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US–Myanmar Commercial Relations:

THE NEXT PHASE



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FOREWORD

U.S.-Myanmar Commercial Relations have advanced significantly over the past four years. During this period, the United States eased of a number of sanctions against Myanmar, including those on new investment and the export of financial services, and lifted a blanket import ban. The United States appointed a full Ambassador in 2012 for the first time in 22 years, and USAID, OPIC, Ex-Im Bank, and other agencies are now active in the country. Multilateral development bank lending is flowing, and many countries have increased their investments over the past several years. But the relationship is still a work in progress.

Despite the easing, some important sanctions remain in place, and the difficulties of operating in the market are substantial. Moreover, Myanmar's economic reform agenda – which spans areas from financial sector development to land reform – is vast. For all these reasons, trade and investment levels between Myanmar and the United States are modest. In 2015, US exports to Myanmar were \$227 million, and imports were \$144 million. Myanmar government data show that total approved U.S. investment in the country is \$248 million (nearly all of which went into the country prior to the imposition of sanctions), while that from China is \$18 billion. Singapore and Hong Kong have \$13 billion and \$7 billion invested in the country, respectively. U.S. investment in Myanmar is well below 1% of total foreign investment in the country.

Growing U.S.-Myanmar trade and investment will be important to improving the livelihoods of the people of Myanmar. How we do that is the question this paper attempts to address. In light of Myanmar's political progress, the U.S. Chamber of Commerce, and the U.S. business community broadly, have advocated for the normalization of the relationship, including the removal of economic sanctions. Our view is that U.S. engagement in the country helps the people of Myanmar, and will support Myanmar's economic growth and development. Myanmar certainly wants U.S. companies in the market, recognizing that they bring high standards in terms of corporate governance, human resource development, labor practices, environmental stewardship, CSR, and in other areas.

A quick look at Myanmar's next-door neighbor Thailand illustrates the potential benefits of a U.S. investment presence. U.S. companies

in Thailand are invested in the full range of manufacturing and service industries – banking, insurance, IT services, auto manufacturing, garments, electronics, and many others. Collectively, they produce \$22 billion per year in Thai exports. They directly employ 175,000 Thai workers – and certainly the downstream employment impact of that is tremendous. Salaries of those directly employed workers total \$3.2 billion per year.

To the extent that U.S. companies are deterred from entering the market and thus contributing to Myanmar's growth, continued sanctions are hurting Myanmar. However, sanctions also do damage in indirect and unintended ways. A prominent and unfortunate example is last year's situation with Asia World Ports, in which payments to legitimate Myanmar exporters were blocked by U.S. banks because the port from which some products were shipped is owned by a sanctioned entity. In the face of continued sanctions, other such unintended consequences are likely. As a result, the U.S. policy of supporting Myanmar's economic growth and U.S. commercial engagement on the one hand is undermined by the policy of sanctions on the other hand. In our view, large-scale U.S. investment simply will not flow into that market while it remains under sanctions. For its part, Myanmar's internal challenges are immense. The financial sector is woefully underdeveloped, and the population is severely under-banked. There is no unitary land law, zoning law or property law that addresses all aspects of ownership, use or transfer of immovable property. The lingering effects of earlier harmful policies on power generation and transmission mean that Myanmar has the lowest installed electric power capacity in ASEAN.

The number of skilled workers across a range of professions is extremely low, and is a major constraint on economic growth. Regulatory and taxation uncertainty add to these challenges, as does the country's poor infrastructure. Corruption is rife, and fundamental issues of the rule of law must be addressed if the country is to build the foundation for long-term economic growth. This paper explores all of these issues, and puts forth a series of recommendations for the Myanmar government to consider in addressing them.

There are many opportunities for the United States to play a helpful role in addressing Myanmar's development challenges. A normalized economic relationship is obviously essential, but could be complemented by concessional tariff rates under the Generalized System of Preferences, and a variety of technical assistance and capacity building programs. Exploratory talks on a bilateral investment treaty would be useful in helping Myanmar officials understand the kinds of market access commitments and investor protections that U.S. companies seek.

In spite of its deep-seated problems, Myanmar's potential is significant. Those U.S. companies that are operating there are optimistic about the market and the country's growth prospects. The 2016 ASEAN Business Outlook Survey showed that the overwhelming majority of U.S. companies on the ground are planning to expand their investments. But there are too few of those companies. A new approach in U.S. policy, combined with broad reform and market liberalization in Myanmar, are needed if the relationship is to reach the "next phase," which is both the subtitle and the focus of this paper.

EXECUTIVE SUMMARY

U.S. executive and legislative policymakers first began to impose restrictions against Myanmar in the wake of its military crackdown on protesters in 1988. President Ronald Reagan suspended U.S. aid, including counternarcotics programs, and stopped all arms sales to Myanmar. Presidents George H.W. Bush, Bill Clinton, and George W. Bush, with Congressional effort and support, steadily strengthened sanctions to isolate and pressure the then-ruling junta for its repression of the democratic opposition, imprisonment of prodemocracy activists, and failure to recognize the 1990 electoral victory of Aung San Suu Kyi and the National League for Democracy (NLD). Sanctions were strengthened through Executive orders and determinations, legislation and Congressional findings, and other policy instruments that limited dealings with the country and its government.

Following the 2010 Myanmar election, which was boycotted by Aung San Suu Kyi and the NLD, Myanmar transitioned from junta rule to a civilian government comprised of former military leaders. Aung San Suu Kyi was released from house arrest just after the election, and in 2011 the then new President Thein Sein and Lower House of Parliament Speaker Shwe Mann began a series of progressive reforms that directly addressed the most significant U.S. concerns, including allowing greater personal freedoms for citizens, beginning dialogue with Aung San Suu Kyi and the NLD, and engaging Myanmar's marginalized ethnic minority groups.

In response, between 2012 and 2013, President Barack Obama eased the most restrictive U.S. sanctions against Myanmar, including to authorize U.S. financial services and new investment into Myanmar, and to allow imports from Myanmar, with the exception of jadeite and rubies. These changes enabled U.S. economic reengagement with Myanmar for the first time in fifteen years, although remaining sanctions

and confusion about their application, including against prominent Myanmar companies and businesspeople, continue to complicate that process. The legal authorities and regulatory framework are complex after years of executive and legislative modification, even though most U.S. activity in Myanmar is now allowed. Banking and financial services conduct is still particularly problematic, and even routine transactions can get caught up for days or weeks. In fact, most of the unintended sanctions consequences have directly related to or been revealed in the financial sector.

In light of Myanmar's political and economic progress over the past several years, the extent to which lingering sanctions discourage U.S. companies from entering the Myanmar market, as well as the difficulties they cause for legitimate Myanmar companies and entrepreneurs, this report suggests the United States lift its sanctions against Myanmar, as well as other implementation measures, including to identify a clear pathway and efficient process for removing individuals and entities from the list of sanctioned Specially Designated Nationals and Blocked Persons.

While U.S. sanctions are damaging for both U.S. and Myanmar economic interests, surveys of U.S. companies in Myanmar have identified a number of other major challenges to greater investment, and to the country's broader economic development. This report addresses several of those areas and sectors: 1) access to finance; 2) access to land, and the uncertainty of who actually has title to the land; 3) access to electricity; 4) access to skilled and healthy workers; 5) rule of law and corruption; 6) regulatory and taxation uncertainty; and 7) severely underdeveloped infrastructure.

In each of those areas, this report examines the challenges and weaknesses in detail, and provides actionable, specific recommendations

to encourage reform and promote sustainable economic growth.

The initial U.S. easing of sanctions has encouraged a small number of U.S. businesses to invest or consider investing in Myanmar after a prolonged absence. In the last four years, trade with Myanmar has increased to its highest levels in decades, and U.S. companies, brands, and products have provided both jobs and training opportunities and their goods and services now line store shelves and are available throughout the country.

Across Myanmar, U.S. companies and brands have been welcomed. For Myanmar, the U.S. represents the highest standards in corporate governance and workforce education. The U.S. has mostly met these expectations, providing thousands of jobs, corporate training programs, improved working conditions consistent with global labor and human rights principles, upward mobility, and access to quality products. U.S. corporations are also bringing critical services and technology to the country, including power generation, cutting edge medical devices, and technological innovations that are key to startups and entrepreneurial ventures. Additionally, U.S. businesses have complemented their investments with philanthropic and corporate social responsibility programs. These efforts have provided health, education, and capacity building assistance to long-marginalized communities.

While Myanmar's citizens largely view U.S. investment positively, the initial influx and yet slow pace of engagement have both generated frustration. Recruiting and keeping talented employees and offering competitive salaries have become major issues for foreign investors, NGOs, and international organizations, as well as local companies. A "talent war" has erupted as these companies and organizations compete with each other over the limited pool

of qualified job candidates, driving up wages in order to attract and retain candidates. Additionally, the entry of new businesses has dramatically increased prices for extremely limited office space and other rental property. Lacking financial infrastructure and regulatory regimes have also led to domestic currency volatility and trade imbalances. The slow pace of U.S. investment has also discouraged both local entrepreneurs and larger businesses expecting increased access to capital and potential joint venture partners. Small and medium enterprises (SMEs) in particular hoped that new U.S. investment would offer new prospects for technology or funding that are not available in Myanmar due to its lack of capacity, deteriorated educational and vocational programs, and outdated government policies. Larger companies encounter the same funding and equity issues, as U.S. investors are concerned about the real and perceived risks and capacity questions associated with Myanmar business, particularly under the shadow of remaining U.S. sanctions. Frustration also extends to current U.S. policy, as Myanmar citizens attribute low investment rates and limited export opportunities in part to sanctions and tax and tariff policies.

In order to continue to support Myanmar's reform process, and to encourage an expanded U.S. investment presence in Myanmar, this report recommends a number of assistance and other programs. These include tariff preferences under the Generalized System of Preferences (GSP), expanded Ex-Im Bank and OPIC support for U.S. exporters and investors in Myanmar, government-backed guaranties to infrastructure projects, technical support and financing of infrastructure feasibility studies and risk assessments, environmental impact assessments, and sectoral development plans. The paper also recommends launching exploratory talks on a bilateral investment treaty.

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This paper was drafted by Erin Murphy and Peter Kucik, both Principals at Inle Advisory Group, and Eric Rose, Partner, Herzfeld, Rubin, Meyer, Rose, under the guidance of the U.S. Chamber's Myanmar Working Group.

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Peter Kucik is a sanctions and regulatory expert who has focused on Myanmar issues since 2007, including with the Treasury Department's Office of Foreign Assets Control (OFAC), before joining Inle Advisory Group. He is frequently solicited for his views and input by The Wall Street Journal, Foreign Policy, Reuters, and Associated Press, and has appeared on CNBC's Squawk Box and CNN's World

Business Today. His extensive experience from nearly seven years at OFAC, which administers and enforces U.S. economic and trade sanctions, ranges from assisting humanitarian and NGO activities in Myanmar, to implementing the easings of U.S. financial, import, and investment restrictions, and comprehensively rewriting the U.S. sanctions regulations that remain in effect.

For more than 25 years, Eric Rose has concentrated his practice in the global aspects of business development, specifically including mergers, acquisitions, privatizations, technology transfers, antitrust counseling, and domestic and international commercial transactions. Mr. Rose has served in several senior in-house counsel positions at leading companies such as American Standard, Tyco Toys, and John Deere. Since 2003, he has been in private practice, representing mid-tier domestic and international equipment manufacturers in the defense, natural resources, and service industries. Mr. Rose has led M&A and other complex transactions in the U.S. and more than two dozen countries on five continents. These representations have included the organization and strategic direction of manufacturing and/or distribution subsidiaries.

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SECTION I

REMAINING SANCTIONS AND RESTRICTIONS ON U.S. COMPANIES

What U.S. Companies Need to Know

Following more than two decades of U.S. executive and legislative action to restrict and prohibit most business dealings with Myanmar, the U.S. undertook a dramatic shift in its sanctions policy in 2012. Spurred by the economic and political reforms undertaken by President Thein Sein and Lower House of Parliament Speaker Shwe Mann, President Barack Obama eased the broadest U.S. financial sanctions, including allowing the exportation of U.S. financial services and new investment in Myanmar. In 2013, the U.S. additionally licensed most transactions involving four major sanctioned Myanmar banks, and allowed imports of Myanmar goods into the U.S. (with the exception of jadeite and rubies). More recently, changes were made to support trade to, from, and within Myanmar, allow transactions by U.S. individuals residing there, and permit most transactions involving all currently sanctioned Myanmar financial institutions, as well as to remove sanctions against ten state-owned enterprises and banks. Although the most restrictive measures are eased, one enduring aspect of U.S. sanctions policy is the [list of sanctioned Specially Designated Nationals \(SDN list\)](#) maintained by the Treasury Department's Office of Foreign Assets Control (OFAC), which administers and enforces U.S. economic and trade sanctions. Notwithstanding the easing of the new investment and financial services prohibitions, nor the recent licensing efforts and removals of banks and other entities from the SDN list, U.S. companies and individuals must conduct comprehensive and careful due diligence to ensure they do not run afoul of these sanctions.

The Burmese Sanctions Regulations¹ and other rules and requirements administered by OFAC

must be complied with by all "U.S. persons," including all U.S. citizens and permanent residents regardless of where they are in the world, all individuals and entities physically within the U.S., and all U.S. incorporated entities and their foreign branches. U.S. citizens and permanent residents must individually comply with U.S. sanctions even if they are acting on behalf of a company or individual that is not required to do so—accordingly, U.S. employees and contractors of foreign companies must also exercise care and due diligence as individuals.

The U.S. has broadly [licensed the exportation of financial services to Myanmar](#). With a limited exception for transfers through sanctioned banks, the license does not authorize transactions with sanctioned individuals or entities. As a result of this license, the [special measures against Myanmar imposed under Section 311 of the USA PATRIOT Act of 2001](#) do not apply to correspondent accounts with Myanmar financial institutions, or to transactions conducted through those accounts, provided they are not sanctioned or otherwise prohibited. However, U.S. financial institutions processing such transactions are obligated to conduct enhanced due diligence under [Section 312 of the USA PATRIOT Act](#).² Therefore, U.S. financial institutions may enter into direct correspondent relationships with most Myanmar banks, so long as they meet that obligation.

The statutory investment ban has been waived, and consistent with that waiver, [new U.S. investment in Myanmar has been licensed](#), provided it does not involve agreements entered into with any sanctioned individuals or entities, the Myanmar Ministry of Defense, the military or other armed

¹ 31 C.F.R. Part 537.

² The core requirements of the Treasury Department's new Customer Due Diligence (CDD) Rule, which becomes effective on July 11, 2016, are substantively similar to the enhanced due diligence requirements under Section 312 of the USA PATRIOT Act.

groups, or any entities they own. “New investment” is defined to include entering contracts, purchasing equity interests, and participating in royalties, earnings, or profits involving the economic development of resources in Myanmar. Examples of the economic development of resources in Myanmar include contracts to confer mineral rights, to acquire a mining operation, or to obtain land for construction or commercial use. The term “resources” is broadly construed to include any natural, agricultural, commercial, financial, industrial, or human resources. Although such activity is now broadly permitted, new investment in Myanmar undertaken prior to May 21, 1997, also is grandfathered and was never prohibited.

