

## **2014 Burma Investment Climate Statement**

### **Executive Summary**

Since 2011, Burma has implemented significant reforms to spur economic development and create an attractive business climate that will generate more inward foreign investment. Promising initial steps addressing some of the core structural challenges facing Burma's economy include: unifying the country's multiple exchange rates, passing a new foreign investment law, reducing trade restrictions, and reforming tax policy and administration. Consequently, the international business community has renewed its interest in Burma and the unique opportunities the country presents. Burma's rich natural resources base, its market potential, its young labor force and its strategic location between India, China and the countries that make up the Association of South East Asian Nations (ASEAN) make it even more attractive to the international community.

In response to ongoing political reform, 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, while the European Union and Australia have lifted their sanctions entirely (except for an arms/military embargo). Remaining U.S. sanctions prevent U.S. persons from dealing with Specially Designated Nationals and restrict the import of Burmese-origin jade and rubies into the United States. As a result of the country's economic liberalization, reduced sanctions, and a favorable external environment, Burma's macroeconomic outlook is largely positive. Growth, led by strong performances in the services and manufacturing sectors, rose to 7.3 percent in fiscal year (FY) 2012/13, and the International Monetary Fund forecasts that growth will further accelerate to 7.5 percent in the medium term. International trade has also increased significantly in the last few years.

Despite the Burmese government's economic reforms 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 is having to prioritize which among its long laundry list of desired reforms to implement first. Currently, the country has many laws and regulations that are outdated and inadequate. Property rights are not well-established and land sequestration and land-grabbing remain major issues. Investor protection and the criteria for foreign investment are not well-defined, and Burma's weak rule of law means that it does not yet have in place the 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 data, consumer base information and other capital and financial indicators. Investment approval procedures are not transparent, are overly bureaucratic and complex, and exclude certain sectors, prohibiting foreign participation.

Although Burma has great commercial potential, the key to unlocking that potential is a sound and transparent investment environment through economic reforms that encourage inclusive opportunity and growth. The government's efforts to date point to a positive trajectory in

achieving this goal of a sound investment framework but investors should come in with “eyes wide open.”

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

Since 2011, Burma has taken significant reforms to improve its legal and regulatory framework in order to create an attractive business climate that will generate more inward foreign investment. According to the Organisation for Economic Co-operation and Development’s (OECD) 2014 Investment Policy Review (IPR) of Burma (<http://www.oecd.org/countries/myanmar/investment-policy-reform-in-myanmar.htm>), Burma “has initiated a broad reform process to improve its legal and regulatory framework for investment to create a more favorable investment climate [and] the new Foreign Investment Law [signed by President Thein Sein on November 3, 2012 with implementing rules entering into force on January 31, 2013] and its accompanying implementing rules mark a milestone towards a more open and secure legal environment for investment but are only the first step in a long process.”

The stated objectives of the 2013 Foreign Investment Law are to support:

- The extraction and 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;
- The advent of businesses and investments which are in line with established international practices and norms.

The law’s stated objectives point to a positive, forward-thinking approach by the government. In general, investors feel that the new Foreign Investment Law offers some improvements over the 1988 Foreign Investment Law by clearly spelling out certain responsibilities and powers granted to the government with regards to approval of investments. Nonetheless, the OECD notes that the new 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 also 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 addition to the general problems described above, 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 implementing rules also restrict foreign investment in certain agriculture and farming businesses, certain animal husbandry businesses, 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 joint ventures in restricted sectors, although individual ownership requirements can be established by the Myanmar Investment Commission (MIC) (see below).

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. For example, in 2013, the government opened a tender for the provision of telecommunication services to foreign companies, without any joint venture or local partnership requirements. The tender, widely regarded as fair and transparent, led to the government's decision in June 2013 to award operating licenses to Norwegian telecommunications company Telenor and Qatar-based Ooredoo. MIC's discretionary authority thus allowed Telenor and Ooredoo to engage in the otherwise prohibited telecommunications sector.

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."

