

ALLEN & OVERY

Myanmar's economic liberalisation: Three years on

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Speed Read

State Counsellor Daw Aung San Suu Kyi's National League for Democracy (the **NLD**) celebrates its third anniversary of government this year. Fourteen months from now, campaigning will commence for Myanmar's 2020 general election, which will be its third since the country's reintroduction of free elections in 2010. This offers an opportune moment to consider the performance of the NLD government in the past three years since their assumption of control.

The report card is far from perfect, with critics often citing, among other things, the lack of a sound policy agenda, hasty restructuring of the ministries and a lack of coordination and late appointment of qualified and experienced personnel, each of which have acted as setbacks to the momentum of economic reform, alongside exacerbating issues around accountability, human rights, peace and security. Nevertheless, Myanmar's investment environment, amidst formidable challenges, has continued to both grow and evolve, albeit at a slower pace and with more limited results than many had hoped.

Introduction

With the Myanmar's 2020 general election (**2020 Election**) looming on the horizon, it is timely to assess the performance of the NLD government, as led by Daw Aung San Suu Kyi (**State Counsellor**), over the last three years since it took control in 2016. Results have been mixed, with backward steps taken in political and social policy, while economic growth remains positive, but slower and weaker than had been anticipated. In this bulletin, we explore Myanmar's current affairs and the impact made by the NLD government in the last three years, with a focus on public administration and policy, the economy and investment, the elections, the peace process and the Rakhine crisis in that period.

I. PUBLIC ADMINISTRATION & POLICY

Administrative changes undertaken by the NLD between 2017 and 2018 have improved confidence in the government. These changes include formation of the Ministry of Investment and Foreign Economic Relations (**MIFER**)¹, as well as the appointment of a new Union Minister to the Ministry of Planning and Finance (**MOPF**). Two well-respected Union Ministers now lead MOPF and MIFER, and a bureaucrat experienced in investment matters serves as the Permanent Secretary of the latter.

Further, the cabinet established the Myanmar Development Institute (**MDI**), a think tank designed to reinforce the government's administrative and policy capacity. Since its formation, the MDI has been providing technical assistance in research, policy and implementation strategies for the country's economic reforms.² All the aforementioned institutions, along with the Central Bank of Myanmar (**CBM**), NLD party representatives and the Members of the *Hluttaw* (the Parliament), participate in the powerful 11-member National Economic

Coordination Committee (**NECC**), chaired by the State Counsellor, which develops, among others, monetary, trade, economic and investment policies.³

Because of these high level and important changes in administration and coordination, Myanmar today has a more solid and coherent vision for its economic future, along with the strategies, policies and priorities to support it. Ceremonially launched at the Invest Myanmar Summit in 2018, the Myanmar Sustainable Development Plan 2018-2030 (**MSDP**)⁴ is a significant policy milestone of the NLD government. The MSDP acknowledges the importance of the private sector in creating jobs and developing the economy, and three of the five goals in the MSDP are economic stability, private sector led growth and prosperity of the nation, thus signalling a positive policy outlook for the business community.

Endorsement of MSDP by the State Counsellor in 2018 and reaffirmation at the Yangon Investment Forum 2019 also means that private sector development continues to be a key priority of the NLD government. Ministries and government offices have

1 MIFER replaces MOPF as the focal ministry for the Myanmar Investment Law 2016. The Union Minister of MIFER concurrently serves the National Security Adviser including the Rakhine crisis.

2 MDI works closely with the Renaissance Institute (RI), a Myanmar independent think tank, and both are chaired by U Myo Myint, an economist and career civil servant who is also a member of the NECC.

3 The NECC was formed by the Presidential Notification 31/2016 and reformed by the Presidential Notification 51/2018, replacing the Union Minister of MOPF with the State Counsellor.

4 http://themimu.info/sites/themimu.info/files/documents/Core_Doc_Myanmar_Sustainable_Development_Plan_2018_-_2030_Aug2018.pdf

also been adhering to and implementing several strategic actions set out in the MSDP. Although subject to review and change, MSDP is a balanced socio-economic policy document for Myanmar, and during the term of the NLD government, it will undoubtedly continue to be the key reference for investors to understand the policies and priorities of this administration. Another positive development is the Project Bank (**Project Bank**), an online database providing information to the public on planned infrastructure initiatives aimed at realising the strategies of the MSDP, potentially allowing better coordination within the government and more transparent opportunities for private investment.

