



OECD Investment Policy Reviews

# MYANMAR 2020

## HIGHLIGHTS





# Preface

by  
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In the past decade, Myanmar has implemented major economic and political reforms to gradually open its economy and to build sustainable private sector-led growth, with the ultimate objective of improving the lives of Myanmar citizens. As a result, Myanmar has become one of the fastest growing economies in the region. The number of people living under the poverty line has fallen drastically. However, 50 years of isolation cannot be overcome overnight. As this 2<sup>nd</sup> *OECD Investment Policy Review of Myanmar* aptly states, “despite substantial improvements, a peaceful Myanmar, open to the world and on a sustainable and inclusive development path, is still a work in progress.”

Myanmar has come a long way in laying down the legal foundations to support a thriving business environment. Building on many of the recommendations from the first *OECD Investment Policy Review of Myanmar* (2014), outdated colonial era laws governing business activities have been replaced by modern frameworks, and many restrictions placed on foreign investments have been removed in the past five years. The government established in 2015 its first Special Economic Zone (SEZ) at Thilawa on the outskirts of Yangon and more are expected to be created in the near future to attract further investments. The Thilawa SEZ has attracted over a hundred investors from nearly 20 countries and is charting the way for a successful business environment nationwide. These advancements are contributing to further economic diversification and generating quality jobs for the people of Myanmar. These reforms have also resulted in increased foreign investment, with FDI stocks growing 12% on average annually from 2011 to 2019, and playing a major role in Myanmar’s economic transformation in the post-liberalisation era, contributing both to capital accumulation and productivity gains.

The first *OECD Investment Policy Review of Myanmar* (2014) was in many ways instrumental in shaping these past reforms, but the full achievement of Myanmar’s sustainable development objectives will require building and expanding on this progress. This 2<sup>nd</sup> *OECD Investment Policy Review of Myanmar* focuses on complementary actions that can further support the strengthening of Myanmar’s business environment and to ensure that these reforms benefit society at large. It provides an assessment of Myanmar’s current policies in critical areas such as green growth, responsible business conduct (RBC), SEZs and land rights and administration. The recommendations provide the government with tangible policy options to enhance the mobilisation of investments that can support the needs of the times in terms of environmental sustainability, inclusiveness, and responsible business conduct more broadly.

The *Review* stresses, for instance, the importance of embedding Myanmar’s SEZ and industrial zone development strategies into a broader enabling policy and institutional eco-system for nurturing deeper linkages of zones, and foreign investors more generally, with the local economy. It documents the unique opportunity for Myanmar to strengthen at this early stage of development its commitments to green growth policies for avoiding locking-in unsustainable development pathways to the detriment of more forward-

looking, low-emissions and climate-resilient development. Myanmar is one of the most vulnerable countries in the world to climate change and cannot afford to consume its rich natural endowments in an unsustainable manner. The livelihoods of millions of its citizens are directly at stake.

The *Review* also underlines the important role that the government can play in promoting and supporting RBC. This becomes ever-more important as Myanmar increasingly opens its economy and progressively integrates itself into the world economy. Societal demands on RBC are rising globally alongside greater international scrutiny by trading partners, businesses and civil society. A failure to meet and address these RBC standards can negatively impact on investment, trade and tourism. There is a clear argument, therefore, to work toward promoting the protection of human rights, ensuring that businesses identify and manage RBC risk, and that there is a strong framework for RBC in Myanmar. The *Review's* recommendations provide insights and directions to make progress in this regard.

Addressing the complicated and conflicting land-governance situation is perhaps Myanmar's greatest reform challenge in the near term. As stressed in the *Review*, this is a complicated issue that, if not addressed, will continue to have important economic and political implications, including for the ongoing peace process.

Like for most countries, Myanmar's previous achievements and efforts will be put at considerable strain due to the covid-19 crisis. GDP growth is expected to more than halve in 2020 due to declines in trade, FDI, and tourism, as well as commodity prices shocks, with the most vulnerable populations being disproportionately affected. Investment will be key for the recovery and many of the structural challenges and policies to investment discussed in this *Review* will resurface again in an ever more important fashion as investors become more risk-averse and selective and industries get eventually reshaped by a faster adoption of transformative technologies and new business models.

Moving ahead with reforms in all these areas will, therefore, be essential in the long run, if Myanmar is to benefit in full from past reforms to improve its investment climate. In so doing, Myanmar can ensure that incoming investments truly contribute towards improving the lives of Myanmar people and meeting the Sustainable Development Goals (SDGs).

The Government of the Republic of the Union of Myanmar and the OECD are very pleased to have once again joined forces in this *2nd OECD Investment Policy Review of Myanmar*, giving continuity to a collaboration that first started in the early years of reform. This could not have been achieved without the support of the governments of Norway and Switzerland.

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# Foreword

Only six years sets this *2nd OECD Investment Policy Review of Myanmar* apart from the first review published in 2014, but much progress has occurred in investment policies and related areas in Myanmar in the interim. The first review was in many ways instrumental in shaping these past reforms. It took place at a time when very little policy work had been undertaken with the Government of Myanmar, and donors were just beginning to turn their attention to private sector development in Myanmar.

This *2nd Review* takes place at a time when diagnoses of the economic challenges facing Myanmar are multiplying and donor support is ubiquitous. The *Review* is therefore more selective in its policy areas coverage and focuses more on impact and on how foreign investment can help Myanmar achieve the Sustainable Development Goals. As with the first review, it relies on the *OECD Policy Framework for Investment (PFI)*, a tool developed at the OECD to help governments address investment climate challenges.

The *Review* was mostly prepared before the outbreak COVID-19 pandemic, but some consideration is given to the immediate challenges emerging from the crisis in the Assessment and Recommendations. The *Review* remains, nonetheless, highly relevant for the aftermath of the current global economic crisis. Investment will be key for the recovery and many of the pre-COVID-19 structural challenges and policies discussed in this *Review* will resurface then in an ever more important fashion, as investors become more risk-alert and selective, and industries are eventually reshaped by the faster adoption of transformative technologies and business models.

This *Review* has been prepared by the OECD Secretariat at the request of the Government of Myanmar. It was carried out in close co-ordination with the Directorate of Investment and Company Administration of the Ministry of Investment and Foreign Economic Relations and supported by an inter-ministerial task-force established for discussing in a whole-of-government approach – characteristic of the OECD's PFI – policy priorities, assessments and strategic orientations of the government in the area of investment. It has benefited from the peer review of the OECD Investment Committee and stakeholder consultations with Myanmar-based foreign government representatives, international organisations, the private sector, civil society and academia. It was discussed at the OECD Investment Committee in June 2020 with the participation of a Myanmar delegation led by H.E. U Thaug Tun, Minister of Investment and Foreign Economic Relations.

The *Review* was prepared by a team led by Fernando Mistura and comprising Iris Mantovani and Baxter Roberts from the OECD Investment Division, Mike Pfister from the OECD Public Governance Directorate, and Naeeda Crishna Morgado and Margaret Wachenfeld, external consultants, under the overall guidance of Stephen Thomsen, Head of Investment Policy Reviews. The RBC chapter was authored by Coralie Martin from the OECD Centre for Responsible Business Conduct as part of the broader project on *Responsible Supply Chains in Asia* funded by the European Union. Angèle N'Zinga provided administrative assistance. Koshu Kunii, former OECD policy analyst, provided inputs. Ana Novik, Head of the Investment Division, Alexandre de Crombrugghe and David Gaukrodger, senior policy analysts at the OECD Investment division, and Tihana Bule, manager at the OECD Centre for RBC, provided comments.

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# Acronyms and abbreviations

ACC	Anti-Corruption Commission
ACIA	ASEAN Comprehensive Investment Agreement
ACT	Action, Collaboration, Transformation
ADB	Asian Development Bank
ADS	Agriculture Development Strategy and Investment Plan 2018–2023
AJCEPA	ASEAN-Japan Comprehensive Economic Partnership Agreement
AMS	ASEAN Member States
APG	Asia / Pacific Group on Money Laundering
ASEAN	Association of Southeast Asian Nations
ASM	Artisanal and Small-scale Mining
BECZ	Border Economic Cooperation Zones (BECZ)
BHR	Business and Human Rights
BITs	Bilateral Investment Treaties
BRI	Belt and Road Initiative
CBD	Convention on Biological Diversity
CCVfV	Central Committee for the Management of Vacant, Fallow and Virgin Lands
CETA	Comprehensive Economic and Trade Agreement
CIT	Corporate Income Tax
COVID-19	Coronavirus 2019
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CRM	Customer Relationship Management
CSOs	Civil Society Organisations
DALMS	Department of Agriculture Land Management and Statistics
DICA	Directorate for Investment and Company Administration
DISI	Directorate of Industrial Supervision and Inspection
EAOs	Ethnic Armed Organisations
ECCs	Environmental Compliance Certificates
ECD	Environmental Conservation Department
ECL	Environmental Conservation Law
EIA	Environmental Impact Assessment
EITI	Extractive Industry Transparency Initiative
EMP	Environmental Management Plan
EPZ	Export Processing Zones
ESG	Environmental, Social and Governance
ESIA	Environmental and Social Impact Assessment
ESR	Export Share Requirement
EU	European Union
EU EBA	European Union Everything But Arms arrangement
FAB	Farmland Administrative Body
FAO	Food and Agriculture Organization of the United Nations
FATF	Financial Action Task Force
FDI	Foreign Direct Investment

FET	Fair and Equitable Treatment
FIL	Foreign Investment Law
FPIC	Free, Prior and Informed Consent
FWF	Fair Wear Foundation
G20	Group of Twenty biggest economies in the world
G7	Group of Seven Nations
GAD	Union Government's General Administration Department
GMS	Greater Mekong Subregion
GVCs	Global Value Chains
GW / GWh	Gigawatt / Gigawatt-hour
IAC	Investment Assistance Committee
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
IDPs	Internally Displaced Persons
IEE	Initial Environmental Examination
IFC	International Finance Corporation
ILO	International Labour Organisation
IMF	International Monetary Fund
Index	OECD FDI Regulatory Restrictiveness Index
IP	Intellectual Property
IPA	Investment Promotion Agency
IPC	Investment Promotion Committee
IPP	Independent Power Producers
ISDS	Investor-State Dispute Settlement
ISIC	International Standard Industrial Classification
ISPAT	Investment Support and Promotion Agency of Turkey
IWT	Inland Water Transport
IZ	Industrial Zone
JETRO	Japan External Trade Organisation
JICA	Japan International Co-operation Agency
LRA	Land Rights Authorisation
LUC	Land Use Certificate
M&E	Monitoring and Evaluation
MAC	Myanmar Arbitration Centre
MACCS	Myanmar Automated Cargo Clearance System
MCCSAP	Myanmar Climate Change Strategy and Action Plan 2018–2030
MCIS	Myanmar Customs Intelligence System
MCL	Myanmar Companies Law
MCRB	Myanmar Centre for Responsible Business
MEAs	Multilateral Environmental Agreements
MFN	Most-Favoured Nation
MIC	Myanmar Investment Commission
MIFER	Ministry for Investment and Foreign Economic Relations
MIL	Myanmar Investment Law
MIOD	Myanmar Institute of Directors
MIPP	Myanmar Investment Promotion Plan
MIR	Myanmar Investment Rules
MJTD	Myanmar Japan Thilawa Development Ltd.
MMK	Myanmar Kyat
MNE	Multinational Enterprises
MNHRC	Myanmar Human Rights Commission
MOALI	Ministry of Agriculture, Livestock and Irrigation
MONREC	Ministry of Natural Resources and Environmental Conservation

MOPFI	Ministry of Planning, Finance and Industry
MoU	Memorandum of Understanding
MSDP	Myanmar Sustainable Development Plan
MST	Minimum Standard of Treatment
MW / MWh	Megawatt-hour
MyCo	Myanmar Companies Online Portal
NAFTA	North American Free Trade Agreement
NAP	National Action Plan
NCP	National Contact Point
NDCs	Nationally-Determined Contributions
NEP	National Environmental Policy 2019
NLD	National League for Democracy
NLL	National Land Law
NLMP	National Logistics Master Plan 2018-2030
NLUC	National Land Use Council
NLUP	National Land Use Policy
NSW	National Single Window
NT	National Treatment
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
ORD	Office of Registration of Deeds
OSS	One-Stop-Shop
OSSC	Thilawa One-Stop-Shop-Centre
PAT	Proposal Assessment Team
PFI	Policy Framework for Investment
PIE	Private Industrial Enterprise Law 1990
PPA	Power Purchase Agreement
PPP	Public-Private Partnership
PSDC	Private Sector Development Committee
R&D	Research & Development
RBC	Responsible Business Conduct
RBF	Responsible Business Fund
RCEP	Regional Comprehensive Economic Partnership
RIA	Regulatory Impact Assessment
SDGs	Sustainable Development Goals
SEA	Strategic Environmental Assessments
SEE	State Economic Enterprises
SEZs	Special Economic Zones
SMEs	Small and Medium-sized Enterprises
SOEs	State-Owned Enterprises
SOPs	Standard Operating Procedures
TEU	Twenty-foot Equivalent Unit
TIPRA	Transfer of Property Restriction Act
TRIPS	WTO Trade-Related Aspects of Intellectual Property Rights Agreement
TSMC	Thilawa SEZ Management Committee
TVET	Technical and Vocational Education and Training
UAGO	Union Attorney-General Office
UMFCCI	Union of Myanmar Federation of Chambers of Commerce and Industry
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme

UNFCCC	United Nations Framework Convention on Climate Change
UNGP	United Nations Global Compact
UNHCR	United Nations High Commissioner for Refugees
UNWG	United Nations Working Group on Business and Human Rights
USMCA	United States-Mexico-Canada Agreement
VAT	Value-added Tax
VFV Land	Vacant, Fallow and Virgin Land
VGFT	FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
VTAs	Village Tract Administrators
WIPO	World Intellectual Property Organisation
WJP Index	World Justice Project Rule of Law Index
WTO	World Trade Organisation
WWF	World Wildlife Fund



# Executive Summary

Myanmar has undergone a tremendous economic and political transformation since 2011. Following decades of economic and political isolation, democracy has been restored. Formerly a virtually closed economy with a regulatory framework for business based on a century-old colonial model, Myanmar is now an open economy with modern business regulations. Consecutive governments since 2011 have been able to give continuity to reforms oriented at further opening the economy and building a sustainable, private sector-led growth trajectory, fuelled in part by foreign investment, with the ultimate objective of improving the lives of Myanmar citizens. This aspiration and vision have been consolidated in the Myanmar's Sustainable Development Plan (MSDP) 2018–2030. But despite improvements, a peaceful Myanmar, open to the world and on a sustainable and inclusive development path, is still a work in progress.

The reform momentum needs to be sustained and deepened for the benefits of recent investment climate reforms to be shared widely and for growth to be environmentally sustainable, ultimately contributing toward the Sustainable Development Goals (SDGs).

The adoption of the new Myanmar Investment Law (2016) and the new Myanmar Companies Law (2017) went a long way in establishing a modern legislative framework for businesses, pioneering explicit investors' obligations to act responsibly and considerably reducing regulatory barriers to foreign direct investment (FDI), but implementation still lags behind in various areas and some critical complementary reforms have not kept pace. The overall legislative framework has not been renewed in all areas, most notably in the area of land, and institutional reforms have not by themselves resolved the issue of inter-ministerial co-ordination. The slow pace of the peace process and the humanitarian crisis in Rakhine State have also continued to weigh on Myanmar's investment climate.

The newly established investor grievance mechanism and recent laws concerning intellectual property rights and arbitration are laudable additions to an improved investment climate, as they bring Myanmar's legal framework broadly in line with international standards in these respects. But the success of these recent developments hinges on ongoing efforts to improve the independence and competency of the judiciary and the Myanmar courts. Myanmar is also at an important juncture in terms of its approach to investor protection in investment treaties. With relatively few investment treaties in force today, Myanmar is in a favourable position to review its approach to investment treaties so that its treaty network reflects the appropriate balance of preserving the government's right to regulate while contributing to Myanmar's efforts to attract FDI.

Myanmar's investment promotion and facilitation framework has also evolved considerably since the early days of reforms. The new Union Ministry of Investment and Foreign Economic Relations has been created to steer and co-ordinate investment policy, and development financing more broadly, and the Myanmar Investment Promotion Plan (MIPP) for 2016–2036 now provides long-term guidance for investment promotion activities. Important strides have also been made in streamlining procedures for establishing a business and in obtaining investment approvals and other needed licences with the one-stop-shop (OSS). The substantial progress made in the ease of starting a business has been attested by Myanmar's considerable improvement in the relevant World Bank's *Doing Business* sub-indicator. Nevertheless, more

could still be done. Investors still complain about the lack of clarity and the burden of procedures for obtaining ministerial licences and permits necessary for operating their businesses, and the OSS system still operates more as a centralised information centre than an actual single window agency.

With the renewed investment framework in place, the Directorate of Investment and Company Administration, Myanmar's investment promotion agency, may also start to graduate to more sophisticated investment facilitation and promotion activities. Beyond strengthening its investment facilitation and policy advocacy functions, it could leverage its reputation and close proximity with investors to assist the relevant agencies in capacity building for domestic industries and linkage programmes with foreign investors.

Building on the experience of other countries and on Myanmar's own experience with the Thilawa Special Economic Zone (SEZ) and industrial zones, it is important that Myanmar's SEZ and Industrial Zones approach integrates a broader strategy and institutional eco-system for nurturing deeper linkages of such zones with the local economy. The Thilawa SEZ has been successful in attracting and diversifying investments and is charting the model for a successful operating environment for business nationwide, but without the development of domestic industry capabilities, the zone spillover potential will remain fairly low.

Increasing investments in transport connectivity and enhancing the efficiency of hard and soft transport infrastructure are other equally important elements for a thriving business environment. Myanmar's transport and logistics infrastructure is still underdeveloped and has failed to keep pace with the rising demand on the main logistics corridors. The Project Bank will contribute to channelling resources to priority projects, but such an endeavour would greatly benefit from improvements in the framework for public and private investments in infrastructure, the rehabilitation and modernisation of state-economic enterprises, and the strengthening of trade facilitation and other soft infrastructure.

Attracting investments that contribute to sustainable and inclusive development as sought in the MSDP and the MIPP could also be facilitated by a clearer and more ambitious government signalling of its expectations and commitments to promoting responsible business conduct (RBC) and green growth. With Myanmar's greater openness and integration into global value chains has also come increased international scrutiny. In a context where demands on RBC are rising globally, Myanmar has every interest in working towards strengthening the enabling framework for RBC and minimising businesses' exposure to RBC risks. Sending a stronger signal to investors about Myanmar's commitments to green growth, including by promoting renewable energy more aggressively and in a more structured manner, and ensuring the effective implementation of Myanmar's environmental impact assessment system, would similarly help to avoid locking the economy into an unsustainable development pathway.

Lastly, a truly inclusive and sustainable investment-friendly environment will only be possible when investors' and people's rights to land can be adequately secured. Few matters are as complex as land policy in Myanmar. Addressing the many weaknesses of the land regime will be challenging, not least because of the deeply rooted interlinkages between land governance and the peace process, but delays in finding a solution will continue to impose damaging consequences on the economy, the environment and the population. Moving forward with this complex process of land reform in a conflict-sensitive manner, taking into account land-related matters of the peace process and through wide engagement with stakeholders, is nonetheless essential for incoming investments to sustainably contribute to improving the livelihood of Myanmar citizens.

# 1. Assessment and recommendations

Myanmar's economic and political reform path is now approaching its first decade. Following decades of economic and political isolation, Myanmar returned to civilian rule in 2011 and installed its first democratically elected government in 2016. This political transformation has been accompanied by substantial economic reforms to open the economy and to build a growth trajectory based on export-led development fuelled in part by foreign investment. But despite substantial improvements, a peaceful Myanmar, open to the world and on a sustainable and inclusive path of development, is still a work in progress.