Any U.S. persons whose aggregate new investment in Myanmar exceeds US\$500,000 must address the [State Department’s Responsible Investment Reporting Requirements](#) (this threshold is being increased to US\$5,000,000). Such investors are required to file reports with the State Department on an annual basis, including a publicly available version. These reports include information regarding policies and procedures with respect to human rights, workers’ rights, environmental stewardship, land acquisitions, arrangements with security service providers, and aggregate annual payments exceeding US\$10,000 to Myanmar government entities, including state-owned enterprises. The stated purpose of the public report is to promote greater transparency and encourage civil society to partner with U.S. companies toward responsible investment. The reporting requirements apply to any new investment, in whatever corporate form it might take. Investors must also notify the State Department if they enter into a transactional relationship with the Myanma Oil and Gas Enterprise (MOGE).

Congress intentionally allowed the statutory import ban in the [Burmese Freedom and Democracy Act \(BFDA\) of 2003](#)³ to expire, eliminating altogether the original restrictions on products from Myanmar and any need to license them. However, continuing concerns about labor issues and human rights in certain market sectors prompted President Obama to immediately reinstate prohibitions on imports of jadeite or rubies from Myanmar and of articles of jewelry containing them.

Except as licensed or otherwise authorized, U.S. persons generally remain prohibited from dealing with any sanctioned individuals and companies, including not only those on the SDN list, but also any entity owned 50% or more in the aggregate by one or more other sanctioned individuals or entities, or “blocked persons.” Such entities that are 50% or more owned by other blocked persons are automatically sanctioned whether or not they appear on the SDN list, and the [formal OFAC guidance on this is known as the “50% rule.”](#) In turn, any entities owned 50% or more in the aggregate by entities that are blocked by the 50% rule are themselves blocked, with a domino effect. The prohibitions on dealing with such sanctioned individuals and entities cover any and all property or interests in property they may have, whether tangible or intangible, and including present, future, or contingent interests. Just over 100 Myanmar individuals and companies remain on the SDN list, and all U.S. individuals and companies must carefully conduct due diligence to ensure their business or transactions do not involve such sanctioned parties. In light of the 50% rule and the realities of the business landscape in Myanmar, many economic interests there are still totally off limits to U.S. persons.

³ This link reflects the BFDA as originally enacted, without subsequent amendments, including by the Tom Lantos Block Burmese Jade (Junta’s Anti-Democratic Efforts) Act Of 2008.

Operative Myanmar Sanctions Prohibitions

Burmese Sanctions Regulations, 31 C.F.R. Part 537

REGULATORY SECTION	PROHIBITION	AUTHORITY	STATUS
31 C.F.R. § 537.201(a)(1) Prohibited transactions involving blocked property.	Targeting criteria enabling the SDN designation and blocking of among others: (A) Senior Government of Burma officials; (B) Those responsible for human rights abuses related to political repression; (C) Those engaged in activities facilitating public corruption; (D) Certain spouses or dependent children; (E) Entities owned or controlled by the Government of Burma; (F) Those providing financial, material, or technological support for the Government of Burma or other parties blocked in this section; and (G) Those owned or controlled by other parties blocked in this section.	E.O. 13310; E.O. 13448; E.O. 13464.	Active criteria.
31 C.F.R. § 537.201(a)(2) Prohibited transactions involving blocked property.	Targeting criteria enabling the SDN designation and blocking of among others: (i) Those threatening the peace, security, or stability of Burma; (ii) Those responsible for the commission of human rights abuses in Burma; (iii) Those involved in arms trade with North Korea; (iv) Senior officials of entities engaged in the acts described in (i) through (iii); (v) Those providing financial, material, or technological support for the acts described in (i) through (iii) or other parties blocked in this section; and (vi) Those owned or controlled by other parties blocked in this section.	E.O. 13619.	Active criteria.
31 C.F.R. § 537.202 Prohibited exportation or reexportation of financial services to Burma.	*See 31 C.F.R. § 537.529 for a general license authorizing the exportation or reexportation of financial services to Burma.	E.O. 13310.	Generally licensed.
31 C.F.R. § 537.203 Prohibited importation of Burmese jadeite and rubies into the United States.	The importation into the United States of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma is prohibited.	E.O. 13651.	Active.
31 C.F.R. § 537.204 Prohibited new investment in Burma.	*See 31 C.F.R. § 537.530 for a general license authorizing new investment in Burma by U.S. persons.	Section 570 of Public Law 104–208; E.O. 13047.	Waived; Generally licensed.
31 C.F.R. § 537.416 Entities owned by a person whose property and interests in property are blocked.	A person blocked pursuant to 31 C.F.R. § 537.201(a) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to §537.201(a), regardless of whether the name of the entity is incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).	OFAC Formal Guidance.	Active.

On August 6, 2013, in light of the expiration of the ban on the importation of Burmese-origin goods contained in the Burmese Freedom and Democracy Act of 2003 (BFDA), the President issued E.O. 13651 revoking the provisions of E.O. 13310 that implemented the BFDA's ban on importing Burmese-origin goods. However, due to continuing concerns, including with respect to labor and human rights in specific sectors, E.O. 13651 reinstated the prohibition on the importation into the United States of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma that was originally imposed by the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (JADE Act), which amended the BFDA. Imports of Burmese-origin goods, other than jadeite or rubies, are no longer prohibited and no longer require an OFAC license.

Section 5(b) of the JADE Act imposes blocking and financial sanctions on certain categories of persons described in Section 5(a)(1) of the JADE Act. In Executive Order 13651 of August 6, 2013, the President waived these blocking and financial sanctions pursuant to Section 5(i) of the JADE Act.

Relevant Legal Infrastructure

The U.S. government, in contrast with nearly all of its international partners, chose not to terminate its sanctions altogether, but instead to maintain the national emergency imposing sanctions and much of the existing sanctions infrastructure. The announced intention of this policy is to both retain leverage to pressure for additional reform, as well as to preserve the core underlying authorities to prevent backsliding by the Myanmar government. Even after the successful November 8, 2015 general election, the U.S. continues this policy through the government transition, and it recently renewed and reaffirmed its sanctions authorities on May 17, 2016.

U.S. economic and trade sanctions against Myanmar were first imposed in 1997, when President Clinton determined in accordance with a Congressional authorization that the then-ruling military junta had committed large-scale repression of the democratic opposition in Myanmar, and issued [Executive Order \(E.O.\) 13047](#) pursuant to the [International Emergency Economic Powers Act \(IEEPA\)](#) declaring a national emergency with respect to the actions and policies of the former junta government. E.O. 13047 prohibited new investment in Myanmar by all U.S. persons, but sales of goods, services, or technology were outside the scope and never were themselves prohibited. Although the statutory provision has been waived entirely, the [new investment prohibition](#) under E.O. 13047 has been licensed but remains in the regulations.

In 2003, President Bush implemented the BFDA import restrictions, prohibited the exportation of U.S. financial services to Myanmar, and enabled the targeting of senior government officials for sanctions by issuing [E.O. 13310](#). In addition, E.O. 13310 sanctioned the three state-owned banks which at the time were the only foreign exchange banks in the country, marking the first inclusion of Myanmar names on the SDN list. Although exceptions were made for personal remittances and humanitarian aid, these measures effectively cut Myanmar off from the U.S. financial system. As

noted, while the BFDA import provision has been allowed to expire, the [financial services prohibition](#) has been licensed but remains in the regulations. The three state-owned banks sanctioned in E.O. 13310 were recently removed from the SDN list.

President Bush in 2007 expanded sanctions targeting criteria with [E.O. 13448](#) to include involvement with human rights abuses related to political repression, facilitating public corruption, or providing support for the Myanmar government. The last category has been used to target Myanmar businesspersons—the so-called “cronies”—and their companies for supporting the former junta regime. In 2008 President Bush issued [E.O. 13464](#) to further expand sanctions targeting ability to cover state-owned or controlled enterprises.

The official announcements of the policy changes during 2012–2013 all noted that the core authorities underlying U.S. sanctions would remain in place, an implicit reminder that the licenses can be revoked and restrictions reimposed. Alongside the initial easing measures, President Obama also issued [E.O. 13619](#) to refocus sanctions targeting and allow the U.S. to sanction those that threaten the peace, security, or stability of Myanmar, including by undermining or obstructing political reform or the peace process with ethnic minorities, committing human rights abuses, or conducting arms trade with North Korea. The targeting criteria from all the Executive orders have been consolidated and incorporated into the regulations, and the U.S. government has expressly stated that listings and potential delistings under these sanctions authorities will be pursued as appropriate to meet changing conditions in Myanmar. On May 17, 2016, these sanctions authorities were again renewed, and OFAC delisted ten state-owned enterprises and banks, and also identified and added six companies to the SDN list.

Under OFAC regulations, individuals and entities on the SDN list may seek to be delisted, including where the circumstances resulting in the

designations no longer apply, by submitting a written request to OFAC. In addition, under certain circumstances, OFAC may of its own accord decide to delist. OFAC investigates and assesses such requests on a case-by-case basis, taking into consideration the facts and circumstances specific to each individual or entity, as reflected in the evidence presented and other information available to OFAC. In 2014, senior State and Treasury Department officials met with several sanctioned individuals in Yangon to discuss the guidelines for delisting. Removal from the SDN list is a legal rather than political process, and individuals and entities seeking to be delisted must demonstrate in a verifiable way changed behavior and support peace, stability, and security in Myanmar. Assistant

Secretary of State Tom Malinowski described this process in an interview with *The Irrawaddy*: “We explained that removal from the SDN list is an administrative—not a political—process managed by the United States Treasury Department in which petitioners must submit proof of fundamental behavior change. We want SDNs to change their behavior and not stand in the way of Burma’s [Myanmar’s] transition. We will look to see SDNs sever business ties with the military, respect human rights, including by avoiding involvement in land seizures, and respect civilian rule. One good way to demonstrate these things would be to conduct a credible, independent audit of all business holdings, plus a credible, independent social and environmental impact assessment of their operations.”⁴

Consequences and Complications

Notwithstanding the U.S. policy shift and easing of the broadest sanctions that previously prevented nearly all engagement with Myanmar, remaining restrictions greatly complicate U.S. reengagement. Sanctions implications and SDN involvement are found throughout the economy; between the extensive reach of military holding companies, state-owned enterprises, and other SDNs, sanctioned individuals and entities own and control many of the most advanced and capable businesses in every market sector, as well as much of the most desirable property in Myanmar. The SDN list includes many of Myanmar’s wealthiest and most prominent businesspersons, as well as state and military corporations whose extensive portfolios span all sectors, including transportation, infrastructure, real estate, tourism, financial services, food and beverages, and extractive industries.

With the application of the 50% rule and sanctioning of all implicated property interests of any nature whatsoever, this potential minefield for U.S. businesses seeking to operate in Myanmar is further expanded. The already incredibly opaque

structure and operation of the Myanmar economy again compounds the issue. Businesses frequently cite the SDN list in Myanmar as the practical limit on options not just for partnership and joint venture relationships, but for purchases, sales, leases and even typical daily business transactions. In an already challenging investment environment, the danger of interacting with a SDN can constrain or completely foreclose prospects for engagement in certain market sectors. Such difficulties in identifying viable Myanmar partners have also driven U.S. companies to undertake projects and transactions instead through third-country parties. This can result in reduced profitability, increased costs and logistical challenges, and diminishes or eliminates the benefits from prospective direct U.S. engagement in Myanmar.

Banking and financial services have been problematic from the initial easing of sanctions, and remain so. No U.S. banks, and few U.S. financial services providers, have entered the Myanmar market. U.S. banks have declined even to open representative offices, and are not viable options

⁴ Aung Zaw, *The Irrawaddy*, US Assistant Secretary of State for Democracy, Human Rights and Labor Tom Malinowski speaks about Burma’s transition, the 2015 elections, religious violence and military cooperation, July 28, 2014, <http://www.irrawaddy.com/election/interview/deeper-change-brings-deeper-resistance>.

for loans or financing in the country. In fact, few U.S. banks will send money to Myanmar, and none accept transfers out of the country, even from subsidiaries of U.S. companies. Transferring funds between the U.S. and Myanmar can take upwards of one to two weeks, even after transactions have been reported as screened for compliance. Transactions are also stopped or delayed by third country correspondent banks even though they have been approved and confirmed by U.S. financial institutions. Many U.S. financial institutions, as well as other companies, treat the entire country of Myanmar as blocked or off limits, notwithstanding the licenses that have been in effect since 2012. Myanmar businesses dealing with the U.S. encounter the same difficulties, and exporters have reported having U.S. payments for their goods frozen. As a result, business is often conducted through additional bank accounts in Singapore or Thailand, significantly increasing transaction costs.

In response, the U.S. government has, with mixed success, sought ways to ensure that core financial services necessary to do business are available and that the remaining restrictions do not cause unintended consequences or undermine efforts to develop Myanmar's economy.

General License No. 19

Just months after the first sanctions policy changes, U.S. companies evaluating the Myanmar market realized that obtaining adequate and reliable banking and financial services would be problematic. At that time, almost every major bank in Myanmar was either sanctioned on the SDN list, or blocked by application of the 50% rule, including the three state-owned banks that were then the sole foreign exchange banks in the country. While a regulatory provision allowed transactions through—but not with—those banks, other regular banking activities remained off limits to U.S. persons. The U.S. government recognized the importance of banking access, and in February 2013 issued General License No. 19 (GL 19) to authorize

most transactions, including opening and maintaining accounts and conducting a range of other financial services, with four major sanctioned Myanmar financial institutions.⁵

GL 19, and the current version of the authorization that is now incorporated into the regulations, illustrate the need to balance broader policy goals against specific sanctions requirements and prohibitions. The license was meant to establish a mechanism for U.S. persons to deal with key Myanmar banks, despite the fact that they remain blocked, because without access to such financial institutions U.S. businesses would not be able to fully participate in the Myanmar economy. The authorization has only been partly successful however; while U.S. individuals and companies may be opening accounts and conducting financial transactions through this authorization, no broader direct engagement has taken place. Notwithstanding the fact that correspondent accounts may be established between U.S. financial institutions and all but a few Myanmar banks, U.S. banks have not done so, and financial transactions between the U.S. and Myanmar continue to be routed through third countries at considerable additional cost in time and fees. Additional due diligence and compliance complications weigh heavily against a limited market for financial services involving Myanmar, and at a time when many U.S. banks are reducing exposure globally, they are especially wary of transaction costs that might reduce already slim margins.

On May 17, 2016, sanctions against two of the banks originally included in GL 19, Myanma Economic Bank and Myanma Investment and Commercial Bank, were removed, and as a result their inclusion in the authorization is no longer necessary. The regulations have also been updated to include two other banks, and the authorization now covers most transactions with Asia Green Development Bank, Ayeyarwady Bank, Innwa Bank, and Myawaddy Bank. As a result of these changes, there are few remaining sanctions restrictions on dealings with Myanmar banks.

⁵ General License No. 19 has since been removed from the Treasury Department website following incorporation of its authorizations into the comprehensively revised and reissued *Burmese Sanctions Regulations* at 31 C.F.R. § 537.531.

