit products are significant deterrents to protecting overall intellectual property (see Chapter 3) and hence Myanmar producers. These form part of the legacy of the closed economy approach of past governments.

Myanmar used to be a regional leader in standardisation practices. A standardisation division was created in 1956 and Myanmar became a member of the ISO a year later. Myanmar withdrew from the ISO in 1965 and rejoined in 2005. Weak quality control and standardisation is a central problem for Myanmar's private sector. Industrial inspection needs to strengthened and quality certifications made more competitive to match the standards of higher end markets which can pay higher prices. The Myanmar Fruit Producers and Exporters Association commented that fruits from Myanmar cannot yet be exported to the EU because Myanmar does not dispose of VHT[14] machines needed for quality checks.[15] This is associated with the broader challenge of acquiring standards and metrology instruments in developing countries, including Myanmar, and are part of the issues the Ministry of Science and Technology and its standards department needs to tackle.

The government has undertaken recent trade policy reforms

Customs, regulatory and administrative procedures at the border are a necessary cost of doing business. They aim to ensure effective compliance with national and international laws, protect consumers of foreign-produced goods and provide tariff receipts – one of the largest sources of government revenues for many developing countries, particularly least developed ones. However, unnecessarily complicated procedures make it harder for host countries to harness fully the efficiency gains resulting from global supply chains, potentially discouraging both domestic and foreign investment. There is considerable empirical evidence showing how a country's overall level of competitiveness and trade growth are linked to the efficiency and effectiveness of its customs procedures (OECD, 2013c).

The government is aware of its trade policy challenges and, as part of its overall private sector development reforms, has launched specific trade policy and facilitation measures. For example, it has liberalised a number of imports, including cooking oil (which was previously permitted for import by only one company), the import and distribution of petroleum and diesel, and the import of vehicles for both personal and commercial use has been liberalised for every Myanmar citizen with a foreign exchange account. Agricultural products, including rice and oil seeds, faced export constraints under export ban schemes for the sake of food security, but these have been liberalised (see Chapter 9 on investment in agriculture).

In April 2012, Myanmar also abolished an ill-functioning "export first" policy introduced in 2002, which clashed with the export tax imposed on traders. The government also deregulated car imports in May 2012. The government also seeks to be awarded IMF Article VIII status in the context of current account liberalisation efforts in 2013 (IDE-JETRO, 2013).

The government also enacted the New Export and Import Law of 7 September 2012 which aims to align Myanmar's trade policy with international rules and regulations, as well promoting trade facilitation. While these objectives seem relatively broad, the law points to a re-orientation of the government on the use of trade policy to promote the private sector in Myanmar.

In terms of trade facilitation measures, the Ministry of Commerce is responsible for monitoring export and import licence applications. To reduce costs and time, an online licence issuing system and online payment system at the border have been implemented. The government has also launched two pilot projects on self-certification, in co-operation with Australia and New Zealand.

Moreover, as a member of ASEAN, Myanmar has been begun to establish a National Single Window among related ministries through its Customs Department (Ministry of Commerce, 2013). Myanmar is co-operating with the ADB on a pilot testing of single-window inspection arrangements at various borders. It is also following the ASEAN Roadmap for the 11 Priority Sectors Integration Standards and Information developed by the ASEAN Consultation Committee on Standards and Quality.

However, the institutional, infrastructure and capacity challenges mentioned earlier are key impediments to Myanmar benefitting from trade development schemes, such as the Generalised System of Preferences (GSP) benefits re-issued by the EU in July 2013. Local value addition will help determine the benefits Myanmar can derive from such arrangements. Myanmar will need to meet the EU rules of origin requiring that the concerned goods be "wholly obtained products" or "sufficiently worked or processed products".[16] This is different from the US GSP regulations, which are based on a no less than 35% appraised value of the domestic material used in the exported product. While the US GSP system is sometimes referred to as simpler than the EU regulations, it excludes a priori many labour intensive goods in which many developing countries specialise, including textiles and apparel, leather products, footwear and electronic products (Hoda and Prakash, 2011). Myanmar was one of the first countries to benefit from the US GSP system in 1976, but was excluded in 1989.[17]

Institutional framework for trade policy setting and promotion

The Ministry of Commerce is the core line ministry tasked with developing and implementing trade policy. This includes international trade agreements and commitments in accordance with the existing laws, rules and regulations. In doing so, the Ministry co-ordinates with other relevant government ministries, agencies and associations such as the UMFCCI. For example, the Ministry is co-ordinating with other line ministries involved in implementing and reviewing the respective policies according to the ASEAN Framework Agreement on Services.

While there is no explicit export promotion agency, the International Trade Promotion Division under the Directorate of Trade of the Ministry of Commerce takes on this role, just as DICA does for investment promotion. Part of its activities to support exporters include training activities, networking with the Market and Information Research Team for supporting export activities, maintaining a website and publishing a weekly commerce journal and a monthly trade news journal. The Division has yet to consider in earnest developing export and trade finance instruments and guarantees. The government is currently considering establishing a Trade Promotion Centre.

Policy makers need to be linked to non-government actors to develop and implement sound policy based on accurate analysis, information and technical dialogue. Creating appropriate policy networks is an important element of strengthening the efficiency of the institutional framework in Myanmar. Such trade policy networks can be formal or informal arrangements, national or regional. Examples include the Southern Africa Trade Network, the CAPAS network (Co-ordinated African Project of Assistance on Trade in Services) and the GMS Business Forum, in which Myanmar participates.

Global value chain considerations for Myanmar

Integrating into global value chains (GVCs) involves numerous dimensions. With the globalisation of production, there is increasing awareness that conventional trade statistics sometimes overestimate the importance of trade to economic growth and income. This misinterpretation stems from the fact that trade flows are measured on a gross basis while the value of products that cross borders numerous times in the different processing stages are counted several times (OECD-WTO, 2012).

The key issue for a country's development is local value addition as captured by value created by domestic firms. For example, an MNE established in Myanmar, producing goods that are part of GVCs, does not contribute to Myanmar's value addition if it does not use goods and services originating from Myanmar. This risk, discussed in Chapter 4 on investment promotion and facilitation, needs to be taken seriously in the context of SEZs. While these may offer employment opportunities in the short-run companies may import goods, source from other MNEs established in the same zone and export freely, with little local value-addition. Thus, the government should consider relating its gross flows of exports, with domestic value-added and national income, or its components such as profits or wages, and by extension, employment (OECD-WTO, 2012). OECD work in the area of GVCs and trade in value-added (TiVA) can support effective policy making in this regard, as it sheds light on the composition of local value-added in trade flows.

Human resource development

Human resource development (HRD) policies concern the quality of the labour force and the regulation of the labour market. Quality in turn is a function of basic and higher education, training programmes and the overall health of the population. The quality and adaptability of the labour force is a key driver in creating a favourable environment for both domestic and foreign enterprises to grow through new investment and to adapt quickly to changing circumstances. Their relative roles and the overall importance of HRD depend on individual country circumstances, particularly the economic structure.

Even more important than individual HRD policies is the interaction among them. Attempts to boost workforce skills through vocational training without considering their interaction with basic educational attainment or flanking labour market policies are likely to be ineffective. Human resource development requires a comprehensive strategy that takes full account of the linkages between, for example, improved population health on educational attainment and, depending on employment policies, on labour productivity.

Myanmar is currently under-investing in its human capital base; the limited educational and health financing translates into a major obstacle to growth and development in the future. The government recognises that the current accumulation of human capital in Myanmar represents a binding constraint that affects employability of the labour force and discourages investment in more high value-added activities. The FY2012-2013 budget that was debated in the Parliament for the first time increased spending for social development needs, health and education. Further, the 10-point *Framework for Economic and Social Reform* includes health and education reforms as key objective of what the President U Thein Sein calls a people-centred development approach.

Access to basic education for girls and boys is a human right and educational attainment at the primary and lower secondary level is a minimum necessary condition for development. Broad access to basic education also underpins a healthy investment environment. To increase participation in basic schooling, the Ministry of Education has implemented the 30-Year Long Term Basic Education Development Plan (2001-31). The implementation of the Education for All National Action Plan (2003-15), and the Rural Area Development and the Poverty Alleviation Plan (2011-15) also aim to contribute to improving enrolment in basic education.

Workers with higher secondary and tertiary education are essential to help secure the full benefits of business investment. Unlike with basic education, graduates are usually able to internalise the benefits in the form of higher wages. There is a danger that the benefits to society and to the local business community are forfeited to the extent that skilled workers permanently emigrate. This risk is greater in small-sized economies than in larger ones, where return migration is common. One way to lower the incentive for skilled workers to migrate and to reap the full benefit of a countries' investment in its own human resources is to pay attention to the size of the financial returns from higher education. More generally, a better business environment lifts the financial returns to investing in education, reduces the incentive to emigrate and favours return migration, a central issue in tackling Myanmar's human capital challenges.

Myanmar has over 150 universities and colleges administered by different government institutions – for example, liberal arts and sciences universities are run by the Ministry of Education (Ministry of Education, 2013). The Institute of Economics under the Ministry of Education provides management training, including various executive programmes. The Master of Business Administration (MBA) programme provided by the Institute of Economics also offers internship schemes carried out in co-operation with the private sector. Under this programme, businesses accept first year MBA students as interns and provide on the job training for one month. In many cases, the companies have appointed MBA graduates who completed the internship at their companies.

Even so, education and health spending may still account for less than 2% of GDP, based on the 2012-13 fiscal year budget (ADB, 2012). To address and sustain development spending on human capital, the authorities should, once again, reassess the current tax policy (see Chapter 5 on tax policy). It is critical for Myanmar to generate adequate resources to fund the development programmes in education and health to relieve human capital constraints. Improved revenue mobilisation invested in the priority development needs will have a large positive direct impact on investment and economic growth.

Moving forward towards an education system that produces a work force with adequate skills requires strengthening technical vocational education and training and secondary education systems, including a shift from a curricula-based approach to competency-based training and creating a demand-driven training system which is responsive to industry needs. Capturing the right signals from the industry and channelling them effectively to curriculum development is complex and necessitates close interaction between industry, government and educational and training institutions – a system based on the triple helix concept (Etzkowitz and Leydesdorff, 2000).

In most Asian developing countries, corrective measures are needed to streamline policy making and to reorganise the current procedural overlaps among institutions, set up sector-specific centres of excellence located close to relevant industries and to institutionalise industry's role in policy making. Foreign investors with new technology and management know-how can contribute to up-skilling the workforce, as the case of Malaysia has shown (OECD, 2013b). In Myanmar, sector-specific training centres should be considered near, or in, the SEZs currently being developed to benefit from the links with MNEs located in the zones and to support local companies in providing adequate skills to service these new investments with the potential for technology and knowledge transfers.

OECD research illustrates that challenges in implementing effective workplace training are common in many developing Asian countries, as they lack a well-developed training infrastructure at the institutional level. Local skills and training ecosystems can provide a network mechanism for vocational training co-ordination by involving more industry in training, better placing trainees in firms, as Myanmar is currently doing through some of its MBA programmes. The impact of developing local skills ecosystems and fostering local skills initiatives is less known in Asian countries but some examples of integrated strategies driven by national authorities have had successful results, such as the Shanghai finance skills strategy (OECD, 2012).

Notes

1. "Myanmar seeks to privatize, with caution", *Wall Street Journal*, 10 June 2012.
2. OECD (2013a), Table 2.2: 106-7.
3. See *http://go.worldbank.org/YFLKH2I140*.
4. OECD, 2010 *Accountability and Transparency: A Guide for State Ownership.*
5. OECD, 2011 *Reform Priorities in Asia: Taking Corporate Governance to a Higher Level*.
6. OECD, *2013 Better Policies for Board Nomination and Election in Asia*, *www.oecd-ilibrary.org/governance/better-policies-for-board-nomination-and-election-in-asia_9789264204386-en*.
7. OECD, *2010 Privatisation in the 21st century, Summary of Recent Experiences*, *www.oecd.org/daf/ca/corporategovernanceofstate-ownedenterprises/43449100.pdf*.
8. 0 = unbound or no commitment, 100 = fully liberalised.
9. "US, European Economic Policy on Myanmar: Pulled between two extremes", Earth Rights International.
10. *www.ide.go.jp/English/Publish/Download/Dp/pdf/118.pdf*.
11. The EBA scheme grants duty-free and quota-free access to the European market for all products except arms and ammunitions.
12. *http://data.worldbank.org/indicator/LP.LPI.OVRL.XQ*.

13. Mizzima, 23 July 2013 (accessed 2 August 2013).
14. Vapour Heat Treatment machines are recognised for efficient treatment against pests in vegetables and fruits, and often used in processing exports.
15. Mizzima, 23 July 2013 (accessed 2 August 2013).
16. For a detailed explanation of the rules of origin requirements under the EU GSP see the EU's *Guide for Users* available under *http://ec.europa.eu/taxation_customs/resources/documents/guide-contents_annex_1_en.pdf*.
17. Myanmar times, 15 September 2013, *www.mmtimes.com/index.php/business/8136-myanmar-should-prep-for-us-gsp.html*.

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OECD Investment Policy Reviews: Myanmar 2014

Chapter 9

Promoting sustainable investment in Myanmar's agriculture

Promoting sustainable private investment in agriculture is crucial to enhance agricultural growth, maximise the development benefits of investments and achieve food security. This chapter highlights key policy challenges to be addressed to attract more and better investment in agriculture, drawing from the OECD Policy Framework for Investment in Agriculture. *The first section examines the context for agricultural investment. The second section provides an overview of Myanmar's investment policy in agriculture, focusing particularly on the land tenure system, the regime for foreign direct investment and the tax incentives offered to agricultural investors. The third section identifies key challenges to promote responsible investment in agriculture that can effectively contribute to sustainable economic and social development. The last section examines specific sectoral policies that can encourage investment in agriculture, namely financial sector development, trade, access to inputs, infrastructure development, human resource development and research.*

Summary

While Myanmar was considered the "rice bowl" of Asia in the 1930s by exporting around 3 million MT annually, its agricultural productivity has suffered since then from decades of extensive government controls – procurement quotas, controlled prices and a monopoly on exports – and public and private under-investment in the sector. In the new context of economic reforms, Myanmar offers the potential for rapid agricultural development relying on its abundant land and water resources. The government identified agriculture as a priority sector and aims to focus particularly on boosting rice, oilseed and bean production to supply the domestic market and increase agricultural exports. If the right policies are implemented and appropriate budget expenditures support these objectives, Myanmar could recover its place as a major agricultural producer and exporter in Southeast Asia. Significant challenges need to be addressed to achieve this potential, the major challenge relating to land tenure security.

Land tenure remains insecure for most smallholder farmers for a wide range of reasons: i) a complex and long registration process resulting in low land registration rates; ii) rigid land classifications that do not reflect the reality of existing land use; iii) lack of recognition of customary land use rights; iv) weak protection of registered land use rights; v) inefficient land administration; and vi) active promotion of large-scale land allocations without adequate safeguards.

Only 20% of the land has been registered in Myanmar and upland areas are not titled at all, mainly due to the complexity of the registration process and the lack of benefits, and even the drawbacks, of registering land use rights. While the adoption of a new legislation on agricultural land in April 2012, namely the *Farmland Law* and the *Vacant, Fallow and Virgin (VFV) Land Management Law*, intends to be combined with an accelerated land registration process, in practice, land registration remains long and uncertain as several agencies at various government levels have to approve registration and applicants are required to fulfil numerous conditions. Farmers need to apply for land use rights on farmland at the ward or village tract Farmland Administration Body (FAB) that submits the application to the township FAB for transmission to the district FAB. Applications for land use rights on VFV land should be submitted at the central level, which constitutes a major constraint for most smallholders living in remote rural areas. The township

department office should check whether the applicant has the means to work on or use VFV land and whether the environment will be affected. It should also review the means for investment and the work plan.

Despite slight recent improvements, the land classification remains rigid as changing land from one category to another remains difficult. As a result, this classification does not always reflect current land use, thereby impeding land users from registering their rights and increasing land tenure insecurity. For instance, agricultural land may be used for non-agricultural purposes only with government approval, and such transfers are normally allowed only for public use. Similarly, some forest land has been partly or completely converted to agricultural use but remains classified as forest land and administered by the Ministry of Environmental Conservation and Forestry (MECF) instead of the Ministry of Agriculture and Irrigation (MOAI).

The new land legislation does not fully recognise customary land rights. While the *VFV Land Law* includes provisions recognising and respecting existing land use by farmers, even if it has not been formally registered, these provisions remain relatively vague and do not mention customary land rights. Although shifting cultivation relies on fallow land, the *VFV Land Law* states that land use rights may be confiscated if VFV land is not cultivated, thereby leaving many smallholders using such practices with very insecure land rights.

Furthermore, the registration of land use rights does not necessarily lead to higher land tenure security as land use rights may be withdrawn if the numerous conditions and required administrative procedures are not respected. As regards farmland, the relevant FAB needs to grant a specific permission to allow farmland to be cultivated, used to grow other crops or for non-agriculture purposes, sold, mortgaged, leased, exchanged or given to foreigners. Farmland should not be left fallow without a sound reason. Any farmland transaction should be registered and related fees paid. As per the *VFV Land Law*, VFV land should be used as planned within four years – 15% of the land should be cultivated in the first year, 30% in the second year, 30% the third year and 25% the fourth year – and within only two years for smallholders.

The classification of agricultural land into two categories managed by different agencies with overlapping roles and responsibilities undermines the efficiency and coherence of land management. Farmland is managed by FABs that can allocate and withdraw land use rights on farmland, and the Settlement and Land Records Department (SLRD) at the MOAI is the main government agency responsible for surveying the cadastre, registering farmland and issuing certified maps classifying land use. In contrast, VFV land is mostly managed by the Central Committee for the Management of Vacant, Fallow and Virgin Land (CCVFV) and is not surveyed by the SLRD. Furthermore, the MECF manages land classified as forest land but that may be used in practice for agricultural purposes.

The new land legislation is in line with government efforts to attract large-scale investments that could lead to employment creation and bring the necessary expertise, financing capacities and marketing networks to enhance the competitiveness of agricultural value chains. The new land legislation states that, if investment projects are approved by the government, the time and size limits set on land leases can be lifted, thus allowing the CCVFV to grant large tracts of land for indefinite time periods to agri-business investors. Indeed, while agricultural investment trends cannot be interpreted due to limited data, data on land investment of the MOAI show that large-scale land allocations have increased significantly over the last decade, from 90 549 ha in 1999 to 1.38 million ha in 2012, particularly to produce rubber and palm oil. The initially so-called "*Farmer Protection Law*" – since renamed "*Farmer Enhancement Law*" – also demonstrates the efforts made to attract large agri-business investors. This law is being drafted and has been criticised for the support it provides to large investors to the detriment of smallholders.

In a context of weak governance and accountability, large investments in land may result in adverse social impacts. These investments, often undertaken without consulting local communities who have customary land rights, may lead to land conflicts, thereby harming not only local producers but also large investors. Such conflicts have made the headlines in recent months demonstrating the urgency to design and enforce effective safeguards to ensure that existing land use rights are respected and local communities fairly compensated in case of eviction. Furthermore, the land actually developed and cultivated by the companies that have been granted land would approximate respectively only 36% and 20% of the total land area allocated. The risks related to large-scale investments in land often outweigh the benefits such investments may bring. Adequate safeguards should thus be developed to ensure that large-scale investments do not have adverse social impacts.

The legislation should also more strictly regulate the potential adverse environmental impacts of these investments. While the recent *Environmental Law* demonstrates the efforts made to promote sustainable environmental management, it presents major weaknesses. Environmental and social impact assessments are not compulsory, many of its provisions remain relatively vague, and most importantly, the law vests the MECF with absolute and limitless discretion, with government approval, to ignore its provisions.

After land tenure insecurity, limited access to finance constitutes the second major constraint for agricultural investors, particularly smallholders.

Only 1-3% of the volume of formal bank loans is extended to the agricultural sector. As a result, most smallholders access credit through informal institutions at high interest rates. The Myanmar Agricultural Development Bank had the monopoly of providing loans to farmers until recently and was able to offer only seasonal loans covering a small share of production costs and on a short-term basis (one-year maximum). Although the new *Microfinance Law* that allows for the development of microfinance institutions should help fill the gap, reforming the MADB would help expand its scope and coverage and ensure that agricultural investors can access long-term credit.

The unpredictability of trade barriers, particularly for rice, also hinders investment in agriculture. Open, transparent and predictable agricultural trade policies both domestically and across borders can improve the efficiency of resource allocation, thus facilitating scale economies, reducing transaction costs and boosting productivity and rates of return on investment. The erratic issuance of rice export quotas creates uncertainty, thereby adding a risk premium and undermining Myanmar's reliability as a rice supplier which partly explains the low export prices of Myanmar's rice to the detriment of agricultural producers and traders.

Finally, investment in agriculture is impeded by a limited access to agricultural inputs, particularly seeds and fertilisers, inadequate rural infrastructure and weak extension services and research and development institutions. The domestic supply of fertilisers remains far below demand while imported fertilisers are often adulterated. As detailed in Chapter 7 on infrastructure development, access to infrastructure assets is currently one of the weakest in the region. However, irrigation infrastructure has significantly expanded since 1988, targeting mostly rice-producing areas, absorbing up to 80% of the budget of the MOAI, to the detriment of public expenditures on extension services or research and development – although these last two sectors have proved to be the most effective ones to raise agricultural growth in most countries.

Extension staff remains inadequate both in number and quality and an efficient mechanism for performance management is lacking. In 2003, Myanmar's spending on agricultural research as a share of agricultural GDP was among the lowest in the world. Furthermore, most agricultural research focuses on increasing production, particularly by developing high-yielding varieties, and does not account for issues of profitability, marketing, agro-ecological constraints and the socio-economic limitations of farmers which should also be considered to support the development of viable and competitive farms.[1]

Context

Agriculture plays a major role in Myanmar's economy, representing around 34.8% of GDP when including fisheries and employing around 61.2% of the labour force. The government sees agricultural development as an effective way to reduce poverty and has identified agriculture[2] as a priority sector and set out the objectives and elements of agricultural policy in various plans. Such policy aims to improve food security and farmers' income by increasing agricultural production particularly through better technology and farming practices, improved access to finance and market liberalisation. Furthermore, the thirty-year Master Plan for Agriculture Development aims to enhance domestic and foreign investment in the sector.