Putting an end to decades of conflict between various ethnic groups – and even among and within some ethnic minorities themselves – has proven to be a formidable challenge. The peace process has been painstakingly slow, with occasional reversals, while at the same time the conflict in Rakhine state continues to create a humanitarian crisis. While this review focuses primarily on the set of policies which can best stimulate responsible domestic and foreign investment and enhance its contribution to sustainable and inclusive development, it is not possible to separate economic policy from the broader political context. Questions of decentralisation and land reform, which would figure in any assessment of the investment climate, are also fundamental elements of any lasting peace settlement.

Many investors will hesitate before investing in conflict-affected areas without a peace settlement, and the peace process will never be fully complete without economic security and an adequate division of resources and responsibilities between the Union and the States and Regions. And local resistance to certain large projects, while driven primarily by concerns about resettlement plans and environmental risks, are nevertheless amplified by historical frustrations over the lack of agency of local stakeholders and the lack of accountability of decision makers. Local populations have also often seen little benefit accruing from the extraction of natural resources and hydropower projects in their territory.

The emerging global economic crisis related to the COVID-19 pandemic is another important challenge with acute short-term effects and potential long-term implications for Myanmar's development. Much of Myanmar's economic growth and transformation since 2011 has been propelled by greater integration into the world economy through trade and investment linked to global value chains (GVCs), both of which have come to a sudden halt in many sectors as a result of the COVID-19 outbreak and are unlikely to recover quickly (OECD, 2020; World Bank, 2020). Myanmar firms and workers have already been strongly affected by the crisis (Asian Foundation, 2020; Myanmar Times, 2020).

In the short-term, it is imperative that the government dedicate its attention during the COVID-19 pandemic to securing the functioning of the health system and preventing a deeper economic recession with lasting poverty and welfare impacts. In the long-run, many of pre-COVID-19 structural challenges and policies to investment discussed in this *2nd Investment Policy Review* will resurface again in an ever more important fashion as investors become more risk-averse and selective and industries get eventually reshaped by a faster adoption of transformative technologies and new business models.

## Economic reforms have seen some measure of success

At the time of the first political reforms in 2011, Myanmar was in many respects a closed economy, with little interaction with the outside world. Economic policy was largely driven by the requirements of self-sufficiency and the regulatory framework for business was based on a century-old colonial model. A first OECD *Investment Policy Review* undertaken in 2012-14 provided a road map for reforms to improve the investment climate, not just to attract more investment but also to ensure that investors act responsibly. These reforms included key legislative improvements such as the Myanmar Investment Law (MIL) and the Myanmar Companies Law (MCL), a number of strategic national plans brought together within the Myanmar Sustainable Development Plan (MSDP), and institutional reforms, such as the suppression of several ministries and the creation of the new Ministry for Investment and Foreign Economic Relations (MIFER). Substantial progress has been made in terms of foreign direct investment (FDI) liberalisation and the ease of doing business, as well as in terms of corporate governance, which has significantly improved Myanmar's rankings in some of the World Bank's *Doing Business* indicators.

As a result of these reforms and the lifting of sanctions and provision of duty-free access in key markets, Myanmar has been one of the world's fastest growing economies and foreign investors were initially enthusiastic about exploring opportunities for investing in one of Asia's last frontiers. A large market, rich in natural resources, with a young population, located within one of the most dynamic regions in the world offers a good basis on which to attract the attention of potential investors.

## ...but many problems raised in the first review persist

The overall legislative framework has not been renewed in all areas, most notably in the key area of land, and institutional reforms have not by themselves resolved the issue of poor inter-ministerial coordination. But to a certain extent, it is possible to say that the first phase of reform, including many areas highlighted in the first OECD *Investment Policy Review*, is on track. To call these reforms the low hanging fruit would be to underplay their importance, but in many ways the hard part of reform is yet to come. A modern legislative framework regulating business activity, developed through an inclusive process, is a good place to start, but implementation still lags far behind in various domains. Poor coordination among ministries and capacity constraints across the whole of government, which were identified in the first review, continue to hamper the effective implementation of reforms. Stakeholders on the ground also point to an overall slowdown in reform efforts, including pushback on liberalising measures and continued anti-competitive practices by rent-seeking incumbents.

Potential investors have also been dissuaded by the slow and uneven pace of the peace process and the on-going humanitarian crisis in Rakhine State. Beyond the reputational risk faced by investors and the need for rigorous due diligence, the potential reaction of home country governments in terms of market access and continuing donor support for reform also weighs on investment decisions. Partly as a consequence of these challenges, foreign investment approvals have fallen sharply from their peak in 2015-16.<sup>1</sup>

The reform momentum thus needs to be sustained and deepened for the benefits of investment reforms to be shared widely and for growth to be environmentally sustainable. With this aim, this *2nd OECD Investment Policy Review of Myanmar* takes stock of the major investment climate reforms since the first review in 2014 and assesses the remaining challenges in a number of priority areas. It looks at how the Directorate for Investment and Company Administration (DICA), the investment promotion agency and key player in terms of business regulation, can improve the investment climate by strengthening its investment facilitation and policy advocacy functions, as well as leverage its reputation and close proximity with investors to work closely with other government agencies to foster greater linkages between domestic and foreign investors. It gives heightened attention to how the government can promote responsible

investment, one of the aims of the recent Myanmar Investment Law and an objective frequently reaffirmed by high-ranking Myanmar officials at investment fora.

Drawing on the experience of many other countries in the region and elsewhere, the review also addresses the potential role of special economic zones (SEZs) and industrial zones in promoting export-led development and the pitfalls to avoid in such a strategy. It also looks at how Myanmar could leapfrog carbon-based energy strategies to promote renewable sources of electricity and other aspects of sustainability, such as natural resource management. At the request of the Ministry for Investment and Foreign Economic Relations (MIFER), the main counterpart for this review, the review also addresses the persistent need to foster secure and well-defined land rights. This problem was raised in the first review, with limited improvement since then. It is a central component of any reform effort as it is key for inclusiveness, sustainability and the peace process, beyond the obvious need to provide certainty for investors.

The first OECD *Investment Policy Review* took place during the early years of reform, at a time when very little policy work had been undertaken with the government, and donors were only just beginning to turn their attention to private sector development in Myanmar. At the request of DICA, it took a comprehensive approach to investment climate reform, including a strong emphasis on the need to ensure responsible investment. This second review takes place at a time when diagnoses of the economic challenges facing Myanmar are multiplying and donor support for legislative reform and for national plans and strategies is ubiquitous. It is therefore more selective in its policy recommendations and focuses more on impact and on how foreign investment can help Myanmar to contribute to the Sustainable Development Goals (SDGs). As with the first review, it relies on the *Policy Framework for Investment* (Box 1.1), a tool developed at the OECD to help governments to address investment climate challenges.

### Box 1.1. The Policy Framework for Investment

The *Policy Framework for Investment* (PFI) helps governments to mobilise private investment in support of sustainable development, thus contributing to the prosperity of countries and their citizens and to the fight against poverty. It offers a list of key questions to be examined by any government seeking to create a favourable investment climate. The PFI was first developed in 2006 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. Designed by governments to support international investment policy dialogue, co-operation, and reform, it has been extensively used by over 30 countries as well as regional bodies to assess and reform the investment climate. The PFI was updated in 2015 to take this experience and changes in the global economic landscape into account.

The PFI is a flexible instrument that allows countries to evaluate their progress and to identify priorities for action in 12 policy areas: investment policy; investment promotion and facilitation; trade; competition; tax; corporate governance; promoting responsible business conduct; human resource development; infrastructure; financing investment; public governance; and investment in support of green growth. Three principles apply throughout the PFI: policy coherence, transparency in policy formulation and implementation, and regular evaluation of the impact of existing and proposed policies.

The value added of the PFI is in bringing together the different policy strands and stressing the overarching issue of governance. The aim is not to break new ground in individual policy areas but to tie them together to ensure policy coherence. It does not provide ready-made reform agendas but rather helps to improve the effectiveness of any reforms that are ultimately undertaken. By encouraging a structured process for formulating and implementing policies at all levels of government, the PFI 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 reviews in regional or multilateral discussions.

The PFI looks at the investment climate from a broad perspective. It is not just about increasing investment but about maximising the economic and social returns. Quality matters as much as the quantity as far as investment is concerned. It also recognises that a good investment climate should be good for all firms – foreign and domestic, large and small. The objective of a good investment climate is 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 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.

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*, see: <http://www.oecd.org/investment/pfi.htm>.

## Taking stock of investment-related developments since 2014

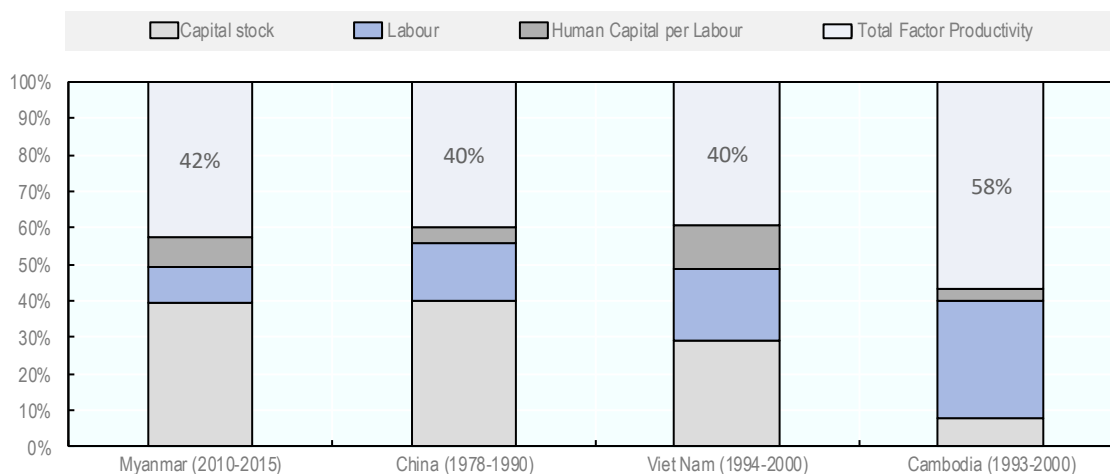
### ***Economic performance***

At a time of rapid economic change, it is perhaps easy to forget how far Myanmar has already come in such a short period of time. Prior to the reform period, the Myanmar economy was in many ways closed off to the global economy. Exports were minimal as a share of GDP and foreign investment was limited to a few large projects in natural resources, including hydropower. The financial system was primitive, with largely cash-based transactions and a dual exchange rate, while tax revenues relative to GDP were among the lowest in the world. Poverty was rampant, particularly in rural areas where much of the population lived without electricity.

Nine years cannot erase decades of mismanagement and Myanmar still faces many challenges, as befitting a least developed economy, but the achievements have nevertheless been impressive. According to the *Myanmar Sustainable Development Plan*, Myanmar has been one of the world's fastest growing economies in recent years, partly as a result of foreign investment, and poverty has declined from nearly one third of the population in 2005 to below 20% in 2015. The economy benefits from low inflation and monetary and fiscal stability, and state economic enterprises (SEEs) are being encouraged to transform into non-budgeted units, followed eventually by corporatisation and then equitisation (MOPFI, 2018). Exports of garments in particular have grown rapidly, along with employment in the sector.

Growth in the post-liberalisation period has been mainly driven by capital accumulation and productivity gains (World Bank, 2018), similar to the experience of regional peers during their respective periods of post-liberalisation reform (Figure 1.1). The large gains in productivity largely reflect the rapid structural transformation and greater integration into the world economy that Myanmar is going through.

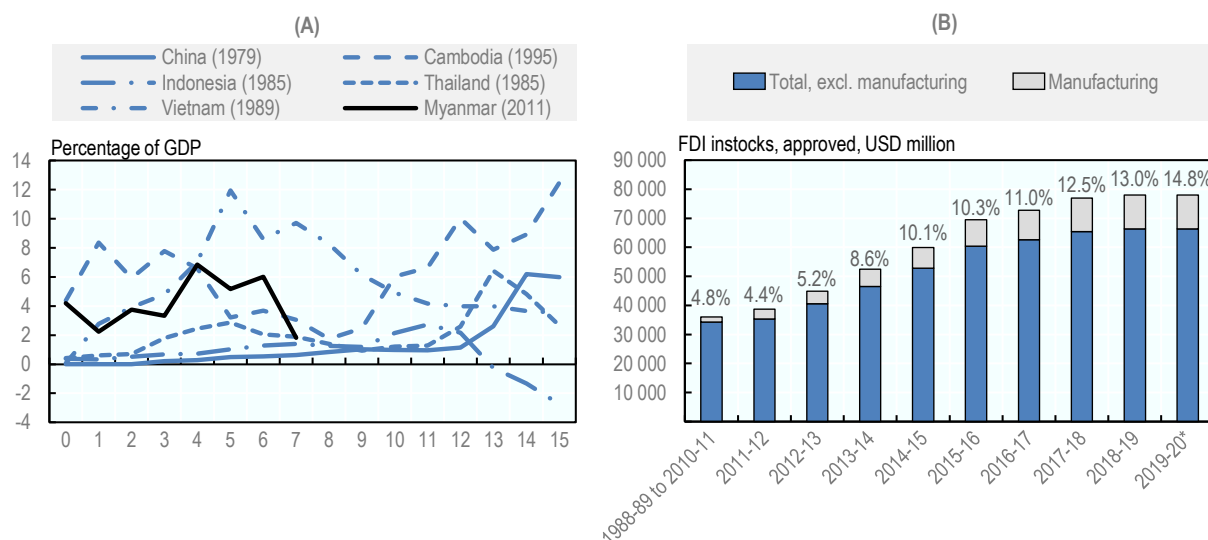
**Figure 1.1. GDP Growth Decomposition in post-liberalisation period: Myanmar and regional peers, percent**



Source: reproduced from World Bank (2018).

FDI has played a major role in supporting this economic transformation. Actual FDI inflows as a percentage of GDP grew considerably in the post-liberalisation period starting in 2011, notably during 2015-17. It then declined sharply in 2018, partly due to uncertainties arising from the Rakhine crisis and perceptions of slowing government reforms (Figure 1.2, Panel A).

**Figure 1.2. Foreign Direct Investment: (A) FDI Inflows in post-liberalisation period, years from reform commencement (percent of GDP) and (B) Approved FDI stocks: total and manufacturing (USD million)**



Note: (A) adapted from IMF (2018) with data from the World Bank World Development Indicators; and (B) based on data from DICA on cumulated FDI approved (permitted). Excludes foreign investment in SEZs and investments not under the purview of Myanmar Investment Commission in the past or present. Cumulative approved FDI does not necessarily match realised investments, but is indicative of the pattern of future inflows. (\*) data for 2018-2019 estimated as of 30 September 2019.

Source: IMF (2018), World Bank Development Indicators database and DICA official statistics.

The government's renewed focus on economic reforms, with the announcement of the Project Bank (see Chapter 5) and the further opening of the financial sector to FDI (see Chapter 2) in early 2019, as well the creation of MIFER in late 2018, is expected to help spur investors' interest in Myanmar in the near term again and to halt this recent downward trend.

Approved FDI into manufacturing sectors outside SEZs has risen significantly since 2011, increasing from about 5% of foreign investments up to 2012-13 to 13% in 2018-19 (Figure 1.2, Panel B). Approved investments have in large part been implemented. Data on existing investments by foreign enterprises suggest that the manufacturing sector accounted for about 15% of the stock of existing foreign investments in Myanmar as of September 2019, in comparison to only 9% in 2015. Inside Thilawa SEZ which is the only operational SEZ at present, FDI in manufacturing is even more prevalent and growing, responsible for about 80% of all foreign investments. In total, as of September 2019, existing FDI inside the SEZ represented roughly 3% of all FDI in Myanmar, up a half percentage point from end-December 2018. These investments have and should contribute to furthering economic diversification, job creation and the development of better employment opportunities (see section below).

Despite the overall improvements since 2014, a number of development obstacles remain. The MSDP lists many of the challenges still faced by Myanmar, including a rural-urban divide, vulnerability to climate change, limited access to finance which is particularly acute for smaller companies, low productivity, an infrastructure gap and historic mismanagement and opacity in the natural resources sector (MOPFI, 2018). Only an estimated 50% of households have access to electricity, one of the lowest levels in the world in spite of abundant natural gas and hydropower. Furthermore, in spite of poverty reduction, one half of the population is estimated to be near poor and hence highly vulnerable to shocks (IMF, 2018). The private sector also complains of shortages of skilled labour.

Investment will be essential for Myanmar to meet the Sustainable Development Goals (SDGs), notably goals 8 and 9 on “sustained, inclusive and sustainable economic growth with increased economic productivity through diversification, technological upgrades and innovation” and to “build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation”.

The government has set an ambitious target of 7.7% GDP growth, driven in large part by FDI and exports. While growth has been strong in the reform period, there are many risks which could affect this performance, not least through their impact on both FDI and exports. Already FDI flows have tapered off from the rapid growth in the early years of reform. In the short-term, the emerging global economic crisis related to the COVID-19 pandemic will certainly slow progress in this respect.

### ***COVID-19 and its implications for Myanmar***

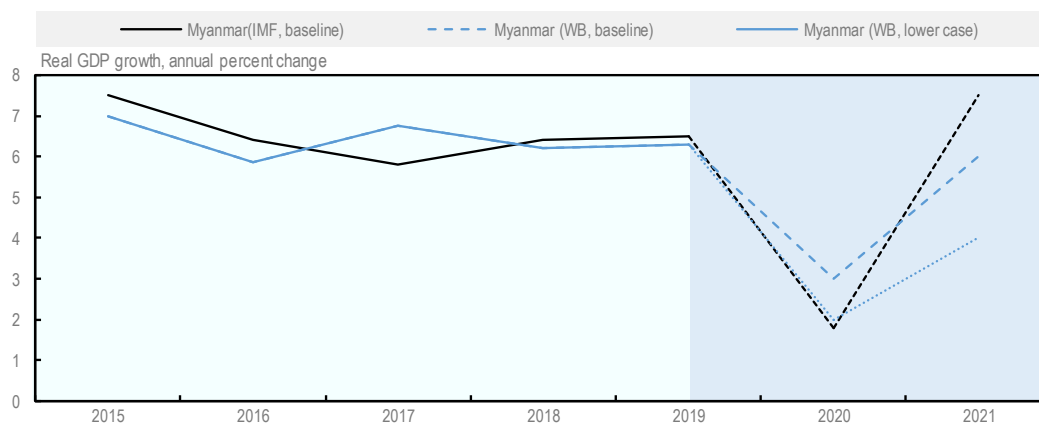
The emerging global economic crisis related to the COVID-19 pandemic is expected to significantly slowdown Myanmar's previous strong economic growth. Real GDP growth is expected to more than halve to approximately 2-3% in 2020, compared to 6.3-6.5% estimated for 2019, before rebounding to 6%-7.5% in 2021 according to the baseline estimations by the World Bank (2020a) and the IMF (2020) (Figure 1.3). Global projections by the OECD (2020a) point to a 4.5% fall in global economic activity in 2020, before picking up by 5% in 2021. The magnitude of these extraordinary shocks is unprecedented. By the end of 2021, the global loss of income will exceed that of any previous recession over the last 100 years outside wartime, with dire and long-lasting consequences for people, firms and governments in 2020.

