



BURMA  
INVESTMENT CLIMATE STATEMENT  
2015

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## Executive Summary

Following years of isolation from the global economy, Burma in 2011 embarked on a new course and began implementing significant reforms to spur economic development and create an attractive business climate meant to generate more inward foreign investment. Over the past several years, the government has made good on its promise to take steps that address some of the challenges facing Burma's economy, including eliminating multiple exchange rates, passing a new foreign investment law, reducing trade restrictions, and reforming tax policy and administration. Consequently, the international business community's interest in Burma and the unique opportunities the country presents – including a rich natural resources base, a large market potential, a young labor force and a strategic location between India, China and the countries that make up the Association of South East Asian Nations (ASEAN) – continues to grow. The European Union and Australia, in response to ongoing political reform, have lifted their sanctions on Burma entirely (except for an arms/military embargo). Similarly, the United States Government has eased almost all of its economic sanctions on Burma, allowing U.S. investment, the importation of Burmese products into the U.S., and the export of financial services, although remaining U.S. sanctions prevent U.S. persons from dealing with Specially Designated Nationals and restrict the import of Burmese jade and rubies into the United States.

The reduced sanctions combined with Burma's move towards economic liberalization and a favorable external environment have brightened Burma's macroeconomic outlook. Real GDP growth rose from 7.3% in fiscal year (FY) 2012/13 to 8.3% in FY 2013/14 led by strong performances in the construction, manufacturing and services sectors. Growth is expected to decelerate slightly to 7.8% in FY 2014/15 (year ending in March) due to slower growth in the agricultural sector. Inflation is expected to pick up to around 6% year on year (y/y) in FY2014/15 from 5.8% in FY2013/14, due in part to increases in food prices and higher electricity tariffs. Per capita GDP jumped to over USD 1,000, putting the country on the cusp of graduating to lower-middle income status (although the increase is largely due to a recalibration based on census results that confirm Burma's population at 51 million rather than the 60 million previously estimated).

Despite the reforms undertaken and improving economic indicators, the government has more work to do in order to create the foundation for a healthy investment environment that contributes to economic development and attracts foreign interest. The government has limited capacity and must prioritize among its long list of desired reforms. Currently, the country has many laws and regulations that are outdated and inadequate. Property rights are not well-established and land confiscation is a major concern. Investor protection and the criteria for foreign investment are not well-defined, and in addition to weak rule of law there are no proper mechanisms and instruments for enforcing contracts and property rights and for settling disputes. A lack of reliable data and information adds to the frustration that many foreign investors experience when attempting to look up market and consumer base information as well as capital and financial indicators. Investment approval procedures are not transparent, overly bureaucratic and complex, and exclude foreign participation in certain sectors.

The government's efforts to date indicate tentative progress toward the goal of a sound investment framework but investors should come in with "eyes wide open."

## **1. Openness To, and Restrictions Upon, Foreign Investment**

### **Attitude toward Foreign Direct Investment**

Since 2011, Burma has made significant reforms to improve its legal and regulatory framework in order to create an attractive business climate capable of generating more inward foreign investment. The government has embarked on an ambitious agenda to strengthen the economy, tackle poverty and promote sustainable and equitable growth, and international investors – including from the United States – are closely watching actions to further open the economy and attract investment. Over the past several years, Burma’s attitude towards Foreign Direct Investment (FDI) has been positive, and recent measures undertaken by the government, including ongoing revision of the Foreign Investment Law and the Special Economic Zone Law and the award of certain tenders and licenses to foreign businesses, illustrate the government’s commitment to further openness. Observers expect FDI to Burma to continue growing in the short-term, but they note that further liberalization will be critical for sustaining FDI growth in the medium- to long-term. As the Organization for Economic Co-operation and Development (OECD) notes, policy uncertainty or backtracking on reforms, inconsistent implementation of rules, investor-state disputes which have been shown to discourage other foreign investors, or reputational risks for foreign investors from the government’s failure to enforce environmental or social legislation which calls into question the responsible business conduct of investors could dissuade further foreign investment in Burma. Indeed, many investors are looking to elections scheduled for late 2015 – the degree to which they are held in an open and transparent manner, as well as the government’s actions after the elections – as a key indicator of the government’s willingness to continue to push forward on reforms.

### **Other Investment Policy Reviews**

The OECD conducted an investment policy review of Burma in March 2014. The entire report can be found at: <http://www.oecd.org/daf/inv/investment-policy/Myanmar-IPR-2014.pdf>.

The World Trade Organization (WTO) conducted a trade policy review of Burma in March 2014. The entire report can be found at: [https://www.wto.org/english/tratop\\_e/tpr\\_e/s293\\_e.pdf](https://www.wto.org/english/tratop_e/tpr_e/s293_e.pdf).

The World Bank’s Doing Business 2015 report includes an analysis of Burma’s investment sectors and business environment, and can be found at: <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB15-Full-Report.pdf>.

The World Bank also conducted an enterprise survey of Burma in 2014, the results of which can be found at: <http://www.enterprisesurveys.org/data/exploreeconomies/2014/myanmar>.

DICA has released its own investment guide which can be found at: [http://dica.gov.mm.x-aas.net/admin/Pages/DisplayPdf?path=MIC%20-%20Myanmar%20Investment%20Guide%202014%20%28MIG2014%29\\_web.pdf](http://dica.gov.mm.x-aas.net/admin/Pages/DisplayPdf?path=MIC%20-%20Myanmar%20Investment%20Guide%202014%20%28MIG2014%29_web.pdf).

## **Laws/Regulations of Foreign Direct Investment**

The main law applicable to foreign investors is the Foreign Investment Law which was approved by President Thein Sein in November 2012. The stated objectives of the 2012 Foreign Investment Law are to support:

- The extraction/export of the rich natural resources of the state for the benefit of the people;
- The creation and accumulation of jobs for the people;
- The development of human resources;
- The development of infrastructure such as banking and finance, modern roads, interstate highways, production of electricity and energy, and modern information technology;
- Transportation of rail, water and air via an international standard to enable citizens to do business throughout the world; and
- The advent of businesses and investments which are in line with established international practices and norms.

The Foreign Investment Law continues to limit certain types of foreign investment (see below).

Although many foreign investors feel that the Foreign Investment Law's stated objectives point to a positive, forward-thinking approach by the government, the OECD notes that the Foreign Investment Law "still leaves many questions unanswered, notably with respect to investor protection and the procedures for admitting foreign investors." In addition, Burma's current regulatory investment framework remains complex, and can cause confusion for investors given the numerous laws that regulate the entry of investors depending on the sector and the location, and depending on whether the investor is local or foreign. Investors have complained that the government's investment approval process (outlined below) is opaque, complex, onerous with regard to the paperwork required, and lengthy. Investors have also noted that the increase of foreign investor scrutiny of the country and the increase of investment proposals have overburdened the government, thereby creating a bottleneck when it comes to investment approvals.

In February 2015, the government released for public comment a draft Investment Law of 2015 that, when ratified, will consolidate and replace The Myanmar Citizens Investment Law of July 2013 (i.e., local investment law) and the 2012 Foreign Investment Law. Parliament may take up the draft law in coming months, but it is difficult to predict when the legislature will conclude deliberations and pass the draft given the large number of draft laws currently being considered by Parliament, as well as the body's impending shift of focus to elections scheduled for the end of the year.

## **Industrial Promotion**

Different ministries and agencies promote investment into different sectors (e.g., the Ministry of Hotels and Tourism promotes responsible tourism investment), although the Directorate of Investment and Company Administration (DICA) under the Ministry of National Planning and Economic Development is officially mandated to coordinate investment promotion under the Foreign Investment Law.

