One year on: Myanmar under the National League for Democracy Government

It has been a year since opposition leader Aung San Suu Kyi took office as State Counsellor in Myanmar, becoming the de facto head of the country's first elected government in half a century. How is her National League for Democracy-led NLD government dealing with the formidable challenge of transforming the country?

This bulletin explains what potential investors need to know about Myanmar's current economic course, the development of new nation-building institutions, and major projects that are planned or underway.

1_A smooth transition to power

Myanmar experienced a welcome period of political stability following the landslide election of a new government in November 2015. The success of the NLD in governing without major setbacks represents a watershed in the country's history. Within months of coming to power, the office of the President issued a directive severely limiting gifts to government officials, signalling that widespread corruption would not be tolerated. Key government agencies followed with a series of 'quick win' announcements, including initiatives to stimulate private sector investment. Ministries announced 100-day plans, among them a move by the Directorate of Investment and Company Administration (DICA) to lower the cost of company registration fees. The Ministry of Planning and Finance launched the State's economic policy – similar to the NLD's campaign manifesto – and DICA later published its own supporting economic policy. Although short on details, both policies will play a vital role in guiding the government's economic reform agenda and supporting private sector development over the next four years.

By the end of the parliamentary session in March 2017, the NLD-dominated parliament, or Hluttaw, had enacted 26 laws, including the Myanmar Investment Law 2016. For further details, please see our bulletin entitled "A big week for Myanmar: A new investment law and the termination of U.S. Sanctions". In 2017, the Myanmar Investment Commission (MIC) introduced reforms that would designate economic development zones, and promoted sectors that will be used to grant in come tax exemptions. The zones will also allow for investments of up to USD5 million to be approved by state and regional MICs, rather than at the national level. Combined with the new investment law and its associated rules, published on 30 March 2017, this forms the legal framework for Myanmar's new investment regime. For further details, please see our bulletin entitled "Myanmar's New Investment Regime". In addition, the Legal Affairs and Special Issues Assessment Commission has prioritised 48 laws for amending or drafting, which the Hluttaw is yet to enact.[1] In October 2016, in response to significant political progress, the Obama administration rescinded the National Emergency designation it had imposed on Myanmar. This removed many sanctions, including the Myanmar-specific list of 'Specially Designated Nationals' whose assets had previously been blocked and who were prohibited from dealings with the United States. For further details, please see our bulletin entitled "The U.S. Department of Treasury, OFAC ends its "Burma Sanctions Program"".

Despite these developments, several factors contributed to Myanmar experiencing a slowdown in foreign direct investment, higher inflation and reduced economic growth forecasts for the fiscal year to March 2017.[2] These included the agriculture sector's slow recovery from nationwide floods in 2015, and the new government's decision to focus on analysing the state of the economy rather than taking immediate corrective measures. Other reasons for the mixed economic performance include competing demands of the peace and national reconciliation process, entrenched bureaucratic practices, the variable abilities of incoming senior officials and highly centralised decision making.

On coming to office, the government set up at least ten institutional bodies, including the now-reformed MIC, which are designed to boost private sector development and steer the economy.[3] Analysis of their mandate, composition and responsibilities suggest that the government's economic goals are privatisation, creating public-private partnerships (PPPs), developing the private sector, reforming the insurance market and growing the Yangon city area and special economic zones. Developments include a 40% capital investment by the Yangon Region government (YRG) in a PPP to run a streamlined bus system. Further, the Private Sector Development Committee, led by Vice President and military nominee U Myint Swe, regularly meets with leading Myanmar businesses to discuss and address the challenges faced by the business community. The extent to which these initiatives spur economic growth across the country remains to be seen.

1 The list of laws prioritised for enactment by the Legal Affairs an Special Issues Assessment Commission can be accessed at http://www.myanmarparliament.gov.mm/en/node/3622.

2 The International Monetary Fund has projected full-year growth of 6.5% for the 2016–17 financial year (compared with 7.3% over the previous year). It also forecasts inflation to be 9% and the budget deficit to increase to about 6.7% of GDP. See http://www.imf.org/en/News/Articles/2016/10/28/PR16469-Myanmar-IMF-Staff-Praises-Progress-in-Economic-Reform In addition, total foreign direct investment to Myanmar in the 2015–16 financial year was USD9.5bn. By the end of January 2017, total foreign direct investment had fallen to USD5.8bn. See http://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/fdi_sector_yearly.pdf.