Myanmar is affected through trade, FDI, tourism, and commodity prices, with poor households being disproportionately affected (World Bank, 2020a). Merchandise trade represents about 51% of GDP in Myanmar, with regional trade with China, India and other ASEAN member states, notably Thailand and Malaysia, accounting for about three-quarters of Myanmar's trade. All of them are substantially exposed to the crisis. Economic activity in China and India are expected to contract by 2.6% and 3.7%, respectively, in the most optimistic scenario according to the OECD (2020a). The IMF (2020) estimates that Thailand's



economy will contract by 3% in 2020 and that of Malaysia by 1.7%, rebounding respectively by 6.1% and 9% in 2021. Globally, trade is projected to decline 9.5%-11.4% in 2020, before resuming by 2.5%-6% in 2021 (OECD, 2020a).

**Figure 1.3. Real GDP Growth, 2015-2021**



Source: IMF (2020) and World Bank (2020a)

Global FDI activity is expected to plummet by at least 30% under the most optimistic scenario (OECD, 2020b). FDI flows to developing countries are expected to drop even more because sectors that have been severely affected by the pandemic, including the primary and manufacturing sectors, account for a larger share of their FDI than in developed economies. The supply and demand shocks resulting from the pandemic will hit strongly some of Myanmar's most prominent investment sectors. Garments which represent about 28% of total merchandise exports are overwhelmingly intended for European markets, the worst hit region, and rely extensively on imported inputs from China. Over two-thirds of fuel exports, which represent over 21% of total merchandise exports, go to Thailand, the worst hit economy in ASEAN according to the World Bank (2020), with the rest going to China. Declining global energy prices also add further downward pressure to exports and fiscal revenues.

Tourism-supported services, such as hotels, restaurants and transport, which account for about 16% of GDP and 27% of employment in urban areas, were among the first to be affected by the crisis and possibly will be among the last to recover as the global economic downturn will have lasting effects on household spending. Travel and border restrictions initially placed on travelers arriving from China, which made up about 20% of international arrivals in 2018/19 (World Bank, 2020a), and then extended later to all international arrivals, were imposed in early February, about a month and half before the first two reported official COVID-19 cases. By 27 April, nearly a month after the first domestic containment measures were implemented, mobile phone mobility data reported a drop of 74% in visits to retail and recreational locations, such as cafés, restaurants, shopping centres and movie theaters as compared to early January. A 67% reduction was observed in visits to public transport stations, and grocery stores and pharmacies saw a 64% decline in visits during the same period (IFPRI, 2020).

The crisis has now already begun to reverberate strongly across the economy. A recent survey by the Asia Foundation (2020) indicates that nearly one third of companies in Myanmar had to temporarily close due to the COVID-19 outbreak and the vast majority of those maintaining operations have reported a turnover drop of more than 50%. Another survey conducted by Eurocham Myanmar (2020) with its member companies reported expected revenue losses in the range of 30% to over 50%. The biggest projected losses are found in tourism, automotive, garments, fast-moving consumer goods and retail distribution. By the end of April 2020, according to the government, over 60 000 workers had lost their jobs due to closures

and workforce reductions in factories following cancelled orders and the disruption of raw material supplies due to the pandemic (Myanmar Times, 2020a).

In such a pandemic crisis, aside from strengthening the health system, including by securing the supply of needed medical equipment, the government needs to focus on protecting jobs and household income and on preventing otherwise viable firms from bankruptcies. A number of policies have been used by governments worldwide for these purposes (e.g. short-time work and income support schemes, tax deferrals and credit guarantees etc.) according to the IMF's COVID-19 policy tracker. The Myanmar government has established the COVID-19 Economic Relief Plan (CERP), which consists of a comprehensive set of emergency fiscal and monetary measures addressing workers and businesses' needs, although implementation has sometimes been faulted for not reaching those most in need (Myanmar Times, 2020a; IFPRI, 2020). Among the most noteworthy measures are the establishment of a USD 71 million COVID-19 Fund to provide loans to mostly Myanmar-owned SMEs in the apparel, hospitality and tourism sectors, and deferral of corporate and commercial taxes interim payments until the end of the 2019/20 fiscal year (see Box 1.2).

### Box 1.2. Myanmar's COVID-19 Economic Relief Plan (CERP): main support measures

The COVID-19 Economic Relief Plan (CERP), released on 27 April, consists of 7 goals, 10 strategies, 36 action plans and 76 actions covering a range of emergency fiscal and monetary measures. It is expected to cost over USD 2 billion and the funding is to come from a reallocation of budget resources, with 22 ministries contributing 10% of their 2019/20 fiscal budgets to the plan, and from international development partners. Among other things, the government has obtained the Parliament's approval for a USD 700 million loan from the IMF to finance budget deficits due to COVID-19 and a USD 50 million loan from the World Bank to support prevention operations and healthcare facilities. Below are the CERP's main announced measures:

#### 1. Improving macroeconomic environment through monetary stimulus:

- Lower bank deposit and lending rates by 3%
- Lower minimum reserve requirements by banks

#### 2. Easing the impact on the private sector:

- Establish MMK 100 billion COVID-19 Fund (USD 71 million, 0.1% of GDP) to provide loans at reduced interest rates for working capital finance of affected local SMEs, particularly in the apparel, hospitality and tourism sectors. The fund is one of the smallest stimulus measures in the region (OECD, 2020c), although its size might increase to MMK 200-500 billion depending on market response
- Defer payments until the end of the fiscal year on 30 September 2020 of corporate income and commercial tax
- Waive withholding tax on exports, specific goods tax, custom duties, and commercial tax on critical medical supplies and products related to the prevention, control, and treatment of COVID-19
- Myanmar Agricultural Development Bank ("MADB") under the MOPFI to offer agricultural, rural development, and livestock loans at reduced rates (1% to 1.5% lower)
- MOPFI to guarantee 50% of any new loans made by banks to enterprises not beneficiaries of the low cost fund for working capital.
- CBM to allow banks to restructure and reschedule MSME loans that regularly pay interest and principal for a longer period of no more than 3 years

**3. Easing the impact on workers:**

- Extend labour benefits to unemployed Social Security Board (SSB) members from six months to 1 year from the date of unemployment
- Implement labour-intensive community infrastructure projects for laid-off workers and returning migrants

**4. Easing the impact on households:**

- Exempt electricity tariffs for all households up to 150 units per month
- Provide in-kind food transfers and emergency rations to vulnerable households and at-risk populations
- Provide cash transfers to vulnerable households, including internally-displaced persons (IDP) in high-risk areas.
- Improve benefits for social pension and Maternal Child Cash Transfer beneficiaries.
- Negotiate with financial institutions for more flexibility related to interest rates and mortgage payments for affected households.

**5. Promoting innovative products and platforms:**

- Promote mobile payment systems and use of e-commerce and social commerce systems.
- Encourage retail businesses and logistics firms to make use of existing websites to sell products and provide services.
- Develop a central e-commerce website.
- Initiate grant competitions for innovative ideas to combat the pandemic's impacts.

**6. Strengthening healthcare systems:**

- Under immediate plans, improve quarantine facilities, import key medical products required for COVID-19, and improve preventive healthcare measures.
- For long-term plans, improve capacity building for the health care sector and upgrade existing health and medical facilities.

**7. Increasing access to COVID-19 response financing (including contingency funds):**

- All government entities to reallocate part of their 2019/20 budgets to the CERP fund, improve budget flexibility, and acquire external grants and concessional loans to finance the CERP action plans

Source: IFPRI (2020), KPMG (2020) and IMF's COVID-19 policy tracker, <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19>.

In the aftermath of the pandemic, policies focusing on mobilising responsible investments will be key for the recovery and many of the pre-COVID-19 structural challenges and policies discussed in this *Review* will resurface in an ever more important fashion, as investors will be more risk-averse and selective, and industries might eventually be reshaped by the adoption of transformative technologies and new business models. Unlocking constraints to productivity growth will be critical to compensate for potentially higher transaction costs, lower mobility and reduced scope for resource reallocation across firms, sector and countries following the crisis. This *Review's* policy recommendations, albeit addressing pre-COVID-19 challenges, remain thus highly relevant and may help to build a faster and more inclusive and sustainable recovery.

But investment policies and institutions can also be called on to assist in the immediate efforts of re-establishing critical supply chains disrupted by the pandemic and supporting the business sector during the crisis. High-quality aftercare services by investment promotion agencies (IPAs) can be vital to ensure that investors remain and reinvest in the country during and following the recovery (see Chapter 3). Alleviating administrative burdens and reducing bureaucratic obstacles for investors can contribute to more efficient production processes and faster delivery of much needed goods to clients during the pandemic. Several countries have already taken steps in this direction (Box 1.3).

### Box 1.3. OECD IPAs' strategic responses to the COVID-19 outbreak

The capacity of IPAs to adapt to new situations makes them key actors in governments' responses to the COVID-19 crisis. OECD IPAs' strategic responses to the COVID-19 outbreak have included:

*Re-organisation and innovation.* OECD IPAs have seen an immediate impact of the crisis on the way of “doing business”. Most of them re-organised rapidly to dedicate a COVID-19 section on their website with information on government support and applicable restrictions. Close to two-thirds of the agencies have a dedicated webpage in English.

*Focus on existing clients and information provision.* The nature of services provided by IPAs has changed radically by shifting away from marketing to intense aftercare. As new regulations are adopted to mitigate the impact of the crisis, IPAs provide support to investors to navigate the rapidly evolving legal framework. They also play a key facilitating role to support firms with their ongoing operations and supply chain relationships.

*Activating business networks.* IPAs have activated their business networks, particularly in the health sector and hardest hit activities, to help the government fight the crisis. For instance, Germany Trade and Invest narrowed down its services to five industries, which are both the most hit by the crisis and for which the IPA can maximise its impact.

*Going digital.* Digital means will allow IPAs to continue servicing and identifying future clients, which requires access to different digital tools. For example, digital client prospecting, capable of correctly identifying potential leads, and virtual-reality solutions for site visits can gain in importance. Some IPAs are already going digital. CINDE Costa Rica has accelerated its digital plans, including artificial intelligence-based marketing, providing services and products online. Business Sweden provides investors with access to online interactive maps of different industrial clusters, and plans to expand them.

*New focus and prioritisation.* The COVID-19 crisis may propel agencies to reconsider their prioritisation strategies. For example, Business Sweden has used for years a qualitative evaluation system to identify “high-quality” projects and the UK Department for International Trade will continue using economic analysis and intelligence driven prioritisation to ensure that FDI plays an effective role in economic recovery.

*Rethinking strategies and reforms.* In light of their evolving roles, OECD IPAs are rethinking their strategic orientations to better respond to both public and private sector needs. Investment climate reforms, supported by IPA policy advocacy, will become ever more important in a context of uncertainty and possible protectionist tendencies.

Source: OECD (2020d)

The MIC has taken rapid measures both to facilitate investment and to mitigate the impact of the COVID-19 outbreak, including steps to encourage investment in the medical sector. On 9 April 2020, the MIC announced a 50% reduction of investment application fees, and, on 11 April, that it would accelerate approvals for investments in labour-intensive and infrastructure projects (Myanmar Times, 2020b, 2020c).

The MIC also accelerated approvals for investments in healthcare and medical equipment (e.g. producers of personal protective gear) and prioritised pharmaceutical enterprises and healthcare service providers. DICA has been publishing information related to COVID-19 on its website, although in Myanmar language only. Translating future announcements and publications into English would greatly help potential and existing investors in accessing important information.

Adopting a responsible business conduct (RBC) approach in government and business responses to the crisis can also bring short and long-term benefits to businesses and the economy as a whole (see Chapter 4). It would help ensure that such responses do not create further risks to people, planet and society – or contribute to destabilising supply chains down the line (e.g. resurgence of forced or child labour in certain strategic sectors). Promoting and enabling RBC as part of overall COVID-19 policy responses is thus essential for ensuring coherence between immediate actions and the expected recovery trajectory. Governments are in a particularly strategic position to steer the economic recovery towards long-term value creation (including reduced greenhouse gas emissions, enhanced worker skills and benefits and emergency preparedness).

For businesses, implementing internationally recognised RBC standards such as the OECD *Guidelines for Multinational Enterprises* or the OECD *Due Diligence Guidance for Responsible Business Conduct* can enhance their capacity to build resilience and better deal with current and future supply chain disruptions. For example, information from supply chain due diligence (e.g. on the origin of raw materials, and other traceability data) when overlaid with risks related to COVID-19 (such as infection rates, government restrictions and associated disruptions in production or distribution channels) can be used to understand short and medium term vulnerabilities in the supply chain, and support continuity planning to manage disruptions. Working out contingency plans with workers and suppliers may make more commercial sense than paying the price of disbanding large segments of a workforce that took years to build and train.

Businesses that put in place effective continuity planning, taking into account the range of RBC issues related to the crisis, including related to avoidance of layoffs and maintaining wage payments, may be better placed to access fresh capital, special emergency funds and relief programmes, regardless of any conditions that may or may not be included (OECD, 2020e). For example, the EUR 5 million emergency cash fund “Myan Ku” established by the EU to support Myanmar workers who have lost their jobs due to COVID-19 considers RBC aspects.<sup>2</sup> Having a more sophisticated RBC lens is also a strategic orientation that can encourage a more systemic and dynamic crisis response and discourage a ‘go-at-it-alone’ position (Barry, 2020). Furthermore, it can also contribute to disaster preparedness and resilience overall, which is especially useful considering the risks of disruptions by climate change.

The COVID-19 pandemic may also work to reinforce some policy recommendations advanced here for the longer-term. For instance, measures taken by governments to protect their societies and economies during the pandemic may disproportionately affect some companies and investors. Investment treaties should thus allow governments sufficient policy space to respond effectively to crises such as the current COVID-19 one and to take vital measures such as securing quick access to essential goods and services (see Chapter 2). Older-style investment treaties concluded by Myanmar in the past contain vague, unqualified provisions that may in certain circumstances fail to appropriately safeguard the government’s right to regulate and may end up attracting undesirable interpretations in eventual ISDS disputes.

The crisis may also put on-going and planned infrastructure projects in considerable distress (e.g. loss of revenue due to lower demand levels, disruptions to projects under construction due to supply-shocks, adverse impact on access to finance etc.), which reinforces the importance of strengthening the framework for public and private investments in infrastructure (see Chapter 5). Many aspects of such frameworks are likely to be put to test, including the framework for re-negotiations, early termination and other provisions such as force majeure, compensation and change in law (World Bank, 2020b). Beyond their critical role in the immediate response to COVID-19 (e.g. emergency procurement of health products and expansion of healthcare facilities), procurement and infrastructure investment will play a critical role during the recovery

as governments try to rapidly activate infrastructure projects in the pipeline to provide a further boost to the recovery. An enhanced public and private investment framework will be critical to ensure that mobilised resources continue to meet value-for-money expectations under the new economic circumstances.

In the same vein, the crisis also offers an opportunity to reconsider development priorities and place greater emphasis on green growth objectives (see Chapter 6). Unchecked, global environmental emergencies such as climate change and biodiversity loss could cause social and economic damage far larger than any caused by COVID-19 (OECD, 2020f). Economic recovery packages should thus strive for more than simply restoring economies and livelihoods quickly, but also seek to accelerate investments and behavioural changes that will reduce the likelihood of future environment-related shocks and increase society's resilience to them.

### ***The contribution of FDI to sustainable development in Myanmar***

Foreign investment can benefit a host economy beyond raising its stock of capital. Under the right conditions, FDI can enhance growth and innovation, create quality jobs, develop human capital, and raise living standards and environmental sustainability. In other words, FDI can generate positive socio-economic and environmental benefits in Myanmar that help make progress towards the SDGs.

Realising these gains is not a given, however. While, in principal, FDI has the potential to advance sustainable development, private sector incentives and the policy context play a critical role in realising this potential. Different chapters of this *Review* examine how reforms in various policy areas can promote investment and, through investment, structural transformation in Myanmar. This section takes a broader view of FDI impacts, and examines new OECD indicators that link FDI to productivity, innovation, job quality, skills, gender equality, and energy efficiency (Box 1.4).

#### **Box 1.4. The OECD FDI Qualities Indicators**

FDI Qualities Indicators describe how FDI relates to specific aspects of sustainable development in host countries. They are structured around economic, social and environmental sustainability. An in-depth assessment of all 17 SDGs, and their corresponding targets, was undertaken to identify the full spectrum of FDI Qualities – that is, areas where FDI may contribute to achieving the SDGs. This assessment further considers the extent to which FDI potential for advancing the SDGs is reflected in the OECD Policy Framework of Investment, including related frameworks and guidelines, such as the OECD Guidelines for Multinational Enterprises and the OECD Policy Guidance for Investment in Clean Energy Infrastructure.

The FDI Qualities Indicators focus on five clusters: productivity and innovation, employment and job quality, skills, gender equality, and carbon footprint. For each cluster, a number of different outcomes are identified and used to produce indicators that relate them to FDI or activity of foreign MNEs, allowing for comparisons both within and across clusters so as to identify potential sustainability trade-offs.

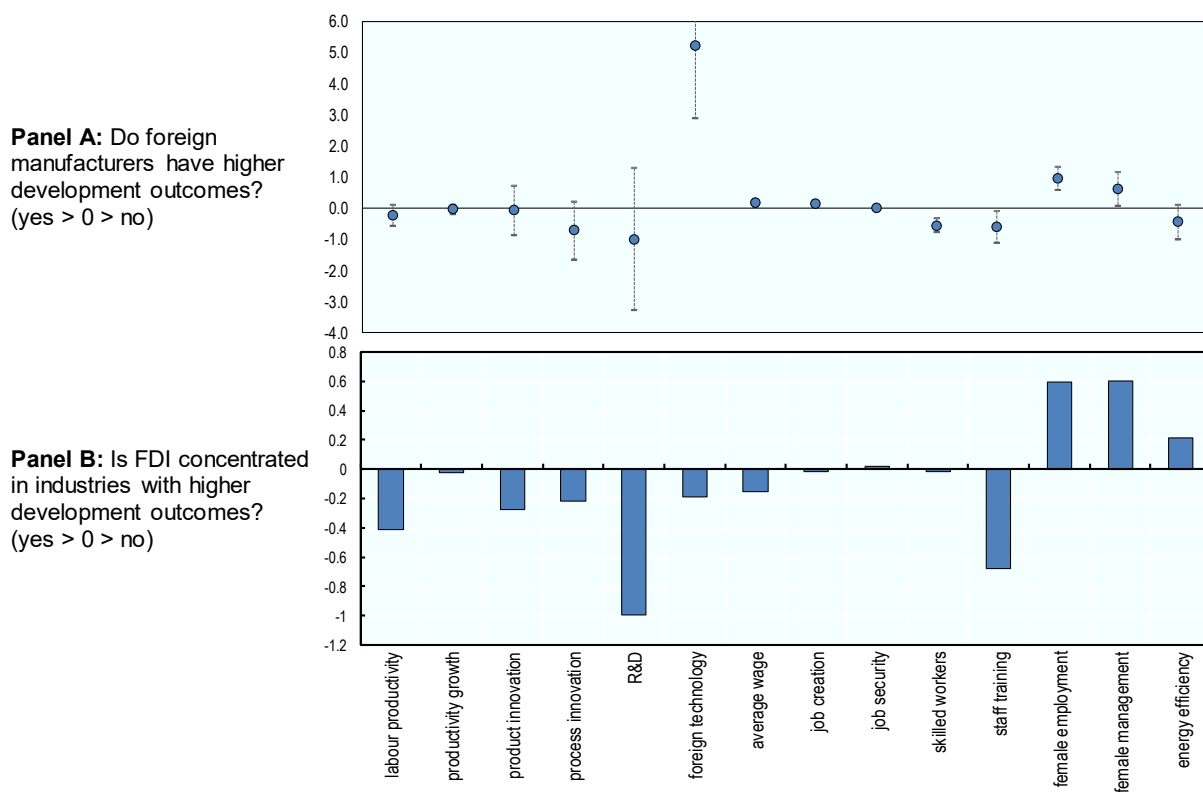
Taking into account the country-specific context, policymakers can use FDI Qualities Indicators to assess how FDI supports national policy objectives, where challenges lie, and in what areas policy action is needed. Indicators also allow cross-country comparisons and benchmarking against regional peers or income groups, which, taking into account the country context, can help to identify good practices and make evidence-based policy decisions.