Notwithstanding its large share in GDP and its importance for employment and livelihoods, agriculture appears very much neglected in terms of public expenditures. As registered by the Directorate of Investment and Company Administration, private investment in the sector has been negligible over the last two decades. However, the area planted with rice, beans and sesame increased considerably and their respective output grew sharply over the last two decades, relying particularly on agricultural land expansion as yields have remained relatively low. Similarly, meat and fish production has seen tremendous growth over this period.

Following the recent economic reforms, several large agri-business investors, mainly from neighbouring countries – China, Malaysia, Thailand, Korea and Viet Nam – are planning to undertake significant investments in agriculture, targeting both food and non-food crops. These investments have the potential, if the necessary mechanisms are in place, to allow for business linkages and spillover effects and to disseminate new technologies, thereby enhancing agricultural productivity growth and the efficiency of value chains.

Agricultural policy

Agricultural policy has been gradually liberalised since the end of the socialist period in 1987 (see Annex 9.A1 for further details). The importance of agriculture as a national policy priority is reflected in the first of the four national economic objectives which state that agricultural development constitutes "the base of the development of other sectors of the economy". In order to achieve the three national agricultural policy objectives – food security, export promotion, and increased farmers' income and welfare – the following specific objectives have been set: achieving a surplus in rice production; reaching self-sufficiency in edible oils; and stepping up the production of exportable pulses and industrial crops (ARDC, 2011).

Agricultural policy is set out in medium and long term plans supported at the highest level. At the rural development and poverty alleviation central committee meeting held on 20 June 2011, President U Thein Sein reaffirmed eight development priorities, including crop and livestock production and fisheries, with a target to reduce the poverty rate to 16% by 2014-15. To this end, the five-year plan 2011-12 to 2015-16 aims to achieve a GDP growth rate of 7.7% and identifies the five following priority areas for agriculture: seed production and the emergence of a seed industry; training and education; research and development; commercial contract farming; and market liberalisation. Furthermore, the plan aims to intensify production, especially in the rice sector to double rice exports within two years (Vokes, 2013).

Similarly, the "Framework for Economic and Social Reforms – Policy priorities for 2012-15" aims to boost agricultural productivity by increasing extension services and government loans, removing barriers throughout the supply chain and promoting demand-oriented market support mechanisms. Key interventions would centre around: improving productivity of the rice sector through improved seed quality, better agronomic practices, optimised fertiliser and input dosages, and integrated pest management; promoting dry season diversification of small farmers into high-value horticulture, fresh fruit, poultry and small livestock; improving farm-level water management by promoting low-cost microirrigation; and expanding microfinance in rural areas.

In the longer term, a thirty-year Master Plan for Agriculture Development developed by the Ministry of Agriculture and Irrigation (MOAI) covers the period 2001-02 to 2030-31 and includes the following objectives: use good quality and high yielding hybrid varieties; extend mechanised farming; strengthen existing irrigation facilities and build tidal protection embankments in coastal areas; encourage agricultural diploma, bachelor, master and doctoral degree holders; undertake research, extension and training activities; support farmers with agricultural loan schemes; and improve agricultural statistics. To this end, the MOAI focuses particularly on promoting farmers' freedom of choice in crop cultivation, enhancing domestic and foreign investment in agriculture and amending agricultural laws and regulations (MOAI, 2012b).

After agriculture, fisheries are considered as the most important sector to meet domestic protein requirements (annual per capita consumption of fish of 48 kg in 2010-11) while providing employment. Since 1988, fisheries have been completely privatised. The priorities of the Ministry of Livestock and Fisheries (MOLF) include: improve fish quality and animal strains; strive for fish and meat production all year round; increase fish and meat exports and foreign exchange earnings; attract further investment; further develop prawn breeding; protect both in-shore and off-shore fishery resources; and improve the socio-economic standards of farmers and fishermen. The MOLF developed a two-year development plan 2010-11 to 2011-12 focusing on: expanding coastal aquaculture, rice-fish culture in rural areas and mud crab culture; improving the rohu genetically; conducting pilot farming projects of sea weeds in coastal areas; and raising public awareness on fishery resources conservation.

The MOLF has also developed a natural resource management policy that aims to: increase fish production by stocking fish and prawn seeds into dams, reservoirs and natural water bodies; incentivise leaseholders to hold fish in pens to release them at the beginning of the season to ensure sufficient capture; and promote education programmes on conserving and rehabilitating fishery resources. Lastly, the MOLF encourages privatisation and public-private partnerships in livestock and fisheries. The Livestock, Feedstuff and Milk Products Enterprise is currently selling or leasing its farms. A total of eight farms and two mills are advertised for sale, and 25 farms and 11 mills are advertised for lease.

Despite its large share in GDP and its importance for livelihoods, agriculture appears very much neglected in terms of public expenditures. Among ASEAN countries, Myanmar has the lowest per capita agricultural expenditure in PPP terms and the lowest share of agricultural expenditure to agricultural GDP (Table 9.1).

Table 9.1. **Agricultural public expenditures by country, 2010**

	Agricultural expenditure (billion 2005 PPP USD)	Per capita agricultural expenditure (2005 PPP USD)	Ratio of agricultural expenditure to agricultural GDP (per cent)	Share of agriculture in total expenditure (per cent)
China	211.3	155.2	24.3	10.3
Malaysia	6.3	226.6	17.7	6.7
Thailand	6.4	94.0	9.7	5.8
Philippines	3.3	35.1	8.0	5.9
Viet Nam	3.3	37.5	6.7	3.9
Indonesia[1]	3.9	17.2	3.5	2.6
Myanmar[1]	0.4	8.6	1.4	8.3

1. Last year of data available is 2007.

Source: Statistics of Public Expenditure for Economic Development (SPEED) Database, International Food Policy Research Institute (IFPRI).

Although data are not available for recent years, according to non-governmental organisations, a significant part of MOAI's budget is allocated every year to irrigation infrastructure through the Water Resources Utilisation Department (WRUD) and the Irrigation Department (around 66% in FY 2010-11). In contrast, in FY 2013-14, the Department of Agriculture (DOA) accounted for only 4.5% of the budget – although it is responsible for agricultural research and extension, seed multiplication and plant health services – and Yezin Agricultural University, the only tertiary agricultural education institute in Myanmar, for only 0.2% (MOAI, 2013). More balanced public expenditures across various public goods, including rural infrastructure but also research and development and education, may help enhance agricultural growth.

Agriculture in the economy

Agricultural GDP

Agriculture is a key sector of Myanmar's economy. While reliable data are lacking, the agriculture and fisheries sectors represent around 34.8% of GDP (MOAI, 2013). Around 61.2% of the labour force is engaged in crop and livestock production or depends to a significant extent on it for its income (MOAI, 2012b). A significant proportion of industry is also related directly or indirectly to agriculture. Indeed, out of a total of 43 239 registered private industries, 35 827 are food industries, including 35 667 private companies, 354 state-owned companies and 6 municipal companies. The largest registered agri-businesses are rice, bean and oil mills (Min Aung, 2012). In 2010-11, crop production accounted for 13.7% of export value and up to 25-30% if livestock production and fisheries are included (Vokes, 2013).

Compared to other Asian countries, Myanmar's share of agriculture and fisheries in total GDP has remained quite high, indicating a lack of significant structural transformation of the economy over the past 30 years (Table 9.2). Agricultural GDP growth has remained relatively low compared to GDP growth in industry and services that has accelerated in recent years. According to ADB data, in 2010-11, total GDP growth was 5.5% and GDP growth in industry and services reached respectively 6.5% and 6.3% against 4.1% in agriculture (ADB, 2012).

Agricultural sub-sectors

While the share of crop production in GDP has steadily decreased in recent years, the share of livestock production and fisheries has remained relatively stable. Indeed, annual GDP growth rates have declined for all sub-sectors but the GDP growth rate of livestock production and fisheries remained well above the growth rate of crop production (Figure 9.1).

The production of the main food crops has significantly increased since 1990. The area planted with rice, beans and sesame increased considerably and their respective output also grew sharply (Figure 9.2).[3] For example, the area planted with rice nearly doubled and its production almost tripled.

However, land productivity has stagnated and agricultural production growth relies mainly on area expansion. Yields in Myanmar remain relatively

Table 9.2. **Share of agriculture, hunting and fisheries in GDP in selected Asian countries, 1980-2011**

Per cent

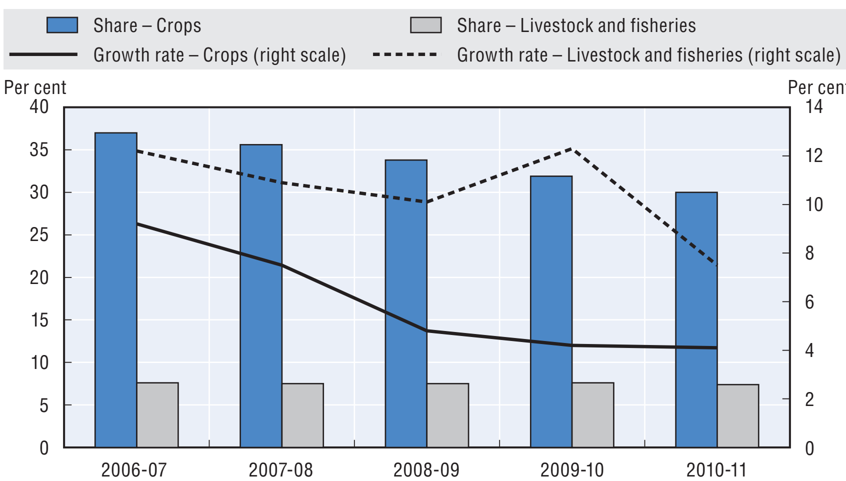
	1980	1990	2011
China	30.1	27.0	10.1
Thailand	23.2	12.5	10.9[1]
Malaysia	22.9	15.2	12.0
Philippines	25.1	21.9	12.8
Indonesia	24.8	19.4	14.7
India	38.1	31.0	17.2
Bangladesh	41.2	29.4	18.3
Viet Nam	50.0	38.7	22.0
Lao PDR	..	61.2	30.3[1]
Myanmar	46.5	57.3	34.7
Cambodia	..	55.6	36.7

1. 2010.

Source: ADB, *Asian Development Outlook*, editions 1995, 2009 and 2012; ADB, *Key Indicators of Developing Asian and Pacific Countries 2004 and 2011*. For Myanmar: Ministry of National Planning and Economic Development.

Figure 9.1. **GDP share and annual growth rate by sub-sector, 2006-10**

At 2005-06 constant producers' prices

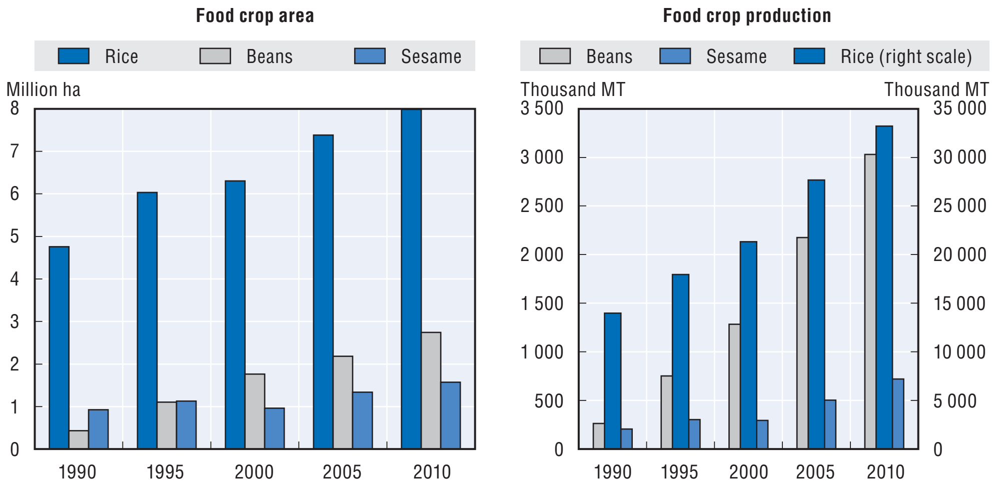


Source: Ministry of National Planning and Economic Development, Planning Department.

low compared to those in neighbouring countries, except for pulses. Current rice yields average 4.1 tonnes per ha, from 3.4 tonnes per ha in 2000, against 5.2 tonnes per ha in Viet Nam and 6.6 tonnes per ha in China (Figure 9.3).

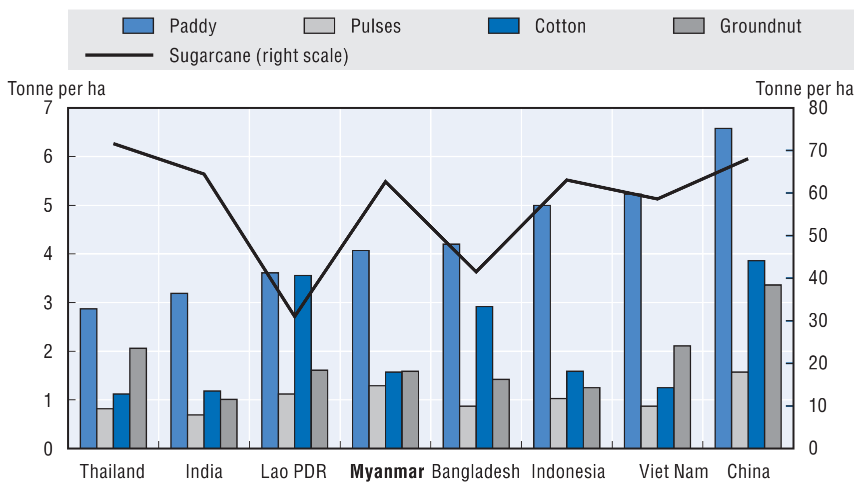
Paddy remains the major crop both in terms of volume produced and land area. In 2009-10, paddy represented 45% of the harvested area followed

Figure 9.2. **Food crop, 1990-2010**



Source: FAOSTAT, 2012.

Figure 9.3. **Crop yields in selected Asian countries, 2009**

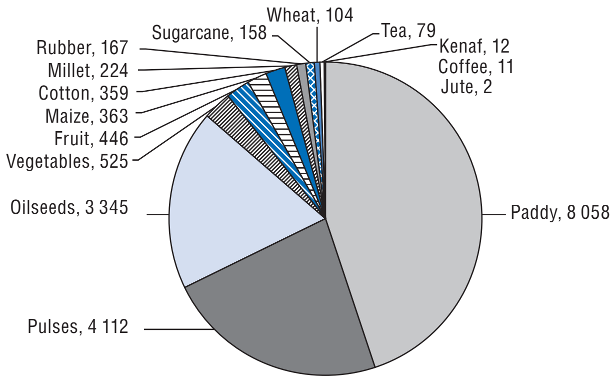


Note: 2010-11 for Myanmar.
Source: Selected Indicators of Food and Agriculture Development in the Asia Pacific region, 2000-10, RAP Publication 2011-21.

by pulses at 23% and oilseeds at 19% (Figure 9.4). Other cereals, including maize, millet and wheat, are far behind paddy in terms of production area and volume. The major crops after rice in terms of volume include pulses, groundnut, sesame and sunflower (Table 9.3). The main industrial crops consist of cotton, rubber and sugarcane.

Figure 9.4. **Harvested area per crop, 2009-10**

Thousand hectares



Note: For sugarcane, only for sugar production.
Source: CSO, 2012.

Table 9.3. **Production per crop, 2009-10**

Thousand tonnes

Cereals		Pulses	Oilseeds		Industrial crops	
Paddy	32 166	5 241	Groundnut	1 341	Sugarcane	9 562
Maize	1 226		Sesame	790	Cotton	515
Millet	210		Sunflower	782	Rubber	110
Wheat	179		Mustard	85	Tea	93
			Palm oil	69	Kenaf	12
					Coffee	7
					Jute	1

Note: For sugarcane, only for sugar production.
Source: CSO, 2012.

From the 1960s to the 1980s, rice production declined as a result of price and trade controls imposed by the government. This trend was reversed in the 1990s, with rice harvested area increasing from 4.8 million ha in 1990-91 to 8 million ha in 2010-11. In 2009-10, rice production reached 32.2 million MT of unmilled paddy at an average yield 3.9 MT per ha (CSO, 2012). From 2006 to 2011, the national surplus averaged 2 million MT and exports 0.7 million MT (Zaw Oo, 2012).

Despite the creation of agencies responsible for enhancing rice production, underinvestment in the rice sector spans from research and extension to seed, infrastructure, credit, milling, post-harvest storage, and transport to the ports (HKS, 2010), leading in particular to low quality rice and low export prices. Most machines operating in rice mills need to be upgraded and renovated (Zaw Oo, 2012).

In 2010, the Myanmar Rice Industry Association (MRIA) was established along with 31 special agricultural development companies (SACs) operating at the township level. The MRIA represents the interests of the rice producers, millers, traders and exporters to the government at the national level. It aims to enhance public-private co-operation to better co-ordinate rice policy and to report on export prices and volumes. At township and village tract level,[4] the SACs operate through contract farming arrangements by distributing inputs and providing credit to rice growers while buying their harvest.

Myanmar Rice Specialised Companies (MRSCs) also aim to support farmers in targeted areas with inputs, including certified seeds and credit at an interest rate of 2% per month without collateral and covering up to 40% of the production costs, while buying contract farmers' production at harvest. SACs' and MRSCs' contract farming arrangements have not been very successful (ARDC, 2011). Gold Delta was the last of the 58 MRSCs that was lending to farmers and had to stop lending as it was not profitable.

While other cereals are much less important than rice, the area and production of maize, millet and wheat have also increased over the last two decades. Maize harvested area has almost tripled and its production increased seven fold (CSO, 2012).

In terms of tonnage produced, pulses[5] rank third after rice and sugarcane. Green gram, black gram and pigeon pea are the most important crops in this group. Following liberalisation in 1988, the sown area of pulses substantially increased from 0.73 million ha in 1988 to 4.5 million ha in 2010-11, with an average yield of 1.28 MT per ha due to the adoption of improved varieties (MOAI, 2012b). The harvested area of green gram, black gram and pigeon pea was multiplied respectively by 4.1, 3.2 and 3.8 while their production was multiplied by 22, 14, and 20.

Pulses, produced mainly by smallholders, are now by far the largest agricultural export item, with export volumes reaching 1.2 million MT in 2009-10 and exports valued at USD 1.2 billion in 2012-13 (CSO, 2013). Myanmar stands now as one of the largest exporters in the world (ARDC, 2011). Pulses are important to the rural economy not only for their profitability but also because of their nutritional content and contribution to soil fertility.

The oilseed sector is particularly important, including mainly sesame, groundnut, sunflower, palm oil, niger and mustard. From 1995-96 to 2011-12, the total harvested area of sesame, groundnut, sunflower and palm oil increased from 1.6 million to 3.0 million ha and the production from 0.7 million to 2.9 million MT. In 2011-12, sesame accounted for 52% of the area harvested in oil crops, with a further 29% taken by groundnut, 18% by sunflower and 1% by palm oil (CSO, 2012). As domestic oil production remains below consumption levels, around 200 thousand MT of palm oil are imported annually (MOAI, 2012b).

Industrial crops – including rubber, cotton,[6] sugarcane, jute and kenaf, tea and coffee – have also expanded over the last two decades, supported by specialised State Economic Enterprises since 1994. From 1990-91 to 2011-12, according to CSO data, rubber production was multiplied by ten and yields increased around two fold to 650 kg per ha as old unproductive varieties were replanted with high-yielding varieties (ARDC, 2011). The government has established a 30-year rubber development plan which sets the goal of reaching a production area of 607 000 ha and an annual production of 300 000 MT by 2030.

Rubber is now one of the leading industrial crops, with about 90% of the production exported to China and five ASEAN countries – Malaysia, Singapore, Viet Nam, Thailand and Indonesia. According to the MOAI data, the planted area has grown tremendously in recent years. From over 200 000 ha in 2005-06, rubber plantations covered nearly 300 000 ha in the following year and 522 088 ha in February 2013.[7] While the bulk of planted rubber is currently located in the south, since the mid-2000s, new plantations, developed almost entirely by companies receiving investment incentives, have quickly expanded in northern Myanmar along the Chinese border to supply the Chinese domestic market (TNI, 2012). The uplands in Kachin and Shan states have been transformed by the expansion of large-scale rubber plantations. However, smallholders with less than 8 ha of rubber plantations still constitute 90% of the total number of rubber growers while entrepreneurs with rubber estates larger than 16 ha account for only 1% of the growers (Thein, 2012).

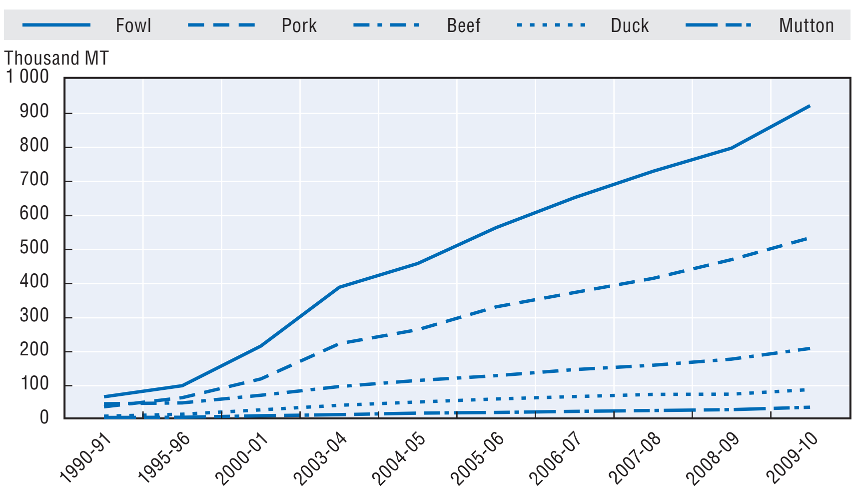
Other industrial crops have also significantly expanded from 1990-91 to 2011-12. Cotton harvested area has more than doubled and its production has been multiplied by 9, and sugarcane harvested area has been multiplied by 3.5 and its production by 5. However, sugar mills operate below capacity as production costs in Myanmar are higher than in Thailand and China. 19 sugar mills out of a total of 21 existing mills are currently operating but for domestic demand. The jute harvested area significantly declined due to the privatisation of state-owned factories that previously bought jute production, while kenaf harvested area slightly increased. As regards tea and coffee, from 1990-91 to 2009-10, their respective harvested area increased from 57 thousand to 79 thousand ha and from 3 thousand to 11 thousand ha (CSO, 2012).

