Positioning Myanmar as an attractive new investment destination in Southeast Asia

8th Meeting of the Asia-Pacific Foreign Direct Investment (FDI) Network United Nations Conference Centre, Bangkok, Thailand 25-26 September 2018
Contents

• Myanmar Investment Position
• Reform of the Myanmar Investment Law
• Challenges on Positioning Myanmar as an investment destination
Myanmar

Population: 53.90 million  
GDP: $62.60 billion  
GDP growth: 7.3%  
Inflation: 10.8%

<table>
<thead>
<tr>
<th>Measure</th>
<th>Year</th>
<th>Index or Rank</th>
<th>Year</th>
<th>Index or Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>TI Corruption Perceptions index</td>
<td>2014</td>
<td>156 of 175</td>
<td>2016</td>
<td>136 of 176</td>
</tr>
</tbody>
</table>
### ASEAN FDI INFLOW 2013-2017

<table>
<thead>
<tr>
<th>Year</th>
<th>Brunei Darussalam</th>
<th>Cambodia</th>
<th>Indonesia</th>
<th>Lao PDR</th>
<th>Malaysia</th>
<th>Myanmar</th>
<th>Philippines</th>
<th>Singapore</th>
<th>Thailand</th>
<th>Viet Nam</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>-57.98</td>
<td>725.47</td>
<td>298.85</td>
<td>8,721.11</td>
<td>18,443.8</td>
<td>104.61</td>
<td>426.67</td>
<td>2,150.03</td>
<td>12,107.0</td>
<td>1,186.80</td>
</tr>
<tr>
<td>2014</td>
<td>141.20</td>
<td>568.18</td>
<td>372.48</td>
<td>13,083.7</td>
<td>21,810.4</td>
<td>137.94</td>
<td>913.24</td>
<td>2,283.98</td>
<td>10,875.3</td>
<td>683.62</td>
</tr>
<tr>
<td>2015</td>
<td>86.65</td>
<td>171.32</td>
<td>425.41</td>
<td>13,083.7</td>
<td>21,810.4</td>
<td>221.83</td>
<td>1,079.15</td>
<td>2,931.35</td>
<td>10,179.9</td>
<td>137.10</td>
</tr>
<tr>
<td>2016</td>
<td>-64.66</td>
<td>-150.44</td>
<td>635.77</td>
<td>9,907.49</td>
<td>3,920.65</td>
<td>196.64</td>
<td>1,075.69</td>
<td>2,098.71</td>
<td>11,290.2</td>
<td>2,230.65</td>
</tr>
<tr>
<td>2017</td>
<td>535.27</td>
<td>460.15</td>
<td>603.49</td>
<td>2,732.15</td>
<td>11,873.4</td>
<td>171.16</td>
<td>1,695.38</td>
<td>2,165.88</td>
<td>9,447.21</td>
<td>1,682.89</td>
</tr>
</tbody>
</table>

**Note:** The values represent FDI inflows in USD millions. The graph shows the inflows for each country from 2013 to 2017.
Myanmar FDI in-FLOW AND FDI STOCK

(UNCTAD, 2016)
Investment Focus Sectors

- Oil and Gas
- Manufacturing
- Infrastructure
- Agriculture
- Tourism
Reform of the Myanmar Investment Law
Reform of the Myanmar Investment Law

• Driven by DICA
• Supported by International Finance Corporation/World Bank Group
• Supported by DFID UK and DFAT Australia and Japan Government
• The ASEAN Comprehensive Investment Agreement (ACIA) as the Benchmark
Potential Benefits to Myanmar

- **Myanmar Investment Law Benchmarked with ACIA standards**
- **Increased Liberalisation, Protection and Facilitation**
- **Increase in Investors’ Confidence**
- **Transfer of Knowledge to Myanmar**
Reasons for Reform

- **Dual Law: Foreign Investment Law 2012 and Citizen Investment Law 2013**

- **To improve on:**
  - Investor Protection
  - Market Access
  - Entry Procedures
  - Investment Incentives