In addition to providing the MIC with broad discretionary authority as evidenced above, the Foreign Investment Law also outlines the procedures the MIC must take in considering foreign investments. Investment approvals are made on a case-by-case basis, and interested foreign investors must first submit a proposal through the MIC, after which the MIC will vet the proposal and then vote on its approval. Final approval comes from U Win Shein, Chairman of the MIC. 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 new import and export licenses from the Ministry of Commerce. Foreign companies may register locally without an MIC license, but in which case they are not entitled to receive the benefits and incentives provided for in the Foreign Investment Law.

In April 2013, the MIC's secretariat, the Directorate of Investment and Company Administration (DICA) launched a service center in Rangoon to facilitate company registration for foreign investors. The center serves as a one-stop shop, hosting representatives from relevant ministries. In order to further promote investment, the government intends to completely relocate DICA to Rangoon by mid-2014.

Please find below contact information for the MIC:

Chairman U Win Shein  
Myanma Investment Commission  
Office No.32, Nay Pyi Taw  
Myanmar  
Tel: 067-406075, 067-406342, 067-406122 (Director General)  
Contact: U Aung Naing Oo, Director General, Directorate of Investment and Company Administration (DICA)

The government taxed **overseas remittances** prior to 2012. This contributed to the popularity of informal money transfer networks (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. Banks began introducing remittance services during 2012 and the volume of such formal transfer is low but growing, according to local bank managers, who forecast that they will overtake hundi remittances in two or three more years. 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.

In March 2014, the government passed the Union Taxation Law, which came into effect April 1, 2014. The law contains provisions on **capital gains** as well as **income tax rates**. Observers opine that the government introduced the new law, that includes some lowered tax rates and new tax breaks, as an incentive to reign in endemic tax evasion and illegal trade.

The Union Taxation Law stipulates income tax rates. Incomes taxes are payable in kyat and assessed at the following rates:

- between 1 to 2 billion kyat 0%
- between 2 to 5 billion kyat 5%
- between 5 to 10 billion kyat 10%
- between 10 to 20 billion kyat 15%
- between 20 to 30 billion kyat 20%
- over 30 billion kyat 25%

The law states that Burmese citizens residing abroad must pay, in foreign currency, a 10% income tax on their total income earned abroad (with certain exceptions). A company registered and incorporated in Burma must pay a 25% income tax on its total income.

Under the Union Taxation Law, **capital gains** from the sale and transfer of assets of companies conducting business in oil and gas sector is payable in kyat, even if the capital gain was in a foreign currency. Capital gains are assessed at the following rates:

- up to 100 billion kyat 40%
- between 100 and 150 billion kyat 45%
- over 150 billion kyat 50%

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.

Although the majority of import/export procedures have not changed, the government has moved from a discretionary to an automatic licensing system since 2010/2011. As a result, licenses are no longer issued only in the administrative capital of Nay Pyi Taw, about 230 miles north of Rangoon, and the time required for obtaining licenses has decreased markedly since mid-2011 from approximately two weeks to 1 day for most items. Most exports permits are issued in Rangoon but some can also be issued by government branch offices at certain border towns such as Muse, Shwe Li and Myawaddy; import permits are issued in both Nay Pyi Taw and Rangoon, with wait times ranging from approximately 1 day in most cases to a maximum of one week.

**TABLE 1:** The following chart summarizes several well-regarded indices and rankings.

Measure	Year	Rank or Value	Website Address
TI Corruption Perceptions Index	2013	157 of 177	<a href="http://cpi.transparency.org/cpi2013/results/">http://cpi.transparency.org/cpi2013/results/</a>
Heritage Foundation’s Economic Freedom Index	2013	162 of 177	<a href="http://www.heritage.org/index/ranking">http://www.heritage.org/index/ranking</a>
World Bank’s Doing Business Report “Ease of Doing Business”	2013	182 of 189	<a href="http://doingbusiness.org/rankings">http://doingbusiness.org/rankings</a>
Global Innovation Index	2013	Not ranked	<a href="http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener">http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener</a>