General License No. 20

In December 2015, the U.S. government took similar action in issuing General License No. 20 (GL 20) to authorize certain trade transactions with Myanmar that would otherwise be prohibited. When Asia World Port Terminal (AWPT), which is a subsidiary of the listed SDN Asia World Company, began to be specifically named in trade documentation instead of the usual reference to only the port city of Yangon, OFAC provided informal guidance that AWPT is sanctioned by the 50% rule due to its ownership, and that trade documents and payments referencing AWPT must be blocked by financial institutions. AWPT is however critical to foreign trade—of the four Yangon port terminals, AWPT is the cheapest, fastest, and most frequently used, and handles almost 60% of Yangon's total cargo volume. Yangon in turn facilitates around half of Myanmar's total trade.⁶

Once U.S. and non-U.S. financial institutions that finance trade with Myanmar in U.S. dollars began blocking transactions involving AWPT, a significant amount of trade was stopped, raising fears of a “de-facto trade embargo.” The U.S. government issued GL 20 in December 2015 to authorize for a six month period transactions incident to the export of goods, technology, or non-financial services to or from Myanmar, including participation in trade finance and payment of fees as well as shipping and handling charges associated with such trade. Although the unintended consequences for trade were revealed through port documentation, GL 20 is intended to support all manners of trade transit, including through ports, toll roads, and airports.⁷

On May 17, 2016, the authorization from GL 20 was extended indefinitely and incorporated into regulations, which should give banks and businesses comfort for longer-term trade, related finance, and other transactions that it is not subject to expiration. The authorization was also expanded to permit transactions related to the movement of goods within Myanmar, such as transportation of goods from warehouses to retail outlets for further

distribution inside Myanmar.⁸ These changes are intended to facilitate commerce into and throughout Myanmar, and in turn bolster trade and commercial opportunities for both U.S. and Myanmar businesses. While this authorization allows certain trade transactions involving SDNs and other blocked entities, it does not authorize any exports to, from, or on behalf of SDNs or other blocked entities. In other words, SDNs can be involved with facilitating exports to, from, or within Myanmar, but they cannot be engaged in such trade themselves.

Yangon Stock Exchange

Another example of unintended sanctions consequences is the recently opened Yangon Stock Exchange (YSX). Although it was not identified as such, initially it too was automatically sanctioned by application of the 50% rule through the ownership interest of then-listed Myanma Economic Bank (MEB). While most transactions involving MEB were allowed, the authorization did not extend to entities owned by MEB, which would have required separate authorization. Pursuant to an agreement signed in December 2014, Japan Exchange Group, the operator of Tokyo Stock Exchange, and Daiwa Securities Group own a collective 49% interest in the YSX, and MEB owns the remaining 51%.⁹

However, as a result of the removal of sanctions against MEB on May 17, 2016, the YSX is no longer sanctioned by operation of the 50% rule. Major non-U.S. financial institutions also typically refuse to transact with entities sanctioned by the U.S., and usually sever ties with such entities altogether when they become aware of a sanctions issue, so this action may prevent potential difficulties like those that emerged with AWPT. While U.S. parties may now provide services to or involving the YSX, trading by foreigners is not currently permitted by Myanmar.

SDN Delisting Process

Although the Myanmar economy is clouded with SDNs and entities blocked by the 50% rule, the

⁶ <http://www.mmmtimes.com/index.php/business/16443-us-banks-call-for-waiver-on-asia-world-port.html>.

⁷ <http://www.state.gov/r/pa/prs/ps/2015/12/250427.htm>

⁸ 31 C.F.R. § 537.532 Certain transactions incident to exportations to or from Burma authorized; certain transactions incident to the movement of goods within Burma authorized.

⁹ <http://www.mmmtimes.com/index.php/business/16932-yangon-stock-exchange-risks-opening-under-us-sanctions.html>.

U.S. government has promoted a way forward for individuals and entities seeking to be delisted. In recognition of their reform efforts, President Thein Sein and Lower House of Parliament Speaker Shwe Mann were removed from the SDN list late in 2012. While the delisting process has been viewed with some skepticism by sanctioned businesspersons, in April 2015 the Chairman of the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) and head of the Dagon Group of Companies, Win Aung, was successfully removed from the SDN list. This was the first prominent Myanmar business leader to be delisted, but others are known to be engaged in the process. In July 2015, Tay Za's former wife was delisted presumptively for that fact, and two former junta officials were removed likely because they are now deceased. On May 17, 2016, sanctions were removed from seven state-owned enterprises – Myanmar Timber Enterprise, Myanmar Pearl Enterprise, Myanmar Gem Enterprise, No. 1 Mining Enterprise, No. 2 Mining Enterprise, No. 3 Mining Enterprise, and Co-Operative Export-Import Enterprise – as well as three state-owned banks – Myanma Economic Bank, Myanmar Foreign Trade Bank, and Myanma Investment and Commercial Bank. If additional delisting efforts can be promptly and successfully resolved, it would create more interest in the removal process, and also diminish sanctions risk to businesses and investors by chipping away at the SDN list.

Although it takes time to investigate, assess, and review the facts and circumstances specific to each SDN seeking removal, the process cannot take so long that it loses momentum. Unless the U.S. government can follow through on the open cases, it risks undermining good will and the credibility of its own policy and process—as well as the desire of additional SDNs to seek removal. The successful removals to date illustrate how the process can work as advertised, but now that Myanmar has successfully conducted its election and the NLD has transitioned into power, the hope and expectation

will be that more removals – if not the removal of sanctions entirely – are on the horizon.

State Department Reporting Requirements

Confusion still surrounds the State Department's Responsible Investment Reporting Requirements and exactly what is required from U.S. investors in Myanmar. The State Department plans to use this information to consult with U.S. businesses and assist them in developing policies and procedures to address issues resulting from their investments and operations. The reports are also meant to encourage an active role by civil society in monitoring investment and working with companies to promote broad-based development and reinforce political and economic reform. While around 20 companies now have submitted these reports, skepticism remains about their benefits. Companies have complained about the added costs and administrative burden of preparing these reports, and many fear that the information will be skewed or misinterpreted and only prompt public criticism.

In May 2016, the State Department announced that the investment threshold triggering the reporting requirements would be raised from the current US\$500,000, to US\$5,000,000. The stated objective in raising the threshold is to minimize the reporting burden on SMEs to in turn encourage more inclusive economic growth.

Renewal of Sanctions Authorities

Finally, the annual renewal of the IEEPA sanctions authorities, most recently on May 17, 2016, is consistently seen as a re-imposition of sanctions, rather than an extension of broader U.S. policy. Myanmar citizens have been both angry and confused by these annual renewals, which could undermine the positive effect of that broader policy, which is largely intended to support those very people. Particularly after the successful election and seating of the NLD government, this process may only become more difficult for the U.S. to explain.

RECOMMENDATIONS

Myanmar's remarkable progress over the past several years – largely free elections, a free press, release of political prisoners, rules allowing free labor organizations, and the first freely elected president and cabinet in more than 50 years – calls for a wholesale reexamination of U.S. sanctions policy. All the positive steps above have been among the U.S. Government's requirements for a more normalized bilateral relationship. Yet with the limited exception of Canada,¹⁰ the United States is the only country maintaining a sanctions framework against Myanmar. All other countries that had maintained sanctions against Myanmar have now completely abolished them.

The unintended consequences of sanctions should also be taken into account as the United States reconsiders policy toward the country. For the reasons discussed above, sanctions limit the willingness of U.S. companies to invest in Myanmar, which in turn denies the people of Myanmar the benefits that such investment brings.

Further, those not targeted by sanctions have often been hurt by them. The U.S. import ban imposed on Myanmar in 2003, among other impacts, put a halt to U.S. garment imports from the country, throwing an estimated 60,000 Myanmar people, mostly women, out of work. More recently, the AWPT issue prevented legitimate Myanmar exporters from being paid for months on end when the U.S. importers' banks blocked their payments.

By contrast, the extent to which those individuals and entities against which sanctions are directed have actually been impacted is questionable at best (e.g. U Tay Za).¹¹ The prevalence of U.S. competitors in the market – particularly those from elsewhere in Asia – mean that sanctioned individuals and entities have numerous other options in terms of potential business partners.

The U.S. Chamber of Commerce therefore recommends that:

- Notwithstanding the May 17, 2016 announcement of the renewal of IEEPA authorities, U.S. sanctions should be terminated.
- Where designations remain appropriate, sanctions should be calibrated so that they target only individuals and entities of concern.
- Given the particularly troublesome issues in the financial sector, the U.S. should issue an exemption to financial transactions covered by the Patriot Act sect. 312, similar to that issued relating to sect. 311.¹² Moreover, given that the Treasury Department's Customer Due Diligence Final Rule will become effective in July 2016, Myanmar-specific banking outreach (as is currently being done for Iran) should be conducted to familiarize smaller U.S. banks them with the current landscape, gauge their difficulties and concerns, and actively suggest establishment of correspondent account relationships.

¹⁰ <http://www.international.gc.ca/sanctions/countries-pays/burma-birmanie.aspx?lang=eng>

¹¹ <http://www.ft.com/intl/cms/s/0/690f437c-b8dc-11e0-bd87-00144feabdc0.html#axzz42wonmkHY>

¹² <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/burma.pdf>

SECTION II

SECTORAL CHALLENGES

Continued sanctions are one major set of challenges for U.S. investors, and for Myanmar's overall economic development, but there are many others. As the new Myanmar government considers its legal and regulatory framework for foreign investment, it faces the challenge of attracting and incentivizing U.S. and other foreign investment. Over the past several years, Myanmar has undertaken measures to open the economy to greater foreign participation, including the ongoing revision of the Foreign Investment Law and the Special Economic Zone Law, and the award of certain tenders and licenses to foreign businesses. Nonetheless, many sectors remain off limits to foreign businesses, and the lack of technical requirements and transparent, predictable regulations consistent with international standards themselves are a barrier to trade and investment. Thus, capacity building of regulators through partnerships with the private sector as well as increased international cooperation in enhancing regulatory efficiency will be important.

However, there is a broader array of other fundamental issues and challenges that the new government must also address if the country is to attract investment, develop its economy, and ultimately provide better standards of living for its people.

A non-exhaustive list of these issues, based on surveys of foreign companies in Myanmar, include: (1) access to finance; (2) access to land, and the uncertainty of who actually has title to the land; (3) access to electricity; (4) access to skilled and healthy workers; (5) rule of law and corruption; (6) regulatory and taxation uncertainty; (7) lack of comprehensive infrastructure.

Each of these areas is discussed in detail in the following section of this paper, with an accompanying series of recommendations. American businesses support Myanmar's goals of stable and sustainable growth and prosperity. The recommendations made herein are offered in that spirit, and are designed to increase Myanmar's competitiveness in ASEAN and globally.

Challenge 1 – Access to Finance

Banking

In Myanmar today, just over 1% of fixed assets investment costs are financed by bank borrowing. The immense majority of Myanmar companies have to self-finance their investments, while only about 30% have a bank account, and only 7% have a line of credit.¹ Myanmar's banking system now comprises four state banks, 24 private banks (nine of which are actually controlled by various government agencies), and 48 representative offices of foreign banks and foreign finance companies. In 2014, nine of these foreign banks qualified to open a local branch under severe restrictions; only four more qualified in 2016. Additionally, there are over two hundred microfinance companies (briefly discussed below), financial cooperatives, the Myanmar Agricultural Development Bank, and

pawnshops, not to speak of a vast informal financial black market (money lenders). Each of these institutions is regulated by a separate entity, under different rules, with the exception of the black market, which is unregulated.

In January, 2016, Parliament passed the Banks and Financial Institutions Law (Law. No. 20/2016),² under which banks must keep 5% of customer deposits as cash with the Central Bank, hold a minimum capital requirement of 20 billion Myanmar Kyats (MMK) (MMK 75 billion for foreign branches),³ and have a minimum capital-adequacy ratio requirement, which currently is set by the Central Bank of Myanmar at 10% of risk-weighted assets. The law provides specific rules on Basel III compliance, anti-money laundering, and other risk management requirements.

¹ <http://www.imf.org/external/pubs/ft/scr/2014/cr14307.pdf>

² http://www.burmalibrary.org/docs21/2016-01-25-Financial_Institutions_Law-20-red-bu.pdf

³ The current exchange rate is about \$1.00 = MMK 1,230

These efforts led the Financial Action Task Force (FATF) to hold this year that “Myanmar has substantially addressed its action plan at a technical level, by: (1) adequately criminalizing money laundering and terrorist financing; (2) establishing and implementing adequate procedures to identify and freeze terrorist assets; (3) strengthening the extradition framework in relation to terrorist financing; (4) ensuring a fully operational and effectively functioning Financial Intelligence Unit; (5) enhancing financial transparency; and (6) strengthening customer due diligence measures”,⁴ subject to a follow-up inspection. Just last year, Myanmar was listed by FATF, together with Algeria and Ecuador, as a “jurisdiction with strategic AML/CFT deficiencies.”⁵ As both Algeria and Ecuador were subsequently deemed “no longer subject to the FATF’s on-going global AML/CFT compliance process,”⁶ the hope is that Myanmar will also “graduate” shortly from this compliance process.

Local banks are subject to interest rate caps (currently at 13% for loans, and 8% for deposits), which reduces their profit margins, and does not allow the banks to provide steady financing, especially to SMEs and to the retail economy. Furthermore, bank financing has an imposed maturity limit of one year, with extensions of up to two more years. The short maturity prevents banks from offering investment loans. Myanmar banks are further restricted from seeking longer term financing from international sources (the U.S. Burma Sanctions and other restrictions are largely responsible for these limitations), which would allow them to increase their leverage. The elimination of these restrictions, coupled with strengthened bank supervision over deposit and loan-cap regulations, are sorely needed.

Lending is also affected by the new law that requires all loans to be backed by collateral, even though the quality of such collateral is not specified. Moreover, there are onerous documentary requirements for processing any loan application. The banks rely primarily on land for collateralization of loans, but control of land in Myanmar lacks

clear titles. This reduces the ability of borrowers to secure loans. The bank lending reform process needs to address new legislation and create a regulatory framework that diversifies the forms of collateral, and creates institutional structures for immovable and movable collateral registration, such as a Land Registry (e.g. Hong Kong⁷). Furthermore, as most SMEs do not own land, or have only a temporary right to use of land nominally owned by the government, other forms of collateral and non-collateral lending need to be addressed under a revised supervisory framework in order to mitigate banks’ risks.

Since the passage of the Microfinance Law (Law no. 13/2011),⁸ more than 250 NGOs, INGOs and co-operatives, including domestic and foreign companies, have been granted licenses. Together they assist almost one million customers. Microfinance companies bring credit to those citizens of Myanmar (some 33 million) who lack access to traditional banking. This system encourages consumption, creates jobs by financing micro enterprises, especially in rural areas, and helps reduce poverty. Microfinance companies are subject to rate caps on loans of 2.5%/month, or 30%/year, and of 1.25%/month and 15%/year on deposits. The bank and microfinance regulatory process should be unified in order to provide predictability to transactional financing.

Insurance

Myanmar has one state-owned insurance company, Myanma Insurance Company, which has held the monopoly for almost sixty years, and is allowed to sell in 42 categories. It also has twelve newly licensed private companies, plus some twenty-two foreign insurance companies’ Sales Representative Offices, three of which offer services in the Thilawa Special Economic Zone.⁹ All private insurers sell the same products (eight categories, at present) at uniform prices, which is quite limiting. These policies have their policy wording prescribed by the Insurance Business Supervisory Board and have the same benefits. Due to the

⁴ <http://www.fatf-gafi.org/countries/a-c/afghanistan/documents/fatf-compliance-february-2016.html>

⁵ <http://www.fatf-gafi.org/countries/a-c/algeria/documents/public-statement-february-2015.html>

⁶ <http://www.fatf-gafi.org/countries/a-c/afghanistan/documents/fatf-compliance-february-2016.html>

⁷ <http://www.landreg.gov.hk/en/home/>

⁸ http://www.themimu.info/sites/themimu.info/files/documents/Microfinance_Business_Law_2011_ENG.pdf

⁹ <http://elevenmyanmar.com/business/japan-tops-foreign-insurer-list>

lack of competition over a long period of time, in addition to the product restrictions, there are shortages of experienced insurance professionals, and underdeveloped informational technology systems. There are no reserving standards and mandated guidelines. These numerous systemic weaknesses leave the entire system vulnerable to collapse.