Despite these positive steps, the many competing and pressing government priorities could still undermine the timely implementation of these impressive policies, a significant concern for investors. In particular, Myanmar does not have many experienced bureaucrats who can swiftly follow up, adapt and implement these new policies and approaches. As a result, many policies and investment fairs have been slow to materialize and do not necessarily produce immediate actions or tangible outcomes. While acknowledging the successful roll out of the Myanmar Companies Online (MyCO), an electronic registry of companies in accordance with the Myanmar Companies Law 2017, this is merely a gateway to investment in the country and still requires opportunities/projects which are attractive to investors.

In addition, negotiations have been either stalled or are slow to make progress in several tenders and bids awarded some time ago. This has resulted in a dearth of projects and agreements being successfully signed by parties. In such cases, information is typically scarce on reasons for the delay, when negotiations will resume or agreements will be signed. For example, almost six months have passed since the announcement of the Project Bank. Key questions remain about this portal, such as launch date, the number of projects in the database and what the next steps are for these initiatives. However, these administrative hurdles are not necessarily unique to Myanmar or the NLD government. Regardless of administrative and policy reforms initiated and underway, it is most likely that investors will continue to face these challenges and need strategies and advice to navigate through them.

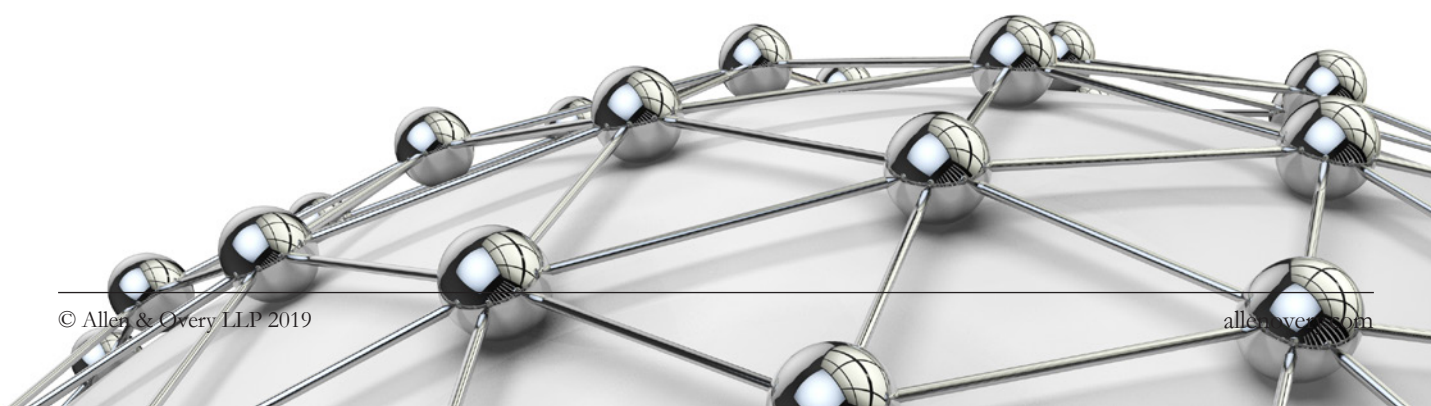
II. ECONOMY & INVESTMENT

Myanmar's economic outlook is expected to be positive and stable in the near term. Recent key economic indicators from Asian Development Bank and the World Bank for Myanmar under the NLD government have been steady and robust with the exception of 2016, the transition year for formation of a new cabinet by the NLD. Myanmar's GDP growth rate has been above 6 per cent and is expected to grow to 6.5 per cent and higher. In the ASEAN region, Myanmar's GDP growth in

the last few years has been on a par with two of its strongest economies, Vietnam and the Philippines and is expected to rise to the top ranks of ASEAN countries (together with Cambodia) by 2020. Further, Myanmar's per capita GDP growth rate is strong, positioning it as one of the top three countries in the ASEAN region between 2017-2020. Inflation in Myanmar is the highest in the region, however, core inflation, excluding food and fuel prices, is rather stable. The NLD government is also dispensing with its "money financing approach" of borrowing from the CBM or printing more notes which fuelled inflation in the country for several decades.

However, Myanmar's economy and investment forecast are vulnerable to several internal and external risks, which are often linked to each other. Key external risks stem from the Rakhine crisis. Neither the NLD government nor the military has fully acknowledged this humanitarian emergency, and both have demonstrated insufficient cooperation with the international community and slow progress in addressing the crisis. As a result, the U.S. State Department Trafficking in Persons Report (**TIP**) 2019 ranked Myanmar in Tier 3, the same rank as in 2018, for failing to meet the minimum standards of the Trafficking Victims Protection Act of 2000, thereby subjecting Myanmar to a wide range of restrictions on assistance by the U.S. government, including development aid. It is as yet unclear to what extent this will affect broader U.S. assistance to Myanmar and bi-lateral relations including trade and investment in the coming years. Although less likely, other potential risks relating to the Rakhine crisis could include the re-imposition of economic sanctions by the EU and the U.S. and revoking trade privileges such as the Generalised System of Preferences (**GSP**) by the EU.