World Bank GNI per capita	2012	Not included	<a href="http://data.worldbank.org/indicator/NY.GNP.PCAP.CD">http://data.worldbank.org/indicator/NY.GNP.PCAP.CD</a>
OECD FDI Regulatory Restrictiveness Index	2013	0.356 on a scale of 0-1	<a href="http://stats.oecd.org/Index.aspx?datasetcode=FDIINDEX#">http://stats.oecd.org/Index.aspx?datasetcode=FDIINDEX#</a>

## 2. Conversion and Transfer Policies

In past years, foreign investors have encountered difficulties in legally transferring their net profits abroad. U.S. sanctions imposed in 2003 prohibited the export or re-export of financial services to Burma, which eliminated dollar denominated transactions and essentially cut off Burma from the world's financial system. However, there have been several major changes to the financial and banking system in Burma over the last two years. These changes, in turn, have led to increased foreign bank participation in addition to the entrance of U.S. and foreign financial service providers to the Burmese market.

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 2014 was approximately between 970 to 990 kyat / dollar.

Currently, the Central Bank of Myanmar allows 11 domestic banks to conduct international currency transactions. Although under current Burmese law foreign banks are not allowed to operate in Burma, they are allowed to set up representational offices to explore the market, and to date, according to the Myanmar Central Bank, there are currently 35 such representational offices. In addition to foreign bank presence in Burma, U.S. companies such as Visa and MasterCard have also entered the market, and to date, there are no less than eight banks that allow automated teller machine (ATM) withdrawals using Visa and MasterCard.

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.

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. According to press reports and statements by government officials, the Central Bank of Myanmar plans to allow a limited number of foreign banks to open subsidiaries

or branches in Burma in 2014, though the scope of financial services which they can provide will likely be limited.

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. According to official figures published by Burma's Central Statistical Organization, total bank deposits by the end of November 2013 were approximately \$10.4 billion. As these limits 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.

### 3. Expropriation and Compensation

According to the OECD 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."

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 beginning to limit – or at least reduce the overt exercise of – such practices.

### 4. Dispute Settlement

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 tried to stipulate local **arbitration** in all contracts it signed with foreign investors.

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.

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.

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.

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.

## **5. Performance Requirements and 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 new 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.

Article 24 of the Foreign Investment Law states that new foreign investment funded enterprises must have Burmese citizens comprise 25 percent of their total skilled employees/workforce by the first two years of operating, 50 percent by the subsequent two years, and 75 percent by the third two-year period. The law grants the MIC power to extend the time limit to employ Burmese workers for “knowledge-based business.”

Any enterprise operating under the Foreign Investment Law or the Myanmar Companies Act must pay **income tax** at a 25 percent tax rate effective April 1, 2012. Withholding tax on royalties and interest is 15 percent for resident foreigners and 20 percent for non-resident foreigners. Tax collection in Burma is, in practice, extremely lax, but foreign investors are an easy target for cash-strapped tax authorities. The Burmese fiscal year ends March 31; tax returns are due by June 30.

The recently-passed **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.

## **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, foreign investors may, depending on the type and value of investment, lease land for a period of up to 50 years and renewable for a further two 10-year periods. In order to do so, the foreign entity must first obtain permission from the MIC in order to lease land in Burma. In addition, a private entity can establish, buy, sell, and own a business only with the review and approval of the MIC. The Government of Burma has also drafted a new condominium law (to date, not yet passed) that would allow foreigners to purchase condominiums, but under strict rules that limit the condominium developer from selling and transferring no more than 40 percent of the condominiums on the sixth floor and above of the building to foreigners.

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

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.

In addition to deficient rule of law, 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.

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 during 2014. 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 World Trade Organization (WTO) has delayed required implementation of the

**Trade Related Aspects of Intellectual Property (TRIPs) Agreement** for Least Developed Nations – including Burma – until 2021.

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

Burma lacks **regulatory and legal transparency**. Though the current government has made efforts to become more transparent, 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. In 2012 and 2013, the Government of Burma did publish new regulations and laws in government-run newspapers and "The Burma Gazette" more frequently than in the past.

Burma's written health, environmental, tax, and labor laws do not impose a major burden on investment. However, the unpredictable nature of the regulatory and legal situation – and irregular enforcement of existing laws -- makes investment in Burma extremely challenging without good and well-connected local legal advice.