- **To reduce complex and lengthy entry process, to increase transparency**

- **Reform the Incentive Scheme from Blanket approval to targeted incentive**
## Table of Comparisons of Position Before Reform

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>National Treatment</td>
<td>No express provision</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Most Favored Nation</td>
<td>No express provision</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Fair and Equitable Treatment (FET)</td>
<td>No express provision</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Protection against Expropriation</td>
<td>Yes, but inadequate.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Currency convertibility and transfer</td>
<td>Yes, but inadequate.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Dispute Settlement Provision</td>
<td>Yes, but inadequate</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Market Access prior to Reform

• OECD IPR: Myanmar ranks very poorly in terms of market access essentially because the Negative List is very long.

• The consolidation of the FIL and CIL into one single law on investment offers the opportunity to review the Negative List and remove some of the restrictions.

• Best international practice is to have a short, clear, transparent Negative List that states without ambiguity what are the various restrictions. Usually 3 types of restrictions:

1. **Prohibitions to invest**: sectors where domestic and/or foreign investors can not invest. Ideal is to have the same for both domestic and foreign.

2. **Foreign Investment Ceilings**: sectors where foreign participation is limited to a certain percentage of ownership. Ideal is to have no or very few sectors with foreign investment ceilings (in effect a mandatory joint venture)

3. **Performance requirements** or **special approval processes** for foreign investors. Ideal is to have as few such restrictions as possible.

Best practice is to establish a periodic review of the Negative List.
Prior to Reform: Myanmar Sets Out More Steps for Investment Approval Than Neighboring Countries.

<table>
<thead>
<tr>
<th>Investment approval</th>
<th>Post Investment approval</th>
</tr>
</thead>
<tbody>
<tr>
<td>DICA</td>
<td>Relevant ministries/regional governments</td>
</tr>
<tr>
<td></td>
<td>Permit to Trade</td>
</tr>
<tr>
<td></td>
<td>Company Registration</td>
</tr>
<tr>
<td></td>
<td>Leasing Approval</td>
</tr>
</tbody>
</table>

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The table outlines the process of investment approval and post-approval tasks in Myanmar, highlighting the involvement of various relevant ministries and the progression through different phases of business operations.
The Myanmar Investment Law 2016, October 2016
OBJECTIVES (CHAPTER 2)

• Applies to both Domestic and Foreign Investors

1. Develop Responsible Business
2. Protect Investors and their Investments
3. Develop Businesses and Investments that meet International Standards
KEY DEFINITIONS AND SCOPE

- "Enterprise":
  - (1) any legal entity constituted or established in accordance with the applicable laws including company, trust, partnership, sole proprietorship, joint venture, business association or similar organisations
  - (2) a branch office of such legal entity established in accordance with the applicable laws.

- “Direct Investment”:  
  - An investment where the investors have the right to control or influence or manage of such assets which are invested by the investors within the Union in accordance with the law.
“Investment” (S.4) Investment includes:

a) an Enterprise;
b) movable and immovable property and related property rights etc;
c) shares, stocks, bonds and debentures;
d) Intellectual property rights etc;
e) claims to money and to any performance under contract having a financial value;
f) rights under contracts etc; and
g) Assignable rights granted by the relevant laws or contract including the rights of exploration, prospecting and extraction of natural resources.
Any Existing or new Direct Investment

Not applicable to any pending dispute or any situation that ended before the date of the Law

Any measure adopted or maintained by the Union Government and Government organisations except measures under Ch. 21 (General exceptions) and Ch. 22 (Security Exceptions).
Role of the Myanmar Investment Commission

Myanmar Investment Commission (MIC)

- MIC Mandate and Functions
  - investment promotion agency;
  - investment facilitation;
  - Investment approvals;
  - advise on investment policies including promoted sectors and restricted sectors (negative list);
  - investment grievance mechanism.