Foreign missions in Myanmar and institutions such as the United Nations, and activists/groups, though frustrated, do not favour blanket economic sanctions against Myanmar due to the potential negative impact on the economy, a nascent democracy and the civilian government, as well as impacting the most vulnerable groups in Myanmar. The approach by this bloc has been, and is likely to continue to be, calling on the government for cooperation and allowing humanitarian support/access while simultaneously engaging through aid and diplomacy. The calls for sanctions against Myanmar to date have been targeted at the military and its personnel, while this does not rule out the possibility for wider economic sanctions due to the fact that the military and business interests can be opaque and entwined and Myanmar companies are still developing adequate corporate governance. In order to mitigate the risks and avoid backlash concerning sanctioned entities/individuals, and those who may be subject to sanctions in the future, investors are advised to conduct rigorous due diligence and continuous vetting in all aspects of their business, from suppliers and partners to clients, to ensure the strictest internal compliance.



Amidst these challenges and risks, economic liberalisation by the NLD government to date has been commendable for a relatively young and inexperienced administration. Although most are still in progress, some of the significant economic liberalisation events since 2016 by sector are as follows:

MYANMAR KEY ECONOMIC LIBERALISATION BY SECTORS UNDER THE NLD GOVERNMENT

Sectors	Summary
Banking	The CBM has been rolling out sweeping reforms to strengthen the banking sector in Myanmar as well as liberalisation. These include a series of directives, among others, liquidity ratio, related parties and loans and external audits to strengthen Myanmar banks' compliance with the banking standards, allowing foreign banks to acquire up to 35 per cent of shares from a Myanmar bank, provide export financing and related banking services, provide wholesale banking services to local/foreign companies/businesses, carry out other banking services, in the same manner as local banks, to local business entities.
Insurance	MOPF selected five foreign life insurance companies for licensing, namely AIA, Dai-ichi Life, ManuLife, Chubb and Prudential, and 100 per cent Foreign Life Insurance Licenses will be awarded once the pre-licensing conditions are fulfilled.
Education	Foreign investments are now permitted in a wide range of private education institutions whether they follow government or international curricula.
Power	The Ministry of Electricity and Energy (MOEE) issued four Notices to Proceed (NTP) for LNG gas-to-power projects with over 3,000 megawatts (MW). In addition, there are NTPs for hydropower projects, and other renewable energy projects are also under negotiation. The MOEE has also made a bold move and increased electricity tariffs with effect from 1 July 2019, slightly easing a key bottleneck on pricing for the government and investors in power generation.
Infrastructure	With assistance from the International Finance Corporation, 10 out of 12 companies which submitted the Invitation for Expression of Interest have been shortlisted for a public-private partnership (PPP) infrastructure project of a 47.5 km ring road for Yangon.
Retail	Foreign-owned companies and foreign-Myanmar joint venture (JV) companies are permitted to operate domestic retail and wholesale businesses. To date, 11 foreign, local and JV companies have received licenses, including DKSH and Toyota Tsusho.

With several large-scale projects among those listed above, the outlook for economic liberalisation and investment opportunities for Myanmar suggests growth potential. While details are yet to be published, bidding on more than 30 oil and gas offshore and onshore blocks are also in the pipeline.⁵ In addition to the Yangon ring road, the Yangon Region Government has recently published 80 projects including Yangon Urban Mass Rapid Transit, industrial zones and several real estate projects. Myanmar has also recently signed the China-Myanmar Economic Corridor 2019-2030 (**CMEC**) Cooperation Plan, a Memorandum of Understanding (**MOU**) between the two countries which is part of the highly debated Belt and Road Initiative. This will include an approximately 1,700 km long corridor connecting Yunnan Province in China to Kyauk Phyu in Rakhine State (via Mandalay), where a Special Economic Zone and a 135 MW power project will be built with Chinese investment.⁶

While the implementation of this non-binding MOU may take some time, the CMEC is intended to add additional large infrastructure projects including a network of railways between Yunnan, Mandalay and Kyauk Phyu. Negotiations between Myanmar and China have highlighted three key points: Myanmar will access financing opportunities other than China, invite international tenders and choose the projects as part of CMEC, although whether these conditions will be in the final

binding agreements remains to be seen.⁷ In addition, there are several ongoing public infrastructure projects financed by multilateral institutions. These positive signs suggest that Myanmar's much needed infrastructure development is underway, offering opportunities both for investors and for the country to attract more funding.

