



**PWINT THIT SA**  
Transparency in Myanmar Enterprises

# Pwint Thit Sa

## Transparency in Myanmar Enterprises

**Fifth Report | 2019**

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Pwint Thit Sa is intended to encourage better corporate governance  
and increased transparency by Myanmar businesses.

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The **Myanmar Centre for Responsible Business** (MCRB) was set up in 2013 by the [Institute of Human Rights and Business](#), and the [Danish Institute for Human Rights](#) with funding from several donor governments. Based in Yangon, it aims to provide a trusted and impartial platform for the creation of knowledge, building of capacity, undertaking of advocacy and promotion of dialogue amongst businesses, civil society, governments, experts and other stakeholders, with the objective of encouraging responsible business conduct throughout Myanmar. Responsible business means business conduct that works for the long-term interests of Myanmar and its people, based on responsible social and environmental performance within the context of international standards. MCRB receives funding from the governments of UK, Norway, Switzerland, Netherlands, and Ireland.

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Based in Yangon, **Yever** is a consultancy offering custom made solutions to corporate leaders. We aim to foster their company business transformation while building their market leadership responsibly and sustainably. Established in 2016, our team combines Myanmar talents and international expertise. The key of our business is trust. Earning and sustaining the trust of our customers, partners, employees and all other stakeholders drive all of our actions.

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## ABBREVIATIONS

<b>ACGS</b>	ASEAN Corporate Governance Scorecard
<b>ACMF</b>	ASEAN Capital Markets Forum
<b>ASEAN</b>	Association of South East Asian Nations
<b>BoD</b>	Board of Directors
<b>CG</b>	Corporate Governance
<b>CSR</b>	Corporate Social Responsibility
<b>DfID</b>	Department for International Development
<b>DICA</b>	Directorate of Investment and Company Administration
<b>DNFBP</b>	Designated Non-Financial Businesses and Professions
<b>ESG</b>	Environmental, Social and Governance
<b>FY</b>	Financial Year
<b>IFC</b>	International Finance Corporation
<b>KPI</b>	Key Performance Indicator
<b>MCL</b>	Myanmar Companies Law
<b>MCRB</b>	Myanmar Centre for Responsible Business
<b>MIC</b>	Myanmar Investment Commission
<b>MIL</b>	Myanmar Investment Law
<b>MIoD</b>	Myanmar Institute of Directors
<b>MIR</b>	Myanmar Investment Rules
<b>MSDP</b>	Myanmar Sustainable Development Plan
<b>MyCO</b>	Myanmar Companies Register Online
<b>NRGI</b>	Natural Resources Governance Institute
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>OTC</b>	Over the Counter (an organized market for trading of unlisted securities)
<b>SECM</b>	Securities and Exchange Commission of Myanmar
<b>SEE/SOE</b>	State-owned Economic Enterprise
<b>TRAC</b>	Transparency in Corporate Reporting (from Transparency International)
<b>UMFCCI</b>	Union of Myanmar Federation of Chambers of Commerce and Industry
<b>YSX</b>	Yangon Stock Exchange

## EXECUTIVE SUMMARY

This is the fifth *Pwint Thit Sa*/Transparency in Myanmar Enterprises (TiME) report. It assesses information disclosure on the corporate websites of 248 large Myanmar companies. Encouraging corporate transparency supports Myanmar's achievement of Sustainable Development Goal (SDG) 16.

Sixty-six more companies were assessed in 2019 compared to the 2018 *Pwint Thit Sa* report, using twice as many dimensions and criteria. This makes *Pwint Thit Sa* 2019 the most ambitious public report ever published about the state of corporate disclosure (CD) in Myanmar. It examines publicly listed and 'public' companies, and privately-owned companies which are influential or significant taxpayers. For the first time, *Pwint Thit Sa* includes the corporate disclosure of all significant state-owned economic enterprises (SEEs).

The 2019 report, although based on the same principle of rating online information disclosure by companies, continues with the approach adopted in 2018 by using the ASEAN Corporate Governance Scorecard (ACGS) to rate companies (Box 5). The ACGS is used widely in the region to assess disclosure of corporate governance by large companies and has also been used this year by Myanmar regulatory bodies to develop a Myanmar Corporate Governance Scorecard to assess the current corporate governance practices of twenty-four of the largest Myanmar companies.