Vegetables and fruit production has also greatly expanded over the last two decades. Since 1990, vegetables and fruit harvested areas have been multiplied respectively by 3.8 and 2.4.

Finally, as regards crops, it is worth noting that Myanmar is the world's second largest producer of opium after Afghanistan. The expansion of opium cultivation raises significant issues. While opium cultivation declined up to 2006 due to opium bans declared by cease-fire groups in Shan state, opium cultivation in the Golden Triangle – Myanmar, Lao PDR and Thailand – has doubled from 2006 to 2011 with an area increasing from 21 500 to 43 600 ha and the production rising from 315 to 610 tonnes, with the main increase located in Myanmar, especially in Shan state. Since Yunnan province approved an opium substitution development programme for Myanmar and Lao PDR in 2006, the Chinese government has been actively mobilising Chinese companies to take part in the scheme by offering them subsidies, tax waivers and import quotas (TNI, 2012).

Livestock includes mainly cattle, buffalo, pigs and poultry. Almost every rural household raises livestock which contributes to household nutrition and income and provides draught power and byproducts, such as hides and leather. Commercial livestock production occurs only near major cities (ADB, 2012). In the past two decades, poultry has seen tremendous growth, with the number of birds increasing seven fold, particularly due to the spread of commercial production techniques in peri-urban areas (Figure 9.5).

Figure 9.5. **Meat production**



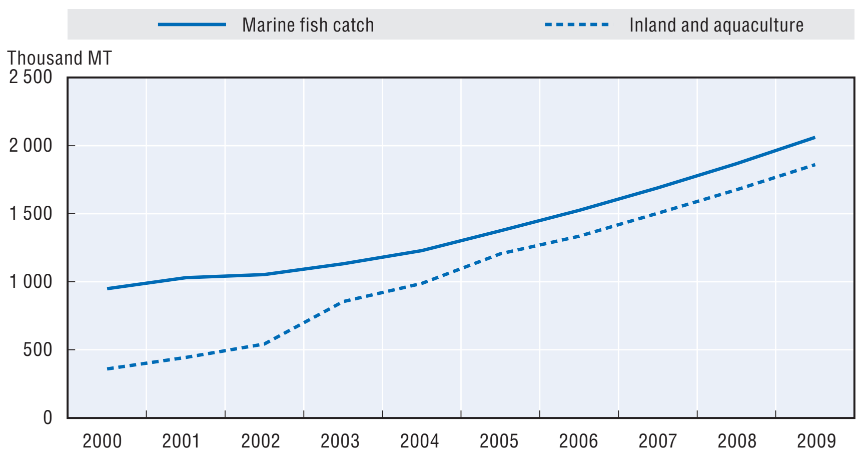
Source: CSO, 2012.

Most livestock production occurs on a small scale and relies on indigenous breeds kept primarily under traditional management systems. Herd or flock sizes remain typically small, averaging only two for cattle, four for buffalo and pigs, and 17 and 30 respectively for poultry layers and broilers. Of the almost 3 million holdings registered in 1993 as possessing livestock, less than 200 000 (6.6%) were recorded as predominantly livestock holdings.

Commercial livestock production centres on dairy cattle and broiler and laying poultry and remains limited largely to the peripheries of Yangon and Mandalay. A Livestock Federation, present down to the district level, represents business interests and is responsible for monitoring production and prices and discussing sectoral issues with the government.

With a coastline of 3 000 km and inland water areas covering 3.3 million ha, Myanmar offers abundant fishery resources. Over the past two decades, the production of both freshwater and marine fish has steadily increased, being multiplied respectively by 14 and 4 (Figure 9.6). In 2010-11, a total of 4.14 million MT of fish were produced – 52% of marine fish and 48% of freshwater fish. Aquaculture and open fisheries contributed equally to freshwater fish production[8] at around 900 thousand MT each, while leasable fisheries provided a fish production of 250 thousand MT. In 2011-12, fish production had a value of USD 700 million against only USD 50 million for livestock production. However, discussions with fishermen, fish traders and investors in shrimp farms suggest that fish production has become less profitable in recent years (Mark, 2013).

Figure 9.6. **Fish production**



Note: 2000 means FY 2000-01 and so on.
Source: Ministry of Livestock and Fisheries, Department of Fisheries.

The aquaculture area has increased from 3.3 thousand ha in 1990-91 to 176.6 thousand ha in 2009-10, with the Rakhine state having the largest acreage of shrimp farms.[9] The number of both in-shore and off-shore fishing vessels has also steadily increased over this period (Table 9.4).

Table 9.4. **Areas of freshwater fisheries and number of fishing vessels, 1990-2009**

	1990-91	1995-96	2000-01	2005-06	2009-10
Fish and prawn ponds (ha)	3 345	38 155	52 736	162 994	179 650
Leasable fisheries (ha)	1 408	1 355	1 399	1 386	1 496
Off-shore fishing vessels	874	1 694	1 987	2 022	2 077
In-shore fishing vessels	6 032	11 615	26 099	30 460	30 842
Fishing gear (one set of net)	6 032	14 561	25 590	31 397	31 347

Note: Non-mechanised fishing vessels are included.
Source: Ministry of Livestock and Fisheries, Department of Fisheries.

Trends in investment in agriculture

Investment in agriculture

Investment trends cannot be analysed in detail as investment data, registered by the Directorate of Investment and Company Administration (DICA) which approves investments, particularly foreign investments, remain incomplete:

- First, the data include investment undertaken by relatively large companies only. Thus, investment made by micro, small or medium enterprises (MSMEs) is excluded as well as domestic investment administered by local governments. As smallholders constitute a dominant share of agricultural production, DICA data may underestimate investment in agriculture more than in other sectors of the economy.
- Second, DICA data do not include informal foreign investment located in ethnic states. While most foreign investment in hydropower, oil and gas projects in these areas goes through formal channels as these sectors are controlled by the state and entail massive investment, the remaining foreign investment is largely informal. Given this lack of data and the reluctance of businesses to disclose information, the extent of such informal investment is difficult to ascertain but may be particularly high. In fact, large investment, much of it foreign direct investment (FDI), seems to have targeted not only mining and hydropower but also logging and most recently rubber, maize, paddy, sugarcane, jatropha and palm oil in resource-rich ethnic states, such as Kachin and Shan states.
- Third, some foreign investments may be undertaken with local counterparts. Thus the investment, if registered, does not appear as FDI. The use of a local partner allows investors to avoid FDI regulations and government oversight and to reduce the taxes, fees and bribes required to pass through bureaucratic layers (TNI, 2013).

With these caveats in mind, DICA data show very low investment levels in agriculture and fisheries. Since 1988, the share of crops in approved foreign investment has averaged 0.44% and the share of livestock and fisheries 0.79% (Table 9.5). By January 2013, the total amount of foreign investment in crops and livestock and fisheries since 1988 reached respectively USD 183 million and 330 million. Domestic investment is even much lower. Since 2007, no domestic investment has been registered for crops, and USD 18.22 million has been registered for livestock and fisheries (Table 9.6). However, additional DICA data show that, as of 31 October 2010, domestic investment in crops reached around USD 0.53 million and domestic investment in livestock and fisheries around USD 14.39 million.

While no data allows to analyse investment levels by sub-sector, production data show that, over the last two decades, significant investment must have been made in rice, maize, pulses, sesame, groundnut, sunflower,

Table 9.5. **Approved foreign investment in agriculture and fisheries, 1988-2012**

USD million

	1988-2000	2000-01	2004-05	2009-10	2010-11	2011-12	2012-13	Total	Share
Agriculture (crops)	14	20			139		10	183	0.44
Livestock and fisheries	283						6	330	0.79
Total foreign investment	**7 177**	**218**	**158**	**330**	**19 999**	**4 644**	**1 143**	**41 842**	**100**

Note: Permitted foreign investment has been registered only since 1988 when the *Foreign Investment Law* first allowed such investment. As of 31 January 2013 for FY 2012-13. For further details on investment by sector, refer to Chapter 1.
Source: Ministry of National Planning and Economic Development, Directorate of Investment and Company Registration.

Table 9.6. **Domestic investment, 2007-12**

USD million

	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Agriculture (crops)						
Livestock and fisheries	0.58	1.50	1.12	3.04		11.98
Mining	0.12		8.59	1.88		1.07
Manufacturing	1.08	25.82	64.24	519.17	485.97	1 482.39
Power				475.95		11.34
Transport		1.01	2.79	143.58	21.16	2 654.85
Hotel and tourism			1.54	66.25	0.71	
Construction		9.39	580.78	253.49	33.14	22.93
Real estate development					11.18	61.66
Industrial development						341.63
Others			65.85	397.51	0.33	169.81
Total	**1.78**	**37.72**	**724.90**	**1 860.87**	**552.49**	**4 757.65**

Note: For 2012-13, as of 31 January 2013.
Source: Ministry of National Planning and Economic Development, Directorate of Investment and Company Registration.

palm oil, rubber, cotton, sugarcane, vegetables and fruit production. As for livestock and fisheries, investment may have targeted mainly poultry and both freshwater and marine fisheries.

Large investments are being planned, particularly by foreign companies from neighbouring countries, targeting several industrial crops:

- Several foreign companies are investing in maize production in the Shan state. Charoen Phokphand Company (CP) from Thailand has established contract farming for maize production exported to China or used to supply CP's livestock feed chain in Myanmar (TNI, 2012). It plans to invest a total of USD 550 million in agriculture, particularly maize seed farms, rice farms and mills, aquatic animal and cattle farms and livestock processing plants.
- Thai Hua Rubber Pcl, Thailand's third-largest rubber producer, plans to invest in rubber for export.
- The Department of Industrial Crops Development (DICD) and China's Wuhan Kaidi Holding Investment Co. have been granted a concession of 200 000 ha in Sagaing region to cultivate maize, sugarcane and jatropha for feedstock.
- The MOAI, Great Wall Co. (domestic company) and China's State Development and Investment Corporation have been granted a similar concession for sugarcane, cassava and maize for biofuel production (TNI, 2013).
- Myanmar Sugar Development Public Co. Ltd. plans to build by 2015 the country's biggest sugar factory in Sagaing region capable of producing 400 tonnes of sugar a day.
- Wilmar, a Singapore-listed group and the world's largest processor of palm oil by volume, plans to make significant investments focusing on rice, sugar and vegetable oil.
- Cargill is exploring opportunities for importing and exporting food and livestock feed.

Investment origin

New agribusiness investors in Myanmar originate predominantly from China, Malaysia, Thailand, Viet Nam and Korea. Companies from these countries are mainly interested in producing and processing palm oil and rubber (TNI, 2013):

- As previously mentioned, China is heavily investing in northern Myanmar. In particular, Yunnan's provincial government is increasingly promoting Chinese agricultural investment in Myanmar to enhance food security in the province. Such investment is facilitated by China's tariff reductions, the availability of Chinese migrant labour and accelerated infrastructure development connecting northern Myanmar with Yunnan (TNI, 2012).

- Malaysia, Thailand and Korea are interested in investing in southern Myanmar, mainly Tanintharyi region, for rubber and palm oil. Malaysian large state-backed companies, such as Felda Global Ventures Holdings, target large rubber concessions, whereas Thai companies, such as Sri Trang Co. and Thai Hua Rubber Co., are interested in both rubber concessions and middle-stream latex processing. Processing plants would be built in major rubber-producing areas in southern Myanmar, particularly in northern Tanintharyi region, as well as next to the Dawei SEZ financed in part by Thailand. Moreover, a new border gate at Mawdaung on the Tanintharyi region – Thai border is expected to open in 2013 and would facilitate the export of agricultural commodities to Thailand.
- Viet Nam is also increasing its agricultural investments in Myanmar, supported by government-backed companies such as the Viet Nam Rubber Association. In April 2010, the Vietnamese government signed a Memorandum of Understanding for a 48 000 ha rubber concession in southern Rakhine state – although the government has blocked site visits because of continuing communal conflict (TNI, 2013).

As for fisheries, Thai companies have been investing in prawn culture. Companies from Sri Lanka, Chinese Taipei, Japan, Indonesia and Malaysia are looking into investment opportunities in this sector.

Investment policy and promotion in agriculture

This section reviews investment policy in agriculture to identify the constraints faced by both small and large investors in the sector. It examines the land tenure system, the regime for FDI in agriculture and the investment incentives offered to agricultural investors.

The analysis shows that the existing legislation is particularly favourable to large investors not only as regards land tenure but also in light of the regime for foreign investment and the tax incentives offered:

- Land use rights can be granted for projects approved by the government or considered to be in the interest of the state without any limit on either the land size or the time of the lease. This gives the Myanmar Investment Commission (MIC) significant discretion on the selection of projects as no clear and transparent selection criteria have been established in the legislation to select specific projects, for instance based on the linkages they would create with local MSMEs. The significant increase of large scale land allocations in recent years has led to numerous land conflicts.

- The regime for foreign investment is also quite favourable to foreign investors with only a few limited activities being restricted or requiring some recommendations or permits. In fact, the *Foreign Investment Law* remains quite vague on the activities restricted to foreign investment, stating for example that "agricultural or livestock breeding business requiring a small amount of investment capital" are closed to foreign investment, without specifying the amount of capital. Similarly, activities "detrimental to traditional ethnic cultures and customs" are closed to foreign investment which leaves significant discretion to the MIC to decide if a specific activity may be detrimental. In fact, the law even allows the MIC to allow foreign investment that may have adverse cultural impacts if it considers such investment is in the national interest. Similarly, some activities are allowed only through joint ventures but no definition of joint venture is provided. In contrast, the 2010 negative investment list of Indonesia has increased FDI restrictions in agriculture and states clear criteria for activities reserved to domestic investors.[10]
- Tax incentives are also generous, particularly for government-approved projects. Foreign investors in agriculture are exempted from income taxes for up to three years. VFV land is exempted from land taxes in the initial years following the issuance of land use rights but indefinitely for government-approved projects without even being required to meet certain criteria. Addressing the structural constraints to investment, such as harmonising the land legislation and building rural infrastructure, may be more efficient in attracting investment than offering fiscal incentives that represent significant revenue losses for the government and that are biased in favour of large investors.

In contrast, small-scale investors continue to face numerous challenges leading to land tenure insecurity, thereby undermining their investment. Registering land use rights is a very long and uncertain process. Once acquired, land use rights are strictly regulated and any change in the use of the land needs to be registered and related fees paid. Furthermore, customary land rights are weakly recognised in the existing legislation. Indeed, the new land laws discourage shifting cultivation and smallholders practicing such cultivation cannot register their land use rights. The land management system remains quite inefficient and confusing due to the existence of different laws regulating different types of agricultural land and different land management agencies lacking co-ordination.

The LIFT baseline survey provides a good overview of the main constraints faced by crop producers in Myanmar. It highlights the lack of affordable credit in rural areas and the high cost of inputs as major constraints for smallholders (Table 9.7). The survey also indicates that high rates of landlessness and indebtedness hinder investment by smallholders.

Table 9.7. **Constraints to household crop production by region**

As a share of the total number of persons interviewed in each region

	Hilly	Dry	Delta and coastal	Giri-affected	Total
Lack of money to buy inputs	43.0	50.0	62.7	65.0	51.0
Lack of or too expensive fertilisers	43.2	45.9	33.5	40.4	42.2
Bad/unreliable weather	27.9	63.3	18.2	28.3	37.6
Lack of or too expensive seeds	18.6	20.4	17.2	19.2	19.0
Crop pests and diseases	16.1	13.8	26	8.8	16.1
Lack of or too expensive local casual labour	10.9	20.3	22.9	5.4	15.1
Lack of household labour	14.7	17.2	8.2	12.1	14.2
Lack of water resources or irrigation infrastructure	15.6	14.7	10.7	12.5	14.2
Lack of or too expensive other tools and equipment	9.9	20.4	14.4	10.8	14.1
Lack of or too expensive pesticides	11.4	17.7	11.3	11.2	13.4
Lack of land	13.8	10.1	12.2	15.0	12.5
Lack of or too expensive draught/mechanical power	5.1	10.0	24.5	7.5	10.0
Low soil fertility/poor soil structure	12.1	8.1	7.5	7.9	9.6
Low crop prices	2.7	6.5	3.4	0.4	3.8
Salinity	0.4	0.5	3.8	19.2	3.2
Lack of knowledge and experience	2.2	3.2	2.5	4.6	2.9
Animal damage	4.6		0.6	0.8	2.1
Not interested/grows enough/too risky to grow more	0.9	0.8	0.3	1.2	0.8
Soil acidity	0.1				0.1
Total number of persons interviewed	**807**	**632**	**319**	**240**	**1 998**

Note: Each person interviewed can select several constraints.
Source: LIFT, 2012.

The legislation should thus be revised to eliminate the waivers on "government-approved projects" and clearly state which specific projects, agricultural commodity or type of investor can benefit from exemptions or special treatment, drawing from a well-designed agricultural investment strategy. Second, significant efforts should be made to facilitate investment by smallholders by securing their land use rights and improving access to credit in order to increase their incomes, enhance agricultural productivity growth and promote inclusive growth.

Land tenure

Secure land rights are a necessary condition of any investment in agricultural production. They are critical to ease the process of land acquisition, incentivise long-term investment in land and sustainable land management, and facilitate access to credit by allowing land to be used as collateral. First, this section examines the existing use of agricultural land.

Second, it reviews the current legislation on land tenure rights, including for large investors.

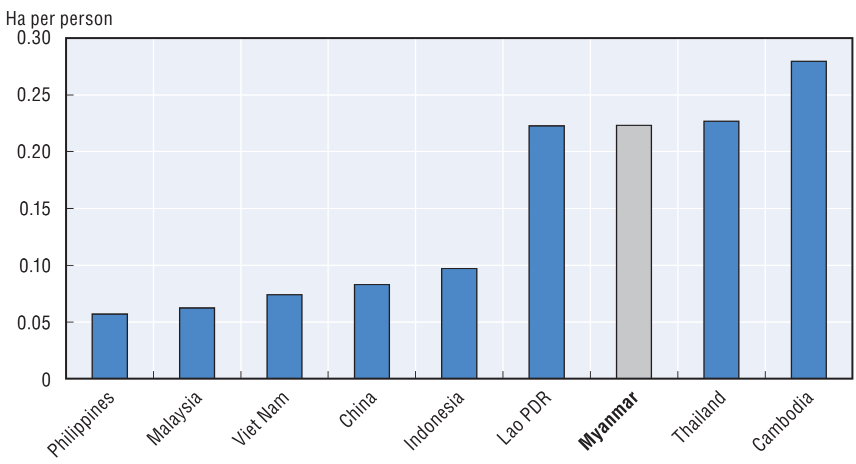
Although Myanmar is endowed with significant agricultural land in per capita terms and agricultural land can be expanded further according to MOAI's data, the average farm size has declined since 1992. However, farm size varies significantly across regions, with the coastal/delta areas characterised by larger landholdings and higher rates of landlessness.

Land management, particularly as set out in the new land legislation adopted in 2012, poses several major challenges to secure land use rights related to: the restrictions imposed on land use rights, the lack of a harmonised legislation and the overlapping responsibilities of various land management institutions, the long registration process, the weak recognition of customary land rights, the rigidity of land classification (i.e. the cumbersome process to change land from one category to another), the limited capacity to solve land disputes and the bias in favour of large-scale land investments.

Agricultural land

Agricultural land is one of Myanmar's major endowments. Although cultivable land is only 18% of total land area, against 34% for Viet Nam or 37% for Thailand, given the low population density, the size of arable land in per capita terms is large and comparable to that of Thailand and Lao PDR (Figure 9.7).

Figure 9.7. **Arable land per person, 2011**



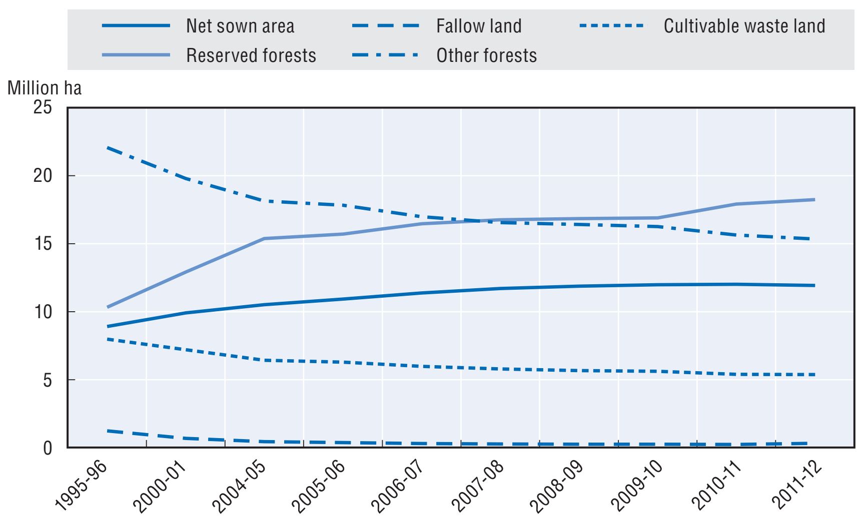
Source: World Bank World Development Indicators Database.

Cultivable land, composed of the net sown area and cultivable waste land, represents 17.6 million ha out of a total land area of 68 million ha. From 1995-96 to 2011-12, the net sown area increased from 8.9 to 11.9 million ha (net of double cropping), owing partly to land reclamation by the government in Ayeyarwady and Tanintharyi regions and to the allocation of fallow land to private investors for commercial farming. Consequently, cultivable waste land, including wetlands, coastal land, and dry land, decreased to 5.3 million ha (Figure 9.8), which allows for further agricultural land expansion. In addition, 0.32 million ha of fallow land would be available for cultivation – although fallow land is defined in practice as land that has not been cultivated for a year only.

In addition, Myanmar boasts large swathes of forested land. Nearly 31% of Myanmar's total land area is covered by forests – although such forests are often heavily degraded. From 1995-96 to 2011-12, reserved forests established for both conservation and production purposes increased from 10.3 to 18.2 million ha while protected public forests and protected forests decreased from 22.0 to 15.3 million ha (Figure 9.8).