Source: OECD (2019)

Foreign investors in Myanmar are for the most part not inherently different from their domestic counterparts in their socio-economic and environmental contributions (Figure 1.4, Panel A). Moreover, they tend to operate in industries with lower development outcomes, particularly in terms of labour productivity, innovation and skills development (Figure 1.4, Panel B). This is perhaps because one of Myanmar’s main attractions to investors is its abundance of young and relatively cheap labour, which is an asset for labour-intensive and low-skilled light manufacturing activities.

One aspect where foreign manufacturers distinguish themselves is in their contribution to reducing the gender employment gap: foreign firms both employ significantly more women than domestic peers and are more likely to empower women to assume top managerial roles. This may be partly because their operations are prevalently in female-dominated industries with a higher incidence of female top managers, like garment manufacturing. While intensive female employment in these industries has been an important avenue for women to enter the labour force in many developing countries, the development of these industries may exacerbate the gender gap if it perpetuates gender-specific labour roles, with women participating only in low-skill low-wage jobs, by deterring government action to promote gender equity in higher-wage jobs. This may warrant policy action to support training and skills upgrading opportunities in the garment industry, particularly as foreign firms are found to employ relatively less skilled labour than domestic peers, and in industries that underperform with respect to offering training opportunities. The fact that foreign firms are more likely to employ female top managers, nevertheless, suggests that they may already be investing in developing managerial skills of women employed in the garment industry.

**Figure 1.4. FDI and sustainable development outcomes in Myanmar**



Note: Panel A includes confidence intervals that indicate statistical significance at the 95% level. If the confidence interval crosses the zero line, the difference between foreign and domestic firms is statistically insignificant. For further details, see OECD (2019).

Source: OECD based on FDI Qualities Indicators

FDI qualities in Myanmar are comparable to those of regional peers at a similar stage of economic development, like Lao PDR and Viet Nam, and somewhat higher than Cambodia (Table 1.1). A notable difference in Lao PDR and Viet Nam is the relatively higher labour productivity associated with foreign investors relative to domestic firms, possibly due to FDI shifting to higher-value added and less labour-intensive activities as a result of rising wages in these countries. In Myanmar, instead, the main sustainable development contribution of foreign investment remains in the area of employment generation, with foreign firms offering somewhat higher compensation to workers. In more advanced countries like Thailand, Indonesia and Malaysia, foreign activity is associated with significantly higher innovation outcomes, particularly investment in R&D.

An area in which there is room for improving FDI qualities in Myanmar is that of environmental impact, and specifically energy efficiency. In most countries in the region, both more advanced and less advanced, foreign manufacturers are considerably more energy efficient than their domestic peers, possibly due to use of more sophisticated, cleaner or energy-saving technologies. In Myanmar, this is not the case, and policies to promote investment in cleaner technologies may be justified.

**Table 1.1. Overview of FDI qualities in Southeast Asia**

Outcome	IDN	KHM	LAO	MMR	MYS	PHL	THA	VNM
labour productivity	+		+		–		+	+
product innovation	+				+	–		–
process innovation	+					–		
R&D	+				+		+	
foreign technology	+		+	+		+	+	+
average wage	+		+	+	–			
job creation	+			+	–	–		
job security	+				–			+
skilled workers				–	–	–	+	
staff training	–	N/A	N/A	N/A	+		–	N/A
female employment	+	N/A	N/A	+	N/A	N/A	N/A	+
female management	+		–	+	+	–	–	–
energy efficiency	+	+	+				+	+

Note: A '+' sign indicates that foreign firms have higher development outcomes, while '–' indicates that domestic firms have higher development outcomes.

Source: OECD based on the FDI Qualities Indicators (2019).

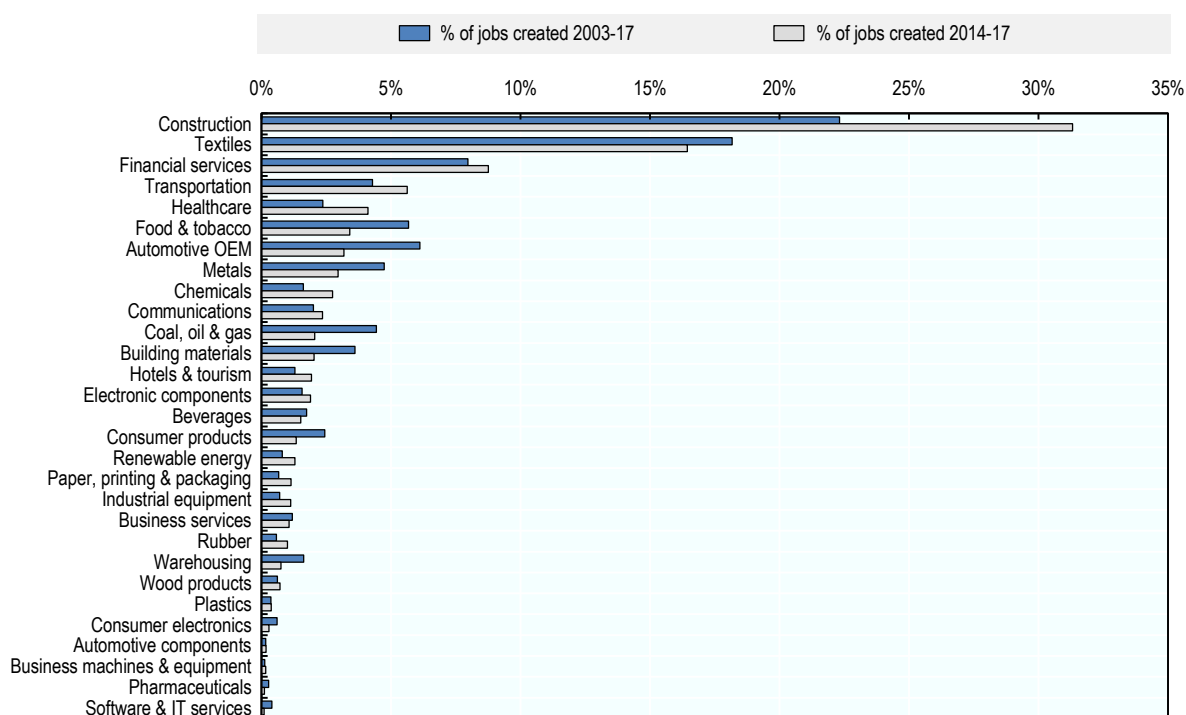
### *A closer look at FDI and job creation*

Greenfield FDI created over 55 000 jobs between 2014 and 2017, more than the 46 000 jobs created in the previous ten years. The majority of jobs remain heavily skewed toward low-skilled and labour-intensive activities like construction and textiles (which account for 31% and 16% of jobs created, respectively) (Figure 1.5). However, industries that require more technical skills, such as chemicals and electronic components, are beginning to attract more FDI, and account for growing shares of job creation.

Lastly, while foreign investors outperform domestic peers in terms of creating new employment opportunities, jobs created per dollar invested remain low compared to regional peers, particularly for manufacturing investors (Figure 1.6).



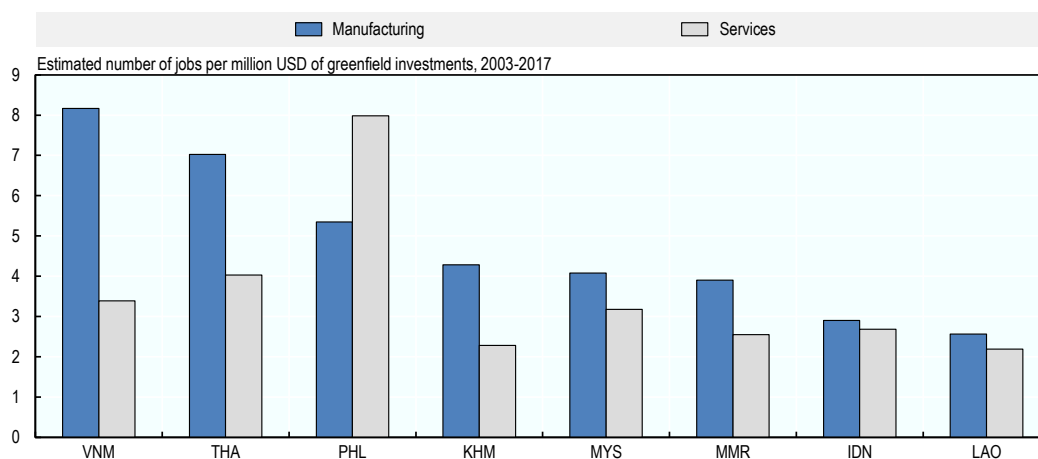
**Figure 1.5. FDI and job creation by industry**



Note: Industries that account for less than 1% of jobs created are omitted. Number of jobs are based on announced FDI projects over 2003-2017. Source: OECD based on Financial Times' fDi Markets database.

**Figure 1.6. FDI and job creation in Southeast Asia**

Estimated number of jobs per million USD of greenfield investments, 2003-17



Note: Greenfield FDI is defined as capital expenditure (capex). Number of jobs and capex are based on announced FDI projects between January 2003 and December 2017. Source: OECD based on Financial Times' fDi Markets database

### ***National strategies and development plans***

As stated in the MSDP, Myanmar has myriad sectoral, ministerial and sub-national plans. A selection of these having an impact on private sector development is listed in Table 1.2. The MSDP is intended to provide an overall framework for coordination and cooperation across all ministries and all states and regions and is presented as a way to “reinvigorate reform”. It links action plans and strategic outcomes with relevant SDG targets, all structured around three pillars: peace and stability; prosperity and partnership; and people and planet.

**Table 1.2. Myanmar strategic and sectoral plans**

<b>Selection of official guiding documents affecting private sector development</b>
Myanmar Sustainable Development Plan, 2018-30
Industrial Plan 2016-22
Private Sector Development Framework and Action Plan
National Export Strategy 2015-19
Myanmar Investment Promotion Plan
12-point Economic Policy, 2016
Rule of Law Strategic Plan 2015-19
Myanmar Industrial Policy 2016
SME Policy 2015
Myanmar National Climate Change Policy 2017-30
Myanmar Energy Master Plan 2015
National Land Use Policy
Myanmar Agricultural Development Strategy 2018/19-2022/23

### ***Legislative reform***

The first OECD *Investment Policy Review of Myanmar* already noted the urgency of the former government to reform the legislative framework. Many laws dated to colonial times, while others were developed under military governments and were often ill-suited to an open economy and not in conformity with international standards. A number of important laws date from this first period of post-2011 reform, including the revised Foreign Investment Law and the Environmental Conservation Law.

**Table 1.3. The legislative framework for investment has improved significantly**

<b>A selection of recent legislative reforms</b>
Myanmar Investment Law 2016
Myanmar Investment Rules 2017
Companies Law 2018
Special Economic Zones Law 2014
Financial Institutions Law 2016
Competition Law 2015
Union Tax Law 2017
Arbitration Law 2016
Condominium Law 2016

Legislative renewal has continued under the NLD government, including the enactment of new laws which were initiated by the previous government. Table 1.3 lists some of the most recent laws having a direct impact on the investment climate. The new Myanmar Investment Law (2016) and the Companies Law (2018) described in more detail below are both modern and comprehensive frameworks and represent a substantial improvement over what preceded them. But not all new laws have gone through as broad and

inclusive a drafting process and as a result are not always unequivocally better than what went before, as will be discussed later.

### *Myanmar Investment Law*

At the time of the first OECD *Investment Policy Review* (OECD, 2014), investment was governed by the Foreign Investment Law (2012), the Myanmar Citizens Investment Law (2013) and the Companies Law from 1914. The Thein Sein government had just revised the 1988 foreign investment law as a signal to investors that Myanmar was open for business, but the 2012 revision still left many questions unanswered and was a long way from good practices in peer countries. The approval system through the MIC was highly cumbersome, key provisions of the investment law were not clearly defined, and Myanmar remained one of the most restrictive countries to foreign direct investment. Many of the recommendations from the first review were incorporated in the 2016 Investment Law (Table 1.4).

**Table 1.4. Some key recommendations from the 1<sup>st</sup> OECD Investment Policy Review**

General	<ul style="list-style-type: none"> <li>• Develop an all-encompassing investment regime covering both foreign and domestic investment under the same regulatory framework</li> <li>• Establish the principle of non-discrimination</li> <li>• Prepare the new law through an inclusive process, with broad public consultations</li> </ul>
MIC screening	<ul style="list-style-type: none"> <li>• Streamline screening to focus on only the largest, most important projects</li> <li>• Simplify criteria</li> <li>• Increase transparency</li> <li>• Minimise discretion</li> <li>• Allow appeals of decisions</li> <li>• Monitor compliance of investors with their commitments</li> <li>• Require investors obtaining an MIC permit to commit to principles of responsible investment</li> </ul>
Investor protection	<ul style="list-style-type: none"> <li>• Further clarify legal provisions on investment protection as to the scope and level of protection they provide</li> <li>• Align the expropriation regime with international standards</li> </ul>
Grievance mechanism	<ul style="list-style-type: none"> <li>• Establish grievance mechanism, incl. for stakeholders</li> </ul>
Investment incentives	<ul style="list-style-type: none"> <li>• Reduce scope for investors to benefit from incentives</li> </ul>
Market access	<ul style="list-style-type: none"> <li>• Review the extensive sector- and product-based restrictions to assess their impact not only on the competitiveness of the individual sectors but also on the overall investment climate itself.</li> <li>• Consider further liberalisation to approach levels of openness found elsewhere in the region and in peers worldwide</li> </ul>

Source: OECD (2014).

The new Myanmar Investment Law (MIL) was designed to address these shortcomings and has done so to a large extent (Table 1.5). Most importantly, it unifies the domestic and foreign investment laws which is now common practice in ASEAN and increasingly worldwide for those countries which have an investment law. Together with the Myanmar Investment Rules (2017), it puts responsible investment front and centre, streamlines and improves procedures, embeds national treatment and, together with the Companies Law, significantly liberalises the regime for foreign investment.

The first objective of the new Investment Law is “to develop responsible businesses which do not cause harm to the natural environment and the social environment...”, while another is to develop businesses that meet international standards. This emphasis on responsible investment is echoed in the duties of the Myanmar Investment Commission which must assess whether the investor has demonstrated a commitment to carry out the investment in a responsible manner. Chapter XVI is devoted to the responsibilities of investors and goes beyond what is commonly found in most recent investment laws. Investors “shall abide by applicable laws, rules, procedures and best standards practiced internationally for this investment so as not to cause damage, pollution, and loss to the natural and social environment and not to cause damage to cultural heritage”.

**Table 1.5. Brief comparison of the new Myanmar Investment Law (2016) and previous Foreign Investment Law (2012)**

Key provisions	2012 FIL	2016 MIL
Unified regime for foreign and domestic investors	∅	✓
Environmental & social concerns	∅	✓
Investment Screening & Approval	∅ (wide scope; centralised)	✓ (narrower scope; decentralised)
National Treatment	∅	✓
MFN	∅	✓
FET	∅	✓
Expropriation	✓ (weak)	✓
Transfer of Funds	✓ (weak)	✓
Alternative Dispute Resolution	✓ (weak)	✓
Grievance mechanism	∅	✓

Note: ✓ covered/improved; ∅ absent or incomplete/weak;

Source: author's elaboration.

The new law also revised the role of the MIC to make it more focused on projects of strategic importance, including those which are large and capital-intensive and those likely to cause a large impact on the environment and the local community. Smaller projects under USD 5 million are now handled by State and Regional Investment Committees. The overall approval process has also been expedited and the provision of incentives is now separated from the approval process itself, allowing all investors passing through the MIC to enjoy certain non-tax benefits. Another change in the Investment Law which was further accentuated by the new Companies Law was a substantial clarification and liberalisation of the regime governing foreign investment (see section below for a detailed discussion).

Institutional innovations in the new law include an Investment Monitoring Division to ensure investors' compliance with commitments and a newly implemented Investment Grievance Committee which receives investor grievances for investments made under the MIC and conciliates for grievances between investors and the state with the goal of preventing them from escalating to legal proceedings. The grievance mechanism was established in April 2020 by the Myanmar Investment Commission Notification No. 9/2020 and is being implemented with assistance from the IFC (see Chapter 2 for more detailed information).

### *Companies Law*

The principal companion to the Investment Law in terms of investment climate reforms has been the recent reform of the Companies Law. Like the MIL, the new Companies Law (2017) has generally been well-received. Developed with the assistance of the Asian Development Bank, it is reportedly modelled on Australian corporate law. It facilitates incorporation, reduces the compliance burden for SMEs, and improves corporate governance generally, including through greater transparency, introduces a new electronic registry system, strengthens minority shareholder rights and provides for greater scope for foreign investment throughout the economy. Further elements include: more freedom for companies to carry out other lines of business; no authorised share capital limit; no restrictions on the transfer of shares between local and foreign shareholders; the removal of the requirement for company seals; and new solvency test safeguards (DICA, 2018).

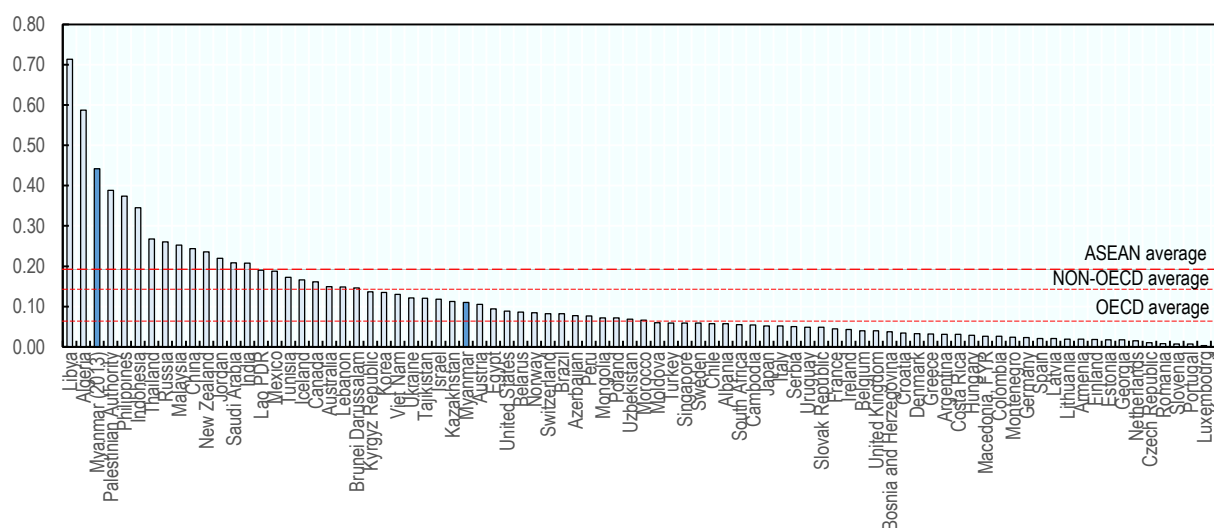
A key element of the new law from the point of view of potential investors is the definition of a foreign company as "a company incorporated in the Union in which an overseas corporation or other foreign

person (or combination of them) owns or controls, directly or indirectly, an ownership interest of more than thirty-five per cent". This change establishes a minimum threshold below which foreigners may invest throughout the economy, except in sectors where separate restrictions apply. Not only does this create more opportunities for foreigners to invest in Myanmar, it also helps to alleviate the problems caused by the prohibition of foreign ownership of land which also previously restricted the possibility for foreign investors to acquire stakes in local companies. Greater protection of minority shareholders also gives foreign investors more confidence when taking minority shares in local companies.