The aforementioned current/potential projects are important in addressing Myanmar's infrastructure needs, especially power and transport which have impeded the country's economic growth and ability to attract investment. Starting with a diagnostic approach to the country's economy and financing situation and options, the NLD government's plan today clearly considers a mixture of financing options that include tax reforms, PPP, official development assistance and loans, as well as foreign direct investment/private investment to finance projects. Attracting international finance institutions and investors will be subject to several factors, including feasibility of the project, social, environmental and economic impact, sovereign guarantees, availability of diverse and functioning capital markets such as government and corporate bond markets to comply with re/investment conditions within Myanmar, as well as the status of peace and security issues.

Most importantly, to gain the investors' confidence and attract investment, the NLD government will need to demonstrate its readiness and capacity to prioritise and implement complex projects and structuring details through swift negotiations leading to binding agreements without significant delays. Equally important for investors is that the departments within a ministry or different ministries are on the same page in terms

5 New bid round gains top-level approval, Myanmar Energy Monitor by Frontier Myanmar Research, 13 May 2019.

6 Press Release on Working Visit of the State Counsellor to the People's Republic of China, 29 April 2019. <https://www.moi.gov.mm/moi:eng/?q=news/30/04/2019/id-17494> Two other projects are 1 billion yuan grant Agreement on Economic and Technical Cooperation and an MOU on the Formulation of the Five-year Development Program for Economic and Trade Cooperation.

7 Gov't spells out conditions for signing the Belt and Road Initiative (BRI) deals with China, 24 April 2019 <https://www.irrawaddy.com/business/govt-spells-conditions-signing-bri-deals-china.html>

of implementing the national policies or projects and effectively coordinating with each other. These include, among others, regular updates on the launch of the Project Bank and the PPP Centre, both to be established under the purview of MOPF, and a feedback mechanism or a forum to receive questions/clarifications on the initiatives. Therefore, while Myanmar's economy is growing and investments offer potential for investors, cautious optimism, along with diligent monitoring, is still warranted for successful investment in Myanmar.

III. POLITICAL CONTEXT

Plans are already underway for Myanmar's general election in November 2020, the third since the 2008 Constitution and the 2010 election, and the first to be held in the country for 20 years. With key stakeholders including the military and approximately 100 political parties representing diverse ethnic groups, it is noteworthy that Myanmar elections have thus far been largely peaceful. The commitment demonstrated by these groups to the nascent democracy provides hope for Myanmar's long-term peace and development in the face of challenges such as fragile ceasefires signed with less than half of ethnic armed organisations (EAOs). At the same time, experts have identified Myanmar's 2020 election, the peace process, the Rakhine crisis and the repatriation of displaced Rohingyas as key risks for the country, which if occurring concurrently, have the potential to further complicate the political situation.⁸

The NLD government's impact report card may be perceived by many as far from stellar for the time being. However, in the absence of a strong opposition party, the NLD remains the primary viable political party for the many voters. Recently, the NLD has publicly confirmed that both the President and State Counsellor will be running in the upcoming general election. The State Counsellor, although her popularity and credibility as a human rights defender and peace promoter has significantly waned with the international community since the Rakhine crisis, still receives popular support, especially among Bamar voters, suggesting that the NLD will continue to lead at the ballot box. Although the NLD is likely to win enough votes to form a government, lower turnout in recent elections and ethnic minorities voting for ethnic parties may result in fewer votes for the NLD than the 2015 election.⁹

The highly sensitive and protracted Rakhine crisis which started in 2012 has intensified and become more complex over the years with no immediate or durable solutions in sight. A crisis of this magnitude, involving approximately one million refugees and new complications

at every flare-up,¹⁰ rightly requires and shifts the attention of key decision makers, if not the entire cabinet, potentially causing delays in economic and investment matters. The situation has also directly impacted the economy, particularly in the tourism sector. While the interest of foreign investors in other sectors in Myanmar has not ceased, the scale of this unprecedented refugee crisis and the potential for economic and trade sanctions require close monitoring among foreign investors in Myanmar and their shareholders.