However not all ACGS criteria have been used for *Pwint Thit Sa*, and some additional performance criteria concerning sustainability and its relationship to the company's business model have been added in the 2019 *Pwint Thit Sa* report, aligned with the Integrated Reporting Framework <IR>. This is to challenge and stretch the leading companies. It also reflects the adoption in 2018 of the Sustainable Development Plan by the Myanmar Government.

The scoring methodology therefore uses 69 of the most relevant criteria from the ACGS (see Annex 2). It assesses four dimensions - Corporate Profile, Corporate Governance, Sustainability Management and Reporting - using 143 criteria (119 disclosure-based, 24 performance-based) with a maximum possible score of 167 (119 Disclosure, 48 Performance). Further details are in the Methodology section in *Part 4*.

The addition of more performance criteria, as well as new companies, means that average scores have fallen in 2019 compared to 2018, from 7% to 5%, even though overall disclosure has not declined; indeed, it has improved, with some leading companies rising to the challenge of both disclosing Corporate Governance (CG) information and reporting performance. For most companies in this study, with the exception of those who are publicly listed and 'public companies', there is no legal requirement to disclose this information on their website under Myanmar law. However, to do so can help a company to obtain a competitive edge with potential business partners and investors whose first research on a company may involve looking at their website.

The top four companies in 2019 scoring highest for disclosure are City Mart Holdings Limited (CMHL), FMI (First Myanmar Investment), Max Myanmar and Shwe Taung. While these companies have consistently featured in the Top 10 of previous *Pwint Thit Sa* reports, all of them have made added efforts in *Pwint Thit Sa* 2019 to enhance disclosure, particularly on corporate governance and non-financial reporting. Indeed, this was true for the 43

companies who opted for direct contact with MCRB/Yever to discuss their draft scores or to gain a better understanding of the criteria and what they mean for company disclosure. On average, this engagement process helped them to improve their score by 8%. Listed companies, which scored 32%, are outperforming public and private companies (each scored 4% on average). However, the variance within each category is significant: *Figure 1* indicates, for each type of company, the maximum, minimum and mean scores.

**FIGURE 1: SCORE BREAKDOWN BY TYPE OF COMPANY**

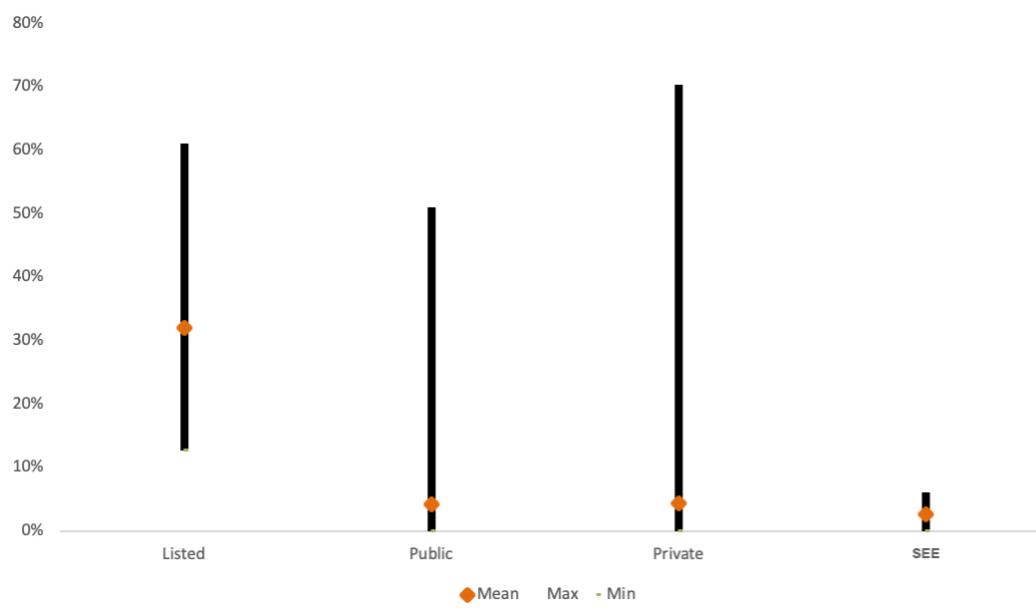


Figure 1 shows that the highest performing company, CityMart, is privately owned, not publicly listed. This shows that private companies can choose to measure and disclose significant quantities of CG and performance information. Furthermore, some private companies which have previously not featured in the Top 10 have joined it in 2019. This demonstrates that *Pwint Thit Sa* has had an impact in encouraging Myanmar companies to raise their game on corporate governance, disclosure and sustainability. This has been reinforced by the interest which international investors and business partners are showing in these issues and the reforms which Myanmar is undertaking, particularly the 2017 Myanmar Companies Law.