## Limits on Foreign Control

The Foreign Investment Law continues to limit certain types of foreign investment. Specifically, under the Foreign Investment Law, foreign investments cannot be made in the following businesses and services:

- administration and conservation of natural forests;
- production of traditional medicines;
- drilling of oil wells whose depth does not exceed 1,000 feet;
- small and medium scale mining;
- cultivation and production of traditional herbal plants;
- wholesale trading of components and scrap-iron;
- traditional food production;
- production of religious items and wares;
- production of traditional and cultural items and wares;
- handicraft production;
- private specialist traditional hospitals;
- trading of raw materials used for traditional medicines;
- medical research and operation of laboratories for traditional medicine;
- ambulance services;
- care centers for the elderly;
- catering on trains, freight forwarding using trains, cleaning of coaches, management of trains;
- agency services;
- [erection and operation of] power plants with less than 10 megawatts; and
- printing, publishing and distribution of periodicals in local languages spoken in Myanmar, including the Myanmar language.

The Foreign Investment Law restricts foreign investment in certain agriculture and farming businesses, certain animal husbandry businesses, and certain fishery businesses. In addition, the implementing rules list those sectors requiring a joint venture (with a maximum of 80 percent foreign equity), as well as other foreign equity limitations and joint ventures permitted only with the state. The Foreign Investment Law has no minimum capital requirement for foreign ownership, except for (as noted) joint ventures in restricted sectors, although individual ownership requirements can be established by the Myanmar Investment Commission (MIC), which is in charge of assessing business proposals, setting requirements and conditions for investment and interpreting and overseeing the implementation of the Foreign Investment Law.

In addition to the Foreign Investment Law, the State-Owned Economic Enterprises Law, enacted in March 1989 and still in effect today, also regulates certain investments and economic activities. Under this law, state-owned enterprises (SOEs) have the sole right to carry out the following economic activities:

- extraction of teak and sale of the same in the country and abroad;
- cultivation and conservation of forest plantations, with the exception of village-owned firewood plantations cultivated by the villagers for their personal use;
- exploration, extraction, sale, and production of petroleum and natural gas;
- exploration, extraction, and export of pearls, jade, and precious stones;
- breeding and production of fish and prawns in fisheries that have been reserved for research by the government;

- postal and telecommunications services;
- air transport and railway transport services;
- banking and insurance services;
- broadcasting and television services;
- exploration, extraction, and exports of metals;
- electricity generating services, other than those permitted by law to private and cooperative electricity generating services; and
- manufacturing of products relating to security and defense.

However, the MIC, "in the interest of the State," can make exceptions to this law. In the past, the MIC has routinely granted numerous exceptions including through joint ventures or special licenses in the areas of banking (for domestic investors only), mining, petroleum and natural gas extraction, telecommunications, radio and television broadcasting, and air transport services. The 2012 Foreign Investment Law and its implementing regulations continue to grant the MIC broad discretion with regard to its decisions on investments. This can at times be beneficial to investors wishing to engage in economic activities in certain prohibited economic sectors.

This level of discretion allowed to the MIC is concerning. Although, as the OECD 2014 IPR notes, the system gives the government flexibility "to open progressively and selectively to foreign investment and to try to maximize the potential benefits from that investment," the same flexibility also creates uncertainty for investors "concerning the criteria upon which the decision to admit them is based [and] creates opportunities for corruption when individual officials are given responsibility for deciding on what basis to admit an investment project."

The Burmese armed forces are involved in many commercial activities via the Union of Myanmar Economic Holdings, Ltd. (UMEHL) and the Myanmar Economic Corporation (MEC). Foreign firms have in the past reported that an affiliation with UMEHL or MEC helped them receive the proper business permits when setting up a joint venture. Nonetheless, entering into business with UMEHL or MEC does not guarantee success for foreign partners. Under General License No. 17 issued by the Department of Treasury's Office of Foreign Assets Control (OFAC) on July 11, 2012, U.S. businesses are not allowed to invest or enter into an agreement with the Burmese Ministry of Defense or any state or non-state armed group, or any entity in which any of the above own a 50 percent or greater interest.

### **Privatization Program**

According to the Government of Burma, the private sector's share in GDP is over 90%, with the State participating in telecommunication services, social and public administration, energy, forestry, construction, and electricity. According to the International Monetary Fund (IMF), the private sector is estimated to be closer to 85% of current GDP, although this is also based on data provided by the government. Another informal estimates place the private sector share between 65-70%. Prior to 2011, foreign participation was not allowed in the privatization process, however, in 2012, President Thein Sein created a new Privatization Commission headed by a Vice President. The commission is currently working on plans to adopt new privatization procedures that will emphasize open tenders and private-public-partnerships.



## Screening of FDI

The MIC plays a leading role in the regulation of foreign investment, and approves all investment projects receiving incentives except those in special economic zones which are handled by the Central Working Body set up under the existing Special Economic Zone Law and joint ventures between foreign investors and state-owned economic enterprises which are the responsibility of the relevant line ministries.

The Foreign Investment Law outlines the procedures the MIC must take in considering foreign investments. Investment approvals are made on a case-by-case basis. To obtain an investment permit, the investor must submit a proposal in the prescribed form to the MIC, together with supporting documentation including details of intended activities and the financial credibility of the company/individual; an undertaking not to engage in trading activities; and annual reports for the last two financial years, or copies of the company's Head Office's balance sheet and profit and loss account for the last two financial years, notarized by the Burmese Embassy in the country where the company is incorporated. The MIC accepts or rejects an application within 15 days, and decides whether to approve the proposal within 90 days. Final approval comes from U Zayar Aung, Chairman of the MIC (and currently the Union Minister of Energy). The MIC evaluates foreign investment proposals and stipulates the terms and conditions of investment permits. An investor must also register with the Directorate of Investment and Company Administration (DICA) – the MIC's Secretariat - except for joint ventures with State equity formed under the Special Company Act 1950. After depositing a registration fee in Myanmar Economic Bank, a foreign investor obtains a temporary registration certificate, valid for six months, then a Company Incorporation Certificate.

Although the MIC has no power to protect foreign companies, there is no evidence that the MIC discriminates against foreign investors. It should be noted that the MIC does not record some foreign investments if they do not require MIC approval, particularly for investors forming a joint venture with a military-controlled enterprise. Many smaller investments may also go unrecorded. Once licensed, foreign firms may register their companies locally, use their permits to obtain resident visas, lease cars and real estate, and obtain import and export licenses from the Ministry of Commerce. Foreign companies may register locally without an MIC license, in which case they are not entitled to receive the benefits and incentives provided for in the Foreign Investment Law.

More information on the MIC and DICA can be found at: <http://dica.gov.mm.x-aas.net/>. In addition, please find below contact information for the MIC:

Chairman U Zayar Aung  
Myanmar Investment Commission  
Building No.1  
Thit Sar Road,  
Yankin Township  
Yangon Myanmar

Contact: U Aung Naing Oo, Director General, Directorate of Investment and Company Administration (DICA)  
Tel: 0-1657891

## Competition Law

A new Competition Law came into force on February 24, 2015. The objective of the law is to protect public interest from monopolistic acts, limit unfair competition, and prevent abuse of dominant position and economic concentration which weakens competition. Specifically, the Competition Law sets a foundation for creation of a regulatory body with investigative and adjudicative powers, addresses the three standard pillars of competition law (agreements that restrain competition, abuse of dominance and mergers) as well unfair trade practices, and establishes a comprehensive penalty regime.

