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Executive summary

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Executive summary

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

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 Now Myanmar finds itself with a legislative framework that is often outdated and inadequate, and with limited capacity to implement widespread reforms.

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

Building an appropriate framework for investment can help to avoid repeating the past experience and contribute to attracting the type of investment that adds to Myanmar's development. More can be done to promote responsible business conduct in the country by enhancing public consultations on changes in the legislative framework and on investment projects, as well as by signing many of the key international conventions related to labour and human rights. A continuing area of concern involves land acquisition for large-scale investment projects. Property rights are not well-established and populations living or working on the land have complained about inadequate consultation and compensation. It will take some time for the government to

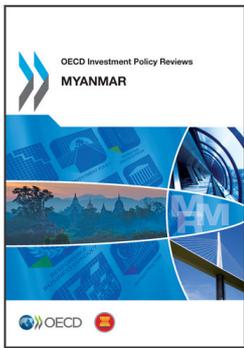
build the capacity to implement and enforce human rights, labour and environmental standards and consumer protection throughout its territory, hence there is scope civil society, both internationally and within Myanmar, as well as governments in investor home countries, to play a complementary role to ensure that investment in Myanmar contributes to inclusive and sustainable development.

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

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

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

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



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Assessment and recommendations

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Assessment and recommendations

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

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

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

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

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

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

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

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

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

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

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

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

The historical context in Myanmar shapes the reform process

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

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

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

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

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

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

Source: Authors' compilation.

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

The new government of President U Thein Sein took over in 2011 and began the first steps towards reform. By-elections were held in April 2012 which were judged by the UN Special Rapporteur for Myanmar to be, by and

large, free and fair, and the National League for Democracy won 43 out of 44 seats. A general election is to be held in 2015, which explains in part the government's desire for what it calls "quick wins" in the reform process so that the fruits of reforms will already be abundant by then. Another landmark in Myanmar's international opening is its current chairmanship of ASEAN.

Legislative reform has proceeded at a rapid pace...

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

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

... but with insufficient consultation and review

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

Table 1. Key legislation affecting the investment climate in Myanmar

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

Source: Authors' compilation.

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

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

Once laws are passed, it is also essential to ensure that they are enforced by an independent and competent judiciary. Judicial reform takes time. Judges need to develop their own capacity to act as arbiters rather than simply administrators of the law, but even more important is the change of mind set

required. The courts need to demonstrate independence and people and companies need to develop trust in judicial recourse. Even if the 2008 Constitution guarantees the independence and impartiality of the judiciary, in practice, the President nominates the Chief Justice of the Supreme Court and controls the financing of Myanmar's court system (IBA, 2012). As a result, in spite of the constitutional guarantees, the judiciary is widely judged, both within and outside of Myanmar, to be under-resourced, politically influenced and lacking in independence (EU, 2012).

Ministries sometimes have overlapping responsibilities in implementing laws

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

... and the government faces significant capacity constraints

"We do this [reform] at a time of weak institutions that evolved in a very different environment and to serve very different purposes."

President U Thein Sein, 2013¹

It is widely recognised, both within government and outside, that the administration faces enormous capacity constraints which are only exacerbated by its ambitious reform agenda. All 13 of the ministries and agencies visited during the OECD mission highlighted their need for greater capacity to keep up with the pace of reforms and manage a rapidly changing economy. Legislative reforms and international commitments will only be as credible as the capacity within the government to implement them. Credibility matters for foreign investors interested in making long-term commitments to Myanmar, such as in extractive sectors. As suggested by the quote by President U Thein Sein above, the government recognises that it lacks capacity in many areas. Developing this capacity will take time and the

government will need to rely to some extent on civil society, foreign governments and international organisations for technical and policy advice. Foreign investors can also play a role by ensuring they respect both domestic laws – even when those laws are not effectively enforced – and international expectations for responsible investment. Similarly, civil society can play an important complementary role to ensure that human rights are protected, that officials and businesses obey the law, that workers’ rights are respected and that the environment is not degraded.