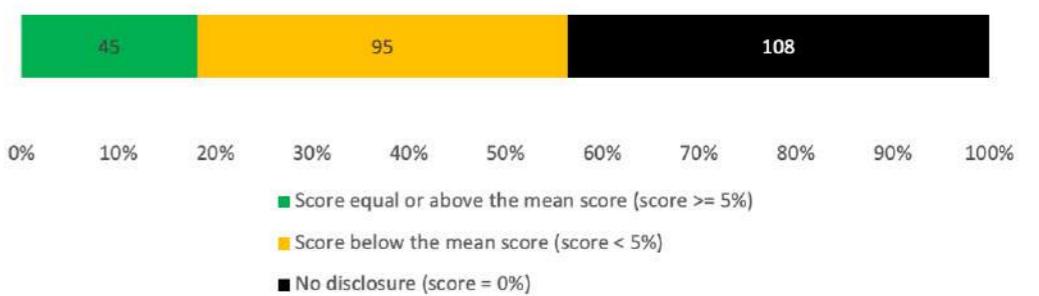
SEEs are the poorest performing category. The leading SEEs for disclosure are Construction and Housing Development Bank (CHDB) and Yangon Electricity Supply Corporation (YESC). Because of the special nature of these companies, and the corporate governance challenges they face, they have been ranked separately (Table 5), but using the same methodology. SEEs will need to step up corporate governance and disclosure under the reforms envisaged by the Myanmar Sustainable Development Action Plan.

The main area of strength amongst the leading companies (including SEEs) is Corporate Profile, with an average score of 59% for the top 10. The weakest areas are Corporate Governance and Reporting with an average score, respectively, of 45% and 46% for the top 10.

Of the 248 companies surveyed, 108 (44%) still do not have a corporate website or the URL was not accessible (in black in *Figure 2*). Even where companies do have websites, many of them publish little or no data relating to the criteria covered in this survey. Of those companies which disclosed corporate information (including SEEs), 67% of those assessed scored less

than the overall average score for all companies assessed (in yellow in *Figure 2*).

**FIGURE 2: DISTRIBUTION OF COMPANIES' SCORES**



As ever, this survey and the ranking it produces is limited by the fact that it only uses publicly available information provided by the company. It does not assess the quality or detailed performance of the company or the accuracy of the data, something which requires the assurance of an independent expert audit. However, MCRB/Yever's direct engagement with companies suggested that those who have higher scores are also those developing a stronger corporate governance culture.

As previously, **Part 2** of the report summarises the evolving regulatory framework for disclosure, transparency and corporate governance in Myanmar. This background information is provided with the intention of raising awareness and encouraging compliance. It is also intended to support corporate governance capacity-building initiatives such as those being undertaken by Directorate of Investment and Companies Administration (DICA), the Central Bank of Myanmar (CBM), and Myanmar Securities and Exchange Commission (SECM).

Some of these initiatives are supported by development partners. **Part 2** also summarises their assistance again, with the intention of promoting a coordinated approach. This includes support from donors such as UK, Australia, Japan and Sweden, provided through the International Finance Corporation (IFC) (a member of the World Bank Group), the Organisation for Economic Cooperation and Development (OECD) and the UN Office of Drugs and Crime (UNODC). **Part 2** also summarises initiatives to address corruption, and related activities by civil society organisations, including Myanmar's participation in global initiatives such as the Extractives Industries Transparency Initiative (EITI), and work on beneficial ownership.

**Part 3** highlights some of the emerging issues for corporate governance and transparency internationally which are of relevance to Myanmar, such as non-financial/sustainability reporting, stakeholder engagement, human rights due diligence, diversity, gender equality and modern slavery.

**Part 4** shows the 2019 *Pwint Thit Sa* scores and explains the methodology.

Finally, **Part 5** includes recommendations for Myanmar companies, government, the Anti-Corruption Commission, Parliament, institutional investors and civil society and the media. These are intended to enhance corporate governance and transparency.

MCRB and Yever plan to undertake research for the next *Pwint Thit Sa* report throughout the course of 2020, with the next report to be published at the end of 2020.

## PART 1: INTRODUCTION

The objective of the *Pwint Thit Sa*<sup>1</sup>/Transparency in Myanmar Enterprises (TiME) report is to incentivise greater publication of corporate governance (CG) and other information by Myanmar companies through publicly recognising them for their disclosure and transparency. MCRB published its first report in July 2014<sup>2</sup>, and further reports were published in 2015 and 2016.