The law classifies four types of behavior as sanctionable violations: acts restricting competition (applicable to all persons); acts leading to monopolies (applicable only to entrepreneurs); unfair competitive acts (applicable only to entrepreneurs); and business combinations such as mergers. The law also restricts the production of goods, market penetration, technological development and investment, although the government may exempt restrictive agreements “if they are aimed at reducing production costs and benefit consumers” such as reshaping the organizational structure and business model of a business so as to improve its efficiency; enhancing technology and technological advances for the improvement of the quality of goods and service; and promoting competitiveness of small and medium sized enterprises.

The Competition Law prohibits efforts to monopolize markets by: controlling prices of goods or services; limiting the availability of a good or service with the aim of controlling prices; reducing the availability of a good or service without appropriate reasons or lowering the quality of a good to reduce market demand; controlling or restrict the geographic market for sales to prevent entry and control market share; and interfering in another business’ operations in an unfair manner.

The Competition Law also prohibits mergers where the merger is intended to lead to excessive domination of the market; the merger will reduce competition in a market with few competitors; or the resulting market share exceeds the thresholds prescribed by the Competition Commission. However, the law permits an otherwise prohibited merger where the resulting enterprise remains a SME; one of the merging parties was, or was likely to become, bankrupt; or the merger promotes exports or development of technology, systems or innovation.

The Competition Law creates the Competition Commission, the principal regulatory authority under the law and the Investigation Committee which will investigate conduct that may infringe the law. The penalties provided for “acts restricting competition” in Burma range from imprisonment up to three years and/or a fine of up to USD 15,000.

Burma is not party to any bilateral or regional agreement on anti-trust cooperation.

## Investment Trends

According to the OECD, Burma’s potential to attract FDI remains largely unexploited. The majority of the investment that Burma received in past decades went into natural resource sectors, with only a small portion of that investment going to the manufacturing or services sectors. However, this has started to change in recent years. The sectors receiving the largest share of FDI since 2011 include the oil and gas, transport and communication, tourism and power sectors,

whereas the mining, agriculture, and livestock and fisheries sectors have received the lowest share of FDI.

Moving forward, observers expect the manufacturing and tourism services sectors to continue growing and attracting more FDI, given Burma's re-entry into the global economy and the removal of the majority of sanctions by Western countries. Conversely, observers suggest that political uncertainty and the rising influence of civil society may temporarily have halted or deterred new large-scale investments in the power and mining sectors.

However, as the World Bank's 2014 Enterprise Services Report notes, reforms to improve Burma's investment climate are urgently needed across a number of areas, especially in access to finance, land, electricity and skilled workers, which were identified as the top constraints. In addition, private firms also indicate that the incidence of corruption as measured by bribe payments is one of the highest in the region. Addressing these key constraints is critical to ensuring a fair and transparent business environment in which all private enterprises can grow and create jobs.

*Table 1*

<b>Measure</b>	<b>Year</b>	<b>Index or Rank</b>	<b>Website Address</b>
<b>TI Corruption Perceptions index</b>	2014	156 of 175	<a href="http://transparency.org/cpi2014/results">transparency.org/cpi2014/results</a>
<b>World Bank's Doing Business Report "Ease of Doing Business"</b>	2014	177 of 189	<a href="http://doingbusiness.org/rankings">doingbusiness.org/rankings</a>
<b>Global Innovation Index</b>	2014	140 of 143	<a href="http://globalinnovationindex.org/content.aspx?page=data-analysis">globalinnovationindex.org/content.aspx?page=data-analysis</a>
<b>World Bank GNI per capita</b>	2013	n/a	<a href="http://data.worldbank.org/indicator/NY.GNP.PCAP.CD">data.worldbank.org/indicator/NY.GNP.PCAP.CD</a>

*Millennium Challenge Corporation Country Scorecard*

The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a per capita gross national income (GNI) or USD 4,125 or less. Burma's scorecard is available here: <https://assets.mcc.gov/scorecards/score-fy15-english-mm-burma.pdf>.

## **2. Conversion and Transfer Policies**

### **Foreign Exchange**

On April 2, 2012, Burma's multiple exchange rates were abolished and the Central Bank of Myanmar established a managed float of the Burmese kyat with an initial auction at 818 kyat per

one U.S. dollar. The kyat has appreciated gradually since then and the exchange rate during the first quarter of 2015 floated between 1000 to 1076 kyat to the dollar.

### *Remittance Policies*

According to the Foreign Investment Law, foreign investors have the right of remittance of foreign currency. Foreign investors are allowed to remit foreign currency overseas through banks which are authorized to conduct foreign banking business at the prevailing exchange rate. Banks began introducing remittance services during 2012 and the volume of such formal transfer is low but growing, according to local bank managers.

Nevertheless, in practice, the transfer of money in or out of Burma has been difficult, as many international banks have been slow to update their internal prohibitions on conducting business in Burma given the long history of U.S. and European sanctions that had isolated the country. The majority of foreign currency transactions are conducted through banks in Singapore. Despite the absence of any legal impediment, it appears that some U.S. banks still refuse to conduct money transfers to and from Burma.

The difficulties presented by the formal banking system are reflected in the continued use of informal sources of finance for loans and remittances by both the public and businesses. Although these informal sources tend to have higher interest charges, they offer an alternative to the limited loan services offered by banks, which provide almost only short-term credit for trade on a limited basis and require collateral. Remittances are also often made through a well-developed informal network of money carriers (aka the "hundi" system). Many overseas workers continue to use the hundi system to remit their money home though the volume of these informal transfers is declining gradually.

Burma is a "country of primary concern" in the 2014 International Narcotics Control Strategy Report. According to the report, Burma is not a regional or offshore financial center, its economy is underdeveloped and its banking sector is still relatively isolated. The report notes, however, that Burma's "prolific drug production, the growing use of credit/debit cards connected to international financial institutions, and lack of transparency make it attractive for domestic, and possibly, international money laundering" as do "the low risk of enforcement and prosecution." Key concerns raised in the report include Burma's level of poppy cultivation, corruption business and government, state-owned enterprises' and military holding companies' significant influence over the economy, including control of a substantial portion of Burma's natural resources, and weak rule of law.

Burma does not engage in currency manipulation tactics.

### **3. Expropriation and Compensation**

According to the OECD's 2014 IPR, Burma's "expropriation regime . . . does not appear to protect investors against indirect expropriations." In addition, it reports that Burma has not incorporated the principle of non-discrimination into its investment framework. Other than a constitutional safeguard that states that the government will not nationalize economic enterprises, there is no specific provision in Burma's legislation against expropriation without compensation.

The Foreign Investment Law prohibits nationalization and states that foreign investments approved by the MIC will not be nationalized during the term of their investment. Specifically, the law states that “the Union Government guarantees that a business formed under the law shall not be nationalized within the term of the contract or the extended term if such term is extended.” In addition, the law guarantees that the Government of Burma will not terminate an investment enterprise without reasonable cause, and on upon expiry of the contract, the Government of Burma guarantees an investor the withdrawal of foreign capital in the foreign currency in which the investment was made. Finally, the law states that “the Union Government guarantees that it shall not cease an investment enterprise operating under a Permit of the Commission before the expiry of the permitted term without any sufficient reason.” The new Investment Law currently being drafted, when enacted, is expected to further strengthen the government’s commitments related to non-discrimination, expropriation and nationalization.

Aside from the possibility of outright expropriation by the Government of Burma, private businesses have been subject to predatory practices by regime-linked cronies. Given the weak rule of law in Burma and the pervasive and powerful system of patronage, larger and more well-connected entities have generally been able to muscle out smaller competitors by denying access to markets, forcing the sale of assets, or otherwise disrupting business operations. However, public scrutiny of businesses is beginning to increase due to a more free and vibrant local press and an increasingly energetic Parliament, and that scrutiny is beginning to limit – or at least reduce the overt exercise of – such practices.