After the prescribed retention levels are met, the excess is transferred to a coinsurance pool formed by all operating insurers, including Myanmar Insurance. In the past, the coinsurance pool's underwriting results have been unprofitable. The lack of a robust regulatory framework, and a lack of insurance statistics have resulted in a lack of public interest in seeking insurance.

Yangon Stock Exchange

The Yangon Stock Exchange was created in December 2015, and started trading this past March with only one of the five approved listings.¹⁰

Impact

Since 2010, domestic lending has risen in excess of 50 percent year-over-year, more than tripling by 2014 as a percentage of the GNP.¹¹ The former government undertook a number of reforms designed to unify exchange rates and stabilize the currency, which the World Bank says will create a solid foundation for growth:

- a Kyat managed float exchange rate system set up in 2012
- creation of a relatively independent Central Bank
- licensing of new banks, expansion of branch networks, the broadening of eligible collateral to include key agricultural export goods, and
- doubling of the loan ceiling to farmers
- Nevertheless, private banking is concentrated in three top banks, which account for more than 50% of the private banking assets, and 60% of lending.

RECOMMENDATIONS

- Adopt legislation to permit banks and other financial institutions to be freed from interest rate caps on both deposits and loans, and allow banks to expand loan collateralization by adopting moveable asset financing through secured lending rules and collateral registries.
- Allow Myanmar banks and financial institutions to borrow abroad, and lend for longer periods of time while offering higher interest rates to long-term depositors.
- Create a new regulatory framework which diversifies the forms of collateral and creates institutional structures for immovable and movable collateral registration.
- Strengthen bank supervision over deposit and loan-cap regulations.
- Create credit bureaus to ensure that borrowers are not over-indebted, as currently there is no way to determine whether a borrower has not borrowed from multiple sources.

¹⁰ <http://mizzima.com/business-domestic/first-myanmar-investment-list-first-yangon-stock-exchange>

¹¹ <http://www.imf.org/external/pubs/ft/scr/2014/cr14307.pdf>

- Consolidate bank supervision, microfinance oversight and regulatory authorities of other forms of finance into one regulatory body, with similar rules and robust supervision.
- Allow foreign insurance companies to enter the market. Insurance is a very specialized and essential field, and foreign companies bring in much better capitalization and experience in other frontier and developing markets.
- Insurance regulation from neighboring countries, which are now exiting the developing country stage (e.g. Thailand, Malaysia, etc.) should be used as a base for a rapid development of new insurance structures which will assist business growth, with both domestic and foreign investment.

Challenge 2 – Access to Land

Under Myanmar's Constitution, all land in the country is owned by the government. In reality, land in Myanmar is categorized as either: 1) agricultural land, or 2) non-agricultural land (see distinct categories listed below). Non-agricultural land refers to land that is not used for agricultural purposes, such as forest land, grazing ground, road, town and village lands, military purposes, religious purposes, etc. In all cases where formerly agricultural land is now being used for development, one has to verify that the land at issue has received a Land Use Permit under the 2012 Farmland Law. Acquisitions and compensation, though, are still governed under the provisions of the Land Acquisition Act (1894). There are no land regulations or institutions for land transactions, and there is no recognition for customary land tenure, land reclassifications, or an independent land dispute resolution procedure.

The country does not have a unitary land law, zoning law or property law that addresses all aspects of ownership, use or transfer of immovable property. There are more than seventy laws, regulations and amendments which are applicable to

land ownership and use, some dating to the British colonial period. In addition, the Farmland Law defines the terms of land rights differently from those in the Foreign Investment Law. It should be noted that "ownership" of land is different from having "possession of" or of "having access" to land, as Myanmar citizens may own land in "freehold," or have a "grant" to land. The other major right to land is "permit" land. Thus, in Myanmar, land can be classified into the following classes:

- (1) Freehold Land
- (2) Grant Land
- (3) Permit Land
- (4) Agricultural/garden Land
- (5) Grazing/Cultivable Land, Fallow Land and Waste Land
- (6) Forest Land
- (7) Town/Village Land
- (8) Military (Tatmadaw) Land
- (9) Land held for religious purposes

'Freehold Land' is the English translation of "ancestral land" in Myanmar. The right to own land in freehold, which is transferable, is, in itself, the absolute proof of ownership, and the owner is not required to pay property taxes on his freehold land. Freehold land can be taken by the government

(Ministry of Home Affairs, Department of General Administration) for a demonstrable “state interest” in accordance with the terms of the 1894 Land Acquisition Act. Almost invariably, freehold land can be found in large cities, and rarely in the countryside.

‘Grant Land’ is owned by the government, at whose discretion a grant or lease can be given for periods from 10 years to 90 years – short-term leases are not extendable) to any Myanmar citizen or entity. This grant/lease is transferable and the owner is legally bound to pay property taxes. This type of land may be taken back if the government does not wish to extend the lease, or for a “state interest,” (which rarely occurs). Outside of Yangon and Mandalay, the “grants” are administered by the respective ‘District Land Administration Department.’ The individual who has the grant/lease agreement with government shall be deemed to be a grant “owner” and he/she can hold the grant as a title deed. The grant holder may transfer, sell, mortgage, lease, exchange, or gift the land with the grant attached by way of a registered deed. His/her inheritors may also inherit that granted land.

‘Permit land’ is land given to a Myanmar citizen or entity by the government, subject to the terms and conditions of a “permit,” primarily for the purpose of building a house. A residential permit holder, or a permit landholder, does not have ownership rights. Thus, he/she cannot transfer/sale/mortgage/lease/exchange/gift the permit land, but can inherit it. In order to engage in any of these transactions, he/she needs to apply for a “grant” or lease agreement with the government. The sole exception is land which formerly was agricultural land and was converted to development, which is transferable. If a permit landholder does anything inconsistent with the terms and conditions of the permit, or does not apply for a grant/lease agreement for permanent residency within a reasonable amount of time, the government may cancel the land permit. According to the terms and conditions provided in permit, the permit holder must: 1) build a house on the subject land in accordance

with the building code (e.g. Department of Human Settlement and Housing Development - DHSHD) within the permit period; and 2) submit a grant application to DHSHD.

‘Agricultural/Garden Land’ is defined, under the terms of the 2012 Farmland Law, which includes its use as paddy land, garden land and rubber plantation land. Prior to the adoption of the 1953 Land Nationalization Act, Myanmar citizens as well as foreigners could own agricultural land. Currently, all agricultural land is under exclusive state ownership. All farmers who are authorized to farm are tenant farmers. This land use right may be sold/mortgaged/leased/exchanged/donated, in whole or in part. The land use rights are recorded in the Township Settlement and Land Record Department. Nevertheless, no regulations for the registration of farmland sales or mortgages were issued, and no tax or transaction fees policies exist. Thus, there is no system to trade farmland.

A change from “agricultural use” to “non-agricultural use” is possible under Section 30 of the Farmland Law (2012), and rule 82 of the Farmland Act Rules. Once approved, (Form 15 “Permit to use farm land for other purposes”), this title to land is transferable, and could become “Grant Land.”

Registration of property in Myanmar is a very difficult and expensive proposition, which does affect the outcome of investment in real estate. On the average, it is reported that it takes 113 days to complete the process, the longest period in the ASEAN.¹² Furthermore, the cost of registering property is also onerous, as the costs come to 7.2% of the value of the property, one of the highest in the ASEAN.¹³

A separate but related issue is the lack of legislation on restitution of government-seized property. Starting after independence, but especially after 1962, Myanmar has experienced a number of nationalizations, most without due compensation to the original land owners. The 2008 Constitution has enshrined the ownership of the land in the government, allowing for “land use rights” to the immense majority of land users. Although there

¹² <http://www.doingbusiness.org/data/exploreeconomies/myanmar/>

¹³ *Id.*

are exceptions to this universal land ownership by the government (e.g. freehold from the Colonial era, or grants by various governments thereafter), most of the land in Myanmar, whether in the cities or in rural area, is held under such “land use rights” granted by the government. These rights can be, and have been, terminated for a number of reasons (e.g. the land-use rights were obtained improperly; real estate rights are restricted under judicial or administrative order; the land-use rights were terminated by the government, including nationalization; the real-estate ownership is in dispute; or the subject property’s ownership has not been perfected). The result has been that, over time, the right to property has been eviscerated, and new investors are not assured that any real-estate investment will not, in the future, be claimed by previous owners who had been disenfranchised without due compensation.

According to a 2015 report of Global Witness, a London-based human rights organization, by 2013 over 5.3 million farmland acres were taken by various government or military associated parties,¹⁴ and leased to investors. (A Hluttaw commission, set up in 2012 to investigate such seizures, found that the U Thein Sein government had returned over 302,000 acres to its original land users¹⁵). Such actions increase the uncertainty as to the land use

rights’ actual ownership. The history of previous nationalizations without due compensation, and land grabs in recent years with very little, if any, compensation to farmers who have worked the land for generations, further complicate this picture.

Impact

Since 2012, Myanmar has been developing a draft National Land Policy using a multi-stakeholder consultation process.¹⁶ An unprecedented effort, this document attempts to strengthen the land tenure security of farmers, ethnic communities, women, and other vulnerable groups in Myanmar. At the same time, it seeks to provide an effective environmental and social safeguard mechanism, improve public participation in the land use decision-making process, improve public access to accurate information related to land use management, and develop independent dispute resolution mechanisms. The draft policy also attempts to guide government mechanisms for handling land acquisition, compensation, relocation, and restitution.¹⁷ It makes specific reference to the UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forestry and Fisheries,¹⁸ which has been adopted by various international bodies as “global best practices” on providing fundamental principles of land governance.

RECOMMENDATIONS

- Establish a national system for the registration of land (i.e. Land Registry), a land policy, and a land law in order to develop a secure land transaction mechanism. The lack of efficient legal institutions that provide reliable property information for impersonal exchange has hampered sustained economic development. One of the biggest impediments to manufacturing investment, for example, is the lack of knowledge as to who owns the land at issue, since when, and based on what right. With the development of a true market economy and emergence of private property interests in land, creating functioning property institutions is imperative. Land titles elsewhere are hallmarks of citizenship, personhood and social justice. A national Land Registry will streamline development, provide title security and efficient title transfer, allow legal exploitation

¹⁴ <https://www.globalwitness.org/en/campaigns/land-deals/guns-cronies-and-crops/>

¹⁵ <http://www.elevenmyanmar.com/opinion/talking-about-judiciary-and-rule-law>

¹⁶ http://www.burmalibrary.org/docs21/NLUP_6th_draft2015-06-en.pdf

¹⁷ <http://www.usaidlandtenure.net/commentary/2014/11/burma-draft-national-land-use-policy-public-consultations>

¹⁸ <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

of resources, and improve the collection of taxes, while remedying some of the past injustice of land grabbing and nationalization without due compensation.

- Adopt a proper Restitution Law. Such a law would solve the claims of previous owners who have been disenfranchised without due compensation by allowing the title to property to be claimed and resolved within a short period of time, thus removing any cloud on the title, and allowing new investors to be assured of the safety of their investment.
- In a national reconciliation effort by the new NLD government, in particular in ethnic areas, farmland right-of-use should be enshrined in law.

Challenge 3 – Access to Electricity

Currently, Myanmar has less than 4,000MW of installed operating electric power capacity, the lowest in ASEAN. The country has some 9 million households, but supplies energy to fewer than 3 million.¹⁹ Industrial development has been substantially curtailed by the lack of electric power, as 94% of Myanmar firms experience power shortages.²⁰ Moreover, during the frequent blackouts which occur in Myanmar, industrial customers are the first to be deprived of energy, before consumers. This increases energy costs (as diesel or gas-powered generators have to be used,²¹ which 76% of all businesses do²²), and decreases efficiency. Moreover, there are significant differences between regions concerning the access to electricity, with some having mostly uninterrupted power, and other areas encountering extended daily shortages, especially during the dry season.

Natural gas

Although Myanmar holds the 10th largest natural gas reserves in the world, it experiences a 50%

shortage in its domestic market due to the previous government's emphasis on exports. Further, Myanmar's gas-fired power plants, which only have an installed capacity of 678MW, require frequent maintenance in some cases due to the high nitrogen content of the gas, which causes the plants to operate well below their desired efficiency. In addition, gas distribution pipelines lack compression, modern metering, and leak detection, adding to their inefficiency.

Renewable

The country has enormous potential for solar, wind, geothermal and hydropower generation. Three quarters of the current generation comes from 11 hydropower plants, and the balance out of gas and steam powered plants. Although rich in coal and oil, there is only one 120MW coal-fired installed capacity plant (Tigyit).²³ The first wind farm deal was announced recently²⁴ with China's Three Gorges Corporation, for a 30MW project in the Ayeyarwady region. The Ministry of Electric Power (MOEP) has stated that it intends to have

¹⁹ Government of Myanmar, Ministry of Energy. 2014. <http://www.iea.org/statistics/statisticssearch/report/?country=MYANMAR&product=balances&year=2012>

²⁰ http://www.burmalibrary.org/docs21/WB-2015-01-Investment_Climate_Assessment-en-red.pdf

²¹ <http://www.adb.org/sites/default/files/publication/175801/ewp-460.pdf>

²² http://www.burmalibrary.org/docs21/WB-2015-01-Investment_Climate_Assessment-en-red.pdf

²³ <http://www.adb.org/sites/default/files/publication/175801/ewp-460.pdf>

²⁴ <http://www.mmimes.com/index.php/business/19343-moep-signs-first-wind-power-deal.html>

as much as 9% of the electric energy sourced from wind farms by 2030.²⁵

The nationwide electricity transmission grid is some 10,000 kms in length. Although the lines are reported to be in relatively good condition,²⁶ the age of most power lines (estimated to be over 50 years for 70% of the network) and the long transmission distance results in voltage losses of 10%. Although the government plans to introduce 500 kV transmission lines, these plans are frustrated by lack of resources as the financing is envisioned to be budgetary.

The former government recognized the challenge early in its tenure, and adopted a National Energy Policy²⁷ based on the principles set in 2013 in its Framework of Economic and Social Reforms.²⁸ These policies have also led to the development of a National Electrification Plan,²⁹ under which six million people will be connected to the grid by 2021, and universal access will be achieved by 2030. This ambitious plan will require a \$4 billion investment every year between now and 2030. MOEP envisions a mixture of diversified sources of energy, conservation, and energy efficiency measures, and the introduction of energy pricing policies which will attract independent power producers (IPPs) and public-private partnerships (PPPs). The government's policy has been to dedicate any new offshore gas fields' output to domestic consumption earmarked for power generation, thus starting to alleviate the gas supply shortages. However, this will require additional investments in primary and secondary gas transmission infrastructure, and a market-based, transparent, and efficient pricing and allocation mechanism.