## **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 has one **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. However, 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 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, by 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.

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

As noted, the Government of Burma reserves for state-owned enterprises many lucrative sectors and sectors deemed sensitive. According to the 1989 State-Owned Economic Enterprises Law, state-owned enterprises have the sole right to carry out certain economic activities (see above in Section 1).

**Corporate governance** of state-owned enterprises is not transparent, and state-owned enterprises are 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.

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 2014.

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 residence 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.

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.

## **12. Political Violence**

There were no instances of **political violence** against Americans in 2013. 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. 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 many including 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. 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 have flared up since June 2011.

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. The national government reports that it is attempting to address and quell the violence.

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

**Corruption** is endemic 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 2013 Corruption Perceptions Index, Transparency International rated Burma 157<sup>th</sup> out of 177 countries, though this was a jump up from its 2012 rating of 172<sup>nd</sup> out of 177. In their Doing Business 2014 report, the World Bank and the International Finance Corporation ranked Burma 182 out of 189 countries on ease of doing business, citing corruption as a major disruptive force in conducting business in the country. 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 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).

### 14. Bilateral Investment Agreements

Burma has signed several **bilateral investment agreements**, also known as "Protection and Promotion of Investment" agreements, with the Philippines, China, Laos, Vietnam, Thailand, Kuwait, and India. Observers opine that these agreements have had little impact on enhancing incoming investment from other countries in the region. More recently, on December 15, 2013, Japan and Burma signed a bilateral investment agreement, and in January 2014, Burma signed an investment guarantee treaty with Korea. On May 21, 2013, the United States and Burma signed a Trade and Investment Framework Agreement (TIFA). It is still too early to tell what impact, if any, these agreements will have in enhancing investment in Burma. Burma has also engaged in investment treaty negotiations with Japan, Russia, Mongolia, Bangladesh, Korea, Iran, Israel, Serbia, and Hong Kong, China.

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.

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

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.

Overseas Private Investment Corporation (OPIC) programs are not yet available for Burma.

## **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 by March 2014, roughly 900 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, due to the former suppression of the labor movement, there is a very low level of awareness of labor issues among workers, employers, and even government officials, although 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. Nonetheless, 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 \$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 \$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 mandates the creation of a National Committee made up of government, private sector and civil society representatives to determine a minimum wage and its application.

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. Because of these practices, the ILO had imposed sanctions against Burma since 2000. Recent progress in labor rights and reform, however, led to the ILO suspending its sanctions against Burma in June 2012.

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. The IMF estimates a 4.02% unemployment rate in 2013.

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

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 quickly replaced by the **Myanmar Economic Zones Law** which President Thein Sein signed into law on January 23, 2014. As noted above, under the new law, investors located in a 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 new 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 Kyauk Phyu off the western coast of Rakhine State, and one in Thilawa on the outskirts of Rangoon. The Dawei and Kyauk Phyu 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 aim to establish a joint venture (with 51 percent Burma ownership) to develop the Thilawa SEZ, although the Thilawa SEZ already hosts port facilities that can accommodate larger vessels. Construction of the first factories to be built in Thilawa will begin in May 2014.

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

Investment figures compiled by the Burmese government include only investments approved by the MIC, only a fraction of which go forward. No statistics exist for disinvestment. The figures do not appear to include many small and medium Chinese investments.

Based on data available at the beginning of January 2014, cumulative foreign direct investment approved by the MIC totaled 655 projects, valued at \$45.33 billion, 8.4 percent higher than the cumulative total listed at the end of December 2012, US\$ 41.49 billion. The MIC expects the country's telecommunications and energy sectors be a significant driver of overseas business investment in 2014 and beyond.

According to the latest Government of Burma statistics provided by DICA, FDI approvals for Burmese FY 2013-2014 (April-March) totaled US\$ 4,107.055 million with 123 permitted enterprises. Leading sectors for this fiscal year were manufacturing (45 percent), telecoms (29 percent) and hotels/tourism (10 percent), in addition to investments in oil and gas, mining, transportation and real estate. This is a significant increase in recorded FDI approvals from FY 2012-2013, which totaled US\$ 1419.467 million with 94 permitted enterprises. Leading sectors in the last fiscal year were power, oil and gas, manufacturing, and mining.