Despite the large size of arable land per capita compared to neighbouring countries, most cultivated land is cultivated by small-scale farmers, with an average landholding size of 2.4 ha (MOAI, 2012b). According to the data provided by the Agricultural Census of 1992-93 and of 2003 and by the Integrated Household Living Conditions Survey of 2009-10, the number of

Figure 9.8. **Land classification, 1995-2011**



Source: Ministry of Agriculture and Irrigation, 2012a.

agricultural landholdings has steadily increased over the last two decades, from 2.7 million in 1992-93 to 3.3 million in 2003 and 4.4 million farms in 2009-10. Consequently, the size of landholdings has declined over this period. The average farm size declined from 2.5 ha in 1992-93 and 2003, which was larger than the average farm sizes found in India, Indonesia and China, to 2.4 ha in 2012.

As shown by the LIFT survey on a sample of 4 000 households, land holding size varies considerably across regions. In 2012, 26% of households in the hilly zone did not have land use rights, against up to 68% in Giri-affected areas and 72% in the delta/coastal zone. Among households with land use rights, the size of land holdings varied widely. In the delta/coastal zone, only 26% of these households owned 2 ha or less, while in all other regions, most of them held less than 2 ha. Similarly, the average size of land holdings in the delta/coastal zone was much larger than in any other area at 6.7 ha, against 1.4 ha in the hilly zone and 2.5 ha in the dry zone. Data in the hilly zone should be interpreted with caution as households surveyed usually practice shifting cultivation and may not report the total land area they use as they cannot register such land.

While the rate of landlessness in rural areas, i.e. the proportion of rural residents without any land use rights, has slightly declined in recent years, it remains very high for vulnerable groups and in specific areas. While as much as 30% of the rural population was landless in 1992-93 and 2003, landlessness among rural households declined to 24% in 2010 (HKS, 2011). However, landlessness in the very poorest groups in rural areas reached 38% in 2010. Paddy-producing areas as well as remote townships, lowlands and ethnic states are particularly affected. The highest rates of landlessness are found in Bago (41%), Yangon (39%) and Ayeyarwaddy (33%) – regions collectively known as the "rice bowl of Myanmar" where more than half of the country's staple crop is grown (FESR, 2012).

This data must be interpreted with caution as it relies on self-reporting and may thus be overestimated. For example, the research conducted by the Land Core Group shows that, in selected communities of Chin and Northern Shan states, all families had access to a minimum of productive land every year. As the process to change the name of the farmer owning a land title is very long, in practice, farmers often cultivate inherited land even though the land title is not under their own name.

Land legislation

While the government remains the ultimate owner of all land, several provisions of the Constitution of 2008 clearly recognise and protect land use rights, including by requiring the government to "enact necessary laws to protect the rights of the peasants" and guaranteeing the right of citizens to appeal decisions regarding land rights to an independent judiciary.

In March 2012, two new land laws were passed by parliament, namely the *Farmland Law* and the *Vacant, Fallow and Virgin Land Management Law*, and their rules came into force in August 2012.[11] Prior to these laws, the SLRD could grant farmers permanent land use rights after five years and hereditary rights after 10 years if farmers cultivated land continuously and paid taxes regularly. Some farmers possess such permanent land use rights, primarily for irrigated paddy land, while others often have less secure land use rights classified as "non-permanent" in tax payment documents. Only around 20% of the land would be titled, with upland areas not titled at all.

In contrast with the land legislation of Indonesia and Tanzania which grants different land use rights to citizens versus companies, the new land laws in Myanmar seems to grant land use rights to all possible investors:

- Farmland use rights can be granted to citizens, government organisations, non-governmental organisations or companies. On reclaimed farmland, individuals should be either farmers without land or with limited land, farmers needing to expand, while organisations should have professional experience in agriculture, bring modern techniques and promote regional development.
- VFV land use rights can be granted to citizens, rural households wishing to carry out manageable agricultural projects, government organisations, non-governmental organisations or foreign investors involved in a joint venture with a government organisation or citizens as stated in the FIL.

However, these land use rights are limited by strict conditions and, if land use rights holders do not respect such conditions, their land use rights may be withdrawn:

- While land use rights can now be sold, mortgaged, leased or used as collateral, land use remains regulated. The relevant Farmland Administration Body (FAB) needs to grant permission if farmland is cultivated, used to grow other crops or for non-agriculture purposes, sold, mortgaged, leased, exchanged or given to foreigners. It should not be left fallow without a sound reason. Any farmland transaction should be registered and related fees paid. While the central FAB may allow cultivating other crops than paddy on paddy land, it should conduct close scrutiny to ensure that "rice self-sufficiency is not diminished as rice is the staple crop" and regional/state FABs should "constantly supervise crop change cultivation to ensure food self-sufficiency". If these conditions are breached, the land use right holder should pay a fine, remove the buildings built without permission or be evicted. If he does not comply, he should be imprisoned for a period ranging from six months to two years. As for VFV land, it should be cultivated within four years – 15% of the allocated land within the first year, 30% in the second year, 30% the third year and 25% the fourth year – and within only two years for smallholders. It should not be mortgaged, given, sold, leased or transferred without government approval.

- The size of landholdings is capped. The *VFV Land Law* has reduced some of the previous size limits and increased the number of categories: 2 008 ha at a time for perennial and seasonal crops, and an additional 2 080 ha when 75% of the land is cultivated, up to a maximum of 20 080 ha; 1 205 ha for horticultural crops; 20 ha for farmers and rural households, with the initial area being limited to 4 ha; 803 ha for buffalo, cattle and horse breeding; 201 ha for sheep and goat breeding; 120 ha for poultry and pig breeding; and 402 ha for aquaculture. Interestingly, no limit is imposed for projects approved by the government, and limits for perennial and seasonal crops can be exceeded if the project is in the interest of the state. It seems the size of holdings of farmland is not limited.
- Some land use rights are limited in time. While farmland use rights are granted as long as required conditions are not breached, land use rights on VFV land are limited to 30 years for perennial and horticulture crops, livestock and aquaculture, and can be extended for another 30 years. They are unlimited for seasonal crops, unless conditions are breached, and for government-approved projects. In contrast, the Notification 44/91 on the "Duties and Rights of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land" limited land use rights to 30 years for all projects.

Various land administration bodies have been set up in line with the two new laws and comprise the FABs and the Central Committee for the Management of Vacant, Fallow and Virgin Lands (CCVFV). Their overlapping roles and responsibilities give rise to some incoherence in land management and increase tenure insecurity. In addition, the Land Allocation and Utilisation Scrutiny Committee, a cabinet-level committee, and the Land Confiscation and Enquiry Commission, a parliamentary commission, have recently been created to propose land policy reforms and help solve land conflicts respectively (Box 9.1). A Central Committee on Land Use Management chaired by the Vice-President was also formed on 16 September 2013 to help ensure that land expropriation is conducted in a just and fair manner (DICA, 2013a).

As detailed in the two land laws, registering land use rights is a long and uncertain process:

- For VFV land above 20 ha, applications should be directly submitted to the CCVFV that transmits them to the Nay Pyi Taw Council or the region/state department office that forwards them to the township department office. Below 20 ha, projects can be directly approved by the Nay Pyi Taw Council or

Box 9.1. **Land administration**

Farmland Administration Bodies (FABs) are line agencies within the MOAI. At central level, the Minister of the MOAI is the Chairperson, the Deputy Minister of the MOAI the Deputy Chairperson and the Director General of the SLRD the Secretary (President Office's Notification No. 62/2012 of 12 September 2012). This structure is replicated at the state/region, district and township levels. As per the *Farmland Law*, FABs are responsible for: approving farmland use rights registration and transactions and submitting those to the SLRD for registration; revoking farmland use rights if conditions are not fulfilled; resolving disputes over the allocation and use of farmland; valuing farmland for tax, acquisition and compensation purposes and ensuring fair compensation for those expropriated; and approving farmland transfers for other purposes. FABs should also ensure that those working on farmland get fair wages and job opportunities, promote mechanised farming and terrace farming while eliminating shifting cultivation and help land use rights holders receive credit and access high-yielding varieties and modern techniques.

The **Settlement and Land Records Department** (SLRD) within the MOAI is the main government agency responsible for surveying and registering farmland and issuing certified maps classifying land use. It is supported by FABs at various government levels (FSWG, 2012b). It does not survey VFV land.

The **Central Committee for the Management of Vacant, Fallow and Virgin Lands** (CCVFV) is a multi-ministerial committee formed at the President's discretion that replaced the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land (CCMCL). The Minister of the MOAI is the Chairperson, the Deputy Minister at the President's Office and the Deputy Minister of the MOAI are the Deputy Chairpersons and the Director General of the SLRD is the Secretary (President Office's Notification No. 66/2012 of 12 September 2012). Members include the same Ministries as the central FAB. The CCVFV overseas the granting and monitoring of use rights over VFV land which can be used not only for agriculture, livestock and mining purposes but also by any business permitted by the government. It is specifically responsible for: receiving recommendations for VFV land use; rejecting applications or granting "permission orders" for VFV land use; rescinding or modifying VFV land use rights; co-ordinating with the MECF and other Ministries to prevent the damage or destruction of forests and natural ecosystems; providing inputs in the formulation of National Land Policy; fixing the rate of security fees to be deposited and the annual land revenue rate and suitable period for tax exemption; helping those with land use rights to secure assistance upon request (technical assistance, inputs, loans etc.); and resolving disputes in co-ordination with other government agencies (FSWG, 2012b). At local level, the Nay Pyi Taw Council, the region/state and township department offices are responsible for VFV land management.

The **Central Committee on Land Use Management** has been created in September 2013 as per the Union Cabinet's Notification No. 59/ 2013 of 16 September 2013. The Vice President is the Chairman, the Ministers of the Ministry of Home Affairs and the MOAI are the Vice Chairmen and the Deputy Minister of Home Affairs is the Secretary. It comprises

Box 9.1. **Land administration** *(cont.)*

seven members. It should: help form FABs at different government levels and support them in implementing the existing legislation; supervise relevant government bodies to avoid land confiscation and resolve related issues; ensure that farmland released by the government or companies are returned to initial land rights holders; and ensure that land disputes are settled in accordance with the legislation. In addition, it has the mandate to decide on matters relating to land use rights submitted with the recommendation of Nay Pyi Taw Council or the region/state government and to provide monthly reports on land use to the Union Cabinet.

The **Land Allocation and Utilisation Scrutiny Committee**, established in July 2012 by the President Office's Notification No. 41/2012 of 18 June 2012, is a cabinet-level committee within the executive branch composed of 13 members and chaired by the Minister of the MECF. The four Vice Chairmen include the deputy ministers of home affairs, border affairs, agriculture and irrigation, and national planning and economic development. It focuses on issues related to national land use policy, land use planning and land allocation for investment, including in agriculture. It is tasked to: prepare a land use policy in collaboration with local and international experts; ensure that land use plans clearly demarcate forest land, secure access to water for local communities and allocate land to commercial plantations; and provide recommendations about reforms required to ensure that the use of land and natural resources is equitable and promotes socio-economic development. The committee should also examine the existing legislation and recommend and prepare revisions, particularly by conducting a review of the land revenue system.

The **Land Confiscation and Enquiry Commission**, established in July 2012 by the Union Assembly's Order No. 52/2012 of 8 August 2012, is a parliamentary commission comprising 56 members and investigating on issues relating to land confiscation to respond to the growing levels of advocacy on land conflicts. It monitors whether land confiscation has been carried out in compliance with existing law, whether land has been used for its intended purpose and if the project has been completed as planned on allocated land, whether land has been allocated through a transparent process and involved negotiations with local communities, if adequate compensation has been paid, and if the costs of resettlement have been covered. It has the mandate to: (i) collect statistical evidence from state and regional governments as well as relevant data from ministries with respect to land confiscation; (ii) conduct investigations and, if required, cover the expenses of the commission and provide necessary staff. This commission does not have a formal mandate to resolve land conflicts but is tasked to gather information to be passed on to parliament and to make recommendations to parliament. It has already received more than 2 000 complaints but only a portion of these (perhaps 10%) are sufficiently well-documented or valid enough to be forwarded to parliament (LCG, 2013). Individual members of parliament are also constantly receiving complaints about land conflicts. In July 2012, one member stated that he had received over 250 complaints from farmers (TNI, 2013). Whether the commission will have a continued mandate after submitting its report to parliament in 2013 remains uncertain as its mandate covers only one year (LCG, 2013).

Box 9.1. **Land administration** *(cont.)*

Furthermore, the MOAI set up in September 2013 an **investigation team** intending to return confiscated farmland to legitimate land rights holders. The team is chaired by the Deputy Minister of MOAI and the Director of SLRD is the Secretary. The team prepares reports for the Chairman of the central FAB and MOAI's Minister to be submitted to the Parliament and the President, and implements matters included in the report of the investigation commission on confiscated farmland and other land to prevent expropriation.

region/state government. The CCVFV should ask for recommendations from the Ministry of Mining or the MECF if relevant and obtain MIC agreement for foreign projects.

- Farmers need to apply for use rights on farmland at the ward or village tract FAB that submits the application to the township FAB for transmission to the district FAB. Once the application has been approved by the district FAB and the registration fees have been paid (around USD 0.57 per person), the township FAB issues the certificate.
- Applications to VFV land use rights can be particularly cumbersome. Applicants that are cultivating the land should show photos of the cultivated land and the Nay Pyi Taw Council or the region/state department office should approve the issuance of a land use right. The township department office should also check whether the applicant has the means to work on or use VFV land and whether the environment will be affected. It should also examine the means for investment, the work plan and the supply of materials for the project. Persons and organisations that had been granted a land use right on VFV land before the enactment of the *VFV Land Law* must submit a record to the CCVFV, attaching photos of the land. The Nay Pyi Taw Council or regional/state department office should then go on a field trip to relevant VFV land accompanied by the right holder and question neighbouring people.
- Once the land use right on VFV land has been approved, the applicant must deposit security fees at the Myanmar Agricultural Development Bank (MADB). For agriculture, these fees amount to USD 8.5 per ha for land areas below 20 ha and USD 28.3 per ha for land areas above 20 ha and for livestock and government-approved projects. These fees may be withdrawn if required land use conditions are not respected. Once the project has been completed, the land use right holder should submit an application to the CCVFV to be reimbursed. The township department office must then inspect VFV land and take photos demonstrating the project has been carried out as planned.

Following the adoption of the two land laws, the MOAI started issuing land use right certificates to farmers in early 2013 and the SLRD and the FABs are striving to end land registration within this fiscal year (MOAI, 2013).

Customary land rights, particularly on land used for shifting cultivation, are weakly recognised in the existing legislation. While the *Farmland Law* states that the central FAB has the duty to provide guidance on shifting cultivation, its rules discourage such cultivation and promote terrace farming to replace it. However, shifting cultivation can have positive agronomic and environmental impacts in a context where demographic pressure is relatively low. While the *VFV Land Law* does include provisions recognising and respecting the existing land use of farmers, even if it has not previously been formally recognised, these provisions remain relatively vague and do not mention customary rights. Furthermore, although shifting cultivation relies on fallow land, the *VFV Land Law* states that land use rights may be confiscated if VFV land is not cultivated, thereby leaving many smallholders practicing such cultivation with very insecure land use rights.

The complexity of land classifications creates confusion and uncertainty, thereby hindering investment. The adoption of a multitude of laws generates a wide array of various land classifications. The *Farmland Law* and the *VFV Land Law* both regulate agricultural land, thereby creating uncertainty about which type of land is regulated by each of these laws. As per the *Farmland Law*, farmland covers paddy land, dry land (ya), alluvial land (kaing), land for perennial crops, land used for shifting cultivation (dhani and taungya), garden land, land for growing of vegetables and flowers, and alluvial land. As per the *VFV Land Law*, vacant and fallow land is defined as land previously cultivated by the tenant and abandoned, and includes land cultivated by farmers and community groups under customary tenure. Virgin land is defined as "new land or other woodland in which cultivation has never been done". It includes land that has been "cancelled legally from reserved forest, grazing land and fish ponds" and may or may not be covered by forest. Community forestry arrangements can be secured on such land (FSWG, 2012b). In line with the *VFV Land Law*, VFV land can be used for agriculture and aquaculture purposes but also mining or other government purposes.

Despite slight recent improvements, the land classification remains rigid. Thus, it does not always reflect current land use, thereby impeding land users from registering their rights and increasing land tenure insecurity. For instance, agricultural land may be used for non-agricultural purposes only with prior government approval, and such transfers are difficult and normally only allowed for public use (ARDC, 2011). Similarly, some forest land has been partly or completely converted to agricultural use, but remains classified as forest land and administered by the Forestry Department of the MECF instead of the MOAI. However, as per the *VFV Land Law*, the CCVFV may request the

MECF that public forest land be used for state economic development, which includes agricultural use. Although this process can be quite long, this is a positive step forward as the most common use of public forest is currently shifting cultivation in upland areas. In addition, VFV land allocated for agricultural purposes can be re-classified as farmland if a FAB determines that the use of land is stable.

Furthermore, while the SLRD is responsible for registering and taxing agricultural land annually, it lacks the capability and resources to properly record land use rights on a cadastral map. Land cadastre is outdated in most of the country, with maps of the colonial period still being used in some areas. UN-HABITAT is working with the SLRD on a two-year programme aiming to modernise land use records and cadastral maps, most of which are still only on paper, particularly by introducing a geographic information system (GIS).

Existing dispute resolution mechanisms may not allow for a fair recognition of existing land use rights. As per the *Farmland Law*, land disputes have to be dealt with by the ward or village tract FAB while appeals should be sent successively to township, district, region or state FABs. Although disputes relating to the inheritance of land use rights may be heard by a court of law, the *Farmland Law* does not offer any mechanism for disputes involving farmland allocation or use to be heard by the judicial branch of government. Decisions of the FABs may not be appealed to a court of law, which means that the rights of land use rights holders, including their right to an independent appeal process, can be denied. Furthermore, the representation of smallholders is mandated in FABs only at village level which undermines their accountability and impartiality. As a result, many land conflicts have bypassed FABs and been taken to civil courts and argued under constitutional rights.

Access to land for large investors

Since 1988, the government has promoted both domestic and foreign investment in land. With notification No. 44/91, cultivable, fallow and waste land could be granted to state-owned organisations and joint ventures for agriculture and aquaculture purposes. However, foreign citizens and companies could not be granted land use rights for a term exceeding one year, unless specifically permitted by the government according to the *Transfer of Immovable Property Restriction Law* of 1987 or if the company was approved under the FIL.

Notification No. 39/2011 on the "Right to Use Land relating to the Republic of the Union of Myanmar Foreign Investment Law" has allowed foreign companies approved by the MIC to lease land up to 30 years, extendible for another 15 years twice, for investing in perennial and garden crops, livestock and aquaculture. Leases can be granted for longer time periods if investments target less developed or remote regions – no clear delimitation of such regions is provided. For seasonal crops, leases can be granted for indefinite periods as long as the required conditions are not breached. To access land, foreign investors can either lease land from the government or citizens, if approved by the government, or enter in a joint venture with a government agency.

In line with this notification, the FIL of 2012 states that foreign investors can have access to farmland only through joint ventures but that an investor approved by the MIC can lease VFV land on a commercial scale for activities that cannot be carried out by citizens. This provision remains relatively vague which leaves significant discretion to the MIC.

Furthermore, as detailed above, the waivers on the size limit on VFV land for government-approved projects and on the time limit for projects in perennial and seasonal crops that are "in the interest of the state" allow the CCVFV to grant large tracts of land for indefinite time periods to both domestic and foreign investors.

As a result, large land concessions have been allocated to commercial investors. The area allocated to companies increased from 90 459 ha in 1999 to 1.38 million ha in 2012 with 267 private companies and 123 government organisations having been granted holdings of about 1 500 ha, although some are even larger (MOAI, 2012b). For instance, Htay Myint's Yuzana Hukawng Valley concession and a Vietnamese rubber concession in Rakhine state cover more than 40 000 ha each, i.e. more than twice the ceiling limit allowed by the CCVFV (TNI, 2012).

Large-scale land allocations have increased sharply particularly since 2010 (Table 9.8). Kachin state has seen the highest increase in land concessions, mainly because of the significant increase in rubber production supported by China's opium substitution programme (TNI, 2013). Private companies control now about 5% of agricultural land (FSWG, 2012a).

The MOAI is indeed actively promoting large investments in agriculture. According to its thirty-year Master Plan, 4 million ha of waste land are targeted for permanent agricultural production:

- One objective is to expand palm oil plantations to 200 803 ha. Three palm oil companies, one from Korea and two from Malaysia, have already received MIC approval and been granted land – 40 161 ha for the Korean company and 20 080 ha for each of the Malaysian companies.
- The MOAI is also supporting biofuel development, particularly through a nationwide jatropha campaign targeting 200 000 ha per state and division, for a total of 3.2 million ha, and by promoting cassava and sugarcane production (TNI, 2012).

Table 9.8. **Area allocated to large-scale commercial farming, 2010-12**

State/region	No. of companies		Granted area (ha)		Per cent change of granted area 2010-12 (%)
	2010[1]	2012[1]	2010[1]	2012[1]	
Kachin state	11	27	159 159	565 174	255
Tanintharyi region	37	42	271 565	402 212	48
Ayeyarwady region	28	70	78 247	115 677	48
Sagaing region	27	54	38 670	104 924	171
Magwe region	38	52	81 945	85 507	4
Shan state	21	85	43 182	65 003	51
Bago	16	37	8 001	21 140	164
Yangon region	7	5	12 536	12 537	0
Rakhine state	14	8	1 052	3 167	201
Mandalay region	16	3	4 168	2 534	-39
Kayin state	1	2	874	1 623	86
Nay Pyi Taw	0	1	0	2 998	
Chin	0	4	0	624	
Total	**216**	**390**	**699 399**	**1 383 119**	**98**

1. Data up to March 2010 and March 2012.
Source: Ministry of Agriculture and Irrigation, Department of Agricultural Planning, Myanmar Agriculture in Brief 2010 and 2012.

- It also supports jute development with a target of 40 162 ha against the current 12 048 ha.

The *VFV Land Law* has been criticised for its potential to facilitate land grabbing and undermine the land tenure security of smallholders. In fact, land grabbing by large agribusiness companies has been reported in recent months. In some cases, land sales occur as a way out of indebtedness (Vokes, 2013). But upland farmers have also lost their customary land rights on land used for shifting cultivation or grazing as such land can be categorised as fallow land under the *VFV Land Law* and thus granted to other users (FSWG, 2012a and TNI, 2012).