In hydropower, after public opposition to the building of the Myitsone dam, the MOEP identified 92 large-scale hydropower projects with a total capacity of 46 GW. The MOEP has now

budgeted construction of 13 hydropower plants with an installed capacity of 2.5 GW. The balance is envisioned to be offered to private investors as joint ventures, adding another 42 GW of total capacity.³⁰

Impact

Despite some progress since 2011, the effect of the disastrous policies of the past in power generation and distribution remain to this day:

- Under the former government, there were eight ministries which had various responsibilities for energy. Each ministry had its own policies and plans, with little coordination among them. Furthermore, each ministry had unincorporated enterprises within its ranks responsible for energy transmission, distribution, etc., in many cases with overlapping responsibilities. This dated organizational structure meant that these enterprises could not seek financing outside the Union budget.
- Full electrification of the country by 2030 will require an estimated investment of over \$56 billion, equal to Myanmar's annual GNP today. As pointed out above, the country's financial system does not have the required framework necessary to promote private sector financing. Existing state-owned power producers cannot access the financial markets due to their lack of an independent corporate structure. Furthermore, the government's fiscal management capacity is insufficient to deal with issues of financing these large projects.
- The entire energy sector's capacity is very limited, in both qualified manpower, as well as in infrastructure. Lack of proper maintenance and insufficient financing has left the energy producing sector dilapidated. The government is starting to introduce policies and plans which address investment needs in both the short

²⁵ *Id.*

²⁶ <http://www.adb.org/sites/default/files/publication/175801/ewp-460.pdf>

²⁷ <http://spectrumsdkn.org/en/home/other-sectors/energy/people-centred-energy-policy-conference-25-26-february-2015/conference-presentations/138-national-energy-policy-2014/file>

²⁸ http://www.themimu.info/sites/themimu.info/files/documents/Ref%20Doc_FrameworkForEconomicAndSocialReform2012-15_Govt_2013%20.pdf

²⁹ https://energypedia.info/wiki/Achieving_Universal_Access_to_Electricity_in_Myanmar#Draft_Final_Reports

³⁰ http://www.burmalibrary.org/docs21/WB-2015-01-Investment_Climate_Assessment-en-red.pdf

and long run, but the energy industry is underdeveloped, and lacks the educational infrastructure to bring in adequate numbers of qualified cadres.

- Connecting to the grid for new customers can take up to a year, at par with Mongolia and Afghanistan.³¹
- The country's legal framework and regulatory environment are outdated or, in some cases, nonexistent, as is the case for energy efficiency, renewable energy, and climate change.

Environmental protection and social safeguard rules are just now being introduced, to a limited extent, and their vigorous enforcement would mitigate potential social issues.

Increased electrification, implemented nationwide, will support the development of SMEs and home businesses in rural areas, improve the ability of students to study, and provide access to information in conjunction with the nationwide telecommunication improvements brought by MTP, Ooredoo and Telenor.

RECOMMENDATIONS

- The functions of policy development, lawmaking, and enforcement, on the one hand, and business operations, on the other hand, need to be separate and independent.
- There is a need for a separate and independent power regulator dealing with tariff setting, competition, standards setting, etc. This regulator, which could be the Electricity Regulatory Commission (ERC), should be responsible for: i) drafting and implementing rules in the power sector; ii) approving power purchasing agreements; iii) issuing licenses; and iv) setting rates.
- Current electricity rates in Myanmar are among the lowest in the ASEAN.³² These tariffs do not reflect the true cost of generation, thus, overall, electricity consumers in Myanmar, large and small, are subsidized by the government. The off-grid consumers, though, pay the true cost of electricity, which varies between \$0.10/kWh and \$0.31/kWh, as opposed to an average grid tariff of \$0.13/kWh. These tariffs prevent private investment, deny the government's power producing units the ability to modernize and expand, and rob, in effect, the over 2/3 of Myanmar citizens who do not have access to the grid.

Thus, in conjunction with the adoption of new national legislation on price liberalization, the following steps should be considered:

- » establishment of a Wholesale Electricity Spot Market (WESM);
- » unbundling of transmission and distribution charges;
- » initial implementation of a cross-subsidy removal scheme;

³¹ *Id.*

³² Current electricity tariff rates are as follows: (i) For households: Mk35/kWh or \$0.036/kWh (for consumption until 100 kWh), Mk40/kWh or \$0.04/kWh (for 101–200 kWh), and Mk50/kWh or \$0.05/kWh (for 201 kWh and above); and (ii) For industry: Mk75/kWh or \$0.08/kWh (until 500 kWh), Mk100/kWh or \$0.10/kWh (for 501–10,000 kWh), Mk125/kWh or \$0.13/kWh (for 10,001–50,000 kWh), Mk150/kWh or \$0.16 (for 50,001–200,000), Mk125/kWh or \$0.13/kWh (200,001–300,000 kWh), and Mk100/kWh or \$0.10/kWh (300,001 kWh and above). <http://www.adb.org/sites/default/files/publication/175801/ewp-460.pdf>

- » privatization of at least 70% of the total capacity of MOEP's generating assets; and
- » transfer of national contracts to independent power producers (IPP) and private-public partnerships (PPPs).

These initial steps will continue the restructuring of the MOEP, in that the Yangon City Electricity Supply Board has been incorporated as the Yangon City Electricity Supply Corporation, and the Mandalay Electricity Supply Board has been converted to the Mandalay Electric Corporation. However, the Myanmar Electric Power Enterprise, the Electric Supply Enterprise, the Hydropower Generation Enterprise, and related departments, also need to be converted into independent companies, and then privatized.

These structural and regulatory changes will allow tariffs to be set in a competitive marketplace, after steps i-v above, as well as (vi) a shift from rate of return base (RORB) regulation to performance-based regulation; (vii) institution of universal charges and lifeline rate subsidy; and, (viii) open access and retail competition. All of these changes will bring competitive pressures on most service suppliers, resulting in better market efficiency and, eventually, lower and more sustainable prices.

Challenge 4 – Access to Skilled and Healthy Workers

Myanmar's economic growth is conditioned on the quality of available human capital. Solid primary education, a secondary education which starts teaching more specialized skills, and higher learning in high schools or vocational schools, are needed to support the country's economic growth. Personnel shortages are acute in education, health sciences, and in virtually every other key profession and skill set.

In Myanmar, the literacy rate is currently over 95%, which is at the same level as that in China, Thailand and the Philippines.³³ In addition to the state's efforts since 1973 to bring literacy to the masses through free and compulsory primary schools, monastic and private schools have an increasing role in educating the children of Myanmar,

in particular under the provisions of the Private School Registration act (2011).³⁴ Despite the availability of public and private schools, only 75% of primary school pupils finish the last grade of primary education,³⁵ for reasons that will be discussed below.

Unfortunately, middle and high school education is neither free, nor compulsory, unlike education in some of the surrounding countries, like China, Thailand, Cambodia and Sri Lanka.³⁶ As a result, the enrollment percentage of 32% is far lower than in any of its neighbors.³⁷ Given that so much of the work force does not have more than a primary education, an adequate and specific skills training program is needed. In many cases, private companies, and especially

³³ <http://data.uis.unesco.org/>

³⁴ http://www.themimu.info/sites/themimu.info/files/documents/Private_School_Registration_Law_2011_ENG.pdf

³⁵ <http://data.uis.unesco.org/>

³⁶ *Id.*

³⁷ *Id.*

new investors, have filled the gap with extensive training, only to see many of the graduates leave for other jobs paying a few Kyats more.³⁸ This is not a phenomenon unique to Myanmar, as many low and medium income countries do not have sufficient trained human capital to accommodate substantial growth, or do not have labor markets adapted to investors' needs.

Various Myanmar governments have attempted, since 1988, to establish new higher education institutions in various parts of the country. For example, between 1988 and 2012, the number of higher education institutions increased from 32 to 164, while the specialized education institutions increased from 79 to 215. And these are just the institutions accredited by the Ministry of Education. In Myanmar, there are many other institutions which are parochial (e.g. the Chin Christian University), or run by other Ministries (e.g. the Yangon Technological University, which is run by the Ministry of Science and Technology) (N.B. there are thirteen Ministries involved in education, with little coordination between them). Yet the gross enrollment ratio in tertiary education is still around 10% vs. over 50% in most OECD countries, or 26% in China and 18% in India.³⁹

Due to the substantial increase in the number of institutions, and the very low spending per student, various Ministries have actually reduced the number of graduates in order to save money. For example, the Ministry of Health has reduced the number of trained doctors to about 1,300, from 2,500/year, and the Ministry of Science and Technology has reduced the number of engineering graduates from 30,000 to 16,000.⁴⁰

The other major issue is the state of vocational

schools (technical schools and high schools),⁴¹ mostly coordinated by the Department of Technical and Vocational Education of the Ministry of Science and Technology. The major sub-sectors where there is a skill deficit include electrical machinery, motor vehicles, petroleum products and chemical products, computer and IT-related jobs, and jobs requiring technical skills and analytical thinking.⁴² Yet, the enormous deficit of technicians in the economy is not made up, in any given year, by the 30,000 graduates of some 460 public training schools, and about 8,300 skilled agricultural workers.⁴³ There are no formal state-sponsored apprentice programs similar to those in OECD countries,⁴⁴ although a privately-sponsored program, the Yangon Center for Vocational Training (CVT),⁴⁵ does graduate several hundred students every year. There is also an investment deficit in training, as more than half of Myanmar's corporations do not budget for training of their employees.⁴⁶

Healthy workforces are also key to the quality of available human capital. Despite the Myanmar Government's commitment to achieving universal health coverage (UHC) by 2030, two fundamental challenges remain. First, health policy has been subordinated to and separated from political and economic stability as a policy priority, rather than understood as a fundamental component of both. The Government's near-wholesale delegation of health policy to the Ministry of Health and other bodies evinces the mismatch between the importance of health policy to Myanmar and its low priority for the Government. Second, structural challenges in Myanmar's health system generate barriers and inefficiencies to providing the people

38 <http://www.burmanet.org/news/2016/03/07/myanmar-times-coca-cola-rep-talks-sanctions-expansion-and-talent-wars-steve-gilmore/>

39 http://www.eaber.org/sites/default/files/OECD%20-%20Multidimensional%20Review%20of%20Myanmar_%20Vol%201_%20Initial%20Assessment.pdf

40 http://databank.worldbank.org/data/reports.aspx?source=education-statistics-~all-indicators#selectedDimension_Stat_Ctry_Ext

41 <http://tvnetmyanmar.org/>

42 http://www.keepeek.com/Digital-Asset-Management/oecd/development/multi-dimensional-review-of-myanmar_9789264220577-en#page30

43 http://databank.worldbank.org/data/reports.aspx?source=education-statistics-~all-indicators#selectedDimension_Stat_Ctry_Ext

44 http://www.swissinfo.ch/eng/beatung-youth-unemployment_exporting-the-swiss-apprenticeship-model/33339790

45 <http://www.cvt-myanmar.org/>

46 http://www.keepeek.com/Digital-Asset-Management/oecd/development/multi-dimensional-review-of-myanmar_9789264220577-en#page30

of Myanmar access to high quality healthcare. Lack of government financing, inadequate infrastructure, insufficient access to medicine and medical equipment, and low numbers of trained staff have all led to both a public healthcare system that few have faith in, and a private healthcare system that offers little quality for high prices.

Impact

Previous Myanmar governments have attempted to provide basic education to all pupils between 5 and 10 years of age, without dedicating the resources necessary for such a populous country. As a result, the educational deficit has, sometimes, been covered by non-formal or private initiatives,

or it has been ignored. The known constraints to education include suitable school facilities, properly trained and remunerated teachers, transportation to schools, and plentiful teaching materials. The government has to ensure that teachers are properly trained, and incentivized to work, especially in the rural areas where two-thirds of the population lives. Further, many families must consider not just the out-of-pocket direct expenditures of sending their children to school, but also the opportunity cost of losing a worker. While Myanmar families treasure education, the parents have to see it as an investment in the child's future which will bring him/her a better life. If they don't, they will hesitate to send their child to school.

RECOMMENDATIONS

- Establish better coordination between the Ministries which have an education responsibility, and preferably locate all such oversight under one Ministry. This will reduce inefficiencies and misallocation, and allow implementation of a single standard of quality of education at all levels.
- Conduct a survey of market needs in order to better understand Myanmar's skill requirements. This should be a continuous effort.
- Emphasize profession-specific education in both high schools and vocational training, specifically including apprenticeships. In particular, as different areas of the country have different economic strengths, investments in education should be in those fields of activity which would bring the highest return to the local population, both in labor participation and income.
- In cooperation with the Ministry of Labour, the Ministry of Education should survey employers to determine unemployment patterns, and compensation variances between various industries, as well as between the private and public sectors. This would allow a timely calibration of the curriculum and size of student bodies to answer the prospective needs of industry and of the public sector.
- Systematically increase teacher training and compensation. The teacher training curriculum should emphasize practical pre-work education, with a particular focus on needed skill sets identified by employer surveys.

- Allocate more funds to secondary education, make it legally guaranteed and mandatory, and offer parents compensation for having their children in school, such as by subsidizing direct expenses, and offering stipends to those parents whose children work for the family, particularly in the rural areas.
- Adopt apprenticeship programs modeled after those in OECD countries, given that vocational and technical training are central to bridging the skill deficit in the labor force. Doing so will allow creation of targeted careers in areas where there is currently a substantial lack of trained workers, and in those professions in which Myanmar may hold a comparative advantage in the region.
- Increase public and private investment in health. The Government should allocate more resources to the health budget, with the understanding that even current plans for better health training and infrastructure are unworkable without significant increases to the long-term budget. Supplementary private investment can be bolstered by external development assistance packages.
- Integrate health goals into policies in other sectors. Good health requires an understanding of health as a governance issue, and an appreciation for how policymaking in other sectors can contribute. Government entities covering issues from transportation, environment, finance and communications need to be included as stakeholders in health goals to ensure that health is a beneficiary and not a casualty of policies in other sectors.
- Address deficiencies in the Township Health System (THS). The THS is a key tool to improve health in Myanmar, and needs to be strengthened. First, declaring a “decade for township health systems” would send a message that the THS is a priority for both the central government and regional/state authorities. Second, immediately enact a policy to ensure free access to essential medicines. This would improve both confidence in the THS but also signal a credible commitment to the government’s UHS goals. Third, the THS system should improve its responsiveness and efficacy by including both private and NGO health care providers.

Challenge 5 – Rule of Law and Corruption

As a country exiting dictatorship, Myanmar requires a major revision of its approach to the “rule of law”,⁴⁷ leading to a consistent and comprehensive system of laws and regulations, applied equally to all parties, in which no one, specifically

including the government, is above the law.

Since independence, Myanmar has not provided for a separation of powers between the legislative branch, the judiciary and the executive. Although Myanmar’s Constitution provides for a

⁴⁷ Rule of Law is defined by the UN as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.” (Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616).

bicameral parliament system that elects the president and an independent judiciary, from 1962 to 2011 the country was run by successive military governments through the exercise of arbitrary, opaque power. The military disbanded the legislature, and subsequently, subordinated the judiciary. Even when attempts were made to reinstate some form of elected legislature, the judiciary remained subservient to the executive branch.

The lack of rule of law has restricted the ability of these governments to provide major public benefits to the population, including, but not limited to equal access to justice, security, education, health care and other services, while, at the same time, protecting the abuse of power. Worse, the lack of the rule of law has been a leading factor in the unbridled depletion of the country's national resources, especially its social capital. With more than 5.5 million emigrants during this period (or, over 10% of its population), the country has lost enormous brain power. The result of these policies is that Myanmar, a country with enormous natural resources, one of the most literate populations in the ASEAN, and one which, at independence, was the largest producer of rice, beans and pulses in the world, with some of the best universities, went from the second richest country in Asia to the second poorest.⁴⁸

The two chambers of the Legislature (the Pyithu Hluttaw and Amyotha Hluttaw) are composed of elected legislators (75%) and military appointees (25%). Currently, due to the lack of resources (e.g. staff, committees, and support for drafting new laws), legislators are limited, by and large, to voting on government-drafted legislation. Any constitutional change requires the vote of 75% or more of Hluttaw members. Therefore, the Constitution cannot be modified by the Hluttaw without the votes of the military-appointed members.