#### **4. Dispute Settlement**

##### **Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts**

Burmese criminal and civil laws are modeled on British law introduced during the colonial period, which ended in 1948. Every township, state, and division has its own law officers and judges. Following the transfer of power to a civilian government in March 2011, the regional military commanders and military authorities at the township, state, and divisional level no longer have authority over judicial decisions at the local and state/division level, although they still wield considerable influence that varies from region to region. Foreign companies have the right to bring cases to and defend themselves in local courts, but this option is rarely exercised due to concern about the impartiality of the courts. Foreign investors involved in conflicts with the government are unlikely to receive a court ruling in their favor.

Courts are neither independent nor impartial, thereby making local arbitration unreliable. Companies facing adverse administrative decisions have no recourse. In addition, Burma is not a member of the International Center for the Settlement of Investment Disputes. The Attorney General's Office and the Supreme Court exercise nominal control over the legal system in Burma, but neither body is independent of the government.

In order to address the concerns of foreign investors about dispute settlement in Burma, the government did take the significant step of acceding, on April 16, 2013, to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”). However, it has not yet drafted domestic legislation to implement the New York Convention.

## **Bankruptcy**

There is no bankruptcy law in Burma, and antiquated insolvency laws – such as The Insolvency Act of 1910 and The Insolvency Act of 1920 – are rarely used.

## **Investment Disputes**

To date, Burma has not been party to any investment dispute. In addition, Burma has not been party to any dispute settlement proceeding at the WTO, as complainant, respondent, or third party.

## **International Arbitration**

It is unclear on what grounds access to alternative dispute resolution, such as international arbitration, is an available option for foreign investors. According to the Foreign Investment Law, when disputes cannot be settled amicably between the parties concerned, the dispute should be settled according to the dispute settlement provisions of the “agreement” or in accordance with Burmese law if the contract contains no dispute settlement provisions, and that investors will inform the MIC about the dispute’s circumstances as well as which mechanisms will be used to settle the dispute. According to the OECD, however, the exact meaning in the law of the term “agreement” is not specified, and observers are confused if “agreement” refers to contracts concluded between state authorities and individual foreign investors, or whether it also refers to bilateral investment treaties containing an investor-state dispute settlement provision. The OECD notes that lack of clarity on this front makes the dispute settlement regulations “vague on what options are de facto made available to investors seeking to resolve their disputes.”

In the past, private and foreign companies suffered major disadvantages in disputes with Government of Burma and quasi-governmental entities. Foreign investors generally prefer to use the 1944 Arbitration Act, which allows for international arbitration. The Burmese government usually tries to stipulate local arbitration in contracts it signs with foreign investors.

### *ICSID Convention and New York Convention*

Burma is not a party to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID).

In 2013 the government ratified The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

## **Duration of Dispute Resolution**

The Foreign Investment Law does stipulate that a foreign investor is entitled to have its dispute settled by foreign arbitration, although it should be noted that there are no domestic laws in place to reinforce international arbitration. Foreign investors have the benefit of the Foreign Investment Law which guarantees certain investment protections to the foreign investor. Because the Foreign Investment Law was only promulgated in November 2012, there has been insufficient time to determine how the law will be implemented in practice, how the Burmese

courts will interpret the provisions of the Foreign Investment Law to determine investment disputes, and how long it will take to resolve investment and commercial disputes under this current system. The new Investment Law currently being drafted is expected to allow for the settlement of disputes through international arbitration.

## **5. Performance Requirements and Investment Incentives**

### **WTO/TRIMS**

Burma is a World Trade Organization member. To date, no claims have been raised against Burma on its maintenance of any measures that are inconsistent with the WTO's Trade Related Investment Measures (TRIMs) requirements.

### **Investment Incentives**

According to Article 27 of the Foreign Investment Law, in order to promote foreign investment, the Government of Burma will grant new investors a five year tax holiday with an option for further exemption if the enterprise is beneficial to the State. The Foreign Investment Law also details several other exemptions and avenues of relief such as a three year exemption on custom duties and the relief from commercial tax for goods produced for export. In addition, Article 27 (j) grants an exemption from customs duty or other internal taxes for any machinery or equipment, or materials imported in order to expand the business.

The Myanmar Economic Zones Law also contains certain investment incentives for investors. Under the law, investors located in a Special Economic Zone (SEZ) may apply for income tax exemption for the first five years from the date of commencement of commercial operations, followed by a reduction of the income tax rate by 50% for the proceeding five year period. Under the law, if profits during the next third five year period are re-invested within one year, investors can apply for a 50% reduction of the income tax rate for profits derived from such re-investment.

#### *Research and Development*

There is no data (anecdotal or otherwise) that indicates that foreign firms are able to participate in government/authority financed and/or subsidized research and development programs.

### **Performance Requirements**

Foreign investors must recruit at least 25% of their employees from the local labor force in the first two years of their investment. The local employment ratio increases to 50% for the third and fourth years, and 75% for the fifth and sixth years.

### **Data Storage**

The Government of Burma does not follow forced localization, and foreign investors are not yet required to use domestic content in goods or technology. The Government of Burma is currently developing laws, rules and regulations on information technology (IT), and does not have in

place requirements for foreign IT providers to turn over source code and/or provide access to surveillance.

## **6. Right to Private Ownership and Establishment**

To date, foreigners cannot purchase and own land or condominiums in Burma and – until September 2011 – could only rent property on a short-term basis, with leases typically limited to one year. However, according to Article 31 of the Foreign Investment Law, foreigners can invest in real estate development through a joint venture or by 100% ownership through a build-operate-transfer (BOT) lease agreement with the government. Under the joint venture scheme, foreign participation is limited to 80% (i.e., local citizens or enterprises must own at least 20% of the equity). The BOT lease agreements provide full ownership to foreign investors, although they are limited to 70 years. The law also allows foreigners to take over BOT leases from locals.

The government is currently drafting and considering a condominium law that would allow foreigners to lease, buy, exchange, or give a condominium unit located on the sixth floor or above in condominium buildings. Under the draft law, the maximum share allocated for foreigner units in any given condominium building would be 40%. Real estate observers had expected the law to be passed in 2014, although the expected date of passage is now mid-2015.

Most real estate transactions in Burma require cash, although banks have begun limited introduction of a consumer lending product that resembles a mortgage loan. Regular bank loans are difficult to obtain and are not available to foreigners. In accordance with The Transfer of Immovable Property Restriction Law of 1987, mortgages of immovable property are prohibited if the mortgagee is a foreigner, foreign company or foreign bank.

## **7. Protection of Property Rights**

### **Real Property**

On paper, Burma has a legal system which protects and facilitates the acquisition and disposition of property such as land and buildings. However, judicial decisions can often be influenced through government interference, personal relationships or bribes, resulting in a judicial process that is perceived as far from impartial and fair. Burma also suffers from an antiquated legal system and outdated legislation; many laws are vague and often subject to manipulation. A lack of rule of law and an ineffective, corrupt judiciary pose major challenges for U.S. private sector constituents looking to do business in Burma. Furthermore, local entities may engage in deceptive, coercive activities by bribing local judges or using personal connections to obtain favorable judgments. A continuing area of concern involves land acquisition for large-scale investment projects. Property rights are not well-established and populations living on the land have complained about inadequate consultation and compensation.

### **Intellectual Property Rights**

Burma does not have adequate intellectual property rights protection. Patent, trademark, industrial design, and copyright laws and regulations are antiquated and deficient, and there is minimal regulation and enforcement of existing statutes. For example, the registration of patents



and designs in Burma is still governed by the Indian Patents and Designs Act of 1911, enacted under British colonial rule. The British colonial government also published a Copyright Act in 1914, but neither the colonial government nor the Government of Burma ever instituted a means to register copyrights. Consequently, there is no legal protection in Burma for foreign copyrights. In addition, Burma has no trademark law, although trademark registration is possible. Some firms place caution notices in local newspapers to declare ownership of their trademarks. After publication, the owners can take criminal and/or civil action against trademark infringers. Title to a trademark depends on use of the trademark in connection with goods sold in Burma.