### FDI liberalisation

The Myanmar Investment Law and Rules, together with the Companies Law and various sectoral reforms, have allowed Myanmar to move from being the most restrictive country out of almost 70 surveyed in the OECD *FDI Regulatory Restrictiveness Index* at the time of the first review to being one of the most open in Southeast Asia and in line with the performance of other non-OECD economies in this regard (Figure 1.7). This degree of statutory liberalisation in only five years is almost unprecedented and could have a substantial impact on FDI inflows over time – assuming that political conflicts are satisfactorily resolved and other key business conditions do not deteriorate.

Figure 1.7. OECD FDI Regulatory Restrictiveness Index, 2019 (open=0; closed=1)



Note: The OECD FDI Regulatory Restrictiveness Index covers only statutory measures discriminating against foreign investors (e.g. foreign equity limits, screening & approval procedures, restriction on key foreign personnel, and other operational measures). Other important aspects of an investment climate (e.g. the implementation of regulations and state monopolies, preferential treatment for export-oriented investors and SEZ regimes among other) are not considered. Data reflect regulatory restrictions as of end-December. See Kalinova et al. (2010) for further information on the methodology.

Source: OECD FDI Regulatory Restrictiveness Index, <https://www.oecd.org/investment/fdiindex.htm>.

The antiquated banking sector has gradually been opened to foreign investors, initially limited to providing financial services to foreign investors and to offering export financing to local firms. Foreign investment is now allowed without discrimination in domestic banks (up to 35% foreign ownership). Beyond that, foreign banks are allowed to provide a full range of services to local firms in both foreign currency and kyat. Retail banking to physical persons remains closed until 1<sup>st</sup> of January 2021 as announced by the Central Bank on 7 November 2019. As of February 2020, 13 foreign banks – all from Asia – had been granted licences to operate branches in Myanmar under the previous two rounds of foreign bank licensing conducted by the Central Bank in 2014 and 2016. A third round is planned for 2020 by the Central Bank and will accord

foreign banks the right to establish subsidiary banks in addition to branches as in the past ones. The announced reform aligns with the diagnostic established in the MSDP: “capacity constraints experienced by our domestic financial institutions, as well as conditions imposed on foreign bank branches operating in Myanmar continue to pose challenges. It is therefore imperative that the banking and financial services sector be further liberalised” (MOPFI, 2018, p. 33)

Other examples of partial or full sectoral liberalisation include: insurance, which was formerly the monopoly of Myanma Insurance, a state economic enterprise; large-scale wholesale and retail distribution; education services; agriculture; and condominium units. The telecommunications sector was already opened to foreign investment in 2014. In some of these sectors, minimum capital requirements for foreign investors and other forms of discrimination remain but reforms nevertheless allow ample scope for foreign participation.

## The challenge of effective governance

### **Rule of law**

*“The rule of law is the fundamental principle which underpins democratic governance. In Myanmar, weaknesses in the rule of law place a heavy burden upon our people, particularly those who are poor and vulnerable and present institutional barriers to achieving durable peace, stability and other goals of sustainable development.”*

(MOPFI, 2018, p. 12)

The first OECD *Investment Policy Review of Myanmar* highlighted the obvious challenge of governance in Myanmar, not just as a least developed country but also because of the legacy of military rule (OECD, 2014). Reforms in Myanmar have been impeded by weak capacity within government, particularly acute at the local level, institutional fragmentation and poor inter-ministerial coordination, and a lack of standardised procedures for both drafting and implementing new laws.

The following description from the first Investment Policy Review (OECD, 2014) is still relevant today:

*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).*

An inevitable tension arises between the urgent need to update the legislative framework and the slow process of building capacity within government to draft and review laws and by-laws. Without improved capacity and more standardised procedures for adopting new legislation, there is a risk that heightened drafting activity will simply exacerbate the existing lack of capacity within government without providing the expected benefits to citizens and businesses. Development partners can assist with this process, but without adequate local participation this can lead to laws which lack local ownership and may not be sufficiently adapted to the situation in Myanmar.

When drafting legislation, ministries tend to operate in silos, with little reference to existing statutes elsewhere, and with little public consultation or review of what it done in other countries. According to one commentator:

*“the NLD government and Hluttaw must move away from the misconception that the Myanmar legal system can be rebuilt, and the economy strengthened, simply by the passage of new laws...At present, legislation...is usually prepared by government officials with no legal expertise or legislative drafting skills. There is poor coordination between government ministries in developing new legislation and no uniform procedure for public consultations on draft legislation” (Thet Tun, 2017).*

Resolving these challenges will require improvements in many areas of governance: transparency, public consultations, inter-ministerial coordination and regulatory impact assessments. There is a clear need to build capacity within the government to draft and review legislation. The Union Attorney General's Office prepared a strategic plan for 2015-19 with the help of UNDP as an important milestone on the path to updating Myanmar's legal system (UAGO, 2015). The plan is candid in its assessment of the UAGO's capacity to perform its oversight role: "we face some difficulties in completing and delivering our work in a timely manner in light of competing demands", requiring both technological upgrading and training.

These reforms will take time but examples both from within Myanmar and from many other countries attest to their importance in improving the quality – and hence the impact – of legislation. These areas are all discussed in more detail below.

### *Myanmar's governance performance*

Comparing the quality of governance across countries is difficult. Rankings are often based on surveys of local perceptions, and how problems are perceived may be idiosyncratic across countries. Table 1.6 shows selected governance indicators which relate to the areas discussed here, notably open government and regulatory enforcement. As a least developed country, Myanmar naturally ranks low in the index. What is most interesting is the variation across measures within Myanmar. It ranks particularly poorly in terms of transparency, but also in terms of civic participation and access to remedies.

**Table 1.6. Selected governance indicators for Myanmar**

(Ranking and Score 0–1 = best performer)

	Global rank	Rank in Asia	Lower middle income rank	Score
Open government	114/126	14/15	24/30	
- Publicised laws and government data				0.20
- Right to information				0.35
- Civic participation				0.42
- Complaint mechanisms				0.42
Regulatory enforcement	85/126	13/15	12/30	
- Effective regulatory enforcement				0.49
- No improper influence				0.61
- No unreasonable delay				0.50
- Respect for due process				0.38
- No expropriation without adequate compensation				0.34

Source: World Justice Project (2019)

### *Regulatory impact assessments*

Ultimately, improved legislation will require the introduction of regulatory impact analysis (Box 1.5). Myanmar currently has no specific body responsible for RIA, unlike in Cambodia and Lao PDR which have both set up an Office on RIA. The experience in Cambodia suggests that this will need to be done incrementally so as not to further exacerbate existing capacity constraints in the short term which risks turning RIA into a largely pro forma exercise heavily dependent on independent consultants. In Cambodia, RIA was introduced progressively, allowing time to build capacity before fully mandating the implementation of RIA for all regulations. As part of this progress, a Regulatory Executive Team was established at the Council of Ministers "to provide advocacy information to line ministries on principles of good practice in the regulation making process, assist with training on RIA methodology, and support line ministries in their implementation of the RIA process" (OECD, 2018b).

### Box 1.5. What are regulatory impact assessments?

Regulatory impact assessment is a cornerstone of evidence-based policy making and one of the most adopted regulatory policy tools by OECD member countries for the past 20 years. RIA is a crucial element of the regulatory governance cycle and is used to develop or strengthen regulatory policy. It is defined as a systematic process of identifying and quantifying the likely benefits and costs from regulatory or non-regulatory options for a policy under consideration and may be based on benefit-cost analysis, cost-effectiveness analysis or business impact analysis (OECD, 2015).

The Recommendation of the OECD Council on Regulatory Policy and Governance encourages countries to integrate RIA into the early stages of the policy process for formulating new regulatory proposals: identifying policy goals, evaluating if a regulation is necessary and how it can be most effective and efficient in achieving these goals, considering means other than regulation and identifying the trade-offs of different approaches analysed to identify the best approach. More specifically, governments should adopt ex ante assessment practices that:

- Are proportional to the significance of the regulation;
- Include cost benefit analyses that consider the welfare effects of regulation taking into account economic, social, and environmental impacts including the distributional effects over time, identifying who is likely to benefit and who is likely to bear the costs;
- Identify the specific policy need and the objective of the regulation, such as the correction of a market failure or the need to protect citizen's rights that justifies the use of regulation;
- Consider both the no-action option or baseline scenario as well as alternative ways of addressing the public policy objectives, including regulatory and non-regulatory alternatives to identify and select the most appropriate instrument, or mix of instruments to achieve policy goals;
- Identify approaches likely to deliver the greatest net benefit to society, including complementary approaches such as through a combination of regulation, education and voluntary standards
- Provide qualitative descriptions of those impacts that are difficult or impossible to quantify, such as equity, fairness, and distributional effects. When regulatory proposals would have significant impacts, ex ante assessment of costs, benefits and risks should be quantitative whenever possible. Regulatory costs include direct costs (administrative, financial and capital costs) as well as indirect costs (opportunity costs) whether borne by businesses, citizens or government;
- Make assessments publicly available as far as possible, along with regulatory proposals, prepared in a suitable form and with adequate time for inputs from stakeholders and assist political decision making; and
- Use RIA as part of the consultation process where possible;
- Indicate that regulation should foster, not deter, competition and consumer welfare;
- Explore ways to limit adverse effects and carefully evaluate them against the claimed benefits of the regulation;
- Consider whether the objectives of the regulation cannot be achieved by other less restrictive means.

Source: OECD (2012), OECD (2015).



In general, there is a need to improve regulatory governance. Understanding the stock of regulations impinging on businesses (and beyond) and having a clear process for the review of existing regulations as well as developing new ones is vital to policy development. In the absence of such understanding, there is a risk that obsolete regulation stays in place and that new regulation gets enacted without a formal process that clearly identifies the reason for its introduction and what problem it is intended to address. Also, the anticipated burden on the system created by the new regulation ought to be assessed (see Chapter 8 for a related discussion in the context of land-related legislation).

Improving the quality of the regulatory environment provides a real opportunity to stimulate economic activity, unlock productivity and growth, and foster inclusiveness of SMEs, as larger firms suffer less from heavy public bureaucracy than smaller firms with limited capacity to deal with regulatory demands.

### *Public consultations*

The MSDP calls for strengthening civic engagement and public consultation processes with respect to policy-making at all levels. Myanmar has had some very good experiences with public consultation, such as with the Myanmar Investment Law and the Land Use Policy, but as a rule such consultations are neither mandatory nor systematic, nor do they follow standard procedures. Box 1.6 provides some good practices for public consultations. To a great extent, the problems raised in the first OECD *Investment Policy Review* in this area have not gone away: a hyperactive government and a newly empowered and assertive parliament, together with insufficient public consultation, mean that draft laws are not adequately vetted.

Public consultation is partly a way of ensuring more effective laws by bringing to light at the earliest stage any possible adverse implications or inconsistencies. By involving stakeholders from the beginning, it also creates greater buy-in and public understanding of the new or amended legislation which will assist in implementation and enforcement (OECD, 2014). While public consultations are neither a panacea nor cost-free from the perspective of administrative sources, they can provide vital feedback on draft laws which can help to improve consistency with other legislation and avoid any unintended consequences. In this way, effective public consultations can help to fill the gap in public governance while the administration develops the necessary tools such as regulatory impact analysis.

In this respect, the Ministry of Investment and Foreign Economic Relations could, for instance, through the recently created Investment Promotion Committee it chairs (see below), take the lead in establishing a formal public consultation process for business related legislations in order to systematically collect inputs from Myanmar business associations, such as the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) and the Young Entrepreneur Association (YEA), and the various foreign chambers operating in Myanmar.

#### **Box 1.6. Good practices for public consultations**

- Have systematised procedures to provide greater clarity and certainty;
- Provide equal access to all stakeholders;
- Allow sufficient time to respond (30-60 days);
- Provide feedback to stakeholders on the outcome of the consultations;
- Consider white papers or RIA as part of the consultations;
- Include IT-based consultations, such as a central web portal.

Source: Jacobs (2015)

### *Public-private dialogue*

Beyond public consultations on draft laws and strategic plans, regular public-private dialogue on investment climate challenges is essential in order to feed in private sector views into policy design and to improve implementation. Many of the bodies involved in investment climate improvements engage in some dialogue with the private sector, as shown below. While there is ample scope for a variety of approaches at different levels, too many platforms for dialogue may serve to dilute the signal on needed reforms and reduce the potential impact of policy advocacy within government. What is most important in this context is the mechanism through which comments from the private sector and other stakeholders feed back into policy design and implementation.

- **Investment Promotion Committee** proposed under the Myanmar Investment Promotion Plan (MIPP) and established in May 2019: cross-ministerial coordination mechanism which will also gather opinions on policies and planned measures from the private sector through a regular dialogue, including with foreign investors.
- **Investor Assistance Committee** and **Investor Grievance Mechanism** under the MIL to respond to complaints and grievances from investors and stakeholders.
- **Private Sector Development Committee** and **Myanmar Special Task Force for Business and Trade Promotion** both aim to promote dialogue with the private sector. The PSDC is chaired by the Vice President. Under the PSDC is the **Improving Myanmar's Doing Business Ranking Working Group** chaired by the Deputy Minister of Commerce.
- **Myanmar Business Forum (abolished in 2017)**: developed by IFC, along the lines of similar bodies established by the IFC in Viet Nam and Lao PDR. It is not clear why this initiative has stopped in Myanmar. Elsewhere, these forums have been generally quite successful as a policy dialogue channel between the government and the business community.
- **Myanmar-Japan Joint Initiative** (and other bilateral consultation mechanisms)

### *Inter-ministerial co-ordination*

Institutional reforms can also help to improve inter-ministerial co-ordination and the effectiveness of government. The first OECD *Investment Policy Review* described a government with over 30 ministries with sometimes overlapping responsibilities and poor inter-ministerial co-ordination. It suggested that in the longer term the government should consider merging certain ministries and streamlining responsibilities. Institutional changes in 2016 reduced the number of ministries from 36 to 21.

Institutional innovations are common within many governments as the boundaries of different policy areas shift and become more fluid. Although there are sometimes good arguments for combining certain functions within one ministry, the exact division of responsibilities among ministries inevitably differs across countries. But institutional changes are only a means to an end and may not be sufficient by themselves to overcome the silos and poor co-ordination across government which is endemic in Myanmar. In the previous government, there were six ministers responsible for various aspects of co-ordination but this approach was not retained by the new government after 2016.

A National Economic Co-ordination Committee has been created to implement the MSDP, chaired by the State Counsellor. For investment matters, an Investment Promotion Committee was created in May 2019 to serve as a cross-ministerial co-ordination mechanism as suggested in the Myanmar Investment Promotion Plan (MIPP).

One prominent merger was the Ministry of Finance and the Ministry of Planning and Economic Development which became the Ministry of Planning and Finance (MOPF), recently transformed into the Ministry of Planning, Finance and Industry (MOPFI) after merging with the Ministry of Industry in late 2019. Part of the responsibilities of MOPF were hived off to create the new Ministry of Investment and Foreign

Economic Relations (MIFER) in November 2018. The new ministry is intended to focus on an investment enabling environment, as well as enhancing the quality and effectiveness of Myanmar's co-operation and co-ordination with development partners and international organisations – two functions which are also combined in Cambodia.

Each government must decide on its own division of institutional responsibilities; no single approach is suitable in all cases, and other ASEAN Member States have adopted a variety of approaches. In Cambodia, SEZs fall under the overall authority of the Council for the Development of Cambodia (CDC) which is the prime body under the Investment Law responsible for investment promotion. The same is true in Lao PDR while in the Philippines the Board of Investment is separate from the Philippine Export Zone Authority which manages the extensive network of zones.

## Decentralisation as a political imperative

Partly as a legacy of autocratic rule, Myanmar has historically been a highly centralised economy. In spite of some efforts at decentralisation after 2011, the central government still accounts for 91% of total budgeted expenditure – far higher than in other countries in the region (Minoletti and Sandi, 2018). Further political and administrative decentralisation is a core component of the peace process.

Decentralisation can empower local governments to provide public services which are better adapted to local conditions and to experiment with reforms that can then be applied elsewhere. It moves government closer to the people, including the marginalised, and can encourage local administrations to improve their effectiveness in order better to attract and retain people and businesses. It also gives local authorities more of a role in managing the exploitation of natural resources in their territories. In the best of cases, it provides a much-needed boost to territorial development to ensure that no region is left behind.

In practice, however, decentralisation is challenging and may not immediately provide the expected development gains. The short term impact may be to weaken overall governance by transferring responsibilities to areas with the least capacity and by adding another layer of necessary co-ordination to an already fragmented governance setting. Weak local governments are also open to capture by local elites and by foreign investors which can multiply the opportunities for corruption and raise the possibility that environmental and social standards are not properly enforced. Outcomes will also depend strongly on how fiscal revenues are shared between the centre and the provinces. Different countries will opt for different degrees of decentralisation, but OECD country experience suggests that some central co-ordination is essential for successful regulatory governance (OECD, 2015). Lessons from the Indonesian experience are shown in Box 1.7.

Beyond questions of the division of administrative responsibilities, widely dispersed territorial development is one of the key challenges in ensuring inclusive growth within both developed and developing countries. As stated in the Myanmar Investment Promotion Plan, “reducing inequality of economic development and income levels between states and regions is an urgent issue for Myanmar”. Many countries face wide variations in the quality of the investment climate at provincial level which further perpetuates regional inequalities. Many larger investors would often prefer to go through the central approval mechanism or through the SEZ authority rather than dealing with local administrations, as has been found in Cambodia and the Philippines, for example. The question of how best to promote investment in the regions is discussed further below.

### Box 1.7. Decentralisation in Indonesia has been a learning process

Indonesia undertook “big bang” decentralisation after the Asian financial crisis, transforming rapidly from one of the most centralised economies into a highly decentralised state. Decentralisation was seen as a vital complement to the democratisation process under way and a reaction to the inherently centralised approach of the previous autocratic government. Beyond the benefits from greater democratic accountability in a country with over 16 000 islands and strong cultural and linguistic diversity, as well as stark regional inequalities, decentralisation was also intended to put an end to separatist movements.

Local governments were handed substantial responsibilities for providing public services, along with extensive fiscal transfers and the large-scale migration of over two million civil servants to the regions. Revenue sharing between the centre and the regions included rents from natural resources. Most of the responsibilities were transferred to the district level rather than to the provinces, ostensibly as a way of weakening the potential for separatist movements by the provinces (Hofman and Kaiser, 2002).

The centre retained responsibility for certain key functions such as defence, justice, planning and police, with most other functions transferred to local authorities. This approach placed a premium on coordination in order to ensure that local initiatives, such as with infrastructure, were consistent with national plans. Fiscal transfers with weak accountability have only served to swell the ranks of officials in sub-national administrations and, without the ability to raise taxes on their own, local governments have relied heavily on user fees and charges which have served to undermine any attempts to improve local business climates and promote regional development (Lewis, 2015).

An OECD study concludes that “there still remain unclear lines of responsibility for the delivery of public services across levels of government...The central government should be more explicit in setting norms, standards, procedures and criteria for local government service delivery responsibilities and provide guidance and supervision. Likewise, minimum service standards should be better monitored and enforced” (OECD, 2016). This uncertainty is mirrored in regulatory overlaps, greatly adding to the complexity of investing. To overcome this burden, almost all regencies and cities have set up a one-stop-shop but with little evidence to suggest that this has encouraged business registration or led to an increase in formality.