Long term reforms are necessary to improve governance

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

Policy options:

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

Improving the investment climate in Myanmar

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

technology, expertise and access to global markets, Chapter 3 on investment policy looks more specifically at the concerns of foreign investors.

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

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

Trends in foreign investment

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

In spite of this sharp drop in approvals, recent figures for realised investments suggest that FDI inflows are still growing rapidly. Furthermore,

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

Policy options:

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

Responsible business conduct

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

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

In this uncertain and evolving environment, and given the legacy of investments in the past which were sometimes associated with human rights

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

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

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

Policy options:

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

resettlement. Develop grievance mechanisms and provide redress to victims.

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

Investment regulation and protection

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

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

One of the most pressing problems of the current regulatory framework is its complexity, with half a dozen laws regulating the entry of investors, depending on the sector and location of the investment and on whether or not the investor is foreign. The approval process is equally complex, with foreign investors sometimes requiring overlapping approvals and facing detailed and often opaque criteria for scrutinising individual projects. If the process is not streamlined, it risks creating bottlenecks as the influx of investment proposals

bumps up against capacity constraints in the Department for Investment and Company Administration (DICA). The authorities recognise these problems and are taking steps to rationalise the legislative framework, but the flurry of legislative activity – with over 30 laws enacted since 2011 – implies that draft laws are not always properly vetted.

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

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

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

Joint venture requirements, for example, are often imposed in order to promote technology transfers, backward linkages and domestic entrepreneurship and to allow local firms to share in any economic rents. While foreign investors might welcome a local partner in some circumstances, joint venture requirements have often been found to be counterproductive, by

dissuading potential investors while at the same time minimising the potential spillovers from that investment.

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

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

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

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

Policy options:

a) Admission and regulation of investment

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

Screening

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

Sectoral restrictions

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

b) Protection of investment and international investment agreements

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

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

Investment promotion and facilitation

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

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

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

Policy options:

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

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

Taxation

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

Policy options:

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

Finance

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

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

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

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

Policy options:

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

Infrastructure

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

price-setting mechanisms also still need to be addressed. Furthermore, the presence of vertically integrated SEEs also discourages private investment.

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

Policy options:

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

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

Other areas of the PFI

Corporate governance

Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders; good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and its shareholders and should facilitate effective monitoring. The degree to which corporations observe basic principles of sound corporate governance is a determinant of investment decisions, influencing the confidence of investors, the cost of capital, the overall functioning of financial markets and ultimately the development of more sustainable sources of financing. Of particular relevance is the relation between corporate governance practices and the increasingly international character of investment: international flows of capital enable companies to access financing from a much larger pool of investors. Corporate governance arrangements must therefore be fully disclosed and credible, well understood across borders and must adhere to

internationally accepted principles if countries are to reap the full benefits of the global capital market and attract long-term patient capital. Corporate governance is therefore one of the key elements in improving economic efficiency and growth, as well as in enhancing investor confidence.

Policy options:

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

Trade

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

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

Human capital development

Myanmar is currently under-investing in its human capital base; the limited educational and health financing translates into a major obstacle to growth and development in the future. The government recognises that the

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

Promoting sustainable investment in Myanmar's agriculture

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

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

Only 20% of the land has been registered in Myanmar, mainly due to the complexity of the registration process and the lack of benefits, and even the drawbacks, of registering land use rights. While the adoption of new

legislation on agricultural land in April 2012, namely the *Farmland Law* and the *Vacant, Fallow and Virgin (VFV) Land Management Law*, intends to be combined with an accelerated land registration process, in practice, land registration remains long and uncertain as several agencies at various government levels have to approve registration and applicants are required to fulfil numerous conditions. Furthermore, the registration of land use rights does not necessarily lead to higher land tenure security as land use rights may be withdrawn if the numerous conditions and required administrative procedures are not respected.

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

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

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

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

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

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

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

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

Policy options:**Land**

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

Investments

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

Other agricultural issues

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

Notes

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

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