*Pwint Thit Sa* is intended to support the implementation of the Myanmar Sustainable Development Plan published in August 2018<sup>3</sup> (see *Part 2*) and in particular business' contribution to **Sustainable Development Goal (SDG) 16**:

- **SDG 16:** Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels<sup>4</sup>;
- **SDG 16.5:** Substantially reduce corruption and bribery in all their forms;
- **SDG 16.6:** Develop effective, accountable and transparent institutions at all levels.

By promoting coordination of capacity-building efforts and enhancing policy coherence, and partnerships, it also directly supports **SDG 17** (global partnerships for sustainable development, capacity building, policy coherence and public-private dialogue). Indirectly it supports all SDGs, since businesses with good corporate governance and sustainability practice can contribute to the realisation of all the Goals.

## HOW PWINT THIT SA CONTRIBUTES TO BUILDING TRUST IN MYANMAR'S CAPITAL MARKET

### FIVE YEARS OF PWINT THIT SA

*Pwint Thit Sa/Transparency in Myanmar Enterprises (TiME)* remains one of MCRB's most popular reports, with once again well over 2,000 downloads of the 2018 report<sup>5</sup> as well as around 2,000 hard copies distributed to stakeholders in, and visitors to, Myanmar, including foreign and Myanmar companies, government Ministers and officials, parliamentarians and civil society organisations. It has received extensive media coverage and has also served as a reference point for international organisations and companies conducting due diligence. High-scoring Myanmar companies have publicised it at international conferences such as Euromoney and LawASIA, and in their annual reports and websites.

In the 2014/2015/2016 reports, MCRB's approach to benchmarking company websites had been based on Transparency International's TRAC

1 *Pwint Thit Sa* means 'new blooms' (and figuratively, 'new talent'). The name was chosen to reflect the emergence of transparency and corporate governance practices in Myanmar after 2012.

2 [www.myanmar-responsiblebusiness.org/news/first-pwint-thit-sa-time-report.html](http://www.myanmar-responsiblebusiness.org/news/first-pwint-thit-sa-time-report.html)

3 [Myanmar Sustainable Development Plan 2018-2030](#), August 2018

4 See [The Private Sector And SDG 16: Contributing To Peaceful, Just And Inclusive Societies](#), a November 2017 report by the Private Sector Advisory Group of the Sustainable Development Goals Fund on how business contributes to SDG16.

5 As of 28 March 2018, the English version of the 2018 report has been downloaded 1831 times from the website, and the Burmese version 396 times.

reporting, which focusses mostly on anti-corruption, organisational and tax transparency<sup>6</sup>. *Pwint Thit Sa* was paused in 2017 and relaunched in 2018 in partnership with Yever (see Box 2). While based on the same principle of rating online information disclosure by companies, the 2018 report not only covered an expanded number of companies, but for the first time used criteria aligned with the emerging corporate governance agenda in Myanmar, and specifically the ASEAN Corporate Governance Scorecard (ACGS)<sup>7</sup>.

The ACGS (see Box 5) was launched in 2011 as part of the ASEAN Corporate Governance Initiative, one of the regional initiatives of the ASEAN Capital Markets Forum (ACMF) of which the Central Bank of Myanmar is a member. The change to using the ACGS for *Pwint Thit Sa* was intended to reflect Myanmar's economic integration into ASEAN and its capital markets, and the various training and other CG initiatives underway which use the Scorecard, so as to reduce burdens and confusion for the businesses concerned. However, this led to a reduction in the amount of environmental social and governance (ESG) information assessed compared to the 2014-2016 *Pwint Thit Sa* reports, since the ACGS is weak on these issues. There is strong stakeholder interest in ESG and human rights in Myanmar; this has been heightened for external investors and other stakeholders as a consequence of the Rakhine crisis. MCRB/Yever therefore included additional criteria in 2018 covering some ESG data; this has been expanded in *Pwint Thit Sa* 2019, which has more focus on ESG and sustainability reporting.

### BUILDING TRUST

Myanmar is characterised by low levels of interpersonal trust. A recent survey reported that 77% of Myanmar people polled said that they 'had to be very careful in dealing with people' compared to 18% of responded that 'most people can be trusted'<sup>8</sup> (equivalent 2014 figures for neighbouring countries such as India, Thailand and Singapore are around 32%, although Malaysia is even lower at 8%)<sup>9</sup>.