Directorate of Investment and Company Administration (DICA)
Admission of Investment

- Investment in Any Allowed Sector
  - Enterprise Registration
    - Endorsement
      - Notification for Endorsement
      - Notification for Investors not in both categories
    - MIC Permit
      - Approval
INVESTMENTS REQUIRING MIC PERMITs (s. 36)

• (a) Businesses /investment activities that are strategic for the Union;
• (b) Large capital intensive investment projects;
• (c) Projects which have large potential impact on the environment and the local community;
• (d) Businesses/ investment activities which used state-owned land and building; and
• (e) Businesses/ investment activities which are designated by the Government to require the submission of a proposal to the Commission.
## Restricted sectors (Negative list)

<table>
<thead>
<tr>
<th>Prohibited Sectors (S. 41)</th>
<th>Restricted (S.42)</th>
<th>Special (s.46)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Hazardous/ poisonous</td>
<td>• Limited to Government (e.g. power transmission)</td>
<td>• Significant impact on security, economic condition, the environment and national interest</td>
</tr>
<tr>
<td>• Untested technologies unless R&amp;D business</td>
<td>• Restricted to Foreign Investors</td>
<td>• Approval from Parliament</td>
</tr>
<tr>
<td>• Damage to environment</td>
<td>• JV between foreign and citizen investors</td>
<td></td>
</tr>
<tr>
<td>• Affect Public Health</td>
<td>• Notification by MIC (e.g. Notification 26), subject to review if need to liberalise, amend or remove</td>
<td></td>
</tr>
<tr>
<td>• Prohibited under other laws</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Investor Rights and Protections

- National Treatment (s. 47 (a) and Most Favored Nation Treatment (s. 47(b))
- Fair & Equitable Treatment (s.48)
- Right to Use Land (s. 50)
- Right to Employ Expatriates (s.51)
- Investment Guarantee (s.52)
- Transfer of Funds (s.56)
INVESTMENT GUARANTEE (CH. 14)

• Conditions for an expropriation (S.52):
  • for public purposes;
  • in a non-discriminatory manner;
  • The investors are to be provided with prompt, adequate and effective compensation; and
  • In accordance with due process of law.

<table>
<thead>
<tr>
<th>Direct Expropriation</th>
<th>Indirect Expropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Formal transfer of legal title</td>
<td>• A measure or series of measures that has similar effect to direct expropriation even</td>
</tr>
<tr>
<td>• Outright seizure of the investment</td>
<td>without formal transfer or outright seizure of the legal title over the investment.</td>
</tr>
<tr>
<td>of the foreign investors</td>
<td>• This is decided on a case-by-case basis.</td>
</tr>
</tbody>
</table>

EXEMPTIONS AND RELIEF

- Removal of Blanket Incentives
- Notifications on Zones/ Investment Activities
- Allows for special treatment of domestic SMEs
GRIEVANCE MECHANISM (S. 82)
MIC to establish and manage a grievance mechanism to inquire and resolve issues before they become legal disputes and to prevent the occurrence of disputes.

Dispute Between Investor and State (Claims for Breach of the Investment Law)

Amicable Settlement

Unable to reach a settlement

Domestic Court/ Tribunal in accordance with the law

Other forms if stipulated in an agreement (international arbitration)
Challenges to Position Myanmar as an Attractive Investment Destination
Advantages of Myanmar

- In the Middle of India and China, Bangladesh. ASEAN and 40% of world population
- Neighbours economies worth USD 15 trillion or 20% of world’s GDP
- Big Domestic Market
- Rich in Natural Resources, fertile land
- Dynamic and enthusiastic Population
- Inclusive Reform Process – Increased transparency and public participation
Key Challenges to Myanmar

Legacy Issues:
Investments approved before the 2016 Law

Regional development in view of new approach for Federalism

Human Capacity, Expertise to implement the Law and to provide support to Investors

Creating Focus Sectors:
Physical infrastructure, export oriented, responsible business, jobs

Bringing informal activities into formal sector (e.g. agriculture, border trade)

Access to Land

Over dependence on resource sector (80%); telecom and manufacturing only 7%