3 These include the Financial Commission, Privatisation Commission, National Planning Commission, National Economic Coordination Committee, Myanmar Investment Commission, Monitoring Committee for Ayeyarwady Hydropower Projects, Myanmar Special Economic Zone Central Body, Private Sector Development Committee, Hanthawaddy International Airport Project Steering Committee and Yangon City Development Committee.

2_What happens next?

Myanmar already has several nation-building studies and master plans at its disposal. These have been developed by multilateral agencies, according to sector and key geographical areas, and include priorities for major new policies and projects. The government is also more prepared than it was a year ago to implement broad economic policies alongside political reforms to improve transparency and accountability. One cannot prevail without the other. In the future, these two areas are likely to converge, as is occurring in Yangon. Ideally, a single overarching policy or plan will be developed for each sector or geographical area and endorsed by the national government. This would create the parameters for relevant ministries or state and regional governments to make decisions and implement reforms closer to the ground.

Institutional mechanisms – including commissions, committees and bodies relevant to the private sector – comprise a mix of senior technocrats and NLD party members, and support the development of more specific plans for each sector or area. Political willpower is needed to successfully and quickly address competing priorities and improve the country's economy. Success also depends on having qualified leadership, decentralised decision making and competent technocrats with diverse expertise, as well as technical advisers across the government and bureaucracy. While critics argue that loyalty rather than competence appears to have been a criterion for appointments, the government does not rule out a reshuffle of key positions during its second year in office and later.[4]

Taking stock and looking ahead, this paper identifies several key projects that could be of interest to investors.

2.1 Projects in the Yangon region

The Yangon Chief Minister, U Phyo Min Thein, is poised to announce more projects in the former capital, building on the successful reform of the bus system. This is despite an initial decision to halt ongoing and approved high-rise constructions in the city. The YRG intends to amalgamate a 2040 master plan for Yangon produced by the Japan International Cooperation Agency (JICA) with plans by the Korean International Cooperation Agency, France's Agence Française de Développement and the UK Department for International Development.[5]

Potential infrastructure projects include developing JICA's central business district – focusing on the area around Yangon Central Railway Station; adding two urban mass rapid transit system railroads[6] and a new deepwater port; and creating a SEZ in three southern townships, which would be connected to the city of Dala by a six-lane road and a bridge crossing the Yangon River. This would be Yangon's second SEZ (a zone has been created in Thilawa) and so far, both the port and SEZ have reportedly been approved by the Myanmar government. The government is also considering building an international airport, although its feasibility is uncertain since the Hanthawaddy International Airport in the Bago Region, about 77 kilometres from Yangon, is also going ahead as a key government priority.[7] Recently, the YRG proposed using a PPP to create a new city in the southwest of Yangon, although the Yangon Region Parliament is yet to approve this project. In March 2017, the Ministry of Construction transferred 34 industrial zones, 97 wards and government-reserved land to the YRG, essentially allowing it to manage the city's land use.[8]

To address Yangon's rising energy consumption and insufficient supply, the YRG plans to reform electricity production, transmission and distribution. However, current laws only allow state or regional governments to manage small and medium electricity generation installations up to 30 megawatts. Reforms could include issuing permits for generation and distribution. In addition, Schedule Two of the national Constitution also only allows states and regions to enact legislation covering small and medium electric power production and distribution installations that are not connected to the national grid. The YRG is drafting a Yangon Electricity and Energy Master Plan that would raise the generation capacity cap and attract investors. It is

4 State Counsellor Daw Aung San Suu Kyi acknowledged that some ministers have progressed more than the others, and some may not be relevant for the position. She further mentioned that [the government] shall change [this] if necessary. State Counsellor's first anniversary speech, Myanma Alin newspaper, 31 March 2017. v

5 http://www.mmtimes.com/index.php/business/24405-jica-updates-2040-plan-for-yangon-development.html.

6 Interview with the Minister for Transport and Communications, Myanma Alin newspaper, 26 March 2017. http://www.burmalibrary.org/docs23/mal%2026.3.17.pdf.

7 http://www.mmtimes.com/index.php/national-news/yangon/24198-yangon-region-to-get-second-special-economic-zone.html and Interview with the Minister for Transport and Communications. Myanma Alin newspaper 26 March 2017. http://www.burmalibrary.org/docs23/mal%2026.3.17.pdf.

8 Posted by Yangon Chief Minister U Phyo Min Thein on his Facebook page.

uncertain whether this amendment would simply make an exception for Yangon or would apply across all regions and states. In any case, the fact that Yangon accounts for 50% of Myanmar's electricity consumption will present significant investment and financing opportunities if the law is changed.[9]

2.2 Insurance market reform

The Myanmar government plans to open up the nation's struggling insurance market to foreign firms before the end of 2017, liberalising a sector that is crucial to economic development. The government may also relax some restrictions on local insurance companies.[10] In March 2017, the Insurance Business Regulatory Board issued a notification allowing provisional permits for foreign insurance companies to operate in the SEZs. Future reform efforts could include the establishment of an insurance industry association to represent all market participants, including foreign insurance companies. Licences will likely be granted to foreign insurance companies via representative offices (as was the case with Myanmar's banking liberalisation), but the terms and level of ownership are unclear. The rules governing foreign investment or joint ventures with a Myanmar company, and the types of insurance involved, are still to be announced. However, it is likely that restrictions will be imposed initially to protect against the possibility of an insurance market oversupply. The Upper House of Myanmar's Parliament, or Amyotha Hluttaw, is coordinating with relevant government stakeholders to review the existing insurance business law, so no immediate changes are expected.[11]

2.3 PPPs for infrastructure and power

Myanmar's Privatisation Commission has a mandate to monitor and assess various types of PPPs.[12] In addition, the Ministry of Planning and Finance, with the assistance of the United Nations, is drafting a national policy on such partnerships. The Asian Development Bank recently signed an agreement with the Myanmar government, under which it will provide strategic and advisory services relating to transport projects. JICA has also supported this approach.

Given the government's preference for PPPs, infrastructure (under the purview of the Ministry of Transport and Communication, and the Ministry of Construction) and power will likely be key sectors. This view is supported by the State Counsellor's one-year anniversary speech at the end of March 2017, which recognised the importance of improving the transport sector and electricity supply, creating job opportunities and attracting investors.

The Ministry of Transport and Communication's five-year development priorities include roads, railways, inland water transport, airports and ports. These form part of the National Transport Master Plan (2016–2040) developed with the assistance from JICA. The ministry has a track record for corporatisation, given its role in creating the Myanmar National Airline, which was based on a law enacted in 2014. The ministry also attempted to corporatise the Myanmar Port Authority and Inland Water Transport Board, but these have not been completed due to challenges involved in transferring old debts and pensions. The ministry is working to corporatise Myanmar Post and Telecommunications, a leading mobile service provider. It is also developing a transaction document template for PPP contracts for key ports projects.

The infrastructure sector continues to attract investors with portfolios that includes major projects, such as existing ports along rivers and deep sea ports, and extensive land throughout Myanmar, as well as the ability to obtain technical assistance from local agencies. Furthermore, the government's economic policies are designed to build infrastructure that connects Myanmar's rural areas with commercial hubs, and create jobs and learning opportunities.

Severe electricity shortages will continue to be a priority for the Myanmar government, as well as a major challenge for investors and households. In the absence of further changes, the National Electrification Plan (NEP), which aims to achieve full electrification by 2030, will continue to guide the power sector in Myanmar. The NEP aims to install capacity of nearly 24,000 megawatts by 2030, using a mix of hydro, gas, coal and renewable energy. As recent as April 2017, the Permanent Secretary reiterated that Myanmar will need an energy mix that includes hydro and coal, and that the government would take steps to minimise any resulting social and environmental impact.

The Ministry of Electricity and Energy's near-term plan for electrification includes rehabilitating existing hydropower stations; constructing or maintaining new distribution plants; maintaining the power grid; and importing and selling liquefied natural gas (LNG) for gas-fired power

9 Text needed

10 http://www.mmtimes.com/index.php/business/22703-insurance-market-will-be-open-to-foreign-firms-in-2017-ministry.html.

11 Interview with the Upper House of the Parliament (Amyotha Hluttaw). http://www.burmalibrary.org/docs23/mal%2013.3.17.pdf.

12 As in other polices published by the government, draft PPP policy lists almost all the sectors for potential PPPs and does not mention specific projects.

plants in the medium term. Recently, an LNG feasibility study was completed with technical assistance from the World Bank. The announcement of LNG tenders and licensing regulations are expected to follow. The medium-term LNG industry is likely to involve importing, unloading and storing LNG through floating storage regasification units and their subsequent transportation. Three new pieces of legislation are anticipated that would govern the LNG industry, off-grid and mini-grid electrification projects, and the creation of a regulatory body to set electricity tariffs. (See this report's 'Conclusion' for more details.)

2.4 Banking

The Myanmar government's key banking priorities include establishing monetary and fiscal stability, developing a stronger financial system that can more easily lend to businesses and households, and liberalising the agriculture and financial sectors.[13] Since gaining independence in 2013, the Central Bank of Myanmar (CBM) has sought to achieve its declared objectives, including monetary stability, financial system stability, and payments and settlement system stability. It has used reserve money targeting as part of its approach to monetary policy and controlling inflation. Twenty deposit auctions were held over the last year, some online using the CBM-Net system, which connects the Central Bank with domestic banks. The system has played a key role in modernising the banking system over the last year, although it was established in the final months of the previous administration. The new system has also been crucial in helping the CBM achieve its payments and settlement system objectives by facilitating real-time gross settlements and automated cheque clearings.

As of 31 January 2017, Myanmar had 13 licensed foreign bank branches, 24 Myanmar-owned private banks (with 1,475 branches), 16 private financial companies, 45 representative offices of foreign banks, 3,219 automatic teller machines and 4,584 point-of-sale machines. Although the government is yet to announce any further liberalisation plans for foreign banks, the Minister for Planning and Finance, in his capacity as chair of the MIC, has noted that local banks will receive assistance, not protection, with the aim of fostering competition for better-quality services.[14]

In addition to being allowed to use mobile banking services, domestic banks have been permitted to issue customers with payment cards including VISA, MasterCard, JCB and Unionpay International cards. During the last financial year, the CBM published instructions to establish a more systematic domestic interbank lending system through CBM-Net. It also permitted swaps and forward trades. Other initiatives being implemented with foreign assistance include moving towards using the interbank rate to determine the exchange rate rather than using the current system, under which the CBM sets the rates. Another achievement was Myanmar's first-ever treasury bonds auction, held in September 2016 as part of the CBM's effort to help the government manage its budget deficit.

The Myanmar government is auditing state-owned banks before restructuring and eventually selling stakes to foreign banks.[15] Compared to the combined banking assets of all 24 domestic private banks, the four state-owned banks' share has rapidly dropped from 67% in March 2013 to 46% in March 2016.[16]

2.5 Special economic zones (SEZs)

SEZs are attractive for foreign investors since they offer a clear regulatory framework and allow 100% foreign ownership as well as certain tax privileges. Of Myanmar's three SEZs, the Thilawa SEZ in Yangon has been a success story. The top three investors – from Singapore, Thailand and Japan – have invested more than USD1bn since the end of 2014.[17] The Myanmar government recently announced that 95% of Zone A (405 hectares) has been occupied, and it is being expanded into Zone B (101 hectares), with arrangements for additional electricity supply.[18]

Progress in two other SEZs, Kyauk Phyu and Dawei, has been hampered by challenges relating to acquisition of land, displacement of local communities, environmental impacts, and problems with compensation and insufficient financing. Vice President and NLD nominee U Henry Van Thio, who

13 From A&O comparison of the NLD manifesto and the State's economic policy. The former mentioned the independence of the CBM but the latter omitted it. The omission is probably because making CBM independent, in reality, is both a hurdle and a compromise with the military, because the CBM governor is identified by Reuters as 'the last junta-era civilian official to remain in a senior post'. http://www.reuters.com/article/us-myanmar-centralbank-idUSKCN10W10R

14 http://www.mmtimes.com/index.php/national-news/25474-govt-will-assist-not-protect-local-banks.html.

15 https://www.bloomberg.com/news/articles/2017-03-08/myanmar-to-vet-state-banks-to-protect-asia-s-top-growing-economy.

16 https://www.rolandberger.com/publications/publication_pdf/roland_berger_study_banking_myanmar_sept.pdf.

17 http://www.news-eleven.com/local/341432.

18 http://www.mmtimes.com/index.php/business/25156-thilawa-extends-to-zone-b.html

is also Chairman of the Myanmar SEZ Central Body, visited the Dawei SEZ in late 2016 and 2017, along with a number of union ministers. U Henry Van Thio has also formed a taskforce led by the union government's Minister for Commerce and restarted Dawei SEZ coordination meetings. In January 2017, members of the Tanintharyi Region government and Dawei SEZ Management Committee, which is responsible for the Dawei SEZ, visited Tokyo to discuss Japan's investment.[19] These trips, and the subsequent visit to Myanmar and Dawei by Deputy Prime Minister of Thailand Somkid Jatusripitak, also indicate that renewed high-level efforts and negotiations to make progress are already under way.

The Myanmar government's priorities for the initial phase of the Dawei SEZ over the next five years include constructing a two-lane highway to the Myanmar–Thai border using a potential loan of around USD138m from the Thai government; establishing a deepwater port, and measures to improve local electricity supply. As already noted, the Yangon region may also develop a fourth SEZ featuring a deepwater port.

19 http://www.mmtimes.com/index.php/business/24795-tanintharyi-officials-say-work-on-dawei-sez-could-restart.html.

Conclusion

In her first anniversary speech, State Counsellor Aung San Suu Kyi, the de facto head of state, mentioned that creating job opportunities was the core of the government's economic policy going forward, and that it would prioritise improving Myanmar's infrastructure and power sector to attract investors. It is our view that if the bureaucratic challenges mentioned above are addressed as a way of implementing this political commitment, the Myanmar economy will regain its momentum towards growth in the years ahead. Meanwhile, meaningful engagement with the private sector, including the chambers and trade missions, as well as with the government remains important for investors to develop their networks and build profile. Further, entry into Myanmar is best navigated with well-informed contextual and legal insight. Allen & Overy opened its office in Myanmar in 2013. Our in-depth knowledge of Myanmar government's practices, key legal risks and the regulatory framework has positioned us well to assist our clients.

The transition in Myanmar is not merely about a change of government. It is also a process of restoring democracy and restructuring an outdated economy and institutions after decades of rule via a close-knit military chain of command. It took nearly two years for the previous administration, an offshoot of the military with history of governing and a bureaucratic system at its command, to announce the telecommunications licence tender, the most important foreign investment in Myanmar to date. It is unrealistic to expect that the NLD government – a nascent democratic institution with political inspirations that revolve around peace and human rights – to implement major economic reforms within its first year. While we recognise that the economy and investment have been slow to grow under the NLD government, the overall legal reform process has been on track, with more laws to strengthen the legal framework for investment under way.

Priority Legislation

While the list below is not exhaustive, the following laws are priorities for the YRG, Government ministries, and the Legal Affairs and Special Issues Assessment Commission of Myanmar.

Sr.	Legislations
Corporate	
1.	Industrial Zone Law
2.	Myanmar Investment Rules (Myanmar Investment Law 2016)
3.	Myanmar Privatisation Law
4.	Myanmar Companies Act
Infrastructure and Construction	
5.	Condominium Rules (Condominium Law 2016)
6.	National Housing Development Law
7.	Bridges Law
8.	Building and Construction Sector Development Law
9.	Road Transport Board Law
10.	Myanmar Aviation Authority Law
11.	Urban and Zoning Development Law
12.	Road Users Law
Trade	
13.	Competition Rules (Competition Law 2015)
14.	Anti-Dumping Law
15.	Countervailing Law
16.	Safeguard Law

Sr.	Legislations
Intellectual Property	
17.	Trademark Law
18.	Copyright Law
19.	Patent Law
Telecommunications and Media	
20.	Television and Broadcasting Law 2015 Amendment Law
21.	Information and Technology Law (IT Law)
Procurement	
22.	Public Finance Management Law
23.	Procurement Law
24.	Foreign Workers Law
Power	
25.	Electricity Law 2014 Amendment Law
26.	Electricity Rules (Electricity Law 2014)
27.	Petroleum and Petroleum Products Law
28.	Rural Electrification Law
Banking	
29.	Protection of Related Parties in relation to a Financial Institution Law
30.	Credit Information Law
Mining	
31.	Myanma Mines Rules (Myanmar Mines Laws 2015)

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