Effective capital markets depend on transparency and trust in companies, particularly public ones and in financial institutions<sup>10</sup>. Strategy 3.5 of the MSDP (Increase broad-based access to financial services and strengthen the financial system overall) highlights the importance of transparency and effective supervision particularly of financial institutions. These are regulated under the 2016 Financial Institutions Law<sup>11</sup>. A number of Directives related to CG were issued under the FI Law in March 2019 (see below). The 2019

6 The 2014, 2015 and 2016 *Pwint Thit Sa* reports were conducted by MCRB using an adapted version of Transparency International's [Transparency In Corporate Reporting: Assessing Emerging Market Multinationals](#), covering Anti-corruption Programmes, Organizational Transparency and Tax. MCRB adapted TI's methodology, dropping tax and adding benchmark questions broadly linked to human rights.

7 [ASEAN Corporate Governance Scorecard](#), ASEAN Capital Markets Forum May 2017

8 [Citizen's Mid-Term Perceptions of Government Performance](#), page 50, People's Alliance for Credible Elections (PACE), September 2018

9 [Interpersonal Trust Attitudes](#), World Value Survey 2014

10 [Reset capital market, allow foreign competition to unleash growth: leaders](#), Myanmar Times, 31 December 2018

11 [Financial Institutions Law](#), 2016

*Pwint Thit Sa* report (see Table 3) compares the transparency of financial institutions against one another. In the 2018 report, financial institutions scored on average 10% compared to an overall average of 7%; in 2019 those figures are 11% and 5% respectively, showing some relative improvement.

One way to build trust is through quality media reporting. This means companies need to disclose accurate information to enable journalists to do their job. This was illustrated by the conflict and mistrust which have arisen between Yangon Regional Government and Eleven Media over the latter's reporting of the Yangon Metropolitan Development Public Company (Box 1)<sup>12</sup>. As more information about companies is available online from MyCo and other sources, there will be increased opportunity for journalists to increase their reporting of business. There will also be a continuing need for training, both of journalists and company media relations staff<sup>13</sup>.

#### BOX 1:

### Corporate transparency and trust: Yangon Metropolitan Development Company

In October 2018, three journalists from Eleven Media Group were arrested after the Yangon Regional Government (YRG) filed a lawsuit against them for allegedly committing an offense against the State for publishing “incorrect information” about the government under Article 505(b) of the Penal Code, which has a maximum penalty of two years’ imprisonment. Following the hearing, they were sent to Insein Prison. The incident, and the attendant outcry, prompted the President to intervene and instruct the Yangon Chief Minister to address this matter through the Myanmar Press Council. The journalists were released. However, YRG demanded an apology, which the journalists refused to give on the grounds that they had accurately quoted Yangon Regional Parliamentarians’ comments on a government audit report.

The information in question related to the nature of the shareholdings in Yangon Metropolitan Development Public Company (YMDPC), and in particular Eleven’s reporting that more than 60,000 shares were held in YRG Planning and Finance Minister’s U Myint Thaung’s name<sup>14</sup>. While YRG have subsequently explained that he was holding them as a proxy for the government, details of company shareholdings, including shares held by YRG are still not fully in the public domain. While initial media reports mentioned that YRG owns 51% of the shares, it is believed that the actual percentage is higher.

YMDPC registered with DICA in March 2017, at which point its ten directors were a mixture of Yangon Ministers, YCDC Executive Board, senior Yangon government officials and businesspeople from the Myanmar Construction Entrepreneurs Association. The Secretary, also a Board Director, is U Win Aung, Chairman of Dagon Group. YMDPC was subsequently re-registered on 24 January 2019 as a Public Company Limited by Shares under the Special Company Act 1950, at which point an additional Director was added (making 11) while Ministers appear to have stepped down and been replaced by officials.

YMDPC still does not have an internet or social media presence, despite being established as a public company since March 2017; this information about YMDPC’s governance has been pieced together from media reports, MyCO DICA’s online register, and opencorporates.com<sup>15</sup>. Nor is information about the YRG shareholding available on the YRG website. Furthermore, the only information published by YRG about YMDPC has been published on the website of Yangon Region Investment Committee (YRIC). Board meetings of YMDPC in December 2018 and February 2019 were both reported on the YRIC website, although with no detail<sup>16</sup>. Since YRIC is an investment approval agency under the Myanmar Investment Law, and has a permitting/regulatory function, the use of the YRIC website to publish company information seems inappropriate.