The judicial system has two parts: the court

system led by the Supreme Court, and the Constitutional Tribunal, which is limited to interpreting the Constitution and reviewing legislation regarding its conformity to the Constitution. Both courts are formed with jurists who are nominated by the President, and confirmed by the Hluttaw,⁴⁹ and can be impeached by the Hluttaw. The term of the Constitutional Court judges is limited to five years, which is a relatively short period of time. The Supreme Court can issue orders regarding fundamental rights.

Lower court judges are appointed by the Supreme Court at the recommendation of the local Chief Minister, and can be dismissed without cause. Thus, their work is, at times, influenced by politics, and not by the rule of law. Furthermore, judges lack the resources to keep current with developments in the law, and, in some cases, are appointed from the military after retirement from the armed forces without having to meet all the legal requirements for the job.

Historically, Myanmar has had five legal systems which overlap: the British common law, the post-independence parliamentary legal system, the socialist civil law, the dictatorial decree system, and the post-2011 legislative system, supplemented by a myriad of regulations, many at odds with each other and, at times, with the actual terms of the laws. The result is that, in a country with more than 800 laws, half of which have been passed or amended since 2011, there is a very strong likelihood that in a controversy between two parties, either or both of them will not know what the actual law is., Worse, the judges may not know either. The reason is that since 1954, laws and regulations have not been codified, and interpretations of the law in actual cases are often not made public.

This situation raises concerns about bribery. In a recent World Bank Enterprise Survey,⁵⁰ less than a third of respondents believed that the court

⁴⁸ Steinberg, David I. (2001). *Burma, the state of Myanmar*. Georgetown University Press. pp. 125–127. ISBN 978-0-87840-893-1.

⁴⁹ Myanmar Union Constitution sect. 299(c)(i)(2008)

⁵⁰ http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2015/03/31/000406484_20150331084640/Rendered/PDF/938480REVISED00CA0938480MM00PUBLIC0.pdf

system is fair, impartial and uncorrupted, the lowest percentage in Asia, other than Mongolia and Bangladesh.

The former Union government passed an Anticorruption Law in 2013⁵¹ which requires, for the first time, all officials in each of the three branches of government to declare their assets. In 2014, a fifteen-member anti-corruption committee was formed, led by a Union Vice President. The commission encouraged individuals to report bribery, and offered immunity from prosecution. Myanmar has ratified the 2003 UN Convention against Corruption,⁵² and the Hluttaw has also increased debate about reports of graft and money laundering, as well as of human trafficking and forced labor. Hundreds of government employees have been disciplined following reports from the public,⁵³ and, more recently, over 160 employees were disciplined or dismissed in anti-corruption investigations.⁵⁴ Moreover, Myanmar has begun the process of joining the Extractive Industries Multi-dimensional Review of Myanmar (EITI).⁵⁵ The result of the start of this anti-corruption campaign in Myanmar is that Transparency International has upgraded Myanmar's ranking to 147.⁵⁶

Generally speaking, corruption is defined as the use of public office for private gain, or in other words, use of official position, rank or status by an office bearer for his/her personal benefit. Corrupt behavior includes: (a) bribery, (b) extortion, (c) fraud, (d) embezzlement, (e) nepotism, (f) cronyism, (g) appropriation of public assets and property for private use, and (h) influence peddling.⁵⁷

In Myanmar corruption can be identified in a multitude of areas, specifically in the acts of:

- securing government services, whether from a centralized authority or at the local level
 - reducing the cost of a transaction or seeking additional benefits not otherwise available
 - reducing or eliminating a threat (e.g. prosecution) or some other government-initiated punishment
 - engaging in a collusive action with another party seeking certain benefits
 - offering or being solicited to offer cash or non-cash payments in order for a government employee to engage in abuse of power, or refrain from doing so.
- The causes of corruption in Myanmar are many, but the main reasons it has become so institutionalized are:
- (10) Government restrictions on trade – foreign companies are not permitted, with very limited exceptions, to engage in either wholesale or retail trade. Furthermore, many exports and imports are subject to licensing, and quantitative restrictions. The result is that a foreign company operating in Myanmar has to use a number of methods to import/export and distribute goods, from “nominee” Myanmar companies, to “captive” companies using related individuals who are indebted to the foreign company, to using “front” Myanmar companies which are only collecting a fee for having lent their name to transactions, etc. These subterfuges create a myriad of bribery opportunities at multiple levels, particularly with government supervisory authorities. The global experience is that the more open an economy is, the lower the corruption. One solution is to free trade of government restrictions which create opportunities for abuse.
 - (11) Controls of pricing, subsidies and exchange rates – in an economy which is now being liberalized, there are still a variety of controls on the value of inputs (e.g. see above discussion on interest rates, and more recently, the issue of restrictions on sales of foreign currency), or subsidies which skew the market. Inherently, where there are price controls, and related currency controls, there is an incentive built-in to find ways to get around the regulatory framework, especially if government employees are involved. Again, global experience has shown that the higher the subsidies to segments of the market, the higher the corruption index.
 - (12) Government employee compensation – employees of Myanmar's government are paid, on

⁵¹ <http://www.myanmargeneva.org/uselink/uselink2.htm>

⁵² https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

⁵³ <http://www.mmimes.com/index.php/national-news/13266-slap-on-the-wrist-corruption-goes-unpunished.html>

⁵⁴ <http://www.mmimes.com/index.php/national-news/nay-pyi-taw/18688-close-to-bottom-of-corruption-index-but-improving-slightly.html>

⁵⁵ <https://eiti.org/Myanmar>

⁵⁶ <https://www.transparency.org/cpi2015>

⁵⁷ <http://www.unescap.org/sites/default/files/apdj-7-2-2-Myint.pdf>

the average, around \$200 to \$300/month, in an environment where their purchasing power has deteriorated by 50% in the last three years, and the inflation rate is in the high single digits. Due to the lack of opportunity to earn more (no bonuses, no incentive pay, no variable pay scales, etc.), there is an expectation that a public employee dealing with private individuals or companies will supplement his/her income by soliciting/receiving gratuities, especially if the risk of getting caught, and the level of punishment, are low.

- (13) Resource allocation – as Myanmar is extremely rich in natural resources, the allocation of oil, gas, timber, real estate, precious stones, rare metals, and other resources opens the door to corruption in the allocation of licenses and in the sales of natural resources.
- (14) Socio-economic factors – in a country with more than 135 ethnic nationalities, there are pressures to favor those coming from the same ethnic or socio-economic background. In particular, where there are very low levels of compensation for government employees, there is a direct correlation between family ties and the level of corruption.

Impact

Myanmar's economic growth is seriously affected by rampant and pervasive corruption. In effect, the price of corruption is considered to be a transactional tax which affects both the scope and level of investment. Any business interested in investment

in a country will consider the total cost of doing business, and corruption at every level may negatively affect the investment decision, particularly in light of the strengthening of the national and international anticorruption enforcement.

Corruption contributes both to lower tax revenue, and the misallocation of resources in public spending. Resources are allocated to less productive industries because of corrupt practices, and the actual income collected by tax revenues may be lower than otherwise would be the case. Furthermore, corruption leads to the development of an underground economy, which is free from government taxation, thus resulting in lower revenues for the public budget. This is also the case in the allocation of public contracts through procurement. If the process is corrupt, the government collects less in revenue, and expends more in term of asset allocation. The impacts of corrupt procurement practices include, but are not limited to, low quality infrastructure, requiring higher maintenance or replacement; lower quality services which need to be supplemented; environmental damage; and other preventable, man-made catastrophes.

Furthermore, due to the fact that some government jobs are more lucrative than others, talent is misallocated, which has negative effects on the country's growth rate. Corruption also causes a highly uneven income distribution in the economy, as the well-connected receive large benefits due to their government monopoly position, exacerbating wealth concentration.

RECOMMENDATIONS

In order to develop the “rule of law,” multiple actions need to be taken:

- Provide a “one-stop” multiple point-of-access, at no cost, to the country's existing laws and regulations, and officially translate them into at least one other language at publication;

- Re-establish the common law system as the primary means of interpreting the law, and allow for court decisions to be published;
- Introduce mandatory annual continuing legal education, and maintain uniform high standards for admission to the bar, as well as to becoming a judge or magistrate at any level;
- Separate entirely the Judicial Branch from the Executive, and have District, Appellate, Supreme and Constitutional Court judges nominated by the President, but confirmed by the Hluttaw. Appointments should be for life, subject to impeachment.
- Increase transparency and public involvement in legislation by requiring that all new laws and regulations, and budgets, undergo a public comment period.
- Reinstate a very active Union Auditor office, create a Public Ombudsman Office which will represent and disseminate information to the public, and create independent anti-corruption, anti-competition, and financial supervision institutions.
- Limit government discretionary powers, eliminate price distortions (subsidies) and special privileges.
- Empower the anti-corruption agency to investigate and prosecute corruption-related offenses. Set up a reporting system where watchdog organizations, the press, and private individuals can safely report evidence of corruption-related offenses. Corrupt politicians and government officials, as well as bribers, have to believe that the government is very serious in fighting corruption. Public prosecution of leading individuals, and a public campaign against corruption, sustained over an extended period of time and repeated, will be necessary if the effort is to be credible.
- Develop a mandatory Code of Ethics for government employees, and follow-up with expeditious punishment for corruption-related offenses. All levels of government have to show measurable implementation of honesty, integrity and capacity for hard work without illegal payments.
- Raise public employees' compensation above the national average, and index it to inflation.
- Improve political and legal institutions by establishing a broad and easily accessed body of laws and regulations, reduce the burden of litigation in the administration of justice by setting up arbitration and mediation centers, and promote efficiency and honesty of the police with regular training in sensitivity, especially regarding ethnic and religious issues.

Challenge 6 – Regulatory and Taxation Uncertainty

The World Bank's "Doing Business" annual ranking lists Myanmar at 160 in the ease of starting a business,⁵⁸ an improved position from previous years. Yet, this ranking is the lowest in ASEAN, and third lowest in Asia, and there are net losses of rankings in paying taxes and getting credit. Operating under outdated legislation,⁵⁹ it takes a foreign investor, on the average, a dozen procedures, more than two months and a substantial amount of money to start a new business. Further, the restrictions in the Foreign Investment Law (2012),⁶⁰ including its regulations concerning the areas in which a foreign investor is permitted to operate, are problematic. Among the restrictions foreign investors face are those pertaining to distribution. Myanmar law prohibits foreign companies from importing agricultural and industrial products and distributing those products domestically without a license. Currently, foreign companies cannot obtain an import and distribution license without a Myanmar-majority joint venture. This rule effectively prohibits foreign companies from entering the trading business in Myanmar.

In addition, the restrictions on transfer of shares between local and foreign investors, multiple and in many cases overlapping licensing requirements, and the prohibitions on engaging in either wholesale or retail trading, make it is easy to understand why foreign investors have to factor substantial start-up costs,⁶¹ time and effort, in just starting a business. Add a required minimum \$50,000 paid-in capital requirement,⁶² and many foreign SMEs have little chance of being able to afford these start-up costs.

There are even more challenges which are quite substantial compared to other ASEAN countries: enforcing contracts (ranked 187, primarily due to the lack of Rule of Law), protecting

minority investors (ranked 184), registering property (ranked 145), and exiting the economy (ranked 160).⁶³ For example, filing for bankruptcy can take up to five years, and cost some 18% of assets. The result is that, unlike foreign companies, which have very stringent and costly registration and operational requirements, an estimated 75% of local businesses operate informally, being, at most, registered at the municipal level without registration as companies. This discrepancy gives a huge advantage to local firms.

These issues are compounded by a number of factors which apply across the board:

- Discrepancies between regions. Managers reported that they spend some 13% of their time on government requirements in Mandalay, but 97% in Taunggyi;⁶⁴
- Local inspections of business activities vary greatly between ministries and agencies, with very little coordination. Thus, businesses are subject to multiple inspections over the same issues, with different outcomes, which raises substantially the cost of doing business in Myanmar. As an example, rice mill licensing requires seven different licenses and permits, and seven annual inspections are expected from at least four different ministries, at an annual cost exceeding \$1,400. It takes 45 days to obtain all required permits, and each permit has to be renewed annually subject to additional inspections. Neither the evaluation criteria, nor the requirements for licensing, are public or regimented (they are arbitrary, depending on the ministry⁶⁵); and
- Time to obtain an operating license, at 27 days, is the highest in the ASEAN.⁶⁶

The payment of taxes, or even figuring out what taxes are due, is difficult at best. Although there is

⁵⁸ <http://www.doingbusiness.org/data/exploreeconomies/myanmar/>

⁵⁹ *Companies Act (1914) -; Companies Rules (1940); Company Regulation (1957)*

⁶⁰ <http://www.moj.go.jp/content/000123996.pdf>

⁶¹ Legal fees, alone, vary between \$5,000 and \$18,000, depending on multiple factors

⁶² More than 90 countries, according to the World Bank, do not have any minimum paid-in capital requirements – <http://www.doingbusiness.org>

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

a Tax Law, which is updated annually, there is no legislation covering tax administration. The result is that with over 15 different kinds of taxes and duties, collected by seven different departments in six separate ministries, there is ample opportunity for inconsistent application of the law.⁶⁷

For example, the myriad of informal, unincorporated businesses of Myanmar citizens pay a “minimum amount” of taxes which are guesstimated from size and type of business and from the frequency with which they pay taxes. Thus, similar to business regulation, informal businesses are “informal” about paying taxes. One of the consequences of this “informal” tax collection is that the tax-to-GDP ratio in Myanmar is less than 10%, one of the lowest in the world. As mentioned earlier, it is also getting harder for foreign firms. They spend an average of over 180 hours annually filing, preparing and paying 31 taxes/year, amounting to an estimated average of 31.4% of profits.⁶⁸

Established businesses, especially foreign companies, have additional burdens. In addition to having to have an outside auditor, in the past two years the International Revenue Department (IRD) has started requiring that these businesses pay their estimated taxes for the fiscal year that just ended by March 31st of that year, well before they even have auditable books. In the event of a deficiency, penalties are substantial. Furthermore,

the IRD has started to require that stamp duties be paid on a number of transactions, such as leases, which has not been the case in the past. If this requirement was applied uniformly to all businesses, formally registered and informal, this would be a positive development, but the reality is that it is applied only to businesses which rent office space. As a result, informal arrangements between individuals, or individuals and informal businesses, are formed and not reported in order to avoid taxation.

Impact

Foreign businesses are stepping into Myanmar as a typical frontier market, where the rules are changing, and the competitive environment seems to be stacked against the foreign investor. Yet, the country has made substantial progress in the past few years through the adoption of the Foreign Investment Law (2012), the Myanmar Citizens Investment Law (2013)(N.B. these two laws are being considered for unification into a new Investment Law⁶⁹ as well as the enactment of a new Company Law⁷⁰) and the Special Economic Zones Law (2013)⁷¹ and rules.⁷² The process of registering and operating a foreign entity in Myanmar, though, is opaque and the legislative and regulatory climate is, at best, uncertain. The onerous, expensive and time-consuming procedures now in place do not offer an easy path in Myanmar, compared with other ASEAN countries.