Burma does not have in place a judicial court specifically dealing with intellectual property rights. Disputes related to the infringement of intellectual property rights are governed by common rules of civil and criminal procedure. Similarly, there is no institution in charge of supervising the administration, registration and enforcement of intellectual property. The lack of adequate intellectual property rights translates to piracy and other intellectual property rights violations in Burma. Piracy of music CDs, video CDs, CD-ROMS, DVDs, books, software, and product designs is evident nationwide, especially in border regions and in the two major urban centers of Rangoon and Mandalay. Most consumers of information technology products in Burma, both in the private sector and in government, use pirated software. Given the small number of local customers, poor state of the economy, and lack of infrastructure (e.g., unreliable electricity for manufacturing), piracy does not have a significant adverse impact on U.S. products.

The Government of Burma is attempting to address these legal deficiencies and the high level of piracy within Burma. After Burma joined ASEAN in 1997, it agreed to modernize its intellectual property laws in accordance with the ASEAN Framework Agreement on Intellectual Property Cooperation. The Ministry of Science and Technology has drafted four new intellectual property laws – on trademarks, copyrights, patents, and industrial design – with the aim of creating a modern, comprehensive legal framework for intellectual property rights and improving Burma’s business climate. The Ministry of Science and Technology has received advice from external stakeholders and experts during the drafting process. It expects to submit the draft laws to Parliament by mid-2015 with the expectation that Parliament approve the draft laws by end-2015. The Government of Burma is also exploring the establishment of a single national Intellectual Property Office that would monitor compliance with intellectual property laws and be responsible for further developing intellectual policy and regulations. In addition, the WTO has delayed required implementation of the Trade Related Aspects of Intellectual Property (TRIPs) Agreement for Least Developed Nations – including Burma – until 2021.

Burma is not listed in USTR’s Special 301 report and is not listed in USTR’s notorious market report.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO’s country profiles at <http://www.wipo.int/directory/en/>.

*Resources for Rights Holders*

For Intellectual Property Rights issues in Burma, please contact:

Peter N. Fowler  
Regional IP Attaché  
U.S. Patent and Trademark Office  
American Embassy Bangkok, Thailand  
Tel: (662) 205-5913  
Email: Peter.Fowler@trade.gov

Information on the American Chamber of Commerce (AmCham) Myanmar Chapter can be found at: <http://www.amchammyanmar.com/>

Information on legal service providers available in Burma can be found at: [http://burma.usembassy.gov/legal\\_assistance.html](http://burma.usembassy.gov/legal_assistance.html).

## **8. Transparency of the Regulatory System**

Burma lacks regulatory and legal transparency. In the past all existing regulations, including those covering foreign investment, import-export procedures, licensing, and foreign exchange, were subject to change with no advance or written notice, and without opportunity for public comment. The government continues to issue new regulations or laws often with no advance notice and little if any opportunity for review or comment by domestic or foreign market participants. Draft bills are not always made available for public comment and there is no formal public consultation process to publish and seek comment on proposed laws and regulations.

The Government of Burma, however, is attempting to enhance transparency in the public sector by using websites to publish information online and by establishing websites through which businesses can access trade information. The Ministry of Commerce, for example, publishes a weekly Commerce Journal, and a monthly Trade News booklet, providing trade-related information. In the past three years, the Government of Burma has also published new regulations and laws in government-run newspapers and "The Burma Gazette" more frequently than in the past.

In 2014, the Government of Burma became a candidate country in the Extractive Industries Transparency Initiative (EITI) -- a global standard for the promotion of revenue transparency. EITI requires extractives-related companies to declare any payments made to the government, and the Government of Burma is required to declare its revenues from extractive sectors. The World Bank will assist Burma in the conditions it must fulfill as an EITI candidate country, including the creation of a report by January 2016 that discusses revenues from certain sub-sectors of Burma's extractives sector, including oil and gas and mineral industries.

## **9. Efficient Capital Markets and Portfolio Investment**

Burma has extremely small equity and debt markets in which foreigners cannot engage, and average citizens do not have portfolio investments. Banks are the primary buyers of government

bonds issued by the Central Bank of Myanmar, which has established a fledgling bond market auction system. The Central Bank of Myanmar issues government treasury bonds with maturities of two, three and five years. Several Burmese companies sell bonds privately on a very small scale.

Burma's stock exchange, the Myanmar Securities Exchange Center, a joint venture of Myanmar Economic Bank and Japan's Daiwa Institute of Research. Almost no activity takes place on this unregulated stock exchange except for over-the-counter trading of government treasury bonds. On July 30, 2013, the Securities Exchange Law came into effect. The law provides the framework for the establishment of a stock exchange and is meant to promote the development of a market-oriented system, safeguard the participants who take part in the securities exchange certificate market, and encourage more participation by the public in financial markets. Specifically, the new law establishes a securities and exchange commission, the main regulatory body to supervise the securities market, as well as sets out licenses available for securities businesses (such as dealing, brokerage, underwriting, investment advisory and company's representative). In addition, the law provides for the establishment of an over the counter market, specifies the prohibited acts relating to securities trading (e.g. insider trading) and the penalties, and provides for the establishment of a securities depository and clearing business.

Implementation of the Securities Exchange Law is a positive step toward the development of an equity market. In 2012, the Central Bank of Myanmar signed a Memorandum of Understanding with the Tokyo Stock Exchange and Daiwa Securities Group to establish a fully-operational stock exchange by the end of 2015. Observers had expressed concern that this target would be missed because of slow progress on establishing a regulatory framework and a securities regulator. Despite passage of the Securities Exchange Law, however, it is unclear whether it will be effectively implemented, including the establishment of a credible and securities regulatory commission, in 2015 and whether many Burmese companies will be ready to list on the new exchange.

Private companies, whether foreign or domestically controlled, are generally small in size. Usually, a small number of people or entities, often within the same family, closely hold the business shares.

### **Money and Banking System, Hostile Takeovers**

The Central Bank of Myanmar (CBM) is empowered to assume supervisory and regulatory functions for the banking sector. The CBM's policy objectives include domestic price stability, financial stability, and efficient payment systems, and the CBM is responsible for approving new banks and supervising new and existing banks. In 2013, the CBM was separated from the Ministry of Finance with a view to making it an independent central bank with greater autonomy in accordance with the new Central Bank of Myanmar Law, which entered into force the same month. The CBM intends to develop the banking sector in three phases: (i) allowing domestic private banks to operate joint ventures with foreign banks; (ii) allowing foreign banks to establish wholly owned locally incorporated subsidiaries; and (iii) allowing foreign banks to open direct branches in Burma.

There are four state-owned banks: the Myanmar Economic Bank (MEB), the Myanmar Foreign Trade Bank (MFTB), the Myanmar Investment and Commercial Bank, and the Myanmar Agricultural Development Bank. The role of the MEB, the largest bank in Myanmar, is to provide domestic and international banking services. The MFTB specializes in international banking. The Myanmar Investment and Commercial Bank carries out domestic and international banking business and extends banking services to private companies, including foreign joint ventures. The MADB extends agricultural credits to farmers. According to the government, the regulatory regime is the same for state-owned banks and private banks

Currently the CBM allows 11 domestic banks to conduct international currency transactions. In October 2014, however, the government awarded limited banking licenses to nine foreign banks – all from the Asia-Pacific region – allowing each bank to set up one branch and to provide loans to foreign companies. Four of the nine banks will begin operations at the end of April. Government officials said the banks will be restricted to providing loans in foreign currency and be required to partner with local banks in order to lend to local companies. The limited licenses are a “preliminary approval” to set up operations, and the government will review individual banks’ operations on October 2015 before deciding whether to grant permanent licenses.