Not all the economic experience has been disappointing, however. Some local governments have done well in fostering a good investment climate while others have struggled – a situation which can be found even in highly centralised economies. According to Doing Business indicators at a sub-national level in Indonesia, the cost of obtaining a construction permit as a share of city income per capita varies by a factor of four across Indonesia, with some regions greatly outperforming the national average. The challenge for the central government is to bring the lagging regions up to the national standard through continued fiscal equalisation measures combined with steps to strengthen local accountability and accompanied by capacity building and continued monitoring.

Whatever the political benefits, many studies suggest that “regional autonomy has not delivered the improvements that were expected...in terms of the provision of public services or in the management of natural resources” (OECD, 2016). The pace of decentralisation was dictated by a political imperative which in retrospect may have been too swift given the lack of capacity at local level and the need to develop mechanisms for coordination across different layers of government.

## Improving the investment climate in Myanmar

this section provides an assessment from each of the policy chapters discussed in this review. The numerous policy recommendations 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

### ***Investment policy***

As alluded to earlier, at the time of the first OECD *Investment Policy Review of Myanmar* (OECD, 2014), there was a sense of urgency for reforming the investment policy framework. Many laws dated from colonial times, while others were often ill-suited to an open economy and not in conformity with international standards. The investment regime was scattered across multiple laws, in many instances outdated and incomplete. Investment procedures were cumbersome and sometimes unwarranted and some were particularly prone to discretionary abuse by authorities. Myanmar also remained largely closed to foreign investments, being assessed at the time the second most restrictive economy to foreign direct investment (FDI) according to the OECD *FDI Regulatory Restrictiveness Index*.

This second OECD *Investment Policy Review of Myanmar* takes place in a substantially different environment. Many of the policy recommendations made in the first review were instrumental to a series of important reforms implemented subsequently and that have significantly improved the investment climate. Myanmar has adopted a modernised investment and corporate framework for both domestic and foreign investors, pioneering explicit investors' obligations to act responsibly and reducing considerably the level of discrimination against FDI. Although a significant number of sectors are still partly off limits to foreign investors, Myanmar no longer features among the top most restrictive economies under the *Index*.

Despite considerable progress over recent years, the reform momentum needs to be sustained and even deepened for the benefits of investment reforms to be shared widely and growth to be environmentally sustainable. Only in this way can the positive effects of investment more effectively contribute towards improving the lives of Myanmar people and meeting the Sustainable Development Goals (SDGs).

The foundations of an enabling investment environment have been laid down to a great extent with the new Myanmar Investment Law (MIL) (2016) and the new Companies Law (2017). New laws concerning intellectual property (IP) rights and arbitration are laudable achievements as they bring Myanmar's legal framework broadly in line with international standards in these two important areas. However, a number of challenges for complementary policies and implementation capacity on the ground remain to be addressed. The success of these recent developments in the legal framework also hinges on ongoing efforts to improve the independence and competency of the judiciary and the Myanmar courts, which will have a crucial impact on investors' confidence in the effectiveness of these new laws in practice.

Myanmar is also at an important juncture in terms of its approach to investor protection in investment treaties. With only 14 investment treaties in force today, Myanmar is in a favourable position to review its approach to investment treaties. Treaties with vague, unqualified provisions may attract undesirable interpretations in investor-state dispute resolution (ISDS) cases and, in some instances, overlap with newer investment treaties with the same partner countries. Overlaps between older bilateral investment treaties (BITs) and newer treaties with the same partners may raise issues of coherence between them which could potentially be exploited by investors to circumvent the newer, more nuanced investment treaties and thereby undermine reform efforts.

The investment policy chapter looks closely at the core investment policy issues – the non-discrimination principle, the degree of openness to foreign investment, the protection of investors' property rights and mechanisms for settling investment disputes – that underpin efforts to create a quality investment environment for all. It takes stock of recent related reforms and examines the quality of government policies currently in place.

### *Main policy recommendations*

- Evaluate the costs and benefits of remaining restrictions to foreign investment in manufacturing sectors with no bearing on national defence and security and that remain partly restrictive to foreign investors due to joint-venture requirements.
- Evaluate the costs of remaining restrictions to foreign participation in services sectors, such as in financial, construction and retail distribution services, which provide critical backbone services to all economic sectors. All these sectors are largely interlinked with market and efficiency-seeking manufacturing investments that Myanmar aims to attract. Cross-country evidence shows that these restrictions typically add costs to entire value chains, including in manufacturing sectors, by restraining potential competition among services input providers. This not only hinders a country's investment attractiveness, it may also end up hurting consumers' choices and purchasing power.
- Make sure that foreign investors are capable of registering long-term land leases in accordance with the MIL. For this, the government may want to issue clear instructions and procedures for the relevant land-related agencies to efficiently implement the MIL. Similarly, it should clarify that pursuant to the new Companies Law, Myanmar companies with up to 35% foreign ownership are allowed to own land under the same terms as wholly-owned Myanmar companies. The private sector has reported repeated difficulties in registering long-term leases of foreign investors with the Office of Registration of Deeds, because of the lack of clarity on the relationship of the MIL with the Transfer of Property Restriction Act of 1987 (TIPRA). Similar concerns have also been raised with regards to the relationship of the Condominium Law of 2016 and the TIPRA. The MIL's provision allowing all foreign investments in Myanmar to obtain longer terms leases (up to 50 years renewable) is one of its main achievements and a key improvement to the business environment in comparison to the past. Access to land on a longer term basis is a critical condition for all businesses, and especially for infrastructure projects and land-based investments which require debt financing.
- Clarify the 'negative list' status of the list of restricted investment activities issued by the Myanmar Investment Commission as mandated in Art 42-43 of MIL. This would require strong co-ordination within government but would add great clarity to the investment regime going forward, notably to potential foreign investors. At this stage, there may be little inconsistency between the current list (Notification 15/2017) and applied restrictions, but such clarification is particularly important to avoid a widening dichotomy in the future. To date, only security services activities seem to be restricted and not listed in the Notification 15/2017, but such inconsistency generates uncertainty as to whether there are more restricted activities that are not listed or whether the list will be constantly updated to reflect changes in underlying regulations.
- Do not allow representatives from State-Economic Enterprises to take part in Proposal Assessment Teams involved in assessing projects in sectors and segments related to the SEE operations. The potential conflict of interest arising from their involvement in the process generates uncertainty and might result in non-competitive approval conditions.
- Continue to prioritise efforts to establish a functionally independent judiciary and improve legal certainty under the Myanmar court system. These challenges have been consistently identified as some of the most important for Myanmar in its democratic transition. The government should continue to pursue, together with external experts and other stakeholders, initiatives that aim to build trust in the independence of the judiciary, increase resources available for training a new

generation of judges and lawyers and promote access to justice programmes at the community level to provide dispute resolution alternatives to the court system.

- Design, draft and implement subsidiary regulations to accompany recent laws on IP rights and arbitration. The enactment of these new laws is a laudable achievement, but dedicated IP courts and authorities to supervise the administration, registration and enforcement of IP rights also need to be established before investors will be able to have confidence in their rights under the new IP laws. Similarly, the government should consider encouraging the development of dedicated commercial courts and building capacity within the judiciary to promote effective enforcement of rights granted under the new Arbitration Law.
- Review and consider possibilities for renegotiation and clarification of older-style investment treaties. These treaties should be calibrated to reflect the appropriate balance of preserving the government's right to regulate while contributing to Myanmar's efforts to attract FDI. The government's experiences with the COVID-19 pandemic may shape how it views key treaty provisions or interpretations as well as the appropriate balance in investment treaties. Vague, unqualified provisions in treaties concluded by Myanmar in the past may not appropriately safeguard the government's right to regulate and may end up attracting undesirable interpretations in ISDS disputes. Some of these older-style treaties also overlap with newer, more nuanced investment treaties concluded with the same partner countries. Myanmar, therefore, may wish to consider taking steps to update these treaties and its approach to future treaty negotiations to ensure the agreements appropriately safeguard the government's right to regulate. It may be possible to achieve updates to some existing treaties through treaty amendments or joint interpretations agreed with treaty partners. The government may also wish to engage with treaty partners with whom Myanmar has two or more investment treaties in force concurrently to review whether overlapping treaty coverage reflects current priorities.
- Manage potential exposure under existing investment treaties proactively. The government should continue to develop ISDS dispute prevention and case management tools. Myanmar may also wish to consider efforts to raise awareness about its investment treaties and the significance of its international obligations under these investment treaties for the day-to-day functions of different government agencies and officials that regularly interact with foreign investors, including at state and regional government level as they are often the ones more directly involved in the implementation of policies.

### ***Investment promotion and facilitation***

Myanmar's investment promotion and facilitation framework has also evolved considerably since the first review. On the institutional side, a new Ministry for Investment and Foreign Economic Relations (MIFER) has been established to steer investment policy and deepen investment climate reforms. Important strides have been made with regards to investment facilitation, notably the streamlining of procedures for establishing a business, obtaining investment approvals and other needed licences with the one-stop-shop (OSS), although there is still much room for improvement with regards to the latter. The Directorate for Investment and Company Administration (DICA) – Myanmar's Investment Promotion Agency (IPA) – has been strengthened to deliver on its mandate and has asserted itself as a leading reformist agency in the government. Myanmar has also established a long-term investment promotion plan – the Myanmar Investment Promotion Plan (MIPP) for 2016-2036 – which sets out an ambitious agenda and strategies for promoting further domestic and foreign investments.

This makes it timely to take stock of recent investment promotion and facilitation reforms and to provide possible directions for the government's ambitious agenda to attract investment for sustainable development. The OECD's survey of IPAs, which Myanmar also completed in the context of this review, allows for some benchmarking of country experiences across regions and provides additional insights on how best to organise Myanmar's promotional and facilitation efforts going forward.<sup>3</sup>

Much of the analysis in this chapter concerns investment facilitation, partly because investment promotion activities remain rather embryonic in Myanmar.<sup>4</sup> Apart from trips abroad where Ministers and the Director General of DICA meet potential investors and business groups and establishing a list of priority sectors for investment, investment promotion in Myanmar is still in its early stages. This is understandable given the weaknesses of the business environment that prevailed just after Myanmar's economic transition in 2011. Investing heavily in investment promotion and branding activities before building the foundations of a good investment climate would have likely been a waste of resources.

DICA has, therefore, wisely focused its efforts on facilitating investments and has gone a long way in this regard as noted above. Focusing on easing regulatory bottlenecks is also indirectly a valuable investment promotion activity as it increases the attractiveness of Myanmar as an investment destination. There is still much room for improvement in investment facilitation nonetheless. To some extent a first tier of business reforms have been achieved with the new Investment and Companies Laws, but reforms to second tier levels of regulations are still much needed. Investors still complain about the unclear and burdensome procedures for obtaining ministerial licences and permits necessary for conducting their businesses. The OSS still operates more as a centralised information centre than as an actual single window agency with authority to issue permits and licences on behalf of the various ministries and agencies represented there. This is in clear contrast to the OSS at Thilawa SEZ where officials have autonomy to take decisions on behalf of their ministries, rendering the process much less burdensome for investors.

Myanmar's investment framework has also reached a level of development that now allows DICA to take a more strategic look and graduate to more sophisticated investment facilitation and promotion activities. These include being more involved in the development of capacity building programmes for domestic firms and industries, as well as being more active in facilitating business linkages with foreign investors. Co-ordination with other major actors active in promoting investments and private sector development in Myanmar, such as special economic zones (SEZs) and the SME Centre under the Ministry of Planning, Finance and Industry, could be strengthened for these purposes, although wide capacity gaps between domestic and foreign firms still remains a major barrier to greater linkages.

DICA has, nonetheless, developed a good reputation and reach with the business community and has an ample understanding of investors' interests and concerns. This can be leveraged in co-ordination with other relevant actors to build industry capacity building programmes and 'first-stage' linkages between domestic and foreign investors. Investment promotion activities could also be strengthened in alignment with these objectives, for instance by targeting investors in activities and segments with a greater propensity to integrate with the domestic economy.

### *Main policy recommendations*

- Strengthen investment promotion activities, while continuing to improve investment facilitation:
  - Myanmar has made big strides in improving the legal and regulatory framework for investor entry and establishment, including through institutional restructuring and the establishment of adequate mechanisms, like one-stop shops and an online business registration system. DICA may now start to scale up its investment promotion measures. This would require significant institutional adjustments, both within DICA (see the next recommendation) and in terms of co-ordination across different actors undertaking their own promotional activities, such as the Thilawa Special Economic Zone.
  - Developing its investment promotion functions may require strengthening and clarifying its legal mandate, which today is submersed in functions of the Myanmar Investment Commission, as well as possibly an institutional and budget rearrangement. The government should consider what would be the best organisation design for delivering on such a mandate. This may imply designing a new strategy to re-position the investment promotion branch of DICA, either remaining as part of a larger ministry or becoming more autonomous.



- Commission a feasibility study by an independent body to analyse various institutional options for DICA, such as those proposed in the MIPP. Decisions on institutional arrangements and the status of the IPA in this regard requires careful analysis of the expected outcomes of any reforms and the consequences on the budget, human resources and the overall effectiveness of investment promotion and facilitation.
- Explore concrete opportunities and activities to foster MNE-SME linkages. DICA has the unique advantage of being close to foreign investors from the establishment phase and should thus seek to promote partnerships with local enterprises early on. This could extend to piloting initiatives in SEZs and industrial zones. Generally, the government should maintain efforts to strengthen the SME sector as a viable source of linkages with MNEs and for inclusive growth in Myanmar, while encouraging the private sector to establish its own industry-specific business development services.
- Considering their institutional independence (reporting to different branches of the government), careful co-ordination between DICA and the other investment promotion agents in the country, such as special economic zones, is needed to avoid policy misalignment, duplication and wasted resources. This is particularly important when it comes to the use and management of investment promotion instruments that have an impact on public revenue, such as fiscal incentives. Fiscal and non-fiscal incentives for firms locating inside the zones are particularly aggressive vis-à-vis the applied regime outside zones. Co-ordination is therefore needed to avoid an unwarranted expansion of zones and the adequate phasing out of some of the excessive fiscal incentives available to firms inside zones, while at the same time seeking greater alignment of the outside regime with the non-fiscal regulatory innovations and improvements available to firms inside the zones (see Chapter 7 for a detailed discussion on how to improve industrial and economic zones policy).
- In terms of investment facilitation, priority should be given to enhancing the effectiveness of the DICA OSS, as well as intensifying support and co-operation with other ministries and agencies to streamline and improve second-tier regulations affecting business operations beyond establishment:
  - Enhancing the effectiveness of the DICA OSS could be achieved by (1) integrating other licences and permits processes into the OSS, including by securing autonomy of OSS officials to decide on behalf of the various ministries and agencies they represent, similarly to current practice in the Thilawa One-Stop-Services-Centre (OSSC); and (2) by exploring further digital solutions for managing applications at the OSS. Moving away from the current paper-based system to digital record keeping not only provides documentation security, but can also allow for faster and more efficient analysis of the data. This could eventually be linked to a customer relationship management system that should be hosted at DICA, building on the customer service training DICA staff is already receiving through donor co-operation programmes.
  - An area requiring particular attention is the co-ordination between DICA and the Environmental Conservation Department (ECD), responsible for Environmental Impact Assessments. Because of the current dual approval process in place, investors with potentially poorly sited or designed projects may be led to believe that they have been given a green light to proceed from DICA, while this is not the case. In such situations, investors sometime seek to ignore or resist implementing ECD's recommendations. Conversely, investors may be equally concerned that implementing ECD's recommendation will invalidate their MIC permits. Expectations must be clarified at the outset to avoid frustrations and facilitate compliance with standards, which could be made easier if the two processes were integrated as recommended above.
  - Concerted efforts are still need in improving and streamlining regulations affecting business operations beyond establishment. The MIC's request to the relevant ministries to develop Standard Operating Procedures (SOPs) is a welcome initiative. The ministries should be

- assisted in developing the SOPs to ensure alignment around common objectives, which should be part of an overall strategy for regulatory improvements, inter alia, supporting the development the National Single Window.
- Consider the distance to the frontier when embarking on continued efforts to improve on the Doing Business rankings. While Myanmar made impressive strides in some categories, such as in starting a business, future efforts could be targeted at categories where Myanmar lies far from the top frontier, such as in the areas of contract enforcement, getting credit, protecting minority investors and resolving insolvency.
  - Strengthen its role in policy advocacy and support for good regulatory governance in business related areas:
    - Take advantage of the agency's strong links and frequent interactions with the private sector to involve them more systematically in defining and revising investment policies and priorities, including investment promotion strategies.
    - Continue implementing good regulatory practices in DICA and aim to pilot ex ante regulatory impact assessments. In the absence of a central government unit overseeing regulatory policy and implementation, including ex ante and ex post regulatory reviews, competent government units should seek international support and advice in undertaking reviews and assessments in policy areas within their remits. These experiences can offer valuable lessons for broader reviews of the stock of regulation in Myanmar and to optimise the regulatory framework, particularly as regards second tier regulations. In the near-to-medium-term, however, a central government unit with a mandate for regulatory oversight should be established.
  - Enhance DICA's operational, accountability and transparency framework:
    - Launch the process of developing an operational strategy in DICA to define targets, core objectives, key performance indicators and budgets, as well as a sound monitoring and evaluation (M&E) system. Such a strategy is a key step in designing the institutional set up for investment promotion in the medium term.
    - Strengthen the quality of DICA's annual report, highlighting its progress vis-à-vis core objectives, and make it public, including in English. This could be inspired by the reports of some leading IPAs and would form an integral part of the M&E system mentioned above.
    - DICA is also well-placed to develop an M&E system that monitors and reports on proposed, approved and endorsed projects obligations, including on responsible business conduct commitments (see Chapter 4 for a more detailed discussion). The new online portal (MyCo) should facilitate publishing information concerning project proposals summaries, including before MIC approval, as well as ensuring and monitoring MIC-permitted and endorsed companies' compliance with their annual reporting obligations under the Myanmar Investment Rule (MIR) 196, including with respect to commitments made in the context of the their Initial Environmental Examination or Environmental Impact Assessments (see Chapter 6 for more information). In this respect, DICA could also propose a standardised template for investors to facilitate reporting, assessment and future policy orientations. For educational and transparency purposes, DICA could make public in its website all the non-confidential and not materially sensitive information reported by investors.
    - Continue the on-going efforts to strengthen the 15 DICA branch offices. Beyond company administration tasks, these branches are key nodes for identifying upfront potential investor grievances, as well as for monitoring and ensuring investors' compliance with obligations in their permits and endorsements.

## ***Promoting and enabling responsible business conduct***

Promoting and enabling responsible business conduct (RBC) is of central interest to policymakers wishing to attract quality investment and ensure that business activity in their countries contributes to broader value creation and sustainable development. RBC principles and standards set out an expectation that all businesses avoid and address negative impacts of their operations, while contributing to sustainable development where they operate.

RBC expectations are affirmed in international principles and standards and increasingly in legislation. Recent years have seen a proliferation of high-level statements, including at G7 and G20 forums, national legislation, economic instruments and industry initiatives on RBC. All recent ASEAN Blueprints include references to RBC. In particular, policy action has focused on promoting the integration of RBC in core business operations, including also in how companies manage and deal with their supply chain. Any company that wishes to integrate in the global economy and participate in trade and investment must be aware of the fact that their buyers, clients, and partners may have various obligations when it comes to RBC. Broadly speaking, RBC is also an entry point for any company that wishes to contribute to the Sustainable Development Goals (SDGs) or to achieve specific economic and sustainability outcomes.