Another issue related to large-scale land allocations lies in the lack of monitoring of land use once land has been allocated to investors and the lack of capacity to enforce the existing legislation. For example, by 2006, the CCMCL had allocated about one million ha of land under the condition that the land would be developed and fully utilised within four years from the date of issuance of the certificate, or else the land would revert back to state ownership. By 2011, only 188 000 ha, i.e. 20% of the allocated area, had been developed and 121 000 ha (13%) cultivated (ARDC, 2011). The land actually developed and cultivated by the companies that have been granted land would approximate respectively 36% and 20% of the total land area allocated (FSWG, 2012a).

To respond to these concerns, the Parliament formed the Land Confiscation and Enquiry Commission in 2012 to investigate the impact of these large land concessions on rural households. The government also established the Land Allotment and Utilisation Scrutiny Committee to oversee the effective use of land resources (see Box 9.1 for further detail). Finally, there has recently been talk about amending the *Farmland and VFV Land Laws* in order to better protect the land rights of smallholders.

The regime for foreign direct investment

Foreign investors are not strictly discriminated against in the agricultural sector, and on the contrary, may benefit from advantages that are not granted to domestic investors. They can invest in all agriculture-related activities although, for some of them, they should receive a permit from the concerned Ministry, follow good practices, respect ASEAN criteria, undertake an environmental impact assessment or comply with the existing legislation – which should not even need to be mentioned. Only three restrictions are stated in the *Foreign Investment Law* (FIL) but all of them remain relatively vague. Furthermore, as projects undertaken by foreign investors have to be approved by the government, they may benefit from the waivers on the time and size limit on land use rights that are not granted to smallholders whose investment proposal does not go through the MIC.

The openness to foreign investment stands in contrast to the Indonesian legislation which states for example that the production of the main food crops on an area less than or equal to 25 ha is reserved to MSMEs as defined in the *Law 20/2008* on MSMEs and that a maximum of 49% foreign equity is allowed for the production of such crops on an area above 25 ha.

As per Notification No. 1/89 of the Foreign Investment Commission (FIC, 1989), eight sectors were opened to foreign investment, including agriculture and fisheries. Investment proposals not specified in the notification were considered by the Commission on a case-by-case basis (DICA, 2013b). As regards agriculture, fisheries and agri-business activities, foreign investment was allowed in almost all activities:

- *Agriculture and fisheries:* Producing, processing and marketing seasonal crops, medicinal plants, coffee, tea, palm oil and horticulture, etc.; breeding, processing, canning and marketing livestock; producing and marketing animal feeds, additives, supplements and veterinary medicines; breeding, fishing, processing and marketing freshwater and marine fish, prawns and other aquatic organisms, excluding in fisheries reserved for government research; and producing, processing, marketing all kinds of fish feeds.
- *Foodstuff:* Manufacturing and marketing bakery products including biscuits, wafers, noodles, macaroni, spaghetti, etc.; manufacturing and marketing all

kinds of confectionery; preserving, manufacturing, canning and marketing other food products; and processing, manufacturing and marketing oil and fats from vegetables, animals and other substances.

The new *Foreign Investment Law (FIL)* passed in 2012 marked a positive change from a positive to a negative investment list, which helps clarify the specific activities opened to foreign investors. However, the MIC retains significant discretion over the approval of investment projects as the criteria for some activities remain relatively vague as currently stated in the FIL (see Chapter 3 on investment policy for further details). The following sectors are either closed to foreign investment or opened under certain conditions:

- Foreign investment in an activity is not allowed if Myanmar citizens are deemed by the MIC to be capable of undertaking that activity, including: agricultural business requiring a small amount of investment capital; traditional agricultural plantation not combined with crop milling and not using advanced machinery; traditional livestock breeding business without advanced technology; fishing of sea fish, prawn and other water creatures at the continental shelf; fishing at ponds and lakes, and other close distance fishing; and production of traditional food and herbal plants.
- Investment is restricted if it is detrimental to traditional ethnic cultures and customs or damaging to public health, natural resources, the environment or biodiversity. However, the MIC can allow foreign investment in such activities if it considers it is in the national interest, especially for ethnic minorities.
- Some activities have to be carried out through joint ventures, including: the production and distribution of hybrid seeds, high-yield seeds and purified domestically-produced seeds; the processing, canning and distribution of food products, except milk and milk products; and rubber production. However, the investment share of each partner is left at their discretion.
- In addition, as detailed in Table 9.9, some activities are allowed under specific conditions.

As detailed in the section above, the land legislation is particularly favourable to foreign investment in land for projects approved by the government, although it seems that foreign investors can directly access VFV land only and have to be involved in a joint venture to access farmland. To summarise, foreign investors approved by the MIC can lease land for indefinite periods for seasonal crops and for up to 60 years for other crops, and even more if they invest in less developed or remote areas. As per the *VFV Land Law*, this time limit may be lifted if the project is approved by the government. The *VFV Land Law* also imposes size limits on leased land, such as 2 008 ha at a time for perennial and seasonal crops, up to a maximum of 20 080 ha. This

Table 9.9. **List of economic activities permitted only under certain conditions**

Activity	Condition
Activities permitted with the recommendation of the relevant Ministry	
Ministry of Agriculture and Irrigation	
Seed production and distribution	Shall be approved by the Union Government and get a recommendation from MOAI.
Establishment and manufacturing of fertiliser industry	
Production and repackaging of pesticides	
Agricultural research and development	
Manufacturing of agricultural machineries and equipment	
Crop plantation, production and related services	
Farm mechanisation	
Ministry of Livestock and Fisheries	
Production of bees and bees products	Shall apply Good Manufacturing Practice (GMP) and follow state directives on foodstuff production; needs to support the transfer of technical know-how and expand export markets.
Fishing net manufacturing	Shall follow the laws, rules, orders, directives and regulations issued by the Department of Fisheries; shall be located at the fishing areas; shall produce the designated size of fishing nets.
Establishment of fish harbour and fish auction market	Shall follow the laws, rules, orders, directives and regulations issued by the Department of Fisheries; shall comply with modern safety and sanitation systems.
Testing laboratory of fish products	Shall perform testing of water quality and products according to ISO 17025.
Fresh and sea water fish farming	Fish species which can harm the local species and bio-diversity are not allowed.
Ministry of Environmental Conservation and Forestry	
Importation of genetically and living modified organisms	Shall get recommendation from the Ministry.
Ministry of Industry	
Production and distribution of oil and fats produced from vegetables, animal and others	Shall use a minimum of 80% of domestic raw materials.
Economic activities permitted under certain conditions	
Livestock breeding (cows and buffaloes)	Shall comply with Good Animal Husbandry Practice (GAHP) and GMP.
Livestock breeding and production (sheep, goats, chicken, pigs and other)	
Production and distribution of animal feed and food supplement; and manufacturing of equipment for livestock farms	Shall be able to operate GMP.
Production of vaccines and drugs for animal diseases	Shall comply with ASEAN guidelines on GMP for animal vaccines and drugs.
Dairy cattle breeding and ox farming	Shall comply with GAHP.
Production of milk and dairy products	Shall comply with ASEAN criteria for the accreditation of milk processing establishment.
Slaughterhouse	Shall comply with Hazard Analysis Critical Control Point (HACCP) system.
Manufacturing and processing of meat and meat products	Shall comply with ASEAN criteria for accreditation of livestock product establishment of manufacturing meat product in hermetically-sealed containers.
Poultry production	Shall comply with ASEAN bio-security management manual for commercial poultry farming and with GAHP and GMP.
Seawater and freshwater shrimp and prawn farming	Shall operate according to the scientific farming system which has no side effect to environmental conservation.

Table 9.9. **List of economic activities permitted only under certain conditions** *(cont.)*

Activity	Condition
Economic activities requiring an environmental impact assessment	
Construction of capital intensive dams and irrigation systems Plantation and production of crops with mass agricultural land areas Large-scale foodstuff industry, including sugar mills Leather and rubber industries Large-scale livestock breeding Seawater and freshwater fish, shrimp and prawn farms	Permit shall be approved based on the type of economic activities only after scrutinising the feasibility study for negative social and environmental impacts which should be minimal or absent.

Source: Notification 1/2013 of the Foreign Investment Law.

size limit can be exceeded if "the project is in the interest of the state" or lifted for projects approved by the government.

One loophole lies in the unclear definition of domestic versus foreign investment in the major law regulating foreign investment in land, i.e. the Notification No. 39/2011 on the "Right to Use Land relating to the Republic of the Union of Myanmar Foreign Investment Law". An investment is categorised as domestic if it is formed only with domestic capital, and as foreign if it is formed only with foreign capital. It remains unclear how joint ventures are categorised.

Tax incentives

Generous tax incentives are granted to foreign investors, including exemptions of land tax on VFV land that aim to incentivise particularly the production of perennial crops. Detailed cost and benefit analyses and regular monitoring of these fiscal incentives would be needed to avoid unnecessary public expenditures and rent-seeking and promote efficient investments. As described above, a wide range of large agri-business companies are already willing to invest in Myanmar and such generous incentives may not be required to attract new investments. The government may rather need to raise revenues in order to increase its capacity to target the most needed investments and regulate and monitor their impact to ensure they bring both economic and social benefits.

Existing incentives for foreign investors in agriculture include:

- exemption of income taxes for up to three years;
- accelerated depreciation of assets;
- income tax relief on reinvested profits;

- reduction of up to 50% on income taxes due on export products;
- exemption of import duty on machinery and other capital goods;
- exemption of import duty on raw materials for the first three years of operations;
- government guarantees against nationalisation;
- repatriation of profits and invested capitals;
- carry forward losses for up to three years (Zaw Oo, 2012).

In line with the *VFV Land Law*, VFV land is exempted from land taxes in the initial years following the issuance of land use rights: 5 years for perennial crops, 3 years for horticulture crops, 2 years for seasonal crops, aquaculture, and breeding of buffalo, cattle, horses, sheep and goats; 1 year for breeding of chickens and pigs. Government-approved projects are again exempted from such limits and the time limit for tax exemption should be "specified in co-ordination with the relevant Ministry". Once the tax exemption has come to an end, the land tax value is: USD 8.5 per ha for perennial crops and aquaculture; USD 5.7 per ha for horticulture crops; and USD 2.8 per ha for seasonal crops and livestock.

Responsible investment in agriculture

Large-scale private investments in agriculture can bring the necessary expertise, financing capacities and marketing networks to enhance the competitiveness of agricultural production and value chains. They can lead to employment creation, including through backward and forward linkages and multiplier effects. However, these investments can also have adverse social and environmental impacts. Policies, laws, and regulations must be well-designed and effectively implemented to ensure that investors behave responsibly and bring both economic and social benefits at the national and local levels, while guaranteeing a sustainable use of natural resources. This section examines existing laws and regulations aiming to promote investments that are both socially and environmentally responsible.

The analysis indicates that efforts have been made in recent years to strengthen the legislation and promote responsible business conduct (RBC). However, further efforts are needed to ensure that agricultural investments do not have adverse impacts. In fact, a large number of land conflicts have been reported in the media recently, arising not only from the low land registration rates but also from the lack of transparent and fair compensation and expropriation mechanisms. No regulatory framework is in place to support inclusive business partnerships between smallholders and large investors that would help ensure that investments benefit both local communities and agri-business companies. Best practices from neighbouring countries could be used and investment policy could help target investors with significant experience in building such partnerships.

Like the recent land legislation, the environmental legislation, although it was adopted in 2012, presents major loopholes, allowing the MECF to waive all the requirements imposed on investors if it considers it is in the interest of the country and its citizens. It does not oblige investors to undertake independent social and environmental impact assessments (ESIAs). The sustainable management of Myanmar's abundant forests is undermined by the lack of co-ordination between various land administration agencies, including the MOAI and the MECF, as well as the lack of land use plans.

Social sustainability

As shown recently in Myanmar, large-scale investments may lead to adverse social impacts, such as the displacement, the loss of livelihoods, and a more limited access to land for the local population, resulting in social polarisation and political instability. Land may be valued by some investors only as a productive asset while it plays a multifaceted economic, social, cultural and religious role. In fact, tenure rights over land are reflected in existing international RBC standards.

As detailed in the previous section on land tenure, the major challenge to ensure the social sustainability of large-scale private investments lies in developing a land legislation that benefits both large investors and local communities. The government should also effectively promote business partnerships between large investors and smallholders and establish fair and transparent compensation and expropriation mechanisms in case of eviction. The responsible governance of land tenure would minimise the risks of social conflicts, thereby increasing the long-term profitability of investments.

The allocation of large land areas without respecting the existing land use rights of local communities has occurred on a large scale in recent decades. In northern Myanmar, the rapid expansion of commercial agricultural plantations remains weakly regulated, leading to illegal logging, the loss of forest biodiversity, soil erosion and water resource depletion but also expropriation. Such investment often remains informal as foreign companies may sign contracts with local authorities that benefit from such arrangements as they own most plantations (TNI, 2013).

Large land investments have wide-ranging negative socio-economic and political impacts. Land concessions often encompass customary land of local communities as well as villagers' traditional forestlands and newly demarcated community forests, with communities having little recourse to compensation. Dispossessed farmers, such as upland farmers practicing shifting cultivation or ex-poppy growers, are occasionally relocated, and sometimes forced to move, to nearby rubber plantations to provide cheap labour. Others migrate to cultivate other forested hills, work as on-farm wage labourers or off-farm labourers in urban centres, or participate in high-risk, small-scale mining and logging. Land dispossession has also wide implications for drug production and trade and Chinese border stability and has fueled a growing antagonism from communities in Myanmar (Holliday, 2012).

To address these growing concerns, the government should provide clear and transparent rules for consultations and negotiations between private investors and stakeholders as well as safeguards to protect the land tenure rights of local people, including not only officially recognised tenure rights but also customary rights that may not have been officially registered. Fully transparent and inclusive consultations can reduce tensions and conflicts but also transaction costs and create trust among stakeholders. Experience suggests that chances for success are enhanced if: i) the specific groups likely to be affected by the project are involved in a meaningful way with adequate representation and consultation, including on issues of project design; ii) the selection of project areas builds on participatory land use planning at the local level; and iii) there is continuous dialogue and monitoring to ensure that agreements are enforced (FAO, 2010).

In fact, as a first step, on 18-20 March 2013, the MECF hosted in collaboration with FAO a workshop on the FAO Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT).

The government can also support partnerships between investors and local tenure rights holders that do not involve large-scale land acquisitions. Inclusive business models, as alternatives to land acquisitions, can minimise investors' risks. Several partnership models have been developed in various countries. Contract farming, out grower schemes and joint ventures can offer investors as much security of supply as direct production, spread the risks between private companies and smallholders, and reduce transaction costs. Mixed models can also be beneficial, such as a large-scale enterprise at the centre involving out growers under contracts to supplement production. Some large investments have managed to achieve broad-based benefits via such partnerships by formulating innovative schemes for sharing both risks and rewards (Box 9.2).

No single model emerges as the best possible option and investments may involve a combination of various models; the success of a specific model is context-specific, and contingent on tenure, culture, history, and biophysical and demographic considerations. One important condition for success is to adequately share the risks between companies and smallholders depending on the capacity of each party to shoulder them. The FAO Guiding Principles for

Box 9.2. **Examples of successful inclusive business models**

Myanmar could also draw lessons from successful examples of partnerships in other countries:

- In Zambia, providing local groups with an equity stake in a sugar plantation was not only profitable for the investor but also for outgrowers by creating additional income opportunities. The higher business risks of this arrangement were addressed through crop insurance, while transactions costs associated with dealing with a large number of farmers were reduced by avoiding the geographical dispersion of outgrowers. This scheme resulted in higher levels of contractual compliance among the outgrowers (FAO, 2013).
- In Indonesia, Unilever set up the Black Soy Bean Farmers Development Programme to encourage Javanese smallholders to grow the crop. Unilever's processing factory committed to buying all production supplied by the co-operatives meeting Unilever's quality standards, at a price agreed annually, based on the market price, before the crop is planted. Contracting farmers reach bean yields of 1 to 2 tonnes per ha while untrained farmers typically reach 0.7 tonnes per ha. In 2010, the programme involved the participation of some 7 000 smallholders, who grew approximately 30% of the black soy beans used to produce Unilever's Bango brand, and farmers' incomes had increased by approximately 10-15% since 2000 (OECD, 2012).

Responsible Contract Farming Operations can help co-ordinate the buyer-seller relationship to ensure mutual benefits of such contract arrangements (FAO, 2012a).

Over recent years, contract farming arrangements have emerged in Myanmar. MRSCs have established contract farming arrangements for paddy production in designated areas after cyclone Nargis. These companies provide seasonal loans and inputs to farmers that the latter pay back in-kind after harvest at prevailing market prices. While such arrangements can help farmers benefit from a guaranteed market and better access to inputs and credit, resulting in increased crop productivity and improved product quality, they can also force them to sell their crops at harvest at low prices to pay back their loans. This type of contract farming is more common in central Myanmar, the delta region, particularly after Cyclone Nargis, and the Shan state, mainly for corn feed.

While such arrangements are quite common in other countries of the region, it is only emerging in Myanmar. To support the expansion of such arrangement to other paddy areas and other crops, the government could provide incentives to companies implementing contract farming, for instance by offering credit guarantees, while establishing adequate safeguards to ensure that smallholders with low bargaining power benefit from such arrangements.

Responsible land governance also requires fair and transparent expropriation and compensation mechanisms for existing land rights holders. The previous chapters focused on the legislation regulating the expropriation of large investors. This section focuses mostly on the expropriation and compensation mechanisms of local communities when a large investor is granted agricultural land where the former had land use rights. Land acquisition may lead to involuntary resettlement and investors may be negatively impacted in their reputation and operations if they are connected to an expropriation for which the state has not paid fair compensation (FAO, 2013).

The government may play an important role in the land acquisition and resettlement process by putting in place guarantees to protect local communities and ensuring that evictions are carried out in a manner consistent with human rights obligations (FAO 2012a). However, the existing legislation in Myanmar does not establish the necessary safeguards for expropriation and fair compensation, as demonstrated by the numerous reports on land conflicts published in the media over the last months.

The recent legislation includes provisions on expropriation and compensation but they remain very weak and do not define the terms of compensation, thus increasing the risk that compensation payments do not cover the real land value:

- The provisions of the FIL rules of 2013 remain quite vague.[12]
- The *Farmland Law* states that the central FAB should ensure that suitable compensation is paid in case of farmland repossession in the interest of the state or the public, without any loss for the right holder. If the farmland has been upgraded with buildings, such buildings should be compensated for. However, right holders whose right has been revoked for not fulfilling the required conditions are not eligible for compensation – which may facilitate the eviction of right holders. In addition, it seems only farmers with land titles may be eligible for compensation.
- The *VFV Land Law* states that, in case of expropriation, the CCVFV should "take action to ensure that the farmers that had long been cultivating the land are not unfairly or unjustly dealt with" and calculate the actual costs incurred in work and investments based on current values. Compensation should be paid within 30 days following land repossession.
- Notification No. 39/2011 on the "Right to Use Land relating to the Republic of the Union of Myanmar Foreign Investment Law" states that owners

should agree on being resettled if needed and that land on which the public is not willing to leave should not be leased.

Although compensation is commonly paid to those subjected to expropriation measures, the absence of consistent standards for compensation may lead to arbitrary compensation. Determining the market value of land remains challenging due to the lack of historical records of land sales and land speculation in some areas. It seems that in practice compensation equals three times the value of the crops and twice the value of the buildings, but this is not enshrined in the existing legislation. Standards on expropriation and compensation should be put in place so that people can be assured that: decisions about expropriation are made solely for public purposes; compensation amounts reflect uniform standards throughout the country; and decisions are made by neutral, unbiased parties and can be reviewed by an independent judiciary (DP, 2012).

To respond to these concerns, a Farmers' Forum, including farmers but also lawyers and agricultural experts, drew up a six-point bill of land rights and sent it to the government in February 2013. It includes the right to reasonable compensation for land acquired by the government or occupied by the army or private companies. This bill also refers to: the right to establish and register farming associations freely; the right to adequate and reasonably priced credit, including long-term loans and technical assistance; the right to amend the land laws; the right to sell produce in a stable market; and the freedom to choose crops.

Environmental management

Investments intended to increase agricultural production in the short term can lead to ecosystem degradation in the long term by degrading land, depleting water resources and leading to losses of pristine forests and biodiversity. Agricultural investments may also have indirect external impacts, including greenhouse gas emissions or impacts on river basins occurring far from the location of the investment itself but directly linked to it (FAO, 2010). In light of growing environmental challenges, the new legislation of Myanmar does include provisions on environmental management but those remain too vague and do not set up enforcement mechanisms to effectively ensure that agricultural investments do not lead to environmental deterioration.

Environmental degradation already constitutes a challenge for Myanmar and may accelerate with the growing population, increasing urbanisation rates and rapid economic development which put pressure on natural resources. The expansion of perennial crops, such as rubber and palm oil, may lead to rapid deforestation. Indeed, nearly 10% of cultivated land is estimated to be at elevated risk from soil erosion, most of it being located in the mountainous regions in the North (ADB, 2008).

The new legislation includes some provisions to promote sustainable environmental management. The *Farmland Law* states that the central FAB should discourage slash and burn cultivation,[13] introduce terrace cultivation in uplands, limit pollution of watershed areas, reduce soil erosion and mitigate climate change. The *Environmental Conservation Law* adopted in March 2012 strengthens previous environmental regulations.[14] However, it presents major caveats. It requires polluters to treat substances causing pollution but it remains relatively vague on the result: "Any business generating pollution should install equipment to monitor, control, manage, reduce or eliminate environmental pollution." But the major weakness of the law is that its Article 36 vests the MECF with absolute and limitless discretion, with government approval, to ignore the provisions of this law: "The Ministry may, with the approval of the government, exempt or relieve any government department, organisation or private business from complying with any provision contained in this law for the interest of the Union and its people."

While the existing legislation includes provisions on Environmental and Social Impact Assessments (ESIAs), it remains vague as regards the development and implementation of such assessments:

- The *Environmental Conservation Law* does not require systematic ESIAs.
- As per the *VFV Land Law*, ESIAs must be conducted for industrial crop development and their results must be made public and their recommendations followed.
- As per the *FIL*, some activities, including crop plantation and production on large areas of agricultural land, large-scale livestock breeding and the construction of irrigation systems, require ESIAs. Capital intensive investment projects and businesses identified by the MECF as potentially harmful should present an ESIA, with the Department of Environmental Conservation being part of the proposal assessment team. The investor is not allowed to carry out business causing environmental pollution, including water or air pollution, on the land he is entitled to lease or use – a provision also mentioned in Notification 39/2011. DICA may terminate the lease if an audit reveals that the activities affect the natural environment on the land leased by the investor.[15]

Sustainable forest management constitutes a major challenge as Myanmar is endowed with one of the largest forest covers in Asia, with forests still accounting for 31% of the land area. Deforestation rates varied over time between 2% in 1975-89, 7% in 1989-98 and 3.2% in 1998-2006. Fire wood production, illegal logging and agricultural land expansion constitute the main sources of deforestation. From 1988 to 2006, the forest cover was reduced by 6.6 million ha, particularly due to the expansion of the net sown area from 8.0 million ha to 12.5 million ha (ARDC, 2011).