Despite recent reforms, Burma’s banks continue to face a number of significant regulatory restrictions that limit the growth of lending, though deposits have grown significantly over the past years, albeit from a low base. As these restrictions are eased in the coming months and years, prompting further growth, the Government of Burma will need to address weaknesses in the country’s supervisory and regulatory framework and in the internal business practices of private and government-linked banks. According to official figures published by Burma’s Central Statistical Organization, total bank deposits by the end of November 2014 were approximately USD 15.3 billion.

## **10. Competition from State-Owned Enterprises**

As noted, the Government of Burma reserves for state-owned enterprises (SOEs) many lucrative sectors and sectors deemed sensitive (see above for the full list). For example, according to the 1989 State-Owned Economic Enterprises Law, state-owned enterprises have the sole right to carry out certain economic activities (see above). For example, exploration of natural gas in inland areas as well as downstream operations is reserved for the Myanmar Oil and Gas Enterprise (MOGE), a state-owned enterprise. The Government of Burma also has the sole right over the exploration and extraction of pearl, jade, and precious stones and, exports thereof. Myanma Railways, another state-owned enterprise, owns the rail infrastructure and holds the monopoly over freight and passenger rail transport services. However, the government has in practice licensed private sector competitors to operate in these nominally restricted sectors. As a result, for example, state-owned operator Myanma Airways’ former dominance of domestic air transport has been eroded by the entry of new privately owned airlines, and state-owned institutions no longer dominate the banking and non-banking financial sector due to the recent growth of privately owned banks.

Starting in 2012, the Government of Burma began taking steps to reduce state-owned enterprises’ reliance on government support and to make them more competitive through joint ventures. This included reducing budget subsidies for financing the raw material requirements of state-owned enterprises. The Government of Burma also continued efforts to privatize or lease

enterprises and real estate properties to both foreign and domestic investors. Additional tenders for the sale or lease of state-owned enterprises and properties are expected during 2015.

### **OECD Guidelines on Corporate Governance of SOEs**

Corporate governance of state-owned enterprises (SOE's) is not transparent, and they not required by law to publicly release annual reports. In general, a regulatory framework for corporate governance, including both private sector companies and state-owned ones, is lacking. In addition, the Government of Burma requires that state-owned enterprises use only state-owned banks for their financial transactions. Private enterprises do not compete on the same terms and conditions as state-owned enterprises. As a result, Burmese state-owned enterprises are inefficient and are unlikely to be able to compete with the private sector, especially foreign companies, on a level playing field.

### **Sovereign Wealth Funds**

Burma does not have a sovereign wealth fund.

## **11. Corporate Social Responsibility**

Burma does not have a deep awareness of corporate social responsibility (CSR). Many local companies (and some international firms) still equate CSR with in-kind donations or charitable contributions. Burma is a deeply religious country with the majority of its residents practicing the Buddhist religion which holds that one may increase one's standing in the cycle of reincarnation by "making merit" through acts of charity. As a result, most Burmese business owners, including so-called cronies, often donate money, build schools, hospitals, low-rent apartments or even pay above the market wage as a result of their Buddhist faith. However, in recent years the Union of Myanmar Chambers of Commerce and Industry (UMFCCI), Burma's largest private sector association, has been promoting the United Nations Global Compact and CSR principles in general.

Private companies owned by foreign nationals from China, South Korea, Japan or other ASEAN countries may practice some form of CSR, but such practices are largely absent in the Burmese market. Several U.S. companies are actively incorporating CSR as an integral part of their entry (or pre-entry) strategy for Burma.

The Government of Burma does not have in place corporate governance, accounting, or executive compensation standards. Nonetheless, since 2011, Burmese civil society organizations have become more vocal in protesting against companies or government sponsored projects which they view as violating social standards.

The United States remains concerned about the protection of human rights, corruption, and the role of the military in the Burmese economy and as such require all new U.S. investment in excess of USD 500,000 to be subject to certain reporting requirements available at <http://www.humanrights.gov/2012/07/11/burmaresponsibleinvestment/>. There are several components to these reporting requirements. Investors are required to file reports with the State Department on an annual basis, to include a version of the report that the Department will make

publicly available, consistent with relevant U.S. law. Key information that companies report on include information regarding policies and procedures with respect to human rights, workers' rights, environmental stewardship, land acquisitions, arrangements with security service providers, and, aggregate annual payments exceeding USD 10,000 to Burmese government entities, including state-owned enterprises. The purpose of the public report is to promote greater transparency and encourage civil society to partner with our companies toward responsible investment. The above reporting requirements apply to any new investment, whatever corporate form it might take. In addition, individuals or entities undertaking new investment pursuant to an agreement or pursuant to the exercise of rights under such an agreement, that is entered into with the Myanmar Oil and Gas Enterprise (MOGE) must notify the Department of State within 60 days of their new investment.

For more information on U.S. government policies on issues of corporate social responsibility, please see the U.S. Government Approach on Business and Human Rights, released in May 2013. The Approach can be found at: <http://www.humanrights.gov/2013/05/01/u-s-government-approach-on-business-and-human-rights/>.

### **OECD Guidelines for Multinational Enterprises**

Burma has not yet implemented the OECD Guidelines for Multinational Enterprises and does not proactively encourage foreign and local enterprises to follow generally accepted CSR principles included within the guidelines. Burma does not proactively encourage adherence to the United Nations Guiding Principles on Business and Human Rights.

## **12. Political Violence**

There were no instances of political violence against Americans in 2014. Although political demonstrations and rallies are normally peaceful, spontaneous rioting, and attacks on individuals can occur due to the density of most gatherings and the mob mentality of unaccountability/anonymity that often prevails. In February and March 2015, student demonstrators protesting a new education law and police forces clashed in Rangoon and in Letpadan, leading to some instances of violence. In February 2015, garment workers on strike in an industrial zone in Rangoon also clashed with police forces.

Burma experienced sporadic bombing attacks in 2010 and 2011. In October 2013, an improvised explosive device, one of several employed over a 24 hour period, went off in a downtown Rangoon hotel, wounding an American woman. There is no indication that these attacks targeted U.S. citizens or U.S. interests. Local authorities regularly claim to discover explosive devices at various locations throughout Burma. In most cases, no groups claim responsibility.

While violence or demonstrations rarely target American or other Western interests in Burma, several ethnic groups are engaged in ongoing civil conflict with the Government of Burma. For decades, there has been anti-government insurgent activity in various locations, particularly near Burma's borders. These border areas have seen sporadic fighting between government forces and insurgent groups throughout the past 50 years. Currently, most ethnic minority groups have signed cease fire agreements with the central government and a national ceasefire agreement is under negotiation. Nonetheless, in Kachin State, in northern Burma on the border of China,

instances of armed clashes between the Kachin Independence Army (KIA) and the Burmese Army periodically have flared up since June 2011. More recently, in February 2015, an alliance of armed groups in Kokang (a self-administered zone in northern Shan State which borders China's southern Yunnan province) attacked multiple Burmese military positions in an effort to regain land lost in a 2009 conflict, consequently leading to a large scale offensive against rebel positions by the military. Burma's military declared martial law and a state of emergency in Kokang.