RECOMMENDATIONS

A number of measures, widely available in other ASEAN countries, should be considered for implementation equally to foreign and domestic investments:

- As the only country in the ASEAN to have separate laws governing domestic and foreign investment, Myanmar should enact a revised investment law overseeing both

⁶⁷ http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2015/03/31/000406484_20150331084640/Rendered/PDF/938480REVISED00CA0938480MM00PUBLIC0.pdf

⁶⁸ http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2015/03/31/000406484_20150331084640/Rendered/PDF/938480REVISED00CA0938480MM00PUBLIC0.pdf

⁶⁹ <http://www.burmalibrary.org/docs21/2015-Myanmar-Investment-Bill-V2-24-02-2015.pdf>

⁷⁰ http://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/myanmarcompanieslaw_draft_0.pdf

⁷¹ http://www.myanmarthilawa.gov.mm/sites/default/files/SEZ_Law.pdf

⁷² http://www.myanmarthilawa.gov.mm/sites/default/files/SEZ_Rules.pdf

domestic and foreign interests under the same general rules. This action will grant foreign investors a minimum standard of non-discrimination.

- Allowing foreign companies to engage in unrestricted import, warehousing and distribution of agricultural and industrial commodities will bring Myanmar into the global supply chain and domestic manufacturers will gain better access to raw materials from the global market. Liberalizing the import and distribution businesses will serve as a catalyst to facilitate the development and growth of Myanmar economy over the long term. In agriculture particularly, Myanmar can attract more foreign investment and improve productivity if it allows foreign companies to pursue wholly or majority owned import and distribution businesses.
- The Constitution grants fundamental rights only to citizens of Myanmar. Thus, foreign investors remain subject to restrictions on investment which do not allow them the same rights and business opportunities as domestic investors. In most international investment legislation, the principle of “national treatment” is incorporated as a commitment by the local government to treat foreign and domestic investments alike.⁷³ This principle creates a level playing field for all investors in that market, and any exceptions should be clearly defined and transparent, including at the regulatory level. It is still possible to permit exceptions, including: i) general exceptions, such as the protection of national security; ii) subject-specific exceptions, such as IPR, and dual tax treaties; and iii) exceptions pertaining to specific industries.
- In Myanmar, only a few bilateral investment treaties (e.g. with India, the Philippines, China) include the “national treatment” clause. The suggested application of the national treatment rule in the revised investment legislation should provide that such treatment be without prejudice to the terms of contrary legislation and/or regulations favoring domestic investment. By doing so, the government will ensure that the domestic regulatory environment offers non-discriminatory legal protection to investors, irrespective of whether they are foreign or domestic. In the event of a dispute, a foreign investor would be able to defend their rights under the revised investment law by contesting, in court or in an arbitral tribunal, any discriminatory regulatory restriction which is not consistent with the terms of the revised investment law.
- The convoluted and expensive procedures required to start a business in Myanmar should be streamlined. It is important to have the same capitalization requirements on foreign businesses as domestic. The paid-in capitalization for domestic companies has been dropped, but remains at \$50,000 for foreign businesses. This, and other measures, will encourage foreign SMEs to enter Myanmar.
- Reduce or eliminate overlapping licensing requirements, and streamline the oversight of multiple ministries over the same matters. This rationalization of government supervision

⁷³ <http://www.oecd.org/investment/investment-policy/oecddeclarationoninternationalinvestmentandmultinationalenterprises.htm>

will serve two purposes: reducing costs of administration to the government, and offering a transparent, predictable set of rules and procedures to the business community.

- Simplify the tax system and broaden the tax base by including the informal domestic business community. The simplification should include the elimination of tax exemptions and special tax provisions which are offered exclusively to government agencies and enterprises which engage in commerce.
- Enact a Tax Administration Law that codifies rules and procedures for tax collection, audit, appeal, etc., and improves compliance by providing transparent rules of tax administration.
- Invest in electronic data collection and management, with taxpayer identification in order to improve consistency. Build the IRD's educational capacity in order to provide resources to the taxpayers leading, in time, to tax compliance and self-reporting. This should include the establishment of a fiscal analysis unit.
- Unify the tax assessing ministries and agencies into one unit, and provide certainty of outcome to reporting businesses compliant with the rules.

Challenge 7 – Inadequate Infrastructure

Due to many years of underinvestment in infrastructure, Myanmar is one of the poorest ASEAN countries in infrastructure assets. Much of this situation can be directly linked to the global sanctions, in particular financial, that the country has operated under for some 25 years. The former Union government had devised plans⁷⁴ to pursue investment in energy, transport and telecommunications, paired with legislative, regulatory and institutional reforms, which would include price deregulation, opening sectors to foreign investment, restructuring regulatory agencies, and other actions. The new government's infrastructure spending needs to be raised substantially from its single-digit levels and in the near term, will have to be supplemented by multilateral lenders and donors.

Private investors should be the major catalyst to "lifting all boats" in infrastructure. A good

first step has been taken in telecommunications, through the first round award of two telecom licenses to Ooredoo of Qatar and Telenor of Norway, plus a partnership of MPT with KDDI of Japan. It is interesting to note that the multi-billion dollar investments made by these companies in Myanmar came without government risk guarantees, in particular as the country's debt has no rating. Political and credit risks affecting infrastructure projects, though, will continue to be of significant concern to investors for the foreseeable future. Although Myanmar has joined the Multilateral Investment Guarantee Agency's political risk insurance mechanism, and the Overseas Private Investment Corporation (OPIC) and the US EXIM Bank, for instance, are prepared to help foreign investors interested in such projects, more needs to be done both within and outside

⁷⁴ http://www.themimu.info/sites/themimu.info/files/documents/Ref%20Doc_FrameworkForEconomicAndSocialReform2012-15_Govt_2013%20.pdf

Myanmar. For example, government contracts, such as the above-mentioned power purchase agreements, could be guaranteed by foreign donor governments.

In the absence of clearly-defined infrastructure sector plans, investors face uncertainty as to the direction the new NLD government will take. The previous government did not implement a clear and transparent regulatory framework based on an agreed-to policy, and as pointed out above, institutional fragmentation and overlap of responsibilities and oversight result in a hodge-podge of policy decisions which at times are contradictory.

Any project should be undertaken based on rigorous technical and financial analysis, which would evaluate the risks and benefits of various alternatives available in both the government and the private sectors, while setting a list of priorities based on economic and social financial modeling. Current regulatory bodies are vertically integrated within ministries, which are subject to political influence and rife with conflicts of interest. Myanmar lacks an independent institutional structure which would be competent to lead the planning and execution of infrastructure projects, similar to the Singapore Economic Development Board,⁷⁵ or Indonesia's Centre for Government-Private Co-operation.⁷⁶ Such an entity could strategize the development of projects, ensure adequate funding and regulatory approvals, and mitigate contingent liabilities, particularly in IPP and PPP projects. At the same time, this entity could protect a project from political influence, as well as from cronies, who would be able to influence regulations to the detriment of competitors or new entrants. Tenders would be submitted to independent review, and

grants would be appealable in a separate structure (e.g. telecom bidding).

Impact

After almost 30 years of underinvestment, Myanmar's infrastructure investment needs are estimated to exceed \$60 billion through 2030, equivalent to the country's entire GNP for one year. In the past, the government allocated only 2% of GNP to infrastructure. The government's budget needs to increase to 6%/year, with bilateral and multilateral donors and private investors making up the difference.

Similar issues concern the vertically integrated transport state-owned enterprises (SEEs) with their parent ministries, which have their pricing and most of their capital set by the budget, without regard to their profitability, financial performance, customer satisfaction, or other criteria. For example, the Ministry of Rail Transport regulates road transport, freight and passenger transport services, as well as the rail system through its ownership of the Myanma Railways, a monopoly. Their revenues go into the budget, and expenditures are allocated from the budget.⁷⁷ Transport prices are set and controlled by the Union government, making investments in transport infrastructure by private parties unattractive. Worse, the government offers implicit cross-subsidies to selected operators. Because most transport infrastructure projects continue to be controlled by SEEs, public departments, and some private companies,⁷⁸ with unrealistically low prices and subsidies to selected operators, there is very little chance for private operators to be able to compete fairly in this marketplace.

RECOMMENDATIONS

- To increase infrastructure financing opportunities for the Union government, donor countries could back infrastructure projects' government guarantees, such as power

⁷⁵ <https://www.edb.gov.sg/content/edb/en.html?>

⁷⁶ <http://pkps.bappenas.go.id/>

⁷⁷ <http://www.adb.org/documents/myanmar-transport-sector-initial-assessment>

⁷⁸ *Id.*

purchase agreements.

- In order to strengthen the financial, technical and capacity building of the government regulators, donors could finance feasibility studies, environmental impact assessments, finance risk assessments, and comprehensive sector development plans.
- The government's priorities, and the role played by SEEs and private sector, including PPPs, need to be clarified and aligned with infrastructure investment alternatives in which cost-benefit analyses of projects are systematically carried out. These analyses would permit each marketplace participant to understand the risks and benefits of being involved in a project, and permit the government to evaluate the contingent liabilities and cost of execution.
- Myanmar should consider creating an institutional structure similar to the Singapore Economic Development Board. This structure would allow for the planning and execution of infrastructure development in conjunction with the private sector, and would lead to the development of a competitive market in which private actors would reduce costs and enhance services.
- Aside from the organization suggested above, the Union government should establish credible, independent infrastructure regulatory bodies to reduce uncertainties that arise from the lack of independent regulators. These competent and well-resourced independent entities would resist political influence and conflicts of interest inherent in the current ministerial structures.
- Regulators would set a level-playing field where all market participants, whether state owned, PPPs or private, would compete based on the same transparent rules, equally enforced. The funding for these agencies should not come from the budget, but from fees assessed on the regulated companies.
 - a. Any rule making should be done in consultation with all stakeholders, including the users, in a transparent and predictable manner. Investors should have the right to appeal and a dispute resolution process should be set in place.
- SEEs should be spun off into separate corporate entities, and should be subject to the same regulatory supervision as private entities. This will help improve their efficiency and, potentially, result in privatizations which would bring additional revenues to the budget, while stopping inappropriate subsidies. At the same time, private investors will be able to assess more clearly their opportunities and risks in a transparent environment. With the tariffs set by the independent regulatory bodies, and not by government ministries, these measures will enhance competition, reduce barriers to entry and enhance the efficiency of the entire infrastructure sector.

SECTION III

U.S.
INVESTMENT
PRODUCES
POSITIVE
OUTCOMES

The easing of the most restrictive U.S. sanctions beginning in 2012 allowed for expanded dealings and new investment in Myanmar by U.S. companies for the first time in decades. Then-Secretary of State Hillary Clinton called on U.S. companies to “invest in Burma [Myanmar] and do it responsibly,” adding, “let’s all work together to create jobs, opportunity, and support reform.” The U.S. corporations entering the country have brought

with them famous brands and goods, best business practices, job opportunities, capacity building efforts, and corporate social responsibility and philanthropic projects.

Trade figures from calendar year 2015 show that U.S. exports to Myanmar more than doubled from 2014 and reached their highest point in more than 10 years:

U.S. trade in goods with Myanmar (in USD Millions)

YEAR	2012	2013	2014	2015
U.S. Exports	66	146	93	227
U.S. Imports	0	30	93	144

Source: Compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission

Even before the initial sanctions easing, when new U.S. investment and financial services were prohibited, as were exports from Myanmar to the U.S., American businesses were nonetheless allowed to sell goods and services to Myanmar. Even so, U.S. exports to Myanmar only began to significantly increase following the 2012 policy changes.

These increasing figures reflect the largely positive Myanmar views toward U.S. investment and brands. According to U.S. Embassy officials, U.S. companies are well-regarded, particularly due to the unique opportunities they afford Myanmar citizens related to education, training, and capacity building, but also interestingly due to the popularity of U.S. television shows and music. In general, the Myanmar people desire a greater U.S. presence because of the value placed on U.S. business practices, the quality of U.S. products, and, more importantly, the opportunity to finally fully engage with the U.S. after decades of isolation and separation. Certainly many of them thought that U.S. companies would rush to invest in the

reemerging economy, and are left wondering if the U.S. will ever fully engage again. Notwithstanding that such factors negatively affect local businesses as well, the nuanced risk calculations of U.S. businesses concerning the impact of remaining sanctions, and of Myanmar’s own deficient physical and policy infrastructure, are not fully understood or appreciated.

Interviews with elected politicians, Myanmar’s youth population, and contacts in the broader populace all support the positive sentiments being received and conveyed by U.S. government officials. Popularity of American brands and businesses spiked with the visits of Secretary of State Hillary Clinton and President Obama in 2011 and 2012, and there was genuine excitement about and expectation of new and extensive U.S. engagement in Myanmar. In general, the newly elected members of parliament and cabinet officials are pro-U.S. and expect that economic and political engagement will increase in the new administration. However, there is some concern and misunderstanding among Myanmar politicians, business people, and the public about how remaining sanctions will continue to work, and whether they could potentially be useful tools to tackle corruption and cronyism, or whether they present further obstacles to investment.

Myanmar youth in particular have been positive about U.S. engagement, and for many

reasons. U.S.-led cultural and educational programs involving Myanmar youth (and young Southeast Asians leaders more broadly) have engendered positive sentiment toward the U.S., including the Young Southeast Asian Leaders Initiative (YSEALI), Southeast Asia Youth Leadership Program (SEAYLP), Study of the U.S. Institute for Scholars (SUSI), International Visitor Leadership Program (IVLP), and Fulbright and Humphrey Fellowships. Additionally, many of the participants in the American Center in Yangon and the Jefferson Center in Mandalay have now become members of the new NLD government, youth leaders, academics, and civil society activists, further deepening ties between the U.S. and the next Myanmar generation. In a similar vein, most young Myanmar are drawn to the reputation and quality of the U.S. higher education system, and many aspire to study abroad and attend its prestigious universities and graduate schools. Finally, the bulk of Myanmar youth live in urban areas and are more exposed to America and its popular culture through advertising, television shows, and social media, creating a strong affinity toward U.S. products and brands.

The general Myanmar public sentiment on U.S. engagement is also enthusiastic, if more tempered. Many are excited by the prospect of job and training opportunities, more and better consumer products, and improved standards of living for themselves and their families. The popularity of American brands is particularly well evidenced by the long lines, many lasting several hours, following the opening of Myanmar's first KFC restaurant. (KFC was one of the first major U.S. fast food chains to open and has been extremely popular).

Local businesses, particularly SMEs and technology start-ups, hope that the presence of U.S. technology and business training opportunities will provide the necessary tools to allow these

companies to grow and “leapfrog” the initial, and often difficult, steps in building a business. Smaller Myanmar companies are also excited about the chance to partner with U.S. firms or receive capital or private investor funding to start or grow their businesses.

For the past four years, U.S. businesses have built on these positive feelings by working to bring the “gold standard” of investment and opportunity to Myanmar. U.S. companies not only adhere to U.S., international, and local Myanmar laws, but also best practices and internal policies that set a high bar in corporate governance. U.S. companies adhere to the anti-corruption requirements of both the Foreign Corrupt Practices Act (FCPA) and the U.K. Bribery Act. In addition to their own internal policies, U.S. corporations respect global conventions such as the U.N. Universal Declaration on Human Rights and International Labor Organization guidelines. Financial institutions implement anti-money laundering and combating the financing of terrorism (AML/CFT) regulations, including for the Bank Secrecy Act, as well as procedures to comply with remaining financial sanctions.