The vast majority of approved new investment since 1997 has come from Asian countries. Nonetheless, in 2012, the United States, the United Kingdom, the European Union, and Australia all eased their bans on investment in Burma. On July 11, 2012 the United States Department of Treasury issued General License No. 17 which authorizes new U.S. investment in

Burma in all sectors with the exception of investment with the Burmese Ministry of Defense, state or non-state armed groups (which includes the military), or entities owned by the foregoing. Moreover, the core legal authorities underlying the U.S. sanctions remain in place. U.S. persons are still prohibited from dealing with blocked persons, including both listed Specially Designated Nationals (SDNs) as well as any entities 50 percent or more owned by an SDN. The Treasury Department's Office of Foreign Assets Control (OFAC) publishes a list of SDNs available at [www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx](http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx).

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 requires all new U.S. investment in excess of \$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 \$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.

According to Government of Burma statistics for 2013, in stock terms, the United States is the thirteenth largest foreign investor in Burma, with 15 approved projects totaling \$243.6 million, which amounts to 0.54% of the total foreign direct investment in Burma.

Major non-U.S. foreign investors in Burma are concentrated in resource extraction and include: Petronas (Malaysia), Total (France), PTTEP (Thailand), Shin Satellite (Thailand), Keppel Land (Singapore), Daewoo (South Korea), China National Construction and Agricultural Machinery Import and Export Co. (PRC), Gas Authority of India Ltd. (GAIL) (India), CNPC (PRC) and the China International Trust and Investment Corporation (PRC).

Government statistics do not report external investments made by Burmese companies. However, there is anecdotal information that some wealthy Burmese individuals and small family businesses have made investments in China and in neighboring ASEAN countries, especially Singapore.

**TABLE 2:** Foreign investment approvals as of January 1, 2014 (by sector)

Sector	Permitted Enterprises	
	No.	Approved Amount (in millions USD)
Power	7	19284.432
Oil and Gas	115	14372.272
Manufacturing	312	3710.349
Mining	69	2862.424
Hotel and Tourism	51	1797.921
Real Estate	22	1229.150
Transport & Communication	18	1217.016
Livestock & Fisheries	28	365.974
Agriculture	13	203.020
Industrial Estate	3	193.113
Other Services	15	54.392
Construction	2	37.767
<b>Total</b>	<b>655</b>	<b>45327.830</b>

**TABLE 3:** Cumulative foreign investment approvals as of January 1, 2014 (by country)

Particulars	Permitted Enterprises		
	No.	Approved Amount (in millions USD)	%
China	56	14227.599	31.39
Thailand	70	9995.0712	22.05
Hong Kong	68	6477.275	14.92
Singapore	103	3802.415	8.39
United Kingdom	67	3149.349	6.95

Republic of Korea	86	3047.303	6.72
Malaysia	46	1625.861	3.59
Vietnam	7	513.186	1.13
France	3	474.360	1.05
Japan	43	321.339	0.71
India	12	299.540	0.66
The Netherlands	7	249.136	0.55
United States	15	243.565	0.54
Indonesia	12	241.497	0.53
Philippines	2	146.667	0.32
Australia	15	99.776	0.22
Russia Federation	2	94.000	0.21
Austria	2	72.500	0.16
Panama	2	55.101	0.12
United Arab Emirates	2	45.500	0.10
Canada	16	41.883	0.09
Mauritius	2	30.575	0.07
Germany	2	17.500	0.04
Republic of Liberia	2	14.600	0.03
Denmark	1	13.370	0.03
Cyprus	1	5.250	0.01
Luxembourg	1	5.200	0.01
Macau	2	4.400	0.01
Brunei Darussalam	3	4.273	0.01
Switzerland	1	3.382	0.01
Bangladesh	2	2.957	0.01
Israel	1	2.400	0.01

Sri Lanka	1	1.000	0.00
<b>Total</b>	<b>655</b>	<b>45237.830</b>	<b>100.00</b>

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