Certain states in Burma also experience inter-communal violence. Violence between Buddhists and Muslims has led to enhanced international scrutiny. In 2012, riots and associated violence in Rakhine State in the western part of Burma left nearly 200 people dead and thousands displaced. In March 2013, in Meiktila in central Burma, violence between Buddhists and Muslims left more than 40 people dead. More recently, in March 2014, riots and looting in the capital of Rakhine State led to the destruction of international non-governmental organizations' (INGO) properties and supplies, and led to the mass evacuation of INGO staff.

For the latest security information, U.S. citizens living and traveling abroad should regularly monitor the Department of State's Consular Affairs website at <http://travel.state.gov>, where the current Worldwide Caution, Travel Alerts, Travel Warnings and health-information resources can be found.

### **13. Corruption**

There are high levels of corruption in Burma. Due to a complex and capricious regulatory/legal environment and extremely low government salaries, rent-seeking activities are ubiquitous. Bribes are expected – and given – to facilitate many official transactions, from the smallest to the largest. Most citizens view corruption as a normal practice and requirement for survival.

Many economists and businesspeople consider corruption one of the most serious barriers to investment and commerce in Burma. In its 2014 Corruption Perceptions Index, Transparency International rated Burma 156th out of 177 countries, a jump up from the 2013 ranking of 157 and the 2012 rating of 172nd out of 177. In their Doing Business 2015 report, the World Bank and the International Finance Corporation ranked Burma 177 out of 189 countries, a jump from the 2014 ranking of 182 out of 189 countries on ease of doing business. The report cites corruption as a major disruptive force in conducting business in the country, and that the major areas where investors run into corruption are when seeking investment permits, in the taxation process, when applying for import and export licenses, and when negotiating land and real estate leases. The World Bank's 2014 Myanmar Enterprise Survey, however, contained a surprising survey result that business owners and managers did not cite corruption as a major constraint for doing business in Burma. The survey – which included survey results from business owners and managers from 632 private firms in five urban areas in Burma - cited access to financing as the top constraint facing businesses. Less than one percent of businesses owners and managers cited corruption as the top business constraint facing their firms. World Bank officials stressed that the World Bank continues to view corruption as a serious problem in Burma, adding that perceptions among local businessmen of corruption as a “fact of life” may have contributed to the low figure.

The Government of Burma appears to recognize the international community's perception of corruption in the country. Consequently, on March 7, 2013, the Government of Burma enacted an Anti-Corruption Law (which stipulates the specific offenses and accompanying punishment in bribery cases as well as includes language on an anti-bribery enforcement mechanism), and followed implementation of the law with its February 25, 2014 formation of a national commission to address bribery and graft (as mandated under the law).

*UN Anticorruption Convention, OECD Convention on Combatting Bribery*

Burma signed the UN Anticorruption Convention in December 2005 and ratified the convention on December 20, 2012.

Burma is not party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

*Resources to Report Corruption*

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#### **14. Bilateral Investment Agreements**

Burma has signed and ratified several bilateral investment agreements with China, India, Japan, Philippines, and Thailand. It has also signed bilateral investment agreements with Israel, Laos, and Vietnam although these have not yet entered into force. The most recent investment agreement is a 2014 Korea- Burma investment guarantee treaty. Burma has also engaged in investment treaty negotiations with Russia, Mongolia, Bangladesh, Iran, Serbia, and Hong Kong, China. Observers opine that these agreements have had little impact on enhancing incoming investment from other countries in the region and that it is still too early to tell what impact, if any, these agreements will have in enhancing investment in Burma. Texts of the agreements or treaties that have come into force are available on the UNCTAD website at: <http://investmentpolicyhub.unctad.org/IIA/CountryBits/144>.

In 2013, the United States and Burma signed a Trade and Investment Framework Agreement. The United States and Burma have not yet engaged in discussions on bilateral investment treaty or a free trade agreement. Burma does not have a bilateral taxation treaty with the United States.

Through its membership in ASEAN, Burma is also a party to the ASEAN Comprehensive Investment Agreement, as well as to the ASEAN-Australia-New Zealand Free Trade Agreement, the ASEAN-Korea Free Trade Agreement, and the China-ASEAN Free Trade Agreement, which all contain an investment chapter that provides protection standards to qualifying foreign investors.



Burma has bilateral trade agreements with Bangladesh, Sri Lanka, China, South Korea, Laos, Malaysia, the Philippines, Thailand, and Vietnam in the Asian region, as well as with a number of Eastern European countries.

### **Bilateral Taxation Treaties**

Burma does not have a bilateral taxation treaty with the United States.

## **15. OPIC and Other Investment Insurance Programs**

On May 21, 2013, the Overseas Private Investment Corporation (OPIC) signed an Investment Incentive Agreement with Burma. In 2014, OPIC announced that its financing and insurance programs are available for Burma.

On February 6, 2014, the Export-Import Bank of the United States (Ex-Im Bank) announced that it would open for business in Burma to help finance short-term and medium-term U.S. export sales. Ex-Im Bank can now provide export-credit insurance, loan guarantees and direct loans for creditworthy export sales to Burma. Short-term insurance is available for sovereign transactions with repayment terms of 180 days or less, and up to 360 days for capital goods. Medium-term insurance, loan guarantees and loans are available for sovereign transactions with terms typically up to five years. The Ex-Im Bank is also able to provide long-term support in Burma, provided there are financing arrangements that eliminate or externalize country risks, such as asset-backed financings and structures that earn revenues offshore in a third country.

On December 17, 2013, Burma became a member of the World Bank's Multilateral Investment Guarantee Agency (MIGA), which means that direct foreign investment into the country is eligible for the agency's investment guarantees.

## **16. Labor**

Until March 2012, independent labor unions were illegal in Burma, and workers were not allowed to organize, negotiate, or in any other legal way exercise control over their working conditions. However, in October 2011, the Government of Burma passed the Labor Organization Law, which legalized the formation of trade unions and allows workers to go on strike for the first time in Burma's modern history. The Labor Organization Law took effect in March 2012 and as of January 2015 roughly 1100 enterprise level unions had been formed in a variety of industries ranging from garments/textiles to agriculture to heavy industry. Though the passage of the Labor Organization Law has engendered a nascent labor movement in Burma, there is a very low level of awareness of labor issues among workers, employers, and even government officials. Labor groups and unions as well as other civil society actors are devising awareness-raising campaigns in order to educate workers on their rights.

Burma's labor costs are very low, even when compared to most of its Southeast Asian neighbors. Older Burmese, particularly those over 65 years of age, are generally well-educated. Many studied English in mission schools during the British colonial and early independence period. The military's nationalization of schools in 1964, its discouragement of English language classes in favor of Burmese, the lack of investment in education by the Government of Burma, and the

repeated closing of Burmese universities over the past 20 years have taken a toll on the country's young. Skilled labor and managerial staff are in high demand and short supply, leading to high turnover. Most in the 15-39 year old demographic group lack technical skills and English proficiency. In order to address this gap, the Government of Burma's Employment and Skill Development Law entered into effect in December 2013. Among other things, the law provides for compulsory contributions on the part of employers to a "skill development fund", although this provision has not been implemented yet.

Although government regulations set a minimum employment age, wage rate, and maximum work hours, managers do not uniformly observe these regulations, especially in the private sector. In 2009, the Ministry of Finance and Revenue set the minimum wage at 1000 kyat (roughly USD 1.17) per day. The Ministry of Finance and Revenue has raised government salaries regularly since 2010 but has not revised the minimum wage for other workers. An average worker in Burma earns about 1500 kyat (roughly USD 1.76) per day, although this amount can be more or less depending on the type of work and whether it is in urban or rural areas. On March 22, 2013, the Government of Burma's Minimum Wage Law came into effect. The law, however, does not update or specify Burma's minimum wage, and instead created a National Committee made up of government, private sector and civil society representatives to determine a minimum wage and its application. The committee is currently working on national minimum wage survey.