U.S. businesses in Myanmar have gone far beyond international standards in implementing their own policies on equality, worker safety, human rights, environmental and social protections, and transparency. Expanded U.S. investment has brought with it thousands of jobs,¹ higher wages, upward career mobility, and better working conditions. Companies have provided training for staff and management, and put in place programs that directly and indirectly improve their particular business lines and interests. For example, U.S. corporations in Myanmar have undertaken the following:

- Western Union trains its employees on anti-corruption and anti-bribery policies on an annual basis as well as on Preventing Workplace

¹ Coca-Cola, Gap Inc., Tillman Global Holdings, and Ball Corporation, State Department Responsible Investment Reports, <http://photos.state.gov/libraries/burma/895/pdf/20150630TCCCMyanmarDueDiligenceReport.pdf>, <http://photos.state.gov/libraries/burma/895/pdf/20150701GapIncMyanmarPublicReport.pdf>, <http://photos.state.gov/libraries/burma/895/pdf/20150527TillmanGlobalHoldingsPublicReport.pdf>, <http://photos.state.gov/libraries/burma/895/pdf/20150701BallCorporationPublicReport.pdf>.

Harassment and Security Awareness and other topics.²

- Ball Corporation provides anti-corruption and compliance training for staff as well as environmental awareness programs on wastewater recycling, rainwater harvesting, and use of renewable energy resources.³
- Gap has led efforts to improve garment industry workers rights and working conditions in the factories from which it sources, including by enhancing the visibility of safety signage and communications, providing storage containers for flammable liquids, conducting ongoing spot checks on machine safety, improving electrical systems and accident reporting, implementing child labor mitigation efforts, and upgrading fire safety systems.⁴
- Coca-Cola has trained employees on worker safety, personal health and hygiene, and labor rights. New hires participate in a two-day onboarding session to learn about its Code of Business Conduct, Ethics Line, Human Rights Policy, and Supplier Guiding Principles, as well as other policies including vehicular safety and water and sanitation.⁵
- APR Energy hired and trained approximately 70% of its workforce locally, creating good-paying jobs and developing important skills that will remain in the Myanmar community long after its interim power project ends. The company and its employees also rehabilitated and expanded three local schools, and provided needed supplies and equipment.

U.S. business involvement goes beyond providing jobs and training programs for Myanmar citizens; U.S. corporations are also bringing much needed services and technology that are improving the country's infrastructure and the lives of its people. Myanmar's energy woes, for example, are well documented; in 2013 only 29% of households (16%

in rural areas) had access to power. APR Energy installed a 102 MW power plant in Kyaukse, located near Mandalay, delivering electricity to nearly six million citizens. The Kyaukse plant is one of Myanmar's cleanest-burning power plants.⁶

General Electric (GE) has also supplied an array of its products to improve healthcare in Myanmar. GE Healthcare provides advanced imaging equipment, including Magnetic Resonance (MR), Computed Tomography (CT), Cardiac Catheterization Systems (CathLab), Digital X-ray, and Ultrasound technology, to Myanmar's biggest teaching, public, and leading private hospitals. GE Healthcare also provides medical devices to improve maternal and infant care, as well as critical and cardiac care.⁷

U.S. corporations also bring unparalleled philanthropic resources to bear in Myanmar. American companies have engaged in marginalized and impacted communities, bringing educational opportunities, clean water, infrastructure improvements, and a host of other programs aimed at improving lives there. For example, U.S. companies have undertaken efforts in the following areas:

- **Technology:** Cisco's Network Academies train students on critical information technology and networking skills. Hewlett Packard has launched its Learning Initiative for Entrepreneurs (LIFE), an online business and information technology program.
- **Health:** Procter & Gamble committed US\$2 million to provide clean drinking water, promote better hygiene, and build capacity to deliver health services into Myanmar. ACE Group provided US\$600,000 to support malaria prevention and the development of safe water, sanitation, and hygiene networks in three refugee camps on the Myanmar/Thailand border. Covidien is facilitating workshops for Myanmar clinicians in advanced surgical procedures

² Western Union, State Department Responsible Investment Report, <http://photos.state.gov/libraries/burma/895/pdf/20150708WesternUnionBurmaInvestmentPublicReport.pdf>.

³ Ball Corporation, State Department Responsible Investment Report, <http://photos.state.gov/libraries/burma/895/pdf/20150701BallCorporationPublicReport.pdf>.

⁴ Gap Inc., State Department Responsible Investment Report, <http://photos.state.gov/libraries/burma/895/pdf/20150701GapIncMyanmarPublicReport.pdf>.

⁵ Coca-Cola, State Department Responsible Investment Report, <http://photos.state.gov/libraries/burma/895/pdf/20150630TCCCMyanmarDueDiligenceReport.pdf>.

⁶ Power Magazine, Our 2015 Gas Top Plant Award Winners, September, 2015, http://www.aprenergy.com/sites/default/files/power_magazine_top_plants_2015_-_myanmar_-_090115.pdf.

⁷ GE News > Company Information > About GE in Myanmar, <https://www.ge.com/news/company-information/myanmar>

focused on colorectal and gastric surgery. Colgate-Palmolive is providing oral health education to schoolchildren in the country.

- **Capacity Building:** MasterCard and Mercy Corps have partnered to provide business and financial literacy skills to women and small businesses. Chevron's Sustainable Health Improvement and Empowerment (SHINE) program provides villagers with grants and loans for improvements in business, health,

agriculture, and infrastructure. The Caterpillar Foundation provided US\$100,000 to support the design and delivery of innovative products that can raise rural incomes. PepsiCo is partnering with the UN Educational, Scientific and Cultural Organization (UNESCO) and the Ministry of Education to develop vocational training initiatives and create curricula and training materials to help youth entering the Myanmar workforce.⁸

Remaining Obstacles and Challenges to Overcome

The influx of U.S. and foreign business into Myanmar has caused or exacerbated certain unintended consequences that could cast a negative light on foreign direct investment. New investment has spurred intense competition for limited pools of qualified human capital, driven up real estate prices, displaced local businesses, and distorted trade and currency figures.

Recruiting and keeping workforce talent and offering competitive salaries have become major issues for U.S. companies as well as NGOs, international organizations, and local businesses. Companies experience a high rate of employee turnover, which is compounded by a limited pool of talent, as noted in the previous section. Corporations allocate significant resources to provide extensive training to new Myanmar hires, however, employees often then leave after only a few months for marginally higher salaries offered elsewhere. Competition for human resources and talent will continue to intensify in the short- and medium- term until enough of Myanmar's population has attained needed workforce skills, education, and training.

Incoming foreign investors and businesses have driven up the prices of office space and housing, making them less affordable for local companies (and in many cases, other foreign and U.S. investors). This increase in demand, combined

with lack of adequate office buildings, hotel rooms, and homes, and Myanmar regulations restricting ownership, drove prices to levels comparable to Singapore and New York—even though the available properties were lacking in quality and amenities necessary to conduct business.

Some Myanmar businesses are concerned that U.S. companies will draw interest away from their products and that domestic companies will not be able to compete. Local brands like Star Cola, Mandalay Beer, and Myanmar Beer have all expressed concern that internationally recognized and affordable brands could take away their market share.⁹ In an interview with the Wall Street Journal in 2013, Zaw Moe Khine, owner of pharmaceutical company AA Medical Products and the local representative for General Motors, reflected the worry of Myanmar conglomerates, saying, "No matter how good local companies are, they can't be regional players. Even if we try to be the most professional company here, we cannot compete."¹⁰ Despite concerns about U.S. businesses outcompeting local firms, there is greater frustration with the slow pace of U.S. investment.

Following the easing of sanctions in 2012, Myanmar expected a gold rush of investment that would bring with it new job and training opportunities, improved corporate standards, and projects that take into consideration environmental

⁸ State Department Fact Sheet, *U.S. Companies in Burma: Doing Business Responsibly*, August 9, 2014, <http://www.state.gov/r/pa/prs/ps/2014/230465.htm>.

⁹ Tim McLaughlin, *The Myanmar Times*, *A cola war brews in Myanmar*, September 24, 2012, <http://www.mmtimes.com/index.php/in-depth/1730-a-cola-war-brews-in-myanmar.html?start=1>.

¹⁰ Shibani Mahtani, *The Wall Street Journal*, *Myanmar Firms Feel Pinch From Abroad*, August 1, 2013, <http://www.wsj.com/articles/SB10001424127887324136204578641672714284736>.

and social impacts. While sanctions are a deterrent to investment, as discussed in the previous section, other factors including Myanmar's capacity issues, deteriorating infrastructure, and regulatory and legal landscape all present significant obstacles to U.S. investment. Foreign investment volume, strained financial infrastructure, and an outdated regulatory regime have the Myanmar market playing catch up after decades of gross economic mismanagement while grappling with currency volatility and trade imbalances. Slower investment in particular has impacted demand for the local currency, the kyat, and has had a negative impact on Myanmar's trade deficit, as exports have failed to stimulate underdeveloped economic sectors.

The Central Bank of Myanmar instituted a managed floating exchange rate in 2012, ending 35 years of a dual rate system where the official rate of six kyat to one U.S. dollar was more than 100 times stronger than the black market rate. The kyat began fluctuating wildly last June, sparking concern among bankers, economists, and traders that the Central Bank may move away from the managed floating exchange rate. As the U.S. dollar began to strengthen versus international currencies last year, the Central Bank's reference rate, which is supposed to reflect the market rate, began to diverge from the price offered by local banks and foreign exchange traders. The gap has since widened significantly despite it being illegal to trade currency outside a 0.8% band around the Central Bank's daily reference rate.¹¹ The Central Bank holds daily foreign exchange auctions, which theoretically allow it to set the reference rate according to demand, but the amounts auctioned each day are far too small to provide a fair representation.¹² If Myanmar is committed to defending the kyat, it will need significant U.S. dollar reserves to buy up the local currency from the market. Additionally, capital inflows slowed as many investors waited to see the results of the election (and may continue to wait until the political transition appears stable and the NLD has had a chance to govern), resulting in a lack

of kyat demand and an increased exchange rate. Bankers and economists are concerned that an unstable kyat will negatively affect foreign investors' assessments of Myanmar. However, currency stability would allow producers, traders, and consumers to plan more accurately and mitigate risks.

Myanmar's trade deficit has grown rapidly since 2012, jumping 88% in the last fiscal year. The Thein Sein Administration had hoped that growth in the oil and gas, construction, and mining sectors would ameliorate the deficit. It had also planned to boost the capacity of local businesses, a policy the NLD government will probably maintain. However, the global economic slowdown, weak commodity prices, and possibly unclear or protectionist NLD government policy will likely continue to dampen interest in these market sectors.

Myanmar entrepreneurs are also frustrated with lack of investment as they seek innovation tools and access to capital to catch up. According to a Project Hub report on "Mapping Yangon's Emerging Start-Up Ecosystem," many entrepreneurs are educated, come from families with disposable income that help provide initial funding, and have focused on technology or online companies which require little capital. However, the growth rate of entrepreneurial ventures is limited by lack of bank loans or private investment. Bank loans require collateral in the form of land or property, and charge interest rates as high as 13%. Private equity and angel investment has failed to materialize due to negative risk assessments, uncertain regulations, and a weak legal framework.

Myanmar companies also encounter related problems, particularly in seeking joint venture partners or finding access to capital, given the strict and comprehensive due diligence U.S. firms must conduct. Although Initial Public Offerings will this year become an option to raise capital, companies may still find it difficult to raise money due to lack of trading experience and local regulations.

Frustration continues to mount regarding unclear U.S. government policies toward Myanmar.

¹¹ Clare Hammond, Aye Thidar Kyaw, Jeremy Mullins, *The Myanmar Times*, *President's Office steps in with forex role*, June 18, 2015, <http://www.mmmtimes.com/index.php/business/15088-president-s-office-steps-in-with-forex-role.html>.

¹² Steve Gilmore, *The Myanmar Times*, *US dollar bids surge at auction but Central Bank purse strings stay tight*, February 26, 2016, <http://www.mmmtimes.com/index.php/business/19192-us-dollar-bids-surge-at-auction-but-central-bank-purse-strings-stay-tight.html>.

On its way out, then Thein Sein Administration unsurprisingly called for a full lifting of sanctions. While many civil society activists, former political prisoners, and the NLD would like the U.S. maintain leverage to ensure that reforms move forward and the new administration is able to govern, those same groups do not want U.S. policies to prevent much needed development in Myanmar.

The U.S. has not lifted import duties for Myanmar, meaning that companies like Gap have to pay a tax of as much as 17% when importing products sourced in Myanmar into the U.S. Myanmar's Generalized System of Preferences (GSP) privileges were revoked by the U.S. in 1989 over concerns about use of child and forced labor in the country. GSP is the largest and oldest U.S. trade preference program and is intended to provide opportunity for poorer countries to grow their economies through trade. GSP promotes economic development by eliminating duties on nearly 5,000 types of products imported from any of the 122 designated beneficiary countries and territories. The Obama Administration has been considering reinstating GSP benefits for Myanmar, and first initiated a policy review in 2013, but has yet to do so.

According to U.S. government officials, "The GSP statute requires that, before designating a country for GSP benefits, the president takes into

account whether the country is meeting various requirements, including taking steps to afford workers internationally recognized worker rights and providing adequate and effective protection of intellectual property rights," and these considerations are currently under review for Myanmar.¹³ Although the Thein Sein Administration enacted new labor laws, their adequacy has been questioned, and enforcement of such protections has historically been problematic. The country's intellectual property rights framework is also insufficient, but legislation has been under discussion for years, and four draft laws – the Trademark Bill, Patent Bill, Industrial Design Patent Bill and Copyright Bill – have been made public.¹⁴ Proponents of GSP eligibility say that it would help diversify Myanmar market sectors and make them more globally integrated. Statistics from the Office of the U.S. Trade Representative outline the top categories of imports from Myanmar in 2013 as fish and seafood, precious stones, artificial flowers, vegetables, and knit apparel, which would largely be eligible under the GSP preference program.¹⁵ The European Union reinstated GSP preferences and duty-free and quota-free access for Myanmar products in 2013.

Patience has worn thin, and should the U.S. fail to grow into a significant presence this year, local Myanmar communities believe it may not happen for at least a decade.

RECOMMENDATIONS

- Grant GSP status to Myanmar. Myanmar has benefitted to some extent from its ability to export to the United States, but greater access to the U.S. market would be one of the quickest, most readily-actionable ways in which to support the country's growth.
- Maintain and expand Ex-Im Bank and OPIC support for U.S. exporters and investors in Myanmar.
- Offer USG guaranties to infrastructure projects, such as power purchase agreements.

¹³ Catherine Trautwein, *The Myanmar Times*, *US reconsiders Myanmar for special trade preferences*, December 8, 2015, <http://www.mmmtimes.com/index.php/business/18018-the-united-states-reconsiders-myanmar-for-special-trade-preferences.html>.

¹⁴ Catherine Trautwein, *The Myanmar Times*, *Foreign business not turned off by knock-offs*, September 2, 2015, <http://www.mmmtimes.com/index.php/business/16271-foreign-business-not-turned-off-by-knock-offs.html>.

¹⁵ Office of the U.S. Trade Representative / Countries & Regions / Southeast Asia & Pacific / Burma <https://ustr.gov/countries-regions/southeast-asia-pacific/burma#>.

- Expand USAID financing of infrastructure feasibility studies and risk assessments, environmental impact assessments, and assistance in the development of comprehensive sector development plans.
 - Hold exploratory talks with Myanmar on a bilateral investment treaty. (Myanmar is negotiating such a treaty with the EU).
 - » These talks would not commit either side to launching formal negotiations (which in any event are likely unfeasible while the country remains under sanctions), but would send a very positive signal, and would be extremely valuable in educating Myanmar officials on the terms and conditions that U.S. investors seek in foreign markets.
 - » Such talks would also give the United States an additional vehicle through which to encourage continued economic reform.
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