Restoring and maintaining peace in Myanmar, the first pillar in the MSDP as well as a key priority for the State Counsellor, has been a politically challenging task for the NLD government and an area of extremely slow progress. Three months after a second Union Peace Accord, which excluded important security issues was signed, the Karen National Union (KNU) and the Restoration Council of Shan State (RCSS), two influential EAOs, suspended their participation in the peace talks. In addition, there are concerns about the EAOs losing trust in the Nationwide Ceasefire Agreement (NCA) signed under the previous government and the current peace talks under the NLD government.¹¹ Another equally important dimension threatening peace in Myanmar is Buddhist nationalism, fuelled by fake news and hate speech inciting racial and religious hatred and violence. This threatens Myanmar's future as a peaceful, harmonious and tolerant society and takes aim at blocking efforts that address the Rakhine crisis as well as undermining the state and possibly the electoral processes for the 2020 election.

Building sustainable peace after decades of conflict takes time. With complex security issues and a daunting number of negotiation partners (21 EAOs), peace remains elusive in Myanmar.¹² In addition, with the emergence of Buddhist nationalism, the journey towards a meaningful ceasefire and peace for the country will be a long and arduous one.

CONCLUSION

The challenges for a three-year-old administration and leadership without much relevant experience running a unique and highly complex country like Myanmar, have been immense. Amidst these obstacles and setbacks, the NLD government has cautiously liberalised the economy and the investment environment since it took over Myanmar's administration. Diligent, if slow, restructuring of the foundation of the economy has levelled the playing field for foreign and Myanmar investors. Improvements to public administration, implementation of policies and the political context, especially ensuring the delicate balance in all these areas, are all important to mitigate risks on the government's reputation and sustain the progress contributing to the socio-economic development of Myanmar. Regardless of these complexities, Myanmar today has come a long way in less than a decade. A relatively stable economy with a strong economic forecast, a sizeable population of consumers and improving infrastructure, Myanmar will continue to be an emerging market to watch for investors.

8 Myanmar's 2020 Elections and Conflict Dynamics by Mary Callahan with Myo Zaw Oo No. 146 April 2019 https://www.usip.org/sites/default/files/2019-04/pw_146-myanmars_2020_election_and_conflict_dynamics.pdf. We have omitted the Constitutional Amendment here. With election campaigns starting in over a year, it may be challenging for the NLD to make progress before the 2020 elections.

9 During the 2018 by-elections, the NLD won only seven out of thirteen contested seats; three seats went to the USDP which were previously won by NLD; and voter turnout was less than 50 per cent. Despite the State Counsellor-led 21st century Panglong Peace Conference, little progress in peace has been made. In addition, the NLD's activities focusing on highlighting the legacy of General Aung San throughout Myanmar has renewed resentments and faced strong opposition in several States where ethnic minorities are predominant and possibly disenfranchised them as potential voters for the NLD in the 2020 election.

10 Myanmar: UN expert 'fears for civilians' after Internet shutdown 24 June 2019 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24733&LangID=E> Yanghee Lee, the UN Rapporteur on the situation of human rights in Myanmar has expressed concerns for civilians in Rakhine and Chin States due to an internet shutdown and a possible 'clearance operation' by the military against the Arakan Army (AA). She is particularly concerned about the Rakhine Buddhist civilians being targeted by the military for their support to the AA.

11 Myanmar's frozen conflicts and the threat to peace by Aung Naing Oo. <https://frontiermyanmar.net/en/myanmars-frozen-conflicts-and-the-threat-to-peace> The author, a former director of the Myanmar Peace Centre and an executive director of the Technical Secretariat Centre of the Union-level Joint Ceasefire Monitoring Committee, says that "some EAOs have continued to upgrade their combat readiness."

12 The number excludes the Arakan Salvation Army (ARSA) and several militia groups but includes the AA.

Key contacts



Sheila Ahuja

Partner – Singapore
Tel +65 6671 6095
sheila.ahuja@allenoverly.com



Chris Bishop

Partner – Singapore
Tel +65 6671 6043
chris.bishop@allenoverly.com



Chris Burkett

Counsel – Bangkok
Tel +662 263 7607
chris.burkett@allenoverly.com



Joshua Set Paing Htet

Senior Associate – Myanmar
Tel +662 263 7613
joshua.htet@allenoverly.com



Stephen Jaggs

Managing Partner – Bangkok
Tel +662 263 7606
stephen.jaggs@allenoverly.com



Simon Makinson

Head of Myanmar
Practice Group – Hong Kong
Tel +852 29747283
simon.makinson@allenoverly.com



James Mythen

Partner – Singapore
Tel +65 6671 6077
james.mythen@allenoverly.com



Sarah Wilson

Partner – Bangkok
Tel +662 263 7620
sarah.wilson@allenoverly.com



Win Ma Ma Aye

Head of Operations and
Government Affairs, Yangon
Tel +95 9 4500 25417
winmama.aye@allenoverly.com

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