Myanmar's liberalisation process initiated in 2011 has enabled greater integration in global supply chains, strengthened the rule of law, and enhanced civil society participation. The first OECD *Investment Policy Review of Myanmar* highlighted the progress made in these areas and proposed options to leverage this context of reforms to promote and enable RBC (OECD, 2014). A number of policies and initiatives have emerged since then in support of RBC. The adoption of the Myanmar Investment Law, which includes explicit references to responsible investment, as well as the related legislative initiatives, was an important step in that regard. RBC commitments and provisions are also embedded in various national policies, strategies, and legal documents. The Myanmar Sustainable Development Plan 2018-2030 includes objectives for the expansion of the private sector as the engine of environmentally conscious and socially responsible growth. Promotion of responsible investment is also embedded in the vision of the Myanmar Investment Promotion Plan (MIPP) for the period 2016/17 – 2035/36.

Various initiatives have been spearheaded by international organisations, civil society and businesses. The UN Global Compact Myanmar chapter established in 2012 counts 126 participants in 2019. The Myanmar Centre for Responsible Business (MCRB), created in 2013 as a joint initiative of the Institute for Human Rights and Business and the Danish Institute for Human Rights, has become an important player for the promotion of RBC in the country. Business networks and associations such as the ASEAN Corporate Social Responsibility Network, UMFCCL, the American Chamber of Commerce and EuroCham organise regular events and make resources on RBC available to the public. The government and international organisations have collaborated with business networks to promote RBC on various occasions.

With Myanmar's greater openness and integration in global supply chains has also come increased international scrutiny. In a context where demands on RBC are rising globally, the recent political and humanitarian situation has attracted significant international attention and affected global perceptions on Myanmar, with direct and indirect economic impacts on investment and trade as well as sectors such as tourism. Since 2018, the EU has enhanced its engagement with Myanmar in relation to the EU Everything But Arms (EBA) arrangement, which guarantees preferential access to the European market for all exports except for weapons and ammunition, due to alleged shortcomings in respecting core human rights and labour rights standards (EU, 2019).

To address reputational issues, support productivity gains and achieve its objective to attract responsible investments, Myanmar has every interest in working toward alleviating the concerns of investors and trade partners. This implies sustaining efforts to address human rights issues, minimise businesses' exposure to RBC risks and strengthen the enabling framework for RBC. The government could also directly support

businesses in implementing RBC principles and standards, and help them navigate RBC risks. Communicating clear expectations and providing guidance as to what business responsibility entails, as well as disseminating and supporting implementation of relevant due diligence instruments in targeted sectors such as raw materials and the garment industry, could be particularly effective. The government also has a role to play in providing strategic directions for RBC at country level and ensuring that all stakeholders work jointly toward the same goal and consistently contribute to national efforts to promote and enable RBC.

The RBC chapter takes stock of the initiatives and various advances made in relation to RBC since the first OECD *Investment Policy Review of Myanmar*, outlining steps taken by the government to promote and enable responsible business practices. Environmental considerations, as well as aspects related to land and SEZ are addressed in more detail in Chapters 6, 7 and 8, respectively. This chapter also highlights opportunities for the government to further support businesses in implementing RBC principles and standards in Myanmar's current context, as well as to drive national efforts to promote RBC.

### *Main policy recommendations*

- *Communicate clearly to businesses and investors what business responsibility entails in practice.* The government could ensure that international RBC standards are explicitly cited in relevant strategies, policies and laws and strengthen the review and approval processes on RBC for businesses falling under the scope of the Investment Law. A first step could be to issue, drawing on the example of the Thilawa SEZ's Notice No. 4/2015, a notification clarifying what is expected from investors in terms of responsible businesses conduct.
- *Support, enable and promote RBC due diligence among businesses.* Myanmar should promote broad dissemination and implementation of the relevant RBC international standards, notably the OECD due diligence instruments, and explicitly support collaborative industry initiatives.
- In particular, the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* provides a useful framework to help businesses identify and address human rights risks in the minerals and other raw materials sub-sectors, and avoid directly or indirectly financing or fuelling conflicts.
- Leveraging existing industry initiatives to promote and disseminate the *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* could enhance industrial relations and support trade and investment in the garment sector.
- *Pursue and intensify efforts to enhance transparency in extractive industries*, in particular and starting with state-owned enterprises. Due to their importance in Myanmar's economy, including in high-risk sectors and the government's significant leverage and ownership role, this could be a particularly effective way to help address and mitigate RBC impacts in Myanmar and foster better business practices in the market.
- *Develop a National Action Plan on RBC, in line with international best practice and in wide consultation with stakeholders.* A NAP process would help ensure that all actors are working in a consistent manner to contribute to the national RBC agenda. The process of developing the NAP could also support broad engagement with a wide range of stakeholders and contribute to building a national consensus on RBC priority issues and actions.

### **Infrastructure connectivity**

Myanmar has come a long way in improving the investment climate in recent years, notably by laying down the basic legal foundations for a thriving business environment to emerge with the new Investment and Companies Laws, as well as the Special Economic Zones law. While these reforms are important building blocks, they are not sufficient to fully deliver upon expected investment attraction and development

objectives. Policy complementarities play a critical role in nurturing an enabling environment for investment and for sharing the benefits with society at large.

A few high-priority issues have already been prominently addressed in other chapters, such as investment promotion and facilitation, special economic and industrial zones, responsible business conduct, green growth and land tenure and administration. Infrastructure connectivity is another equally important area requiring particular attention from the authorities as it plays a critical role in building a thriving business environment, supportive of linkages between incoming foreign investments and the local economy.

Myanmar's political transition has been accompanied by substantial economic reforms to open the economy and to build a growth trajectory based on export-led development fuelled in part by foreign investment. The Myanmar Sustainable Development Strategy (MSDP) 2018-2030 clearly attests to this objective by embracing a private sector-led growth strategy and recognising its role as a potential engine of environmentally conscious and socially responsible economic growth. Acknowledging Myanmar's current economic structure, the MSDP gives priority to supporting the development of agriculture and small-medium enterprises (SMEs). In conjunction, the government aims to promote manufacturing, industrial and service sectors development to induce faster structural transformation and generation of higher quality jobs, as well as to facilitate the transition to a digital economy in the future.

A critical ingredient for attracting export-oriented manufacturing investments and improving agricultural development as sought in the MSDP is access to markets and good international gateway conditions. Better transport infrastructure connectivity can help ensure more efficient and reliable supply chain networks, raising opportunities for firms to integrate global value chains (GVCs) and for countries to reap the benefits of participation.

This calls for integrated strategies that combine investment, trade and infrastructure policies. Investment promotion and facilitation policies, for instance, need to go hand-in-hand with trade and infrastructure policies to be effective. This is equally the case for infrastructure. The quality of hard infrastructure is enhanced when an efficient soft infrastructure system is in place, including in terms of trade facilitation and logistics services. There are often cases where hard infrastructure has been developed without accompanying trade and business regulatory reforms or where it lacked the necessary multi-modal approach to deliver the expected results. Overcoming a fragmented approach is thus critical for strengthening the investment climate and leveraging positive spill-overs and complementary effects.

Since the lifting of economic sanctions, Myanmar has drastically expanded its trade, with exports and imports growing by 82% and 362%, respectively, between 2010 and 2017 (Central Statistics Office Myanmar 2019). A large and growing population fuels demand for imports while abundant labour and natural resources provides a fertile supply of its exports. Its geographic position also benefits overall trade, strategically located between some of the world's fastest growing economies: India, China and ASEAN countries. Infrastructure connectivity and expansion of logistics networks are therefore indispensable to Myanmar's sustained economic growth through greater integration into the world economy and to the rising of living standards of urban and rural population.

Current transport infrastructure connectivity in Myanmar is still underdeveloped and fails to keep pace with pressing demands. With just over a third of its roads paved and port capacity limited, quality of hard infrastructure can be considered poor within the region (ADB, 2014). A high concentration of transport on roads and lack of multimodality infrastructure contribute to relatively high transport costs (ADB, 2016b). Overall Myanmar's logistics performance is said to significantly lag behind the performance of its regional peers, especially with regards to trade-related infrastructure (World Bank 2014). Limited transparency and predictability in border procedures further add to the cost of doing business in the country by making it more burdensome to move goods across the border (OECD, 2018c). Stakeholders consulted during this review also complained about the presence of various formal and informal toll gates across important routes, such as along the major road from Yangon to Hpa-An (part of the East-West Economic Corridor), adding further costs and delays to transport.

There is a dire need for domestic connectivity to be improved through increasing transport investment from the current level of 1%-1.5% of GDP. China, Thailand and Viet Nam spend in comparison over 4% of their respective GDP on transport. The ADB (2016e) advocates that Myanmar should also aim to increase its transport investments to 3–4% of its GDP annually, suggesting that this can be done by increasing user fees in line with operational expenses, nudging SOEs to reach financial sustainability and actively involving private sector participation through concessions and PPPs.

Infrastructure investment planning and delivery would need a real boost to enable more efficient and sustainable expenditure on infrastructure. Transport infrastructure governance would generally benefit from the consistent use of proper feasibility studies, stakeholder consultation and project appraisal frameworks, taking into account any potentially negative social and environmental externality up-front, as well as from the introduction of long-term transport investment programmes and better monitoring and reporting (ADB 2016a). More efficient planning and delivery, such as strengthening governance in project selection, delivery and maintenance, can help to significantly save in infrastructure spending (McKinsey 2016).<sup>5</sup> In doing so, the government should give particular attention to modernising the use of its road assets, by improving efficiency, such as allowing trucks on the Yangon-Mandalay expressway or increasing its legal axle loading, as well as by improving main trade corridors, such as the Greater Mekong Subregion North Road corridor to China and the GMS East-West Road corridor to Thailand (ADB 2016b).

Trade facilitation also remains weak within the region and will need to be strengthened. Myanmar can better facilitate trade through introducing the possibility to request advance rulings about the customs treatment of goods prior to their importation and reducing formalities at the border, in particular promoting automated processing for customs across all major border points, reducing the number of documents required for trade, and simplifying procedures in terms of associated time (OECD 2018).

The government is, nonetheless, stepping up efforts to tackle these connectivity deficiencies. It has established overarching goals and strategies in the MSDP and in the new National Logistics Master Plan 2018-2030. In 2019, it passed the regulation which will permit investments in much needed bonded warehouses. The government has also introduced a project bank of prioritised public investments which will facilitate co-ordination of donor support and the participation of the private sector. At the moment, Myanmar is already benefiting from support from the Asian Development Bank and JICA for the improvement of the main corridors. Their support is needed to scale up and upgrade existing transport connectivity infrastructure and, consequently, for attracting export-oriented investments that can better spur linkages with the domestic economy.

### *Main policy recommendations*

- Increase investments in transport and logistics infrastructure: raise additional funding through adjusting user fees in line with operational expenses where affordability assessment allows, addressing the financial health of state-owned infrastructure companies and encouraging private sector participation.
- Further improve infrastructure investment planning and delivery, though strengthened feasibility and appraisal frameworks, taking into account potentially negative social and environmental externalities up-front, stakeholder consultations, long-term infrastructure programmes and appropriate monitoring of projects.
- Modernise the existing infrastructure assets, with particular focus on the main trade corridors, such as the Greater Mekong Sub-region North Road corridor to China and the GMS East-West Road corridor to Thailand.
- Make more efficient use of existing infrastructure assets, for instance, by allowing trucks on the Yangon-Mandalay expressway or increasing its legal axle loading.
- Strengthen trade facilitation and other soft infrastructure, through reducing formalities and upgrading trade supporting facilities.

## ***Investment framework for green growth***

Green growth offers Myanmar an opportunity to foster economic growth and development while ensuring that natural assets continue to provide the resources and environmental services on which the well-being of its people relies. A critical aspect of green growth is catalysing investment and innovation in environmentally sound technologies and infrastructure which both helps to sustain growth and gives rise to new economic opportunities (OECD, 2011). In addition, with the increasing need for global action to address climate change, investment for green growth must promote a transition to a low-emissions, climate resilient development pathway (OECD, 2017). Investment for green growth includes, among other things, investment in infrastructure – such as renewable energy, energy efficiency, water purification and distribution systems, transport and housing – as well as in conservation and efficient usage of natural resources, and waste management (OECD, 2015b).

A green investment framework has much in common with a general policy framework for investment, but an investment-friendly policy framework does not necessarily result in green investment unless certain elements are also in place. These include: a strong governmental commitment at both the national and international levels to support green growth and to mobilise private investment for green growth; policies and regulations to provide a level playing field for more environment friendly investments; policy and planning systems that screen all investments at an early stage to ensure environmental sustainability is taken into account; policies to encourage more environmentally responsible corporate behaviour; an institutional capacity to design, implement and monitor policies to foster green growth objectives; financial mechanisms for green investment (OECD, 2015b).

This chapter describes Myanmar's policy framework in these areas, providing an overview of the state of play and progress made in supporting green investment. It reviews the current policy framework in place to promote green growth and climate change (including policies that help to improve the environmental quality of investments in general), examines in greater depth existing efforts and the potential to engage the private sector to scale up investment in renewable energy, and highlights issues related to financing green projects in the country. It is structured around the questions on green growth and investment raised in the updated *OECD Policy Framework for Investment* and the *OECD Policy Guidance for Investment in Clean Energy Infrastructure*. It also builds on the discussions on policy choices to support the transition to a low-emissions, climate-resilient economy in OECD (2017) *Investing in Climate, Investing in Growth*.

Currently, Myanmar is facing several environmental and development challenges. It has seen year on year economic growth since its transition to a democracy, but the unsustainable use of natural resources is exacerbating development challenges. Primary sectors support employment and GDP growth, and the poorest populations live in rural and remote areas where livelihoods are reliant on small-scale agriculture, fisheries and use of forest resources. Illegal logging and other economic activities have resulted in widespread degradation of natural resources, with Myanmar estimated to have lost 10 million hectares of forest cover between 1990 and 2015 (Fodor and Ling, 2019). Increasing air and water pollution in urban areas is exacerbated by poor waste management, including of hazardous waste in industrial zones, uncontrolled construction activities and growth in vehicle usage. Myanmar is also one of the most vulnerable countries globally to climate change.

Promoting green investment is an opportunity for Myanmar to avoid locking in environmentally and economically unsustainable development. The country faces a major gap in infrastructure provision, with an estimated 40% of its roads being paved (Asian Development Bank, 2017a) and little more than 50% of the population having access to electricity as of December 2019 according to the authorities. These gaps present an opportunity for Myanmar to invest in greener infrastructure alternatives and avoid locking-in environmentally unsustainable infrastructure for the next two decades. Off-grid renewable energy can support increased access to energy while grid expansion takes place, and utility scale, on-grid renewables can help reduce the carbon intensity of the electricity supply.

The government has taken steps towards promoting green investment, with several new strategies and actions being put in place in the last year. The Myanmar Sustainable Development Plan 2018-2030 clearly integrates environment and climate change as one of five pillars for development. The country's Climate Change Strategy and Action Plan 2018-2030 promotes climate action, and Myanmar's Nationally Determined Contribution outlines mitigation and adaptation priority actions. The National Environment Plan 2018-2030 promotes integration of environmental issues across sectors, and the Environment Conservation Law 2012, underpinned by the Environment Conservation Rules 2014 and other regulations, promotes the greening of investments by assessing and mitigating against negative environmental impacts.

Taken together these policies represent a solid, and coherent framework for green growth in Myanmar, however, inclusion of targets or clear goals on specific areas relevant to green growth (e.g. renewable energy, emissions reductions) could present a stronger signal to investors. Further, significant efforts will be needed to implement these policies, and to raise public and private resources for green investments. All government agencies, and especially those in close contact with investors, such as the Directorate of Investment and Company Administration (DICA) among others, need to be well-aware and educated about these strategies, as well as disseminate them and integrate them early-on in their services and interactions with investors. This helps to clarify expectations and facilitates policy implementation and compliance.

### *Main policy recommendations*

- Ensure that environmental considerations are included in early screening of proposed investments by MIFER, MONREC and line ministries, and that this is a joined up process involving all relevant Ministries (see related recommendation in Chapter 3).
- Promote the greening of investments by continuing to strengthen the implementation of environmental impact assessment (EIA) systems, including by building capacity at national and subnational levels to review EIAs and reduce delays in this process, and improving the transparency and information systems supporting EIAs. In order to strengthen compliance and accountability, the government may also consider creating an online database of approved EIA reports. This could help to educate investors and improve the quality of future EIAs, as well as contribute to enhancing monitoring and compliance pressures by stakeholders.
- Integrate environmental criteria in the future development of Myanmar's project bank. Myanmar is developing a project bank to prioritise investments in infrastructure and attract investors. In the future, integrating environmental considerations into the identification of projects, including through strategic environmental assessments, could help catalyse investment for greener projects.
- Promote utility-scale solar and wind-based electricity generation more aggressively within the country's energy plans, including through the formal recognition of the role of non-hydro renewables in the countries power expansion plans, the introduction of standardised power-purchase agreement templates, facilitating the land acquisition process etc.
- Support roll-out of off-grid renewable energy solutions, including by promoting opportunities for private companies and impact investment.
- Improve access to climate finance and other concessional environment-related finance, and target the use of these strategically to develop projects and build capacity for green investment, and improve climate resilience.

### ***Making the most of economic zones***

Following the experience of regional peers, Myanmar is advancing an ambitious programme of special economic zone (SEZs) and industrial zone development, with the aim of attracting investors, creating jobs, and developing industry. Currently there are three SEZs and 19 industrial zones across the country. These



zones impose a cost on society through forgone revenues from tax incentives, duty exemptions and infrastructure investments specific to the zone. In order to justify their establishment, the associated societal gains must outweigh these costs. In principle, zones, particularly SEZs, have the potential to generate long-run spillovers that benefit workers and firms beyond their confines through knowledge transfers, in addition to being a potential source of foreign currency as they typically target more export-oriented industries. In practice, the experience of SEZs as a vehicle for development has been mixed, depending much on the quality of policies and business environment in which they operate. On the positive side, host countries can, to a certain extent, influence the spillover potential of SEZs with appropriate policies and institutions targeting skills and supplier development, and facilitating the exchange of information between SEZ investors and local companies.

Some important differences in the framework for SEZs and industrial zones exist in Myanmar. SEZ programmes are governed by a special regulatory and institutional framework, dealing with trade, investment, land, tax, labour and environmental policy. The main legislation covering the regime for the establishment and operation of SEZs and the rights and obligations of SEZ authorities, developers and users is the 2014 Special Economic Zone Law. Industrial zones, on the other hand, do not offer a special regulatory or customs regime, and have until recently not been subject to dedicated legislation. The government submitted a draft Industrial Zone Law to Parliament in late 2019, enacted in May 2020, with the objective of ensuring a more systematic approach to zone planning and development.

To attract investors, the Myanmar SEZ Law offers a generous incentive package, including a corporate tax holiday of up to seven years, and a subsequent extended period of reduced corporate tax rate, as well as deductions linked to R&D investments and local staff training activities. In addition, the law mandates the establishment of a one-stop shop to access all government services and clearances, and the provision of basic infrastructure and utilities. In return, investors are subject to a minimum investment requirement, restrictions on domestic sales and employment of foreign personnel, and staff training obligations.

Compared to the in-land regime, the 10-year 50% corporate tax rate reduction offers a substantial competitive advantage, which partly justifies the restrictions on domestic sales of free zone investors, as a means of protecting inland investors from unfair competition. However, a less distortionary approach would be to gradually phase out the reduced tax rate, as has been the case in many regional peers, while relaxing the export share requirement, which would allow inland companies to benefit from high-quality goods produced in the zones.