Forested land comprises different types of forests. The permanent forest estate consists of reserved forests, protected public forests and protected forests (Table 9.10). The first two categories are established for both conservation and production purposes and can be categorised as community forest. Commercial use is promoted mostly in protected public forests but also on specific plots of reserved forests. The third category is established only for conservation purposes and includes wildlife sanctuaries and conservation parks.

Table 9.10. **Permanent forest estate, 2010**

	Area (km^2)	Share in land area (%)
Reserved forest	121 843	18.00
Protected public forest	40 950	6.05
Protected forest	35 107	6.67
Permanent forest estate (total)	**197 900**	**30.73**

Source: Ministry of Environmental Conservation and Forestry, Planning and Statistics Division.

Several laws and regulations promote sustainable forest management, including the criteria and indicators for sustainable forest management of 1999 and the forest master plan 2001-30. In 1995, the Forest Department also issued community forest instructions that promote decentralisation and community participation in forest management. These instructions grant local communities forest land tenure rights for an initial period of 30 years which is extendable, and the Forest Department provides technical assistance to help develop community forestry. In addition, the MECF organises regular training programmes on reforestation, environmental conservation and sustainable land use for its staff and private investors and has recently started some projects involving Payment for Ecosystem Services (MECF, 2013).

However, as detailed in the above section on land tenure, the lack of a harmonised legislation and the overlapping responsibilities of various land management institutions, the weak recognition of customary land rights and the rigidity of land classification undermine sustainable forest management. For instance, while the *Forest Law* of 1992 indicates that the Minister of the MECF may change the classification of any area from reserved to protected public forest, the procedure to follow and the standards to apply remain unclear. The law does not provide any mechanism to declassify areas of reserved forest land in order to use them for other purposes, such as agriculture. In fact, the law clearly states that any reserved forest land existing under the Forest Act of 1902 should remain as such. Penalty provisions may be applied to anyone trespassing or encroaching on reserved forest (FSWG, 2012b).

Several projects have been developed to address the risks related to climate change and extreme weather conditions, including: Myanmar National Adaptation Programme of Action (NAPA) with a draft report developed in 2012;[16] Myanmar Action Plan for Disaster Risk Reduction of 2009; Dry Zone Greening Action Plan of 1997; Clean Development Mechanism (MOAI, 2013). Pilot projects of the UN Programme "Reducing Emissions from Deforestation and Forest Degradation" (REDD) have been implemented and several activities, notably capacity building, are already on-going. A REDD+ strategy is also being developed. Furthermore, Myanmar adopted Myanmar Agenda 21 and ratified the UN Framework Convention on Climate Change.

In addition, a dry zone greening department, comprising 3 200 staff, was created in 1997 within the MECF to support greening activities in the dry zone. It has the following tasks: establish forest plantations to stop desertification; protect remaining natural forests; introduce and promote the use of wood fuel substitutes; and manage and develop water resources. Consequently, about 8 000 ha of forest plantations have been established annually on deforested and degraded forests, with a total of 127 421 ha planted by 2009-10.

Sectoral policies encouraging investment in agriculture

Investment in agriculture relies on an integrated policy environment where a wide range of sectoral policies contribute to a sound investment climate. The section on investment policy and promotion showed that agricultural investment was constrained by uncertain land tenure rights. It can also be constrained by high costs of finance due to disfunctioning local financial markets and by low social returns due to weak infrastructure and low human capital (Hausmann, 2008). In fact, evidence from many countries over five decades shows that public investment in education, rural infrastructure and agricultural research and development (R&D) yields much higher returns than other expenditures such as input subsidies (FAO, 2012b). This section aims to identify existing constraints related to financial sector development, trade policy, agricultural inputs, infrastructure and human capital development and research that can explain low investment levels in agriculture.

After land tenure insecurity, access to finance constitutes the major constraint to increased investment in agriculture, particularly by smallholders. The Myanmar Agricultural Development Bank (MADB) was until recently the unique provider of financial services to agricultural producers and could not meet the demand for credit due to financial constraints. As a result, most farmers rely on informal money lenders and access credit at very high interest rates. The *Microfinance Law* should help increase financial services available to farmers. Reforming the MADB and modernising the financial sector, as underlined in Chapter 6 on financial sector development, would also help improve access to finance in rural areas.

While trade has been liberalised since 1988, the imposition of unpredictable export restrictions on rice discourage investment in the rice sector and lower the price of Myanmar's export rice as the country is seen as an unreliable exporter. Trade policy should rather intend to facilitate smooth and reliable agricultural trade in order to facilitate market access and increase rates of return on investment.

Finally, a limited access to inputs, inadequate rural infrastructure and weak extension services and research and development institutions hinder investment by both large and small investors not only at the production stage but along the whole agricultural value chain. Attracting further investment in Myanmar's agriculture and increasing its competitiveness requires significant efforts to improve access to high-quality inputs by producing and disseminating new technologies, to develop rural infrastructure, particularly to supply reliable energy, and to strengthen existing extension services and research and development institutions.

Finance

This section provides an overview of the challenges faced by large and small agricultural investors to access credit by describing the various financial institutions involved in the agricultural sector and the financial services they offer, and by examining recent and future policy reforms aiming to facilitate access to credit in the sector. A broader analysis of the financial sector in Myanmar can be found in Chapter 6 on financial sector development.

The availability of credit in rural areas is extremely limited, particularly due to the legal and regulatory framework. While agriculture employs up to 61.2% of the workforce, only 1-3% of the volume of formal bank loans is extended to the agricultural sector. Consequently, most rural households borrow from informal sources, as showed by the LIFT survey conducted in 2012:

- Family and friends were the most common sources of loans: 42% of all households borrowed from family and friends, 31% from money lenders, and 19% from shopkeepers.
- 48% of landless households relied on family and friends as a source of loans, against only 21% for households owning more than 8 ha.
- Households with no or little land frequently borrowed from shopkeepers while this was a less common source of loans for households with larger areas of land.
- Money lenders were a common source of funds for households regardless of the land area.

- More formal sources were less common: 16% of households borrowed from microcredit providers, 10% from government, 7% from village savings and loans associations, 2% from farmers associations or co-operatives, and less than 1% from commercial banks (LIFT, 2012).

The heavy reliance on informal lending sources stems from the fact that the MADB has been the only formal provider of credit to agricultural producers over the last decades. Although its lending has increased in recent years, it provides only short-term seasonal loans that cover a limited share of the production costs and continues to prioritise rice farmers. Other formal lenders have been unable to fill the gap. Significant efforts are made to facilitate access to credit, including by reforming the MADB, relaxing bank lending regulations and accelerating land registration to enable farmers to use land as collateral.

Financial institutions

The financial system is quite narrow and consists of the following institutions: 4 state-owned banks with specific mandates; 19 private commercial banks; 30 representative offices of foreign banks; Myanmar rice specialised companies and special agricultural development companies; approximately 3 600 credit co-operative societies established under the Ministry of Cooperatives; state-owned and private pawnshops; 132 registered microfinance institutions established by international donors and local associations; and informal lenders, including traders and input suppliers.

As regards state-owned banks, the Myanmar Agricultural Development Bank (MADB) is virtually the only major source of institutional credit for small farmers (Table 9.11), and most farmers report borrowing regularly from the MADB (HKS, 2010). However, the MADB caters only to about a third of the farming population (Macan-Markar, 2012). Although none of the other 3 state-owned banks provide financial services directly to the agricultural sector, the Myanmar Economic Bank (MEB), the largest state-owned bank, plays a key role in financing agriculture by lending to the MADB at an annual interest rate of 4%, an amount determined annually by the government, as well as to traders, mostly agricultural traders, who make up 75-80% of its clients and lending

Table 9.11. **Sources of agricultural credit, 2013**

Per cent

	Monsoon planting season	Secondary planting season
MADB	69.9	55.1
Informal	26.3	36.7
Microfinance	3.0	6.8
Other	0.7	1.4

Source: Survey conducted by Mr. Anders Engvall for Access to finance in Myanmar project, January 2013.

volume. As traders constitute a major source of finance for farmers, the MEB, through traders, indirectly finances farmers. It effectively subsidises traders by offering them loans at an annual interest rate of 15% while they typically lend to farmers at 5 to 20% per month (UNDP, 2004).

Private banks have not been allowed to lend to farmers until recently. Loans by such banks are hampered by interest rate caps and regulatory restrictions. Caps on deposit and lending rates are too low to attract depositors or allow lenders to make a profit when dealing with small and sometimes risky borrowers (HKS, 2010). These banks could be allowed to set their interest rates freely and fund input traders, crop buyers and processors.

With private banks banned from giving loans to farmers until recently and MADB credit being seasonal, informal money lenders fill the void, charging interest rates that can be as high as 20% per month (Macan-Markar, 2012). They include fertiliser dealers often lending at 4-6% a month and wealthier villagers or townspeople lending at about 10% a month. Pawnshops lend at about 5% a month with collateral (HKS, 2010).

Furthermore, Myanmar Rice Specialised Companies (MRSCs) and the 31 special agricultural development companies (SACs) offer loans at 2% a month, but in small amounts (though more per farmer or per ha than the MADB) and only to very reliable farmers (HKS, 2010). Due to high levels of non-performing loans, they recently decreased their supply of credit (MOAI, 2013).

Co-operative societies also play an important role in extending credit to farmers (Box 9.3). In 2009-10, 7 907 primary co-operative societies were registered for a total of 951 971 members. From 2003-04 to 2009-10, their liabilities increased from USD 3.2 million to USD 13.7 million, their working capital from USD 9.5 million to 28.8 million and their net profit from USD 0.11 million to 0.37 million (Table 9.12).

As microfinance has been prohibited for a long time, it is still at an embryonic stage of development and the scope and scale of the operations of microfinance institutions (MFIs) in terms of the number of rural people and areas covered remain very limited. As part of the measures to alleviate poverty, a *Microfinance Law* was enacted on 30 November 2011, and, as a result, 132 MFIs had registered by February 2013. Licences are issued by the Microfinance Supervisory Enterprise under the Ministry of Finance.

A recent UN statement about Myanmar says that the promise of new low-cost loans, with interest capped at 2.5% a month, has seen the demand for microcredit in rural areas inch close to USD 470 million which could balloon to USD 2 billion (Macan-Markar, 2012). Furthermore, a few non-governmental organisations as well as donors, such as LIFT (Box 9.4), are providing microfinance services in rural areas.

Box 9.3. **Co-operative societies in Myanmar**

The Ministry of Cooperatives is responsible for regulating co-operative societies, in line with the *Cooperative Law* of 1992 – while other farmers' groups are regulated by the MOAI. The Cooperative Department is represented at every administrative level down to the township level. The Ministry's five main missions include: establishing one co-operative society by village; supporting the creation of co-operative societies at different levels (local up to national) and supporting them to access credit, technology, markets and service; setting up a national microfinance bank to extend credit to co-operative societies; nurturing an educated youth graduating from co-operative universities, colleges and training schools; and supporting development and poverty alleviation. Two co-operative universities, two co-operative colleges, four co-operative training schools and commercial schools operate under the Ministry of Cooperatives.

As of 31 January 2013, 19 575 co-operative societies, mainly farmers' co-operative societies, had been formed. They consist of various kinds of societies, namely: trading, farming, crop producers, livestock breeding, forestry producers, mining producers, industrial, construction, microfinance, bazaar, transportation, health care, education services, women development, and jewelry.

Co-operative societies can receive loans from the Cooperative Bank, a private bank under Myanmar Central Bank, and from the Cooperative Revolving Fund, as regulated by the *Cooperative Law*. These loans allow them, in turn, to extend loans to their members. The Cooperative Department provides regulations on loans, by fixing for example the maximum amount of loan per member depending on the type of co-operative society, the loan term and the repayment frequency. For farmers, the size of the loan is limited by the size of the landholding. The rate of non-performing loans is currently quite low, at 1%.

Although Myanmar is a member of the International Co-operative Alliance (ICA) in Asia and the Pacific, the existing legislation on co-operatives does not meet all ICA principles. The seven principles include: voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; co-operation among co-operatives; and concern for community.

Source: Ministry of Cooperatives, 2013.

As the MADB remains the major formal institution providing credit to agricultural producers, it is worth examining further how it operates. It was established in 1953 as a state agricultural bank. As per the *MADB Law* of 1990, its mandate is to "effectively support the development of agricultural and rural socio-economic enterprises by providing banking services". The law allows three types of loans: i) annual loans up to 1 year; ii) short-term loans of 1 to 4 years; and iii) long-term loans from 4 to 20 years. The MADB relies on a relatively large branch network that covers over 60% of the townships with a

Table 9.12. **Primary co-operative societies, 2003-09**

Type of co-operative society	Year	No. of societies	No. of members	Thousand USD		
				Liabilities	Net profit	Working capital
Saving and credit	2003-04	1 713	328 070	1 991	52	7 362
	2009-10	1 314	287 320	8 161	244	19 727
Agricultural producers	2003-04	4 430	95 257	422	26	888
	2009-10	2 245	121 129	1 470	48	2 889
Agricultural products wholesale	2003-04	76	2 784	369	5	62
	2009-10	36	1 555	1 884	6	2 170
Crop purchasing milling and marketing	2003-04	17	384	58	2	363
	2009-10	8	274	16		12
Agricultural and general merchandise	2003-04	3 494	317 954	349	26	830
	2009-10	4 304	541 693	2 186	76	3 968

Source: Ministry of National Planning and Economic Development, Central Statistical Office, 2012.

Box 9.4. **Livelihood and Food Security Trust Fund (LIFT)**

LIFT, a Western donor-backed microfinance initiative in Myanmar, has offered small agricultural loans ranging from USD 60 to 600 since the introduction of the *Microfinance Law*. LIFT donors, including Denmark, the European Union, the Netherlands, New Zealand, the UK, Sweden and Switzerland, aim to contribute to improved livelihoods and food security for achieving the Millennium Development Goal 1 of eradicating extreme poverty and hunger, particularly by sustainably increasing food availability and incomes of two million targeted beneficiaries.

More specifically, these objectives are to be achieved through delivering the following programme outputs:

- Higher agricultural production and incomes by increasing production and improving post-harvest technologies and access to inputs and markets.
- Targeted households supported in non-agricultural livelihood activities and/or trained in livelihood skills for employment.
- Sustainable natural resource management and environmental rehabilitation to protect local livelihoods.
- Effective social protection measures that increase incomes, enhance livelihood opportunities or protect the livelihoods assets of chronically poor households.
- Stronger capacity of civil society to support and promote food and livelihoods security for the poor.
- Monitoring and evaluation evidence and commissioned studies used to inform programme and policy development.

LIFT targets poor and vulnerable populations, including smallholder farmers for enhancing production and productivity and landless for ensuring access to food by the most vulnerable. LIFT also works with larger farmers and others who provide employment to landless people, such as credit providers and small agro-processors.

Source: LIFT website, 2013.

head office in Yangon, 16 divisional offices and 205 township offices (out of a total of 325 townships).

The Myanmar Livestock and Fisheries Development Bank (MOLFB) was established separately to provide credit for livestock production and fisheries. In contrast with the MADB that essentially acts as a channel for government funds and subsidies, the MOLFB is independent.

MADB lending has increased over the last two decades, and particularly in recent years. In 2009-10, the MADB disbursed USD 106.2 million of loans, nearly 10 times the 1995 level (Table 9.13). In 2011-12, as of February 2012, loans reached USD 407.5 million (MOAI, 2012b). MOLFB loans have also slightly increased in recent years, from USD 110.2 million in 2010-11 to USD 119.3 million in 2011-12 (as of 31 July 2012).

Although the law gives the MADB a mandate to provide financial services to a broad spectrum of borrowers,[17] the MADB provides loans only to farmers for crop production, and almost exclusively to rice farmers due to financial constraints. Rice farmers have been given top priority and received about 81.4% of total loans in 2009-10, with the remaining loans being divided among farmers growing oilseeds (10.4%), pulses (6.9%), maize (0.7%) and cotton (0.6%) (Table 9.13).

While the MADB offers relatively low interest rates, the impact and scale of its loans remains limited in comparison with funding needs. Interest rates are prescribed by the MOAI and average 1.3% per month, which is considered

Table 9.13. **MADB loans per crop, 1990-2009**

Thousand USD

	1990-91	1995-96	2000-01	2005-06	2009-10
Cereals					
Paddy	1 316	7 503	10 818	33 268	86 457
Maize	7	75	-	83	733
Wheat	10	133	-	-	-
Oilseeds					
Groundnut	235	972	1 132	1 990	4 409
Sesame	69	966	596	1 774	6 434
Mustard	0	1	5	56	209
Other					
Pulses	48	266	744	1 524	7 330
Cotton	22	204	412	362	608
Sugarcane	2	11	64	-	-
Total	**1 731**	**10 237**	**13 769**	**39 057**	**106 177**

Note: Maize is inclusive of sorghum.
Source: Myanmar Agricultural Development Bank, 2012.

by farmers surveyed by the LIFT as "very advantageous" (LIFT, 2012). However, the cost in terms of paperwork, visits to bank offices, forming lending groups, and speed money (payments to process loan forms quickly) can be very high. As the MADB does not conduct mobile banking, farmers are required to travel to the MADB branch to receive and repay their loans, imposing them considerable expense. Seasonal loans (monsoon, pre-monsoon and winter loans) make up the bulk of MADB's lending. They are usually made without collateral – except for loans for machinery for which a deposit covering 50% of the value of machinery is required – and are guaranteed by joint-liability groups of 5 to 10 members.

In principle, loan size is to be determined according to the borrower's demand and capacity to repay, and is targeted to be approximately 30% of production costs (UNDP, 2004). In practice, because of MADB's limited funds, the amount can be as small as USD 25-50 per ha, compared to estimated production costs of USD 250-475 per ha (ARDC, 2011). One village reported a maximum of USD 113 per ha of paddy and USD 28 per ha for other crops. The interest rate was 1.75% per month with terms of 8 months for paddy and 4 months for winter crops (LIFT, 2012). For FY 2013-14, loans for rice production should be increased to USD 283 per ha, while rice production costs average USD 777 per ha.

On-going reforms and initiatives

A draft amendment to the *MADB Law* to be presented to Parliament through the MOAI proposes some positive reforms, including to increase MADB capital and reserves to USD 11.4 million and to increase loans extended to each farmer producing rice and sugarcane from USD 226 to USD 283 per ha. However, it would also require the MADB to allocate 50% of its net profit to reserves at the end of each financial year and transfer the balance of its net profit to the government (MOAI, 2013). This amendment could draw from the lessons learned when transforming Bank Rakyat Indonesia to a successful profit-minded organisation (Box 9.5).

While waiting for the results of the financial sector master plan, two reforms will be implemented with respect to bank lending regulations:

- First, the government will consider allowing commercial banks to lend for terms longer than one year while enabling mortgage finance to get started.
- Second, the use of moveable assets, including exportable crops and gold, as collateral for lending will be permitted and encouraged – although this can benefit only large farmers (FESR, 2012). Indeed, the list of eligible collateral has already been expanded to include key agricultural export goods besides real estate and fixed deposit accounts.

Box 9.5. **Bank Rakyat Indonesia**

Indonesia's second-largest bank, Bank Rakyat Indonesia (BRI), boasts thousands of branches which have loaned billions of dollars in small to medium amounts to rural borrowers. Its success demonstrates not only that rural borrowers repay their loans reliably if those loans are made professionally but also that they can save.

Initially, BRI rural lending units acted like government offices providing a loan at a fixed interest rate based on the acres of rice grown. Farmers only had to prove that they were growing rice to secure a loan. When this rice programme was phased out (it was ineffective), 15 000 bank officers were retrained. Each lending unit became a rural bank with its own profit and loss accounting. Salaries were raised to private sector levels and bonuses paid to profitable units. Dishonest officers were weeded out. Deposits grew so much that funding from savings at the units became sufficient, though government loans to the units helped get things started, and that any loan thought to be sound was funded. Repayment rates reached 97%, and lending units became profitable within one or two years of becoming fully operational.

Such a transformation may not be feasible as quickly for the MADB, but a similar improvement could be attempted. The MADB would then need to be spun-off from the MOAI and incorporated as a state-owned company.

Source: HKS, 2010.

The MOAI has conducted a land registration survey that should have ended in March 2013, with the intention of making long-term loans available to farmers equal to 30% of the value of the land. However, as indicated by the Minister for Agriculture and Irrigation in January 2013, farmers owing debts to the MADB or the SACs will not be eligible for these loans (MOAI, 2013).

To address the issue of the lack of insurance, Myanmar Insurance Corporation introduced a deposit insurance scheme to protect small depositors from losing their deposits when the bank fails. 17 private banks have participated in this scheme (MOAI, 2013). In June 2013, the corporation indicated that it would provide insurance to farmers but had yet to decide on the types of insurance it would provide and when the scheme would start. The government has also recently allowed private insurance companies to begin operations.

Trade

Since 1988, trade barriers previously imposed by the government both in domestic and export markets have been gradually relaxed and the export value of agricultural products has significantly increased. The production, trade and export of all crops have now been liberalised, except for paddy which is still subject to some controls and restrictions as an economically and socially important crop. As a result, farmgate rice prices in Myanmar amount to only about 33% of rice export prices while in Viet Nam the ratio is 50-60% (HKS, 2009).

As a consequence of market liberalisation, private sector involvement in agricultural trade has increased. Thirteen private agricultural crops associations have been formed at the central level under the Union of Myanmar Federation for Chambers of Commerce and Industry (UMFCCI), including for: paddy producers; rice and paddy traders; rice millers; fruit and vegetables producers and exporters; pulses, beans and sesame seeds merchants; edible oil dealers; rubber producers; farm crop producers; sugarcane and sugar-related products merchants and manufacturers; palm oil producers; agro-based food processors and exporters; perennial crop producers; and onion, garlic and culinary crops producers and exporters (ARDC, 2011).