If YMDPC has more than 100 shareholders, it is legally obliged under the SECM rules (see below) to disclose CG information on its website. But in any case, to do so would be good practice. The absence of reliable information about YMDPC has contributed to a continuing lack of trust between Yangon Regional Government and the media, and negative reporting about the company<sup>17</sup>. The dispute between YRG and Eleven Media remains unresolved.

12 [Yangon Govt Sues Eleven Media for Offenses Against the State](#), Irrawaddy, 10 October 2018

13 See [Who's Running the Company: A Guide to Reporting on Corporate Governance](#), IFC 2012

14 [Eleven media journalists refuse to apologise](#), 4 December 2018, Radio Free Asia

15 [https://opencorporates.com/companies/mm/5533-2016-2017\(YGN\)](https://opencorporates.com/companies/mm/5533-2016-2017(YGN))

16 [Board Of Director Meeting Of Yangon Metropolitan Development Public Co., Ltd](#), 18 December 2018, News item on Yangon Region; ‘[Attending to the Meeting of Yangon Metropolitan Development Public Co](#)’, 24 February 2019

17 [Huge government housing project hits turbulence in Dagon Seikkan](#), 27 October 2017, Frontier Magazine.

**BOX 2:****MCRB Partnership with Yever**

**Who is Yever?** In 2018 MCRB decided to join forces with a new Myanmar-based business sustainability consultancy, whose Director, Nicolas Delange, had been conducting a similar private benchmarking exercise of sustainability reporting indicators of Myanmar companies for several years. Nicolas Delange is also supporting the IFC on the SECM corporate governance scorecard initiative (see below).

**Respective roles:** As in 2018, during *Pwint Thit Sa* 2019, MCRB managed the relationships with the companies that were analysed during the project. Yever performed the assessment for each company (on a pro bono basis, which included around 150 days of pro bono work), and compiled the feedback on draft scores. MCRB and Yever then provided this to the companies, and where companies asked for it, provided pointers for improvement.

**Conflict of Interest Declaration:** Yever provides paid consultancy services to 5 companies included in the *Pwint Thit Sa* 2019 report namely City Mart Holdings Limited, Shwe Taung Group and Grand Guardian Insurance (GGI), MTSH and Myan Shwe Pyi Tractors. To avoid conflict of interest, their final scores were independently checked by MCRB. All companies were provided with the same information and the same offers of dialogue and deadline extensions where requested.

**Practice what you preach:** MCRB and Yever both benchmarked their own disclosed information against the same criteria as the companies. MCRB's overall score is 15%, equivalent to 20th, while Yever's overall score of 13% places them 22nd. Although the survey questions were designed for large enterprises, these scores show that many of the disclosure criteria for the ASEAN CG Scorecard can be applicable even to micro-enterprises (MCRB has 17 employees, Yever has 4). Yever is also the only certified B Corp member in Myanmar, demonstrating its own commitment to sustainability and disclosure.

**GREENWASHING?**

*Pwint Thit Sa*, as with other sustainability indexes, faces perennial criticism that it favours companies who 'green-wash' themselves with good websites, and 'cut and paste' policies, which are published but not implemented. To address this, the 2019 *Pwint Thit Sa* report includes additional performance criteria concerning ESG and sustainability, and its relationship to the company's business model. These are drawn from other reputable sustainability indexes such as Integrated Reporting <IR> and Global Reporting Initiative Standards.

This means that significantly more weight in the 2019 score has been placed on disclosing data about performance, such as safety incidents, complaints etc. The inclusion of performance criteria has positively challenged and stretched the companies who previously led the index such as FMI (Yoma Group), CityMart, Max, and Shwetaung; some new entrants such as UAB

18 <https://www.bcorpasia.org/myanmar>

have also taken up the challenge. However, since this reporting is not a Myanmar legal requirement, and the concept is new and a challenge for most Myanmar companies, overall average scores have dropped under the 2019 scoring system (from 7% to 5%), even though absolute levels of disclosure have risen.

Inclusion of more performance criteria has been one way to highlight which company owners/CEOs have better embedded CG and business integrity in the way they do business. Furthermore, this has been evident from the *Pwint Thit Sa* team's engagement with companies. The higher scoring companies tended to have departments covering compliance, ESG, human resources and even a Company Secretariat, and to field these for discussion with MCRB/Yever. Lower scoring companies often fielded public relations teams, who were not informed about company CG.

### THE BUSINESS CASE FOR CORPORATE GOVERNANCE AND TRANSPARENCY IN MYