

# Myanmar

## 1. Overview

Since the establishment of the civilian government in March 2011, Myanmar's government has launched numerous ambitious economic reforms to attract foreign investment and reintegrate into the global economy, such as the enactment of a new foreign investment law, and currency exchange reforms.

Due to the government's commitment to reform and the subsequent easing of most sanctions, the economic growth has accelerated since 2012. According to the Asian Development Bank, Myanmar's GDP grew by 7.7 percent in FY2014, driven mainly by expansion of construction, manufacturing, and service sectors.<sup>38</sup>

The expansion of the economy has led to growing demands for supporting infrastructure. However, it has become apparent that public infrastructure delivery alone cannot meet the needs for fulfilling the current massive infrastructure deficit.<sup>39</sup> Myanmar's government lacks the fiscal space to undertake infrastructure projects. Therefore, in the short run, most infrastructure projects will be financed by official development assistance (ODA) loans or through attracting foreign investment. Some foreign investment projects have already been implemented in the power, port, and telecommunications sectors through existing laws. A comprehensive regulatory framework on the PPP scheme has not been established yet, while there exist simple build–operate–transfer (BOT) schemes in each sector.<sup>40</sup>

Myanmar's government is seeking to prepare a new investment law to promote investment, cashing in on the launch of the ASEAN Economic Community later this year. In addition, ADB is in the process of providing a technical assistance programme to help the government strengthen its financial management.

---

<sup>38</sup> Asian Development Bank (2015), *Myanmar: Economy*. Manila: Asian Development Bank. <http://www.adb.org/countries/myanmar/economy> (accessed 22 June 2015).

<sup>39</sup> According to the Logistics Performance Index published by the World Bank, Myanmar was ranked 145th out of 160 countries in 2014.

<sup>40</sup> The term 'BOT' is used in different meanings in each sector. For example, in the road sector most projects were just rehabilitation projects, not including construction. In addition, during the term, ownership of the roads belong to the Myanmar government, whereas in the port sector, the private sector is allowed to own the port asset, which is more like BOT that is commonly used.

## PPP Country Profile - Myanmar

### 2. Institutional and Regulatory Frameworks

Although there is no organization which covers overall PPP projects, the Project Appraisal and Progress Reporting Department (PARED) of the National Planning and Economic Development (NPED) is a focal point of the privatization programme, including the promotion of PPP. The NPED is responsible for the formulation of national development plans and the enhancement of the economic development of the state. The NPED also has a Directorate of Investment and Company Administration (DICA), which is a window for individual investment projects through scrutinizing and issuing permits for investment proposals. Other NPED departments that are related to ODA and foreign investments are also a part of the process.

The Myanmar Investment Commission (MIC) is a government-appointed body that appraises and approves investment related proposals in accordance with the Foreign Investment Law. It makes the final decision to provide approval of foreign investment.

Regarding its regulatory framework, there is no PPP-enabling legislation governing contracts between a public sector regulator and a private party, in which the private party provides a public service or project, and assumes substantial financial, technical, and operational risk. Instead, private sector investors in, and lenders to, PPP projects will need to consider a framework of laws that are or may be (depending on the sector) relevant to PPP projects in Myanmar including those set out below:

**Foreign Investment Law:** The new Foreign Investment Law (FIL) was enacted on 2 November 2012, replacing the 1988 law. The FIL sets out key points relating to foreign investment in Myanmar. In particular, it allows foreign investors to participate in one of three ways:

- establish a wholly foreign-owned enterprise;
- a joint venture enterprise with a Myanmar citizen, a local enterprise, or organization (whether private or state owned); or
- any other form of contractual arrangement. The FIL applies to activities prescribed by the MIC from time to time, and approved by the government.

It also sets out, at a high level, a list of the types of activities in which the MIC may prohibit foreign investment. The FIL requires that all foreign companies seeking to operate in Myanmar do so under an investment permit (MIC permit).

## PPP Country Profile - Myanmar

**Foreign Investment Rules:** The Foreign Investment Rules were also issued on 31 January 2013 and implement the FIL, including the procedure for applying for an MIC permit.

**MIC Notification:** In 2014, the MIC issued three notifications (Notification No.49/2014, No.50/2014, and No.51/2014). Notification No.49/2014 clarified the activities in which foreign investment is prohibited or restricted which were outlined in Notification No.1/2013. For example, the new notification expands the list of activities required to be undertaken by way of a joint venture with Myanmar citizens, a ministry, or a government department. Notification No.50/2014 prescribed the activities that required an environment impact assessment (EIA) to be undertaken. Notification No.51/2014 listed the activities that do not qualify for customs duty and commercial tax exemptions set out in the FIL or the Myanmar Citizens Investment Law.

**Permit to Trade and Certificate of Incorporation:** Regardless of whether a foreign investor is seeking a MIC permit, no foreign company can carry on business in Myanmar unless it has obtained a permit to trade (PTT) and a certificate of incorporation (COI). The PTT is a business licence that must be obtained by all businesses, whether or not they are formed under the FIL. The COI is proof of the company's valid existence. The PTT and COI are obtained by application to the DICA.

**Land Leases:** The Foreign Investment Rules also have provisions relating to the leasing of land (foreigners cannot own land in Myanmar). These provisions vary depending on the location and type of land in question and whether or not the government is the landlord. Notably, the MIC must consent to any foreigner leasing land. The MIC has rights to require a lease to be terminated in certain circumstances, for example, if the investor fails to pay rent or causes environmental damage. In principle, the term of a land lease to a foreigner cannot exceed 50 years although the MIC can agree to an extension of the term by two periods of 10 years, that is, to a total of 70 years.

**Foreign Currency:** In relation to foreign currency, the Foreign Investment Rules provide that a foreign investor may deposit the amount of foreign currency referred to in its application for a MIC permit in a Myanmar bank authorized to take foreign currency deposits. Any change in the amount of foreign currency required for the investment requires MIC approval. The foreign investor may export foreign currency. In some cases, the consent or approval from the Central Bank of Myanmar is required.

## PPP Country Profile - Myanmar

**Arbitration:** On 5 March 2013, the sixth session of the Parliament voted in favour of Myanmar acceding to the New York Convention. The document of accession was filed without reservations on 16 April 2013. However, before the convention can become effective, Myanmar must pass a new arbitration act which is expected to be passed in 2015 and will be based on the United Nations Commission on International Trade Law (UNCITRAL) model law.

**Environment:** Relevant legislation includes the Constitution, the Myanmar Special Economic Zone Law (2014), the Environmental Conservation Law (2012), and the Union Parliament Law No. 9, 30 March 2012 (implementing rules are being drafted, which provide for environmental impact assessments (EIA) and MIC notification (requiring EIAs for 34 different types of projects).

**Foreign loans:** Regulatory approval from the MIC and the Central Bank of Myanmar are required for foreign loans. A 15 percent withholding tax applies on interest from offshore loans.

### 3. Recent developments in PPP

Some BOT projects have been implemented in sectors such as port, electricity, and road. Nevertheless, most of the projects were under unsolicited mode and appropriate risk sharing has not been taken into account. The main challenges for Myanmar's government to undertake PPP projects with effective foreign participation would be to structure bankable projects with appropriate risk sharing under transparent and equitable investment rules.

Regarding legal framework developments, the DICA is currently preparing a new Myanmar Investment Law to modernize the Myanmar Investment Law with the assistance of the International Finance Corporation (IFC).<sup>41</sup> The new law will be a consolidation of the existing Foreign Investment Law and the Myanmar Citizen's Investment Law. The draft will be submitted to the parliament later in 2015 after ongoing public consultations.<sup>42</sup>

In addition, the Myanmar government is currently developing PPP management capabilities with technical support from ADB. The objectives of the support are (i) to deliver

---

<sup>41</sup> Directorate of the Investment and Company Administration, 'Consultation on the Modernization of Myanmar Investment Law'. <http://dica.gov.mm.x-aas.net/> (accessed 22 June 2015)

<sup>42</sup> *Myanmar Times* (2015), 'DICA Calls for More Local Feedback on Draft Investment Law', 7 May. <http://www.mmtimes.com/index.php/business/14334-dica-calls-for-more-local-feedback-on-draft-investment-law.html> (accessed 22 June 2015)

## PPP Country Profile - Myanmar

to the government sound tendering processes and decision frameworks based on the principles of PPPs; (ii) to promote consistent, objective, and transparent application of PPP project development criteria to an international standard; and (iii) to create recommendations for development of institutional management capacity for PPP.<sup>43</sup>

Within infrastructure developments, the immediate priorities are expected to be in urban transportation systems, upgrading national airports and construction of new airports, and water utilities. Notably, three international airport concessions have recently been procured under a PPP scheme: the New Hanthawaddy (a consortium of Yongnam Holdings Ltd, Changi Airport Planners and Engineers, and JGC Corporation chosen as the preferred bidder), Mandalay (awarded to a consortium led by JALUX Inc. and Mitsubishi Corporation), and Yangon (awarded to a consortium led by local Pioneer Aerodrome Services). Other than these sectors, one of the potential and contentious projects is a special economic zone (SEZ) development in Dawei. As the use of the PPP method in this huge flagship project will be essential in the long run, the development of the SEZ is expected to be a good opportunity for improving Myanmar's PPP environment.

---

<sup>43</sup> Asian Development Bank, *47267-001: Support for Public-Private Partnership Framework Development*. [http://adb.org/projects/details?page=details&proj\\_id=47267-001](http://adb.org/projects/details?page=details&proj_id=47267-001) (accessed 22 June 2015)