While the share of agricultural and marine products in total exports decreased from 38% in 1990-91 to 21% in 2009-10, the export value of these products increased from USD 1.3 billion to USD 9.9 billion over this period, with the export value of rice, pulses and fish being multiplied by 8, 10 and 27 respectively (Table 9.14).

Table 9.14. **Export value and volume of major agricultural export commodities, 1990-2009**

Commodity	1990-91	1995-96	2000-01	2007-08	2008-09	2009-10
Value (million USD)						
Rice and rice products	195	500	236	627	1 263	1 580
Pulses	585	1 542	1 883	3 933	4 621	5 750
Raw rubber	3	204	76	217	139	461
Maize	15	52	104	192	162	14
Fish	41	181	330	1 137	1 039	1 124
Prawn	129	462	679	631	536	393
Crop products	1 070	2 636	2 626	5 315	6 533	8 164
Animal products	6	8	42	24	28	41
Marine products	187	698	1 061	1 877	1 707	1 709
Total crop, animal and marine exports	1 263	3 342	3 729	7 216	8 268	9 914
% of total exports	38	58	26	18	20	21
Volume (thousand MT)						
Rice and rice products	134	354	251	358	666	818
Pulses	195	610	831	1 141	1 451	1 232
Raw rubber	1	25	20	19	14	41
Maize	20	62	148	156	120	10
Fish	12	34	49	114	131	150
Prawn	2	9	15	18	18	19

Source: Ministry of National Planning and Economic Development, Central Statistical Office.

Myanmar is the world's second-largest exporter of pulses after Canada, with India as its predominant customer followed by the United Arab Emirates, Thailand, Bangladesh and Japan. From January to May 2013, India represented 74% of the export volume of pulses and consequently, Myanmar is heavily dependent on India's decisions to import. Another major risk lies in the lack of regulation on payment policies resulting in high default risk, as demonstrated by defaults of wholesale traders to their sellers, i.e. local traders, in recent years. Such risk discourages investment in the sector (Thura Swiss, 2013a).

In 2009-10, Africa was the major export destination of rice and rice products with 644 000 MT of rice imported from Myanmar, followed by Southeast Asia with 136 000 MT and the Middle East with 16 000 MT (Table 9.15). This might be due to the fact that, as detailed above, rice from Myanmar is of low quality and meets the needs of African markets rather than higher end markets.

Table 9.15. **Major destination countries of rice exports, 1990-2010**

Thousand MT

Country of destination	1990-91	1995-96	2000-01	2007-08	2008-09	2009-10
Africa	**40**	**23**	**25**	**58**	**377**	**644**
Ivory Coast					178	468
Southeast Asia	**15**	**261**	**46**	**55**	**43**	**136**
Malaysia	10		7		17	18
Singapore	5		6	55	24	80
Philippines		92			1	38
Rest of Asia	**66**	**44**	**174**	**194**	**230**	**14**
Bangladesh		20	174	193	202	10
Middle East	**3**			**44**	**12**	**16**
Europe			**6**	**7**	**4**	**5**
Americas	**10**	**26**				**2**
Oceania						**1**
Total	**134**	**354**	**251**	**358**	**666**	**818**

Source: Ministry of National Planning and Economic Development, Central Statistical Office.

Domestic marketing channels for rice function efficiently in much of Myanmar (HKS, 2010), but unofficial fees and tolls imposed on internal shipments of agricultural products can be particularly high (HKS, 2009). Furthermore, some barriers remain on border rice trade, which lowers export prices to the detriment of producers and traders. The erratic issuance of rice export quotas[18] creates uncertainty, thereby adding a risk premium and undermining Myanmar's reliability as a rice supplier. This lowers export prices as compared to other exporters, even for rice of the same quality (HKS, 2010).

In January 2009, the export price of Vietnamese 5% broken rice and of Thai 15% broken rice were respectively 60% and 128% higher than the export price of Myanmar rice.

In addition, the requirement of large minimum stocks to apply for an export licence limits private sector participation. The stock requirements set at 10 000 tonnes of stored rice (in addition to rice to be exported) have been lowered to 5 000 tonnes, but it means that traders still need over USD 1 million in inventory at present prices (HKS, 2009).

Following a proposal by Thailand in August 2012, five rice exporting nations within ASEAN – Thailand, Viet Nam, Lao PDR, Cambodia and Myanmar – may form a cartel to boost rice prices and improve rice quality by setting minimum quality standards. An ASEAN Rice Federation would be created and based in Thailand. A meeting held in October 2012 laid out fundamental agreements and standards. However, the initiative has been stalled as some countries were not ready to institutionalise co-operation and there is concern about the weaknesses of Myanmar, Lao PDR and Cambodia, as producers do not have the techniques and access to high-quality seeds that would allow them to export high quality rice.

Agricultural inputs

Agricultural producers have very limited access to high-quality seeds and fertilisers. Public expenditures on seed research are extremely low and despite efforts to increase domestic fertilisers' production, it remains low due to high production costs while imported fertilisers are often adulterated. Similarly, the domestic production of farm machinery does not meet domestic demand and most machinery is still imported from neighbouring countries.

Most farmers use low-quality seeds, i.e. rice seeds of mixed varieties saved from previous harvests or bought from other farmers, which may not respond to high levels of inputs or to improved water control and which produce, when milled, a high proportion of low-value broken rice (HKS, 2011). According to surveys conducted in 2010, even large and rich farmers in well-established rice-producing areas were unsure which seeds to use and where to buy them (HKS, 2010).

With the exception of industrial crops, the production of seeds and planting materials is almost the exclusive responsibility of the Department of Agriculture (DOA). The programmes of production and distribution of certified seeds for main crops were initiated in 1987 but have been constrained by a limited budget (ARDC, 2011). The Seed Division (SD) is responsible for founding and registering seed production across a range of crops. It operates 22 seed farms as well as the Myanmar Rice Research Centre. Out of its total budget of USD 2 308 905 in 2013-14, the SD earmarked only USD 69 640 to research. Some MRSCs are initiating certified paddy seed production and distribution through contract farming arrangements in designated areas. Public-private partnerships (PPPs) could help meet the growing demand for quality seeds and could be supported by regulations governing the introduction of such seeds.

The use of chemical fertilisers remains quite low as compared with neighbouring countries. Chemical nutrient application in Myanmar is about 10% of the South Asia regional average and less than 7% of that of Viet Nam. Low fertiliser use is due particularly to limited access to seasonal credit and the relatively high level of adulterated fertilisers on sale. According to field surveys, most farmers admitted that they could not know whether the fertiliser that they had bought, either imported or produced domestically, was adulterated, except for some brands selling at a 50-100% premium. A test to check fertiliser quality should not cost much relative to the price of the fertiliser and could be made widely available (HKS, 2011).

The domestic fertiliser industry produces mainly urea fertiliser from abundant domestic natural gas resources, while phosphate and potash fertilisers are imported. Three urea state-owned plants, built in the 1970s and run by the Myanmar Petrochemical Enterprise, produce around 100 000 tonnes per year, i.e. less than 25% of their capacity and around 17% of domestic requirements. Natural gas is supplied by the Myanmar Oil and Gas Enterprise that usually prefers to export natural gas to obtain foreign exchange. The production of urea fertiliser by two new fertiliser plants may help meet future domestic requirements. Small amounts of compound fertiliser, bio-fertiliser and foliar fertilisers are produced by SEEs and private companies from imported materials. Since compound fertilisers are used widely in crop production, establishing private fertiliser compounding plants should be encouraged (ARDC, 2011).

Despite excess capacity and increasing needs, fertiliser production is not growing. Prior to 1993, fertiliser prices were heavily subsidised. When subsidies were removed, domestic market prices rose to international levels and the government allowed the private sector to import and distribute fertilisers, providing import tax exemptions. Despite these measures and a lack of competition in the fertiliser market, most enterprises find it difficult to be profitable in fertiliser production (ARDC, 2011).

As a result of the expansion of agricultural land and the promotion of farm machinery by the MOAI, the use of farm machinery has been increasing. From 1995 to 2011, the number of power tillers increased from 9 900 to 188 500 and the number of water pumps from 107 800 to 178 424. The MOAI's thirty-year Master Plan intends to mechanise 63% of the crop land by 2030.

While the government supports the domestic production of farm equipment, machines produced domestically do not meet the demand and are sometimes of low quality and consequently, various machines continue to be imported mostly from China and Thailand. The Ministry of Industry is producing agricultural machinery, including tractors, power tillers, threshers, disc harrows, disc ploughs and machine parts. In 2007, it produced 11 650 pumping sets and 14 594 light agriculture machines. Until 2012, the MOAI was producing power tillers, reapers, threshers, trailers and machine parts and its Agricultural Mechanisation Department (AMD) was managing 99 tractor stations (retail outlets), five farm machinery factories and one farm machinery plant. In 2013, these factories as well as the production of farm machinery have been handed over to the Ministry of Industry and the private sector. Several small private manufacturing enterprises also produce farm equipment, mainly around Mandalay (ARDC, 2011).

Infrastructure

While the chapter on infrastructure development focuses on infrastructure as a whole, this section examines more specifically policy challenges to develop agriculture-related infrastructure, particularly irrigation networks, storage and transportation systems, and information and communication technologies.

Although the government has actively supported the development of irrigation infrastructure over the last two decades by allocating most of MOAI's budget to irrigation, irrigated land still represents a small share of cultivated land compared to neighbouring countries. Water users' groups have become active and are responsible for operations and maintenance of irrigation infrastructure at the tertiary level. High transport costs and limited or inexistent post-harvest and storage facilities, particularly for rice, fruit and vegetables, undermine the efficiency of value chains and lead to significant post-harvest losses. Similarly, despite the efforts made to disseminate market information through existing information and communication technologies (ICTs), such technologies would need to expand to better link farmers to markets and increase competitiveness.

While local small-scale initiatives are undertaken to address these constraints, addressing institutional fragmentation in some sectors and encouraging private sector participation in infrastructure development, including by building clear sector plans clarifying the role expected from the private sector and SEEs and reducing regulatory uncertainties, would be essential to expand infrastructure services (see Chapter 7 on infrastructure development for further details).

Irrigation

Since the early 1990s, the government has embarked on an ambitious irrigation expansion and land reclamation programme and initiated substantial irrigation works, which have often been supply-driven and have not always taken into full consideration local agronomic conditions. By March 2012, 235 dams, 327 river pumping stations and 8 312 groundwater irrigation projects had been completed.

Consequently, the irrigated area grew substantially from 0.54 million ha in 1988 (12.6% of the net sown area) to 2.31 million ha in 2009 (17.1% of the net sown area) (Table 9.16). Over the same period, the storage capacity increased from 2.33 km^3 to 18 km^3, i.e. 1.7% of the estimated annual renewable surface water resources (ARDC, 2011). While total current water use in Myanmar accounts for less than 10% of total water resource availability (ARDC, 2011), irrigated agriculture was the single most important water user in 2003, accounting for over 89% of total water withdrawals, with annual water withdrawals of 28 km^3. This supported a sharp increase in the the cropping intensity from 140% in 1995 to 170% in 2008 (UNDP, 2004).

Table 9.16. **Irrigated area by type of irrigation, 2012**

Per cent of irrigated area

	Irrigated area (million ha)	Government irrigation		Private irrigation		Wells (%)	Other sources (%)
		Canals (%)	Tanks (%)	Canals (%)	Tanks (%)		
1990-91	1.00	24.7	15.6	26.8	3.8	2.1	27.0
1995-96	1.74	15.8	8.0	14.0	2.2	2.3	57.7
2000-01	1.90	18.8	11.2	12.6	1.0	4.7	51.7
2005-06	2.12	20.3	13.3	12.2	1.4	4.6	48.2
2009-10	2.31	17.3	11.2	11.7	1.9	6.5	51.4

Source: Ministry of Agriculture and Irrigation, Settlement and Land Records Department.

Currently, river pumping covers 38.1% of the irrigated area, dam and river diversion 29.2% and groundwater irrigation 6% (MOAI, 2013). More than 75% of the total irrigated area is sown to rice, but vegetables, pulses and sesame are also grown under irrigation (UNDP, 2004).

Despite such progress, in 2009, the proportion of the sown area under irrigation in Myanmar remained low (17.1%) compared to neighbouring countries, such as Bangladesh (57.5%), China (47.3%), India (33.8%), Viet Nam (31.9%), Thailand (26.5%) or Lao PDR (22.3%). With a potential irrigable area of 10.53 million ha, there is still a large scope for developing irrigation infrastructure (ARDC, 2011).

While the private sector is also playing an important role, the government continues to supply most infrastructure, with government irrigation covering 28.5% of the irrigated area (Table 9.16). Both the Irrigation Department (ID) and the Water Resources Utilisation Department (WRUD) are responsible for irrigation, including collecting water taxes. The ID is responsible for constructing and maintaining irrigation facilities down to the tertiary level, while Water Users' Groups (WUGs) farmers are responsible for building field ditches and for operations and maintenance (O&M) of the latter. The WRUD, comprising 3 000 staff, is responsible for supplying irrigation by pumping water from rivers, streams and groundwater sources. The central government has recently handed over the provision of some infrastructure to local governments, including mini-dams and reservoirs covering less than 2 008 ha of irrigated sown area and water pumping covering less than 803 ha (MOAI, 2013).

A total of 166 WUGs have been established covering about 40% of the total irrigation network. Each WUG has an elected leader whose role is to oversee the O&M of field ditches. WUGs are responsible for distributing water fairly among members, solving conflicts and expediting the timely payment of water charges. They fall under the control of the township agriculture supervision committee whose members are officers of relevant departments, such as the ID, the DOA and the SLRD. In parallel to WUGs, another type of farmers' group called "Ten Farmers Group (TFG)" was established at village level under the DOA. While WUGs are established based on the irrigation network system, TFGs are based on the number of farmers. By 2010, TFGs had been established in 13 077 village tracts. They contribute to building awareness on water management and serve as a platform to represent farmers' interest in all aspects of agriculture, including irrigation (ARDC, 2011).

No domestic legislation covers water rights. Currently, the state owns all water rights that are handled by the central government for national projects and by local governments for small projects. In practice, some farmers directly fund small projects involving water use without getting the approval of the local government (MOAI, 2013).

Storage and transport

Transport costs remain quite high. Agricultural products are transported by trucks, trains, and, in some inaccessible areas, riverboats (see Chapter 7 on infrastructure development for further details). The country has reasonably good primary roads and river networks, but in many areas, secondary roads are in poor conditions, particularly in the rainy season, and may require four-wheel drive vehicles or ox carts in the dry season (ARDC, 2011; HKS, 2010). Indeed, the cost of shipping a product from harvest areas to Yangon for export can be as high as the purchase price. Furthermore, the port of Yangon is regarded as one of the most expensive and least efficient ports in the world.

The loading and unloading of cargo is slow, commodities cannot be collected in the targeted timeframe and ships are unable to purchase fuel (HKS, 2009).

Efforts are being made to ease these constraints. Producers' associations under the UMFCCI, such as the Fruit and Vegetables Producers and Exporters Association, are getting involved in the export of agricultural commodities produced in hilly regions and marketed in Singapore and Bangkok through Yangon airport, such as mangos, to improve the prices paid to producers. Cross-border trade with China is also being improved for products of Mandalay to increase the market share and better fulfil export criteria imposed by Chinese buyers. Loading and uploading facilities, commodity exchange centres and food processing complexes that will be established near the Chinese border will help reduce post-harvest losses of perishable crops produced in Myanmar (MOAI, 2013).

While post-harvest processing facilities help reduce waste and raise profit, such facilities are still lacking for most crops, particularly fruit and vegetables but also palm oil. Maintaining the quality of fruit and vegetables and maximising their shelf life requires careful and minimal handling and proper temperature. However, as most often post-harvest technology is lacking, post-harvest lossess of fresh produce, especially mangos, is ranging between 25% and 40% (DOA, 2013). Similarly, palm oil plantations are expanding mostly in Tanintharyi division, but the only private palm oil refinery plant is established in Yangon and cannot cater for all palm oil production (ARDC, 2011). Furthermore, as regards storage facilities, the number of warehouses, ventilated and cold storage systems, silos and de-humidifiers that are required for cereals, legumes and oilseed crops and some important culinary crops remains limited (MOAI, 2013).

The post-harvest management of mango has slightly improved since 2011 through concerted efforts of the UMFCCI and mango producers' associations in collaboration with the DOA. However, another challenge is the limited awareness and knowledge of smallholder farmers and private entrepreneurs on post-harvest handling practices (DOA, 2011).

In the rice sector, little investment is made in post-harvest storage and transport to the ports (HKS, 2010). Inadequate drying facilities and antiquated mills produce low quality rice (HKS, 2009). Many mills have to buy gasifiers to supply electricity, and delays and poor loading conditions at the port raise costs and decrease quality even further (HKS, 2010). Consequently, rice quality, and thus export price, remains quite low in Myanmar compared to neighbouring rice exporting countries such as Viet Nam and Thailand. At present, 25% broken Myanmar rice commands an export price even lower than 100% broken Thai rice.

However, Myanmar Agribusiness Public Co. Ltd (MAPCO) and Japan's Mitsui Corporation reached an agreement in August 2013 to invest USD 100 million to promote Myanmar's rice industry, including by developing rice mills with a capacity of 100 000 tonnes per year. The electricity required for the mills will be produced from rice husks. Although Japan has some of the strictest quality standards for rice imports in the world, Myanmar resumed its rice exports to Japan in May 2013 through Mitsui, after a 46-year hiatus due to poor quality (Thura Swiss, 2013b).

Upgrading existing facilities will take time and considerable investment (HKS, 2009). To respond to these challenges, 182 flat-bed dryers have been built in states and regions by private rice millers and farmers' associations with the support of the Pioneer Postharvest Development Group, a civil society organisation, and the technical advice of International Rice Research Institute. Moreover, the rice millers' associations in Ayeyawaddy delta and Rakhine state promote parboiled rice factories. As food security and safety have become a priority, increasing the quantity produced is not sufficient and quality should also be improved through stronger good agricultural practices (GAP), good manufacturing practice (GMP) and Hazard Analytical Critical Control Point (HACCP) (MOAI, 2013).

Information and communication technologies

As underlined in Chapter 7 on infrastructure development, the telecommunications sector offers great opportunities for Myanmar to develop its economy, and more particularly the agricultural sector. ICTs can help better link farmers to markets by providing them regular market information but also support the development of mobile banking that can ease access to financing.

While ICTs have a low penetration level, the government already disseminates and releases up-to-date information on agricultural prices collected on 16 markets for 20 crops as well as on market flows through radio broadcasting and television channels every two weeks and through weekly or bi-weekly newspapers and journals distributed at township offices by the Ministry of Information, the MOAI, the Ministry of Commerce and private institutions (MOAI, 2013). Particularly, the bi-weekly MOAI's Myanmar Agri-Business journal, the farmers' journal and the agro-cyclopedia journal provide information to farmers on seed technology, cultural practices, GAP systems and integrated pest and disease management practices. A farmers' channel has also just been launched by Myanmar Radio and Telecommunication (MRTV).

Furthermore, the Myanmar Business Coalition, a local non-governmental organisation established by traders and businessmen and created in the dry zone to better connect farmers to traders, identified information/communication gaps and established a market information system maintained by local traders and using FM radio stations.

Human resources and research

Well-trained workers are essential for agricultural development. Effective extension and research programmes cannot be designed or implemented without adequate human resources. However, mainly due to very scarce financial resources, extension staff is inadequate both in number and in quality. While a wide range of government bodies is involved in research and development (R&D), public spending on R&D remains extremely low and centrally planned R&D programmes tend to focus on agricultural production rather than on a broader approach that would include issues of marketing and profitability and would help enhance productivity growth.

Agricultural human resource development institutions comprise: the Yezin Agricultural University (YAU); seven State Agricultural Institutes (SAIs); various divisions of the Department of Agriculture (DOA); education and technology development divisions at the MOAI; and the Livestock Breeding and Veterinary Department (LBVD) at the MOLFB. They provide agricultural extension services (see Annex 9.A2 for further details). The LBVD is responsible for providing extension services on livestock production but is even more poorly resourced than the DOA.

The number of trained graduates remains extremely low compared to the needs. In 2011-12, only 402 students obtained a higher education degree in agriculture. Extension staff is inadequate both in number and quality. For example, as regards paddy, one extension worker covers an average of 2 400 ha – based on the total net sown divided by total number of extension staff (ARDC, 2011). The staff is paid a per diem rate of less than USD 0.02 (HKS, 2010). At present, the Agricultural Extension Division of the DOA lacks a sufficient supply of specialists in most fields of agricultural services. Finding agricultural technicians, extension workers and persons to fill posts such as director of regions/states and managers is particularly difficult due to a shortage of qualified staff (MOAI, 2013).

Most extension messages are centrally designed by managers and mechanically implemented by field staff over a diverse range of agro-ecological and socio-economic conditions, without proper consideration of farmers' needs and limitations or market requirements, resulting in a low adoption rate of technical recommendations (UNDP, 2004). The front-line extension workers are the village managers who would need to be more oriented towards farmers' problems to be more effective. The bottom-up approach from village tracts to townships to districts up to regions and states initiated to formulate 2011-15 development plans and poverty reduction programmes may support such change. Furthermore, regular training sessions, particularly of village managers, should be conducted to improve the knowledge of production technology, communication skills and leadership abilities (MOAI, 2013).

Extension staff must be not only properly trained but also incentivised to help increase crop production and farmers' income. The lack of performance management is another impediment to efficient extension services. At present, the evaluation procedures and criteria of the extension system are not systematically written and distributed and extension officers have no written personnel manual. No regular performance evaluation of each extension staff member is conducted and immediate officers usually only send a recommendation and performance appraisal to higher authorities. State/regional, district and township managers have great difficulties appraising the work of village managers assigned to remote areas (MOAI, 2013).

Viet Nam's experience in providing extension services to rice farmers can be particularly relevant to Myanmar. Since 1993, Viet Nam has managed to expand agricultural extension services rapidly. While the poorest farmers and those living in remote and mountainous regions may have been neglected, the overall impact was to raise rice productivity and increase diversification, especially in livestock production. Extension knowledge was disseminated by about 3 000 extension workers as well as research staff, and mass organisations. Radio and, later, television have been used to reach farmers who could not be reached on an individual basis (HKS, 2010).