Thilawa SEZ is currently the most advanced SEZ in Myanmar, with high quality facilities, public utilities and transport links. Its Management Committee, the TSMC, established a One-Stop Services Centre that significantly reduces the number of public officials with which investors must engage and offers expedited one-stop clearances for all necessary approvals and registrations. The TSMC is in the process of developing a portal for investors to submit applications and obtain approvals online, and has committed to specific turnaround times for many procedures, on par with zones that are internationally recognised for their good practice in business facilitation. It has also issued a notice clearly stating RBC expectations that apply to all companies doing business in Thilawa. As such, Thilawa can serve as a model for other industrial zones in terms of infrastructure development and zone management, and as a laboratory for policymakers to test new policies, like simplified regulations or RBC policies, before rolling them out to the wider economy. While it is too early to assess Thilawa's wider economic impacts, currently, 74 businesses are operational in the SEZ and account for around 9 000 jobs; a quarter of these businesses have already started exporting. Moreover there is evidence that Thilawa is contributing to skills development, as reported by surveyed zone workers, while the extent of backward linkages with non-zone firms remains limited mainly because of the still limited capacity of domestic firms (IGC, 2018).

The planning and administration of industrial zones is generally less well developed compared to that of SEZs. Until now, management committees have not been subject to rules or standards for developing and managing the zones, and the respective roles of different government bodies in administering zone

development were not clearly defined. The weak and outdated legal framework has resulted in the rapid proliferation of industrial zones with inadequate planning and little assurances on their performance and benefits. Many industrial zones have inadequate infrastructure, unused plots and irregular use of land. Infrastructure investment and maintenance have been insufficient over the years. Roads are in poor condition even in zones surrounding the main urban areas, and drainage and waste management continue to be a concern. The high prices of land in these zones have led many companies to sell their plots and take their operations outside the zones, defeating any strategy behind zone development. The newly enacted Industrial Zone Law of May 2020 sets out that existing zones shall comply with provisions of the new law, including on land use, environmental conservation, and infrastructure provision. If appropriately enforced, this new legal framework is likely to deliver significant improvements in industrial zone performance.

Mingaladon Industrial Park, developed by a public-private joint venture between the Myanmar government and a Japanese trading and investment company is a notable exception to the general shortcomings of industrial zones. It is widely considered to have the most advanced facilities of any industrial zone in Myanmar, which along with its proximity to Yangon are its main attraction to investors. Unlike other industrial zones in the country, Mingaladon is fully operational with some 41 running businesses occupying all available plots, and employing tens of thousands of workers in light manufacturing activities. But business facilitation in Mingaladon is little better than in other zones or in the wider economy. Building on the Mingaladon experience, the Myanmar government is looking to develop other two industrial parks in partnership with the foreign investors, namely with the Thai Amata Corporation and with the Korea Land and Housing Corporation. It is expected that these new zones will set new improved standards for future industrial zones in the country (Myanmar Times, 2019a and 2019b).

The MIPP proposes a set of actions to improve administration policies of industrial zones, including devising a zone allocation plan based on the investment and linkage potential of different regions; clarifying the roles and responsibilities of different institutions; setting the rules and requirements in terms of activities, infrastructure provision and environmental protection; and examining opportunities for streamlining business-related procedures through a one-window service. The government has since enacted a new Industrial Zone Law as mentioned above and is in the process of amending the Private Industrial Enterprise (1990) and the Small and Medium Enterprise Development (2015) Laws, for the purpose of increasing investment, strengthening links with SEZs, upgrading existing industrial zones and developing sustainable industries. If designed appropriately and in the line with the actions proposed by the MIPP, these laws have the potential to support framework conditions that are conducive to new investment attraction and industrial linkage development in Myanmar's industrial zones.

Myanmar is currently able to offer abundant labour to investors at a competitive cost but with an insufficient supply of workers with technical or managerial skills, who are vital for the adoption of new technologies and for effective business management. The combination of tax deductions for training expenses, investor obligations to provide training activities, and gradually increasing restrictions on foreign skilled labour may serve to effectively transfer knowledge to local employees and develop the technical skills base. But restricting foreign personnel without a parallel initiative to develop the local skills base will only serve to discourage potential investors from choosing to locate in Myanmar. In parallel, the education system is undergoing a major overhaul and the MIPP proposes concrete actions to develop human resources for industry, including monitoring private sector needs and facilitating dialogue between government bodies that oversee vocational education and skill development, education and training institutions and private sector representatives. These actions, if implemented, have the potential to foster the sorely needed technical and managerial skills.

Given the limited base of local suppliers, Myanmar is still at an early stage with respect to linkage programmes, and still relies heavily on donor support to develop the necessary framework for integrating local suppliers in the supply chains of foreign investors. Going forward, successful special economic zones and industrial zones, like Thilawa and Mingaladon, offer a good starting point for implementing pilot

linkages programmes. The TSMC could also promote the matching of buyers and sellers by, for example, providing firms in the zone with a list of firms in the Yangon region, and in neighbouring IZs that are producing the relevant inputs or through networking events.

### *Main policy recommendations*

- Align SEZ and industrial zone development and administration with the broader investment promotion strategy, possibly consolidating their oversight under one central authority.
- Consider gradually phasing out excessive fiscal advantages provided to SEZ investors through extended corporate tax reduction (in addition to the tax holiday available to non-zone investors), while simultaneously relaxing the export-share requirement of free-zones, to level the playing field across zone and non-zone investors, reduce government revenue losses, eliminate distortions in investor allocations to domestic and export markets, and grant domestic industry access to free zone goods. Along these lines, also consider extending tax deductions for training expenses available to SEZ investors to the inland regime.
- In line with the goal of attracting and enabling responsible investments into Myanmar, as alluded in the new Myanmar Investment Law, consider adopting the Thilawa SEZ Notice No. 4/2015 on Responsible Investment for the wider economy, and encourage management committees of all zones to adopt it too.
- Resolve the inconsistency between the SEZ Law and the EIA requirements in terms of approval processes and terminology as set out by the 2012 Environmental Conservation Law, by amending the implementing regulations of either law and creating a dedicated EIA regime for SEZs.
- Implement the action plan for improving planning and administration of industrial zones, and ensure that clear rules and requirements in terms of zone allocation, infrastructure provision, business facilitation and environmental protection are embedded in the new Industrial Zone Law.
- Implement the action plan to develop human resources for industry set out in the MIPP. In particular, establish an active dialogue with the private sector on skills needs, facilitate dialogue between relevant policy makers, education and training institutions, and industry, and support the design of curricula that meet the needs of business.
- Support relevant institutions in designing systematic and industry-specific training programmes for supporting industries, in collaboration with donors and the business community. Involve SEZ investors in the design of training curricula and programmes. Focus on key economic sectors, such as those targeted by the MIPP, including textiles and garments, agroindustry and machinery assembly. Food processing could serve as a pilot initiative given the currently higher potential for linkages in the sector.
- Promote the matching of investors and suppliers through networking events, or by providing Thilawa investors with a list of firms in the Yangon region, and in neighbouring industrial zones that are producing the relevant inputs.

### ***Fostering secure and well-defined land rights***

Secure and well-defined land rights are a key building block of an enabling investment environment, notably one that supports a more inclusive and sustainable development path. Myanmar still needs to make considerable progress in this respect. The first OECD *Investment Policy Review* (OECD, 2014) already shed light on many land tenure and governance deficiencies affecting the investment climate and sustainable development more widely. The review also recommended a number of reforms that would contribute to strengthening land rights and administration.

Many of the land tenure challenges identified then still persist today, although it is to be hoped that the prospects are brighter for addressing these issues in the near future, given the adoption of the National

Land Use Policy (NLUP) in 2016 (Government of Myanmar, 2016). The NLUP, which was finalised in the waning days of the previous Thein Sein government after extensive stakeholder consultations, represents a rather progressive land policy framework. Among other strategic orientations, it proposes the development of a National Land Law (NLL) to support the implementation of the various NLUP objectives. The current government, which took office in April 2016 subsequent to the NLUP publication, also restated the commitment to addressing land governance and increasing land tenure security in its election manifesto (NLD, 2015).

Subsequent events, however, have led some businesses and civil society organisations (CSOs) to take a more sceptical stance on the ability and willingness of the Myanmar government to pursue the vision established under the NLUP. The somewhat slow progress in advancing with the NLUP implementation – for example, the National Land Use Council (NLUC) charged with the implementation of the NLUP was only established two years later – and some rushed and parallel reforms to key land-related legislations in late 2018, which are inconsistent with the NLUP, have raised concerns of stakeholders. Many CSOs also voiced concerns about the lack of consultation so far around the development of the NLL. It is hoped that this will change after the formation in September 2019 of a dedicated working committee under the NLUC for this purpose and in involving representatives of a wide group of stakeholders.

Concerns have also been raised with respect to the ‘Land and Property Bank’ project announced in late 2019, under which it seems that government entities would list all the plots of land under their control and that could be potentially made available to investment projects. This way investors would have an upfront idea of possible land plots and locations for their projects. At this stage, the lack of official information about the initiative precludes a more thorough assessment of its potential impact, but considering the various deficiencies of the current land information system discussed below, there are likely to be significant risks and challenges in pursuing the initiative.

Until at least some of the core provisions of the NLUP are implemented, land tenure will remain confusing and often insecure for investors, smallholder farmers, communities and other landowners or users. The reasons include *inter alia*: *i*) the fragmented, complex and outdated legal and institutional framework, with dozens of laws in place and multiple agencies involved in land administration; *ii*) weak protection of land tenure rights, particularly of customary land use rights that are predominant in many of the ethnic states in the country; *iii*) inaccurate or absent land information systems (i.e. cadastre and property registry systems); *iv*) complex and burdensome land registration processes resulting in low land registration rates, notably in ethnic upland areas; *v*) absence of land use planning and complex land use change policies; *vi*) overly strict land use policies, including rigid land classifications that are used for land administration interventions including land registration that do not reflect the reality of existing land use on the ground; *vii*) unclear and costly land transfer procedures; *viii*) a poor regime for compulsory land acquisitions by the state; *ix*) weak land disputes resolution system; *x*) challenges in addressing historical land grievances; *xi*) and, until recently, the promotion of large-scale land allocations without adequate safeguards.

The importance of secure access to land and natural resources cannot be overstated in Myanmar: it is the most important resource for rural households comprising two thirds of the population. A stark urban-rural poverty divide remains, with a still significant 23% of the rural population in poverty in 2015, compared to an urban poverty rate of 9% (MOPFI, 2018). This means that millions of people depend on access to farmland and rangelands, to fisheries and forests for their livelihoods. The way the government and society manage those resources has a direct impact on food security, poverty alleviation, investment and environmental sustainability (FAO and EU, 2018). Myanmar has been identified as one of the most vulnerable countries in the world to the effects of climate change, ranking 3rd out of 187 countries from 1998 to 2017 in the Global Climate Risk Index 2019 (Eckstein *et al.*, 2019). As such, effective use of land and the prevention of degradation of land and natural resources must also be factored into long-term land use planning.

With the agreement on the Sustainable Development Goals (SDGs) in 2015, global recognition of the critical importance of tenure, access to resources and their governance for achieving sustainable development has been secured within a broad, comprehensive framework. Within this context, Myanmar adopted its Myanmar Sustainable Development Plan (MSDP) 2018–2030 which consolidates the overarching national development vision and strategy, and serves thereby the purposes of facilitating the alignment of policies, co-ordination and co-operation across all ministries, states and regions (MOPFI, 2018).

Despite explicitly noting that it results from the integration and distillation of existing plans and priorities, the MSDP fails to include a reference to the NLUP, which was dropped from its penultimate draft. The remaining section on land governance usefully focuses on sustainable land management to preserve the country's natural capital but is silent on other relevant land governance dimensions (MOPFI, 2018). This omission adds to a number of confusing signals on the importance the government attaches to addressing the current complicated and conflicting land governance situation as mentioned above.

Anecdotal evidence suggests that the current situation is an important restraining factor on further investment as well as a source of continued frustration for smallholders, communities, and ethnic groups who must live with the vulnerability posed by insecure tenure. Land reform is often one of the most challenging areas of reform a government can face – it is tied up with long-held traditions of customs and use, more mundane but ever-present pushes and pulls of vested interests, both visible and hidden, and laden with economic and political implications. Those challenges are even more pressing in Myanmar given the deeply rooted interlinkages between land governance and the peace process.

Moving forward with this complex and highly contested process of land reform is essential for Myanmar to sustainably benefit from incoming investments that can contribute to improving the livelihood of its citizens.

#### *Main policy recommendations*

- Implement the NLUP through a structured and consultative process that involves a wide range of stakeholders and which is set out in a transparent and predictable manner, with a clear planning of activities and schedule for stakeholders participation in the process. The establishment of the working committees under the NLUC for this purpose with participation of stakeholders goes in this direction. They should make sure that their work plans provide *inter alia* the opportunity for advanced considerations of draft documents, opportunities for oral and written input, and full and transparent access to relevant documentation by all stakeholders including beyond its active membership.
- Develop the National Land Law (NLL) and harmonise and rationalise existing land laws with the NLL:
  - Ensure that the NLL recognises and provides for the formalisation of all formal and informal land tenure rights and delineate a streamlined institutional framework and process for land rights registration, transfers and acquisitions; and set this as the framework for the harmonisation and rationalisation of the remaining land laws;
  - Develop a comprehensive land law reform process and proposals that reflect the basic principles of the NLUP and harmonise existing land legislation with the NLL;
  - Take action on an interim basis to halt contentious amendments to the existing laws and regulations, for instance pause implementation of the 2019 Land Acquisition Resettlement and Rehabilitation Law, while adjusting implementing rules where feasible to address identified challenges and seek alignment with the NLUP;
- Develop a single administration system to improve policy and procedural consistency and avoid situations of regulatory and institutional voids as is currently the case. Key considerations are to improve the efficiency and reliability of land-related services (e.g. issuance of land documents,

cadastral survey and mapping and registry services) and enhance land tenure security for all, by taking steps to:

- simplify land categories and allowing all to be registered, including individual and communal claims to customary land;
- promote women's rights over land, including through the systematic registration of conjugal titles under both partner names;
- establish a streamlined process for registering and regularising land tenure rights and transfers;
- establishing a transparent process for the management of public land;
- establish pilot land offices in selected townships with a focus on the delivery of good quality land administration services to experiment and roll-out successful practices to other offices in the medium-to-longer term;
- reform the current inefficient and costly property tax system;
- establish the framework for updating and then digitising existing land records and information with the vision of moving to an unified cadastre and registry system in the future;
- address the necessary institutional arrangement to bring land administration services under a single land administration authority;
- and designate a lead land committee in each chamber of the Parliament to deal with land issues;
- Revise the 2019 Land Acquisition Resettlement and Rehabilitation Law to strengthen the framework and ensure compulsory land acquisitions by the state occur only in a non-discriminatory manner, for a well-delimited public purpose, under due process of law, and against prompt, adequate and fair compensation;
- Develop a land dispute settlement system that is independent, timely, affordable and effective and is widely accessible to all;
- Eliminate or at least restrict criminal sanctions concerning land-related offences to the most severe cases;
- Establish a land use planning framework to support a more sustainable and efficient pattern of spatial development;
- Set up monitoring and reporting mechanisms for large-scale agricultural land allocations to ensure their compliance with agreed performance requirements and allow for more informed policy-making, as well as to transparently respond to stakeholders' concerns about their social, environmental and economic impacts;
- Halt new large-scale land allocations in conflict-susceptible areas until land reforms are in place. Consider them only in areas where the risk of conflict is kept to a minimum, for instance in returned VFV land over which there are no existing claims (including of customary rights holders) or over which land legacy issues can realistically be addressed and there is no risk of infringing on customary rights of indigenous people and local communities;
- Address links to the peace processes/ceasefires, including restitution rights of refugees and internally displaced populations:
  - Land governance in conflict-affected areas, including land restitution, are wide-encompassing challenges, involving issues and policies well beyond the scope of this review. Other fora are more appropriate to discuss solutions to these specific complex matters. Nonetheless, it is important to recognise here that such challenges affect the climate for responsible investment and that an upgrading of the land regime and administration as suggested in this review would need to be carried out in a conflict-sensitive manner, recognising and incorporating land-related matters arising from the evolving peace processes and ceasefire agreements. Any institution and process established to address restitution rights of returning refugees and internally

displaced persons (IDPs) should strive for the highest standard of transparency and accountability, and nurture the involvement of local communities at the policy and implementation level.

#### *Key considerations for responsible investors*

- *Detailed due diligence, including consultations and negotiations*: given all the challenges and gaps identified in existing Myanmar law, detailed due diligence is a necessary part of any investment involving land to ensure that investors are not involved in dispossession of existing users that does not comport with international standards. Companies should take a broad view in consulting and negotiating with occupiers and users of land, recognising that potential claimants or occupants may not have full documentation of their tenure rights, nor in some cases, tenure rights that are protected under current law. Ignoring claims based on long-standing occupancy and use, including customary use, or requiring current occupants or claimants to pursue them through the courts, is not a viable alternative for negotiating access to land in Myanmar. It is essential to recognise that even when claims cannot be upheld under existing legislation they are often legitimate for local communities and rural households. Nor is it practical, especially where claimants are already occupying the land. Efforts to involve smallholder farmers in the investor's business plan is strongly recommended, as communities traditionally involved in agriculture may have few other options to restore their livelihoods.

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## Notes

<sup>1</sup> Also because some of the investments leading to the peak were of a 'one-off' nature. The reduction has been largely driven by a decline in investments in the oil & gas sector, which has not had a project put to tender since then, and in investments in transport and communications following the entry of three new mobile telecom providers, namely of Ooredoo and Telenor in 2014 and MyTel in 2017. Foreign investment approvals in manufacturing, however, have remained fairly strong, denoting that there is still some positive momentum despite the situation.

<sup>2</sup> The cash relief is disbursed through a mobile money platform to workers in crisis who are jobless and / or face evictions from their homes ; workers whose contracts have been illegally terminated thereby countering irresponsible business practices ; and workers of Small and Medium Enterprises (SMEs) who agree to retain workers and to provide at least a matching support. Recipients are selected in consultation with trade unions and local civil society organisations (Global New Light of Myanmar, 2020; EEAS, 2020)

<sup>3</sup> See OECD's work on Investment Promotion and Facilitation for more information:  
<https://www.oecd.org/investment/investment-promotion-and-facilitation.htm>

<sup>4</sup> The terms investment promotion and facilitation are often used simultaneously but imply two very different functions. One is about promoting a country or region as an investment destination, while the other is about making it easy for investors to establish or expand their existing investments.

<sup>5</sup> McKinsey Global Institute examined more than 100 case studies (of the 400 cases carried out overall) that quantify the impact of a range of improvement levers from across three broad categories of opportunity: improving project selection and optimising infrastructure portfolios; streamlining delivery; and making the most of existing infrastructure assets. The case studies come from a range of countries covering different geographies and development profiles. Some of these cases were drawn from McKinsey's work, and some from external literature and interviews. They mostly come from 2008 to 2013, with a few going back as far as 2003.



## OECD Investment Policy Reviews

# MYANMAR 2020

Only six years sets this second *OECD Investment Policy Reviews: Myanmar* apart from the first review published in 2014, but much progress has occurred in investment policies and related areas in Myanmar in the interim. Nonetheless, the reform momentum needs to be sustained and deepened for the benefits of recent investment climate reforms to be shared widely and for growth to be environmentally sustainable, ultimately contributing toward the Sustainable Development Goals (SDGs). This second review takes stock of recent achievements and assesses remaining challenges in selected policy areas for nurturing an enabling responsible business environment and ensuring benefits are shared with society at large. It places strong emphasis on impact and on how foreign investment can help Myanmar achieve the SDGs and improve the lives of the people of Myanmar.



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