In the past, the Government of Burma has utilized forced labor in its construction of commercial enterprises and for portage and military building. In addition, Burma has been condemned for recruitment and use of child soldiers in armed combat by the military and by non-state armed groups. These labor practices are inconsistent with Burma's obligations under several International Labor Organization (ILO) Conventions, leading to the imposition of sanctions against Burma in 2000. In 2012, the ILO suspended those actions because of recent progress in labor rights and reform.

In addition to passage of the Labor Organization Law (see above), in March 2012, the Government of Burma passed the Ward or Village Tract Administration Law which defines, prohibits and criminalizes the use of forced labor in Burma, and simultaneously repealed an old colonial era law that had sanctioned the practice. In December 2013, the Government of Burma ratified ILO Convention 182 on the elimination of the worst forms of child labor. The ILO continues to work with the Burmese Government on forced labor issues under the Supplementary Understanding on Forced Labor which was signed in February 2007 and renewed in January 2012, and will also engage with the Government of Burma on the issues of child soldiers and child labor. The United States strongly supports ILO activities in Burma.

Although the government does not publish unemployment figures, anecdotal evidence indicates a level of unemployment as high as 20% and underemployment in formal, non-agricultural sectors.

Although workers have held small strikes since the passage of the Labor Organization Law, the largest strikes to date occurred in February and March 2015. Approximately 900 garment workers from five Korean-owned garment factories in Rangoon's Shwe Pyi Thar industrial zone went on strike in early March, demanding higher wages. After three weeks of protests and sit-

ins, several groups of workers began marching through downtown Rangoon in mid-March, leading to a confrontation with local police forces that ended with the arrest of several workers and union leaders. Several international labor groups and NGOs as well as local media criticized the police's actions and arrest as overly zealous. As of April, four union leaders remained in the jail awaiting their trial hearings.

The government is currently working on a mandate from President Thein Sein's office to abolish all antiquated labor laws and to introduce new labor laws and regulations by June 2015. The government expects to repeal the antiquated Dockworkers Act (1948) and introduce to Parliament new laws on occupational safety and health and alien workers by June 2015. The government also hopes to amend a range of labor-related laws, including those associated with factory labor, wage payments, and shops and establishments.

On November 13, 2014, the Governments of the United States, Burma, Japan, Denmark, and the ILO formally launched the Initiative to Promote Fundamental Labor Rights and Practices in Myanmar (Initiative). The overarching goal of the Initiative is to promote a culture of compliance with fundamental labor rights. The Initiative supports two main objectives: (i) improving Myanmar's system of labor administration through comprehensive labor law reform and government capacity building on enforcement and administration; and (ii) building stakeholder engagement and strengthening labor relations. The Initiative is intended to cultivate relationships between business, labor, and civil society stakeholders and the Government of Burma. These relationships are expected to serve as the foundation for a strong system of institutionalized social dialogue, industrial relations (employers and workers), and effective government engagement with broader civil society going forward, as well as to facilitate the promotion of corporate social responsibility in Burma, drawing from the United Nations (UN) Guiding Principles on Business and Human Rights..

## **17. Foreign Trade Zones/Free Ports/Trade Facilitation**

The government has set aside 19 industrial zones, large tracts of land surrounding Rangoon, Mandalay, and other major cities, and is exploring the creation of another seven industrial zones. However, all these areas are merely zoned for industrial use and none of them come with any special services or investment incentives.

Burma enacted a Special Economic Zone Law in January 2011 that was replaced by the Myanmar Economic Zones Law which President Thein Sein ratified in January 2014. Under the newer law, investors located in a Special Economic Zone (SEZ) may apply for income tax exemption for the first five years from the date of commencement of commercial operations, followed by a reduction of the income tax rate by 50% for the proceeding five year period. Under the law, if profits during the preceding five year period are re-invested within one year, investors can apply for a 50% reduction of the income tax rate for profits derived from such re-investment. The law also mandates the formation of an SEZ central authority and a management committee. The management committee will be responsible for setting wage levels and monitoring the ratio of local and foreign labor. Under the law, local skilled labor should compose at minimum 25 percent of the total workforce in the first year, 50 percent in the second year and 75 percent in the third year. The law also stipulates the conditions needed in order to establish new zones.

There are three SEZs in Burma: one in Dawei, Tanintharyi Division; one at Kyaukphyu off the western coast of Rakhine State, and one in Thilawa on the outskirts of Rangoon. The Dawei and Kyaukphyu SEZs are being developed as deep sea ports. Initially, Thailand-based Italian-Thai Development Public Company Limited (ITD) was the project developer of the Dawei SEZ. However, after ITD failed to raise sufficient financing, the Government of Burma took over the project, and the search for a new developer continues. The governments of Burma and Japan have established a joint venture (with 51 percent Burma ownership, including a private sector Burmese business consortium) to develop the Thilawa SEZ, and the Thilawa SEZ already hosts port facilities that can accommodate larger vessels. Construction of the first factories in the Thilawa SEZ began in 2014 and is expected to be complete by the end 2015. The government has yet to award a tender for the development of the Kyaukphyu SEZ.

## 18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	Year	Amount	Year	Amount	
<b>Host Country Gross Domestic Product (GDP) (\$M USD)</b>	n/a	n/a	2013	5,000	IMF staff estimates/projections
<b>Foreign Direct Investment</b>	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
<b>U.S. FDI in partner country (\$M USD, stock positions)</b>	n/a	n/a	2013	1	<a href="http://bea.gov/international/factsheet/factsheet.cfm?Area=606">http://bea.gov/international/factsheet/factsheet.cfm?Area=606</a>
<b>Host country's FDI in the United States (\$M USD, stock positions)</b>	n/a	n/a	2013	<1	<a href="http://bea.gov/international/factsheet/factsheet.cfm?Area=606">http://bea.gov/international/factsheet/factsheet.cfm?Area=606</a>
<b>Total inbound stock of FDI as % host GDP</b>	n/a	n/a	2013	<1%	

*Table 3: Sources and Destination of FDI*

Burma has not reported any data to the IMF's Coordinated Direct Investment Survey.

The data on inward direct investment presented below is sourced from the Government of Burma's Ministry of National Planning and Economic Development's Selected Monthly Economic Indicators (January 2015) publication. A disproportionately large percentage of inward direct investment appears to come from Singapore, and this can be explained by U.S., western and other international companies routing their investments to Burma through their presence/branches in Singapore for ease of logistics and transfer. Local contacts report that Hong Kong's large share of inward direct investment can be explained by Chinese companies routing their investments to Burma through Hong Kong, and they opine that Chinese companies engage in this routing behavior so that their investments are not immediately seen as coming directly from China. Of note is Vietnam's presence on the Top Five list of inward direct investment: this is a recent phenomenon and prior to 2013-2014, Vietnam was not a top foreign investor in Burma.

Burma did not present any data on outward direct investment in the Ministry of National Planning and Economic Development's Selected Monthly Economic Indicators (January 2015) publication.

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### **Direct Investment from/in Counterpart Economy Data**

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#### **From Top Five Sources/To Top Five Destinations (US Dollars, Millions)**

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<b>Inward Direct Investment</b>			<b>Outward Direct Investment</b>		
Total Inward	6615	100%	Total Outward	n/a	100%
Singapore	3814	57%			
Hong Kong	455	7%			
United Kingdom	434	6%			
China	256	4%			
Vietnam	175	3%			
"0" reflects amounts rounded to +/- USD 500,000.					

*Table 4: Sources of Portfolio Investment*

Burma has not reported any data to the IMF's Coordinated Portfolio Investment Survey.

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