As for R&D, a number of major impediments to efficient R&D programmes can be underlined, with the limitation that the only data available are from 2003:

- The number of agricultural research staff rose steadily from 1996 to 2003, but inflation-adjusted spending on agricultural R&D trended downward. In 2003, R&D expenditures amounted to USD 0.06 for every USD 100 of agricultural output (research intensity ratio). This rate is the lowest in the world. For example, in 2000, the average for Asia and the developing world were respectively USD 0.41 and USD 0.53. In 2003, Myanmar invested just USD 8 million in 2000 international prices on agricultural R&D. The country's average spending per agricultural scientist is also among the lowest in the world. Agricultural research investments in Myanmar would need to increase seven fold for the country to be on par with the average for the Asia-Pacific region (ASTI, 2007).
- Myanmar has one of Asia's lowest shares of researchers trained to the postgraduate level. In 2003, only 18% of all research staff held MSc degrees and only 2% held PhD degrees. Very low civil service salaries and benefits make attracting, motivating and retaining highly qualified agricultural researchers in the public sector extremely difficult.

- Most agricultural research is based on specific commodities, targets the development of high-yielding varieties and other production technologies, and does not account for issues of profitability, production cost, marketing, agro-ecological constraints and socio-economic limitations of farmers. In fact, most projects are "stand-alone" as they do not form building blocks of a programme targeted to reach a well-defined objective. Similar activities can be repeated every year without a clear objective, partly because programmes are usually centrally planned at headquarters for implementation on research farms. Similarly, priorities are often set at headquarters without effective involvement of research field staff, extension agents, and farmers. As a result, projects often do not take into account the insertion of new technology into prevailing cropping systems and specific areas (UNDP, 2004). They emphasise research increasing agricultural production rather than adopting a broader perspective of the farm as an agri-business unit.

Policy recommendations

Harmonise the land legislation. While the legislation on agricultural land was revised in 2012, it does not provide a harmonised and coherent framework for land use and land use rights allocation, which undermines sustainable land management. A unique comprehensive land law could be developed for all types of land, including agricultural land, to harmonise the existing land legislation. The *Farmland and VFV Land Laws* could be incorporated as chapters of this law.

A consolidated law would help enhance co-ordination across the various Ministries responsible for managing specific land categories and should allow for decentralised land management. Currently, the lack of co-ordination across various land management bodies prevents efficient land management and allocation. Existing land categories may be no longer practical and do not always reflect the reality on the ground. Co-ordination mechanisms between relevant Ministries should be set up and an effective dialogue among decision makers, planners and producers promoted at the appropriate level. National participatory land use planning should be developed and balance the needs of all land users. Such a process should re-classify land to reflect current land uses resulting particularly from the conversion of forests into agricultural land.

Accelerate land registration. As described in the *Farmland and VFV Land Laws*, the system for registering and transferring farmland and VFV land is very complex. Several land management bodies at various administrative levels have to review and approve the application for land use rights, thus increasing transaction costs and uncertainty. Registering land rights can help increase land tenure security, a necessary condition of any investment in agricultural production. An efficient institutional structure at both the national and local level should carry out land titling and land surveys – which nowadays are accurate and relatively cheap thanks to innovations in geographic information and positioning systems.

A one-window service could be established at the lowest possible government level. This would help accelerate land registration and streamline and simplify the payment of fees and taxes. Assistance should be provided to help farmers comply with land registration requirements. This is all the more important as, according to the 2009-10 Development Integrated Household Living Conditions Survey, land ownership status and size correlates with poverty levels, demonstrating the significant contribution of asset ownership towards poverty reduction (FESR, 2012).

Promote the free choice of crops. While rice will continue to play a major role in Myanmar's agriculture and offers potential for increased production, policies should not prioritise rice at the expense of other crops and activities, including non-farm activities, which may well offer both farmers and the country a greater return. Policies encouraging rice self-sufficiency at the state or division level do not necessarily ensure an optimal and sustainable use of natural resources. Some regions are better suited to rice cultivation than others, and deficit areas can buy rice from low cost areas. Rice first policies, such as those imposing farmers to grow dry season rice if irrigation is available, should be relaxed to allow farmers to make their own decisions. More broadly, the use of agricultural land should be left at the discretion of the producers and not too strictly regulated.

Recognise customary land tenure rights. The importance of customary land rights is increasingly recognised at the international level, including in Southeast Asia. The *Farmland and VFV Land Laws* offer a few improvements compared to previous land laws, particularly by recognising that shifting cultivation is a legitimate land use and that farmers can use VFV land without formal government recognition. However, these laws provide weak protection of customary land tenure rights, particularly as land used for shifting cultivation remains categorised as fallow land. While, as in Myanmar, the state in Viet Nam formally owns all land, it provides land use rights to individuals, households, organisations, religious establishments, but also "population communities" that include various ethnic minority groups holding land collectively under customary practice. The land legislation in Myanmar should clearly recognise and protect customary land rights, including collective rights and rights on land used for shifting cultivation. It should also consider the diversity of customary law that varies across different ethnic groups and geographic areas.

Develop appropriate safeguards when granting large land areas to commercial investors. Allocating large land areas most often occupied by smallholders and local communities to commercial investors may lead to social conflicts, thereby undermining the profitability of investments. The FAO Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, endorsed by the Committee on World Food Security in May 2012, provide a valuable framework for responsible tenure governance. In line with these guidelines, several specific measures could be taken:

- Myanmar may follow the example of Indonesia where permanent land use rights can be allocated only to citizens while foreign and domestic enterprises can receive only leasehold rights limited in time and subject to extension. A national independent land transfer oversight panel could be established to approve transfers of land areas above a certain limit.
- Any allocation of land areas above a certain size should be preceded by an ESIA, complete land registration, the resolution of existing land disputes and participatory and inclusive consultations with concerned stakeholders. Such consultations can help develop contract farming arrangements that benefit both local communities and investors as per the FAO guiding principles for responsible contract farming operations.[19]
- A land tax could be imposed on the purchase of large land areas to prevent land speculation and help induce productive investment in land.

Develop clear and transparent selection criteria before granting investment incentives. The land legislation offers waivers on land allocation and taxes to investments that have been "approved by the government". The *VFV Land Law* states that projects approved by the government or considered to be in the interest of the state can be allocated land without any limit on neither the land size nor the time of the lease. Similarly, it exempts such projects from paying land taxes without any time limit. The legislation should thus be revised to eliminate such broad waivers. Instead, an agricultural investment strategy should be designed to define the specific types of investments, i.e. specific projects, agricultural commodity or type of investor, that are the most needed along agricultural value chains and that may be supported by exemptions or special treatment – although the costs and benefits of such incentives should be regularly monitored to avoid unnecessary public expenditures and rent-seeking and promote efficient investments.

Set up monitoring and reporting mechanisms for agri-business companies against a set of minimum standards. In the agricultural sector, RBC is particularly important not only as regards land tenure rights as highlighted above but also human rights, particularly of indigenous and vulnerable groups and agricultural workers, and the sustainable use of natural resources. The environmental legislation should be strengthened by making ESIAs compulsory and developing mechanisms to ensure they are undertaken by independent agencies. Reporting standards could also be developed on human rights, including labour rights. The creation of a multi-stakeholder commission composed of government officials, investors, producers' organisation and civil society organisations could help develop such standards and mechanisms.

Establish independent and accessible procedures to address grievances. Recent case studies demonstrate how difficult it is for smallholders to access fair arbitration for land use grievances. The *Farmland Law* states that farmland administration bodies (FABs) will arbitrate land disputes, but as many of these disputes may involve the MOAI itself, the impartiality may be compromised. An independent body could be established to arbitrate land disputes. It should be easily accessible to smallholders in terms of language used, cost and location and remain separate from the sectoral Ministries responsible for land management. It must be authorised to hear appeals against decisions made by FABs. In addition, non-judicial arbitration mechanisms should be developed to ensure the equal participation of all parties involved in land disputes. Finally, modern safeguards relating to the payment of fair compensation and involuntary resettlement for the taking of land use rights should be incorporated into the land legislation.

Reform the MADB to expand its coverage. Given its extensive branch network, the MADB offers significant potential to respond to the financing needs of farmers. It has already embarked on a restructuring process and could undertake the following additional changes to increase its impact:

- Interest rates on loans could be increased to incentivise lending – while remaining lower that interest rates of 10-15% per month offered by informal lenders.
- The term of loans should be extended beyond immediate harvest to allow farmers to sell their production at more favourable prices not immediately after harvest.
- While agriculture should remain an important part of its portfolio, the MADB should diversify its lending to reduce its risk and foster the growth of non-farm rural enterprises and employment in rural areas. This would be consistent with the provisions of the *MADB Law* which give the MADB a broad mandate beyond agricultural lending.
- The MADB could be given more independence, including by lifting the requirement of paying 25% of profits to the government.

The MADB can draw both positive and negative lessons from the experience of public agricultural development banks in neighbouring countries, notably the Bank Pertanian Malaysia and the Bank of Agriculture and Agriculture Cooperatives in Thailand which are among the more successful public rural banks (Vokes, 2013).

Increase trade policy predictability. Trade policy should aim to increase the reliability of Myanmar as an exporter, particularly for rice to reach export prices closer to those of Thailand and Viet Nam. Export restrictions on rice can help limit rice exports to supply the domestic market but hurt producers and delay the industry's adjustment to the international market. Direct measures intending to release the constraints on the development of efficient value chains, such as infrastructure development in regions with a comparative advantage, would be more effective to meet domestic demand.

Strengthen extension services. Extension workers are not well-trained and their number remains quite low compared to farmers' needs. Efforts should focus on building their capacities and ensuring they provide high quality extension services. The emphasis of advice should be shifted from a narrow focus on increasing rice production to a broader perspective on the farm as an agri-business unit. Large farms should pay for advice service, but it should be free of charge for smallholders. The creation of co-operatives and producers' organisations should rely on a bottom-up approach and be actively supported by extension workers through appropriate trainings. These groups can play a major role in linking farmers to markets, providing them with necessary inputs and increasing their bargaining power.

Increase public funding on research and development (R&D). Greater public funding needs to be provided to R&D. The intensity of research in Myanmar is low compared to other neighbouring countries. Partnerships and consortia between national and international research, extension and farmers would enhance access to best practices and the utilisation of mature technologies and increase uptake by farmers. Furthermore, the government can set incentives to induce the private sector to invest more in agricultural R&D, particularly through the enforcement of intellectual property rights such as patents and licences.

Notes

1. Data in USD presented in this chapter were converted from current kyats to USD by using the exchange rate of 1 MMK = 0.00113572 USD as of June 2013. Data in acres have been converted in hectares (ha) by using the rate of 1 ha = 2.47 acres.
2. Myanmar statistics usually use the term "agriculture" to refer to crop production while livestock production is included in the same category as fisheries. In this chapter, the standard definition of agriculture consisting of crop and livestock production is applied.
3. Available crop data should be interpreted with caution. The data do not include concessions in areas administered by ethnic armed groups. Concessions in government-controlled territory but administered through military officials may not always be included. Furthermore, discrepancies in national land data exist between and within ministries and departments. For example, the Perennial Crop

Education and Technology Development Division and the Settlement and Land Records Department report different data on rubber plantations.

4. A village tract is typically composed of 3-7 villages. Although it is an administrative unit, residents of constituent villages share a sense of identity.
5. 17 kinds of pulses are grown in Myanmar, including black gram, green gram, pigeon pea, soy bean, pelun, kidney bean, butter bean, chick pea, garden pea and sultapya.
6. Cotton is usually listed among industrial crops but its seeds are also processed for edible oil.
7. The discrepancy with CSO data may be due to the fact that a significant amount of rubber plantations is not registered at the national level.
8. Freshwater fisheries include aquaculture, leasable fisheries (floodplain fishing grounds leased annually to individuals or groups for fishery activities) and open fisheries (opened to any fisherman who has received a license from the Department of Fisheries for its fishing gear).
9. Shrimp farming faces several challenges, including poor maintenance, the lack of quality feed and hatcheries, the prevalence of diseases, and, in Rakhine state, the depletion of wild prawns used for hatcheries.
10. For example, the production of the main food crops (including corn, soybean, peanut, green beans, rice, cassava, sweet potato) on an area less than or equal to 25 ha is reserved to domestic MSMEs, and the Law 20/2008 clearly defines MSMEs.
11. Farmland Act Union Parliament Law No. 11/2012 approved on 3 April 2012 and Notification 62/2012 released on 31 August 2012; Vacant, Fallow and Virgin Land Management Act Union – Parliament Law No. 10/2012 approved on 2 April 2012 and Notification 1/2012 released on 31 August 2012.
12. They state that: "If houses, buildings, farm and garden land, fruit trees and edible plants, etc., should be transferred or cleared on targeted land, the investment should be approved by the Nay Pyi Taw Council or relevant government body and that land owners should state that they agree and are satisfied with the land transfer and resettlement conditions. Land owners should be offered employment opportunities and receive compensation in local current prices. If land owners are not willing to transfer the land and leave it, the investor does not have the right to lease the land and carry out its investment."
13. It should be noted that although the government discourages slash and burn cultivation, i.e. shifting cultivation, such a system can be sustainable and deliver environmental goods in areas where demographic pressure is relatively low. An approach tailored to the characteristics of each geographical area should thus be taken.
14. The law empowers the MECF to: carry out Environmental and Social Impact Assessments; require polluters to pay for environmental damage; establish environmental quality standards; implement a monitoring system on various sources of pollution, including the use of agro-chemicals; identify a list of specific businesses that need to obtain permission before operating; and monitor the enforcement of the terms and conditions imposed on the business once permission has been granted and impose a fine or cancel the licence if these conditions are not complied with.
15. Furthermore, the FIL rules state that an investment proposal should include a control and prevention system to mitigate environmental and social impacts. Once the investment proposal has been accepted, DICA should request

recommendations from the Nay Pyi Taw Council or the local government or from the MECF to ensure minimum environmental and social impacts.

16. The NAPA specifies 32 priority adaptation projects in 8 sectors, namely agriculture, early warning system, forestry, public health, water resources, coastal zone, energy and industry, and biodiversity.
17. The MADB may extend loans to state-owned agricultural organisations, co-operative societies, private persons, village banks, farmers, entrepreneurs and labourers for agricultural and rural socio-economic enterprises.
18. The rice export quota is calculated by the Ministry of Commerce based on monthly market surveys conducted by the latter and production data from the MOAI, in collaboration with a price stabilisation committee.
19. These principles include: common purpose of farmers and buyers, adherence to a legal framework, clear documentation, readability of contracts, due attention and review, disclosure, transparency in price determination, transparency and fairness in clauses relating to quality, input supply and use, fairness in risk sharing, prevention of unfair practices in buyer-farmer relations, honouring contractual terms, open dialogue and clear mechanisms to settle disputes.

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ANNEX 9.A1

Myanmar's agricultural policy since the 1960s

During the socialist period from 1962 to 1987, agricultural production was strictly controlled, with centralised policy-making imposing the choice of crops, procurement prices and the availability of inputs. Export controls were introduced for many commodities and only state enterprises were generally authorised to export. State economic enterprises (SEEs) were created by nationalising existing enterprises and most industrial activity passed under state control (UNDP, 2004).

In 1987, Myanmar liberalised the domestic marketing, processing and export of some agricultural produce. The first crops to be fully liberalised were beans and pulses. Consequently, the acreage of these crops tripled between 1990 and 2001, reaching more than 2.5 million ha in 2001, while exports grew from nothing to nearly one million tonnes in 2002-03 (UNDP, 2004). The export of most agricultural products was opened to the private sector, with the exception of rice, sugar, rubber, cotton and jute that were either considered as essential for domestic consumption or used as raw material for domestic industries. Waste and fallow land was allocated to private investors for agricultural purposes. The import and distribution of agricultural inputs, previously handled by the state, were opened to the private sector, and tariffs on the import of agricultural inputs were removed. Input subsidies were also greatly reduced. These measures were accompanied by the *Foreign Investment Law* of 1988 (ARDC, 2011).

Although domestic rice trade was liberalised, rice production and exports continued to be extensively controlled. Targets of production area were decreed to ensure that each state/division was self-sufficient in rice, and farmers were forced to cultivate rice in designated areas, especially those with irrigation, as a condition to access land and inputs. Myanmar Agriculture and Farm Produce Trading (MAPT), a state agency under the Ministry of Commerce, was granted a monopoly on rice exports, and farmers were required to deliver a specified quantity of paddy per unit area cultivated to the MAPT, at a price often significantly lower than the market price. The MAPT used the rice obtained under compulsory procurement to supply low-income groups, government employees and military personnel, and to maintain buffer stocks (UNDP, 2004).

In 1994, the Myanmar Perennial Crops Enterprise (MPCE), the Myanmar Sugarcane Enterprise (MSE) and the Myanmar Cotton and Sericulture Enterprise were formed within the MOAI to promote the development of cash crops. Well aware of the economic importance and the role of rubber as an exportable crop and an industrial raw material for local manufacturing industries, rubber became one of the major crops promoted by the MPCE. Following the creation of the MSE, from 1995 to 2008, sugarcane area tripled and production more than tripled from 3.2 million to 9.9 million MT. However, yields increased only from 51 to 61 MT per ha, indicating that production increased mainly by expanding cultivated area (ARDC, 2011).

In the 2000s, agriculture was liberalised further. In 2003, compulsory quota delivery to the MAPT at a fixed price was brought to an end, and the MAPT monopoly on rice export was abolished with MAPT facilities being sold or rented to private or military companies, allowing the private sector to export rice although only under certain conditions related to national self-sufficiency. In order to continue supplying special target groups, the MAPT still purchased rice, but at market prices from traders (UNDP, 2004). In 2004, the state-controlled prices and the compulsory sale of sugar, rubber and cotton to SEEs was lifted, but jute procurement and export still remained in the hand of SEEs to provide export earnings and supply state-owned factories. The production, trade and export of all crops have now been liberalised, except for rice which is still subject to some controls (ARDC, 2011).

ANNEX 9.A2

Human resource development and research institutions in Myanmar

The Yezin Agriculture University (YAU), comprising 228 staff, is the only agricultural university in Myanmar and the prime mover for human resource development in agricultural development. Its graduates represent a significant proportion of MOAI's staff. Most instructors trained in agricultural extension in the State Agricultural Institutes (SAIs) and in the Central Agricultural Research and Training Centre (CARTC) graduate from the YAU. In 2012-13, 32% of the total budget of YAU's academic departments, i.e. USD 20 870, were allocated to research. Of this budget, 24% were used for hybrid rice (YAU, 2013).

The Department of Agriculture (DOA) is the umbrella organisation of the MOAI co-ordinating agricultural extension. It encompasses the following divisions:

- The Agricultural Extension Division (AED) is responsible for implementing extension programmes, disseminating quality seeds and modern cultural practices and distributing inputs. It conducts farmers field schools (FFS) and block-wise high-yielding programmes through a farmer-led participatory approach with farmers' groups of 10 members. It also operates model farms, GAP demonstration fields and model villages, such as Alyinlo village with 1 205 ha. With 5 200 staff, it is the largest branch of the DOA.
- The Plant Protection Division (PPD) delivers training in Integrated Pest Management (IPM), including through FFS, and conducts limited research on IPM.
- The Land Use Division (LUD) provides extension services and is responsible for research in soil conservation and amelioration and land use.
- The Seed Division (SD) is responsible for founding and registering seed production across a range of crops. It undertakes limited research on rice. It

operates 12 central farms and 22 seed farms as well as the Myanmar Rice Research Centre.

- The Biotechnology Centre (MOAI, 2013).

The following departments of the MOAI are also involved in research and extension:

- The Department of Industrial Crops Development (DICD) has research and extension activities in the areas where industrial crops are grown (ARDC, 2011).
- The Agriculture Mechanisation Department (AMD) is responsible for providing farm services, such as land preparation, cultivation and harvesting, as well as extension services for upland and deep-water areas. It also conducts research on the adaptation of small and medium farm machinery to local field conditions and disseminates technical know-how on the use of farm machineries.
- The Water Resources Utilisation Department (WRUD) promotes the use of sprinklers and drip irrigation systems (MOAI, 2013).

Furthermore, the Central Agriculture Research and Training Centre offers pre- and post-service trainings. The DOA plans training activities while the Centre provides them.

The Department of Agricultural Research (DAR) is the principal government agency for agricultural R&D, comprising 24 research farms and 688 staff. In 2012-13, its budget was about USD 3.8 million. Its research focuses on increasing crop productivity.

In addition, the following Education and Technology Development Divisions manage specific crops:

- SETDD is responsible for sugarcane with 654 field extension officers stationed at township level. However, extension services suffer from the other numerous activities of the division, such as research on plant breeding and water management. Its variety improvement programme places emphasis on the introduction, hybridisation and selection of varieties but its impact remains limited as most farmers do not apply the recommended dosages of fertilisers.
- CSETDD manages cotton and sericulture with 2 605 staff stationed at division, district and township level. The Longyaw Model Cotton Farm is the largest farm under its control with about 3 373 ha. While technology dissemination relies on the Training and Visit (T&V) system, a top-down approach continues to promote standard cultural practices and blanket fertiliser rates.
- JAFETDD is responsible for jute and allied fibres with 458 extension workers. It aims to increase jute and kenaf production by providing extension services and conducting limited research.

- SCCETDD manages seasonal crops and coffee with 945 staff.
- PCETDD manages perennial crops with 377 staff. It aims to expand the area and production of rubber, palm oil and cashew nut. Programmes are focused on rubber and palm oil breeding through germplasm introduction and clonal trials, primarily at the Applied Research Centre for Perennial Crops. The division also operates a Development Centre for Rubber Technology.
- In addition, the Vegetables and Fruit Research and Development Centre, comprising 48 staff and 36 farms, provides extension services and conducts research and produces good quality seeds (MOAI, 2013).

As regards livestock, the Livestock Breeding and Veterinary Department of the MOLF comprises 2 000 staff but has only office staff and no field staff. It provides free vaccines for disease control as well as free artificial insemination. It conducts research on biological production, veterinary medicine, artificial insemination, and reproductive disorders. In 2003, it employed the second-largest number of agricultural full-time equivalent researchers after the DAR amounting to 101, but its spending was actually higher than the DAR, at 35% of the country's total (ASTI, 2007).

As for fisheries, the Department of Fisheries of the MOLF manages 26 freshwater fisheries stations that conduct seed production and research to enhance aquaculture. In 2010-11, these stations produced 796 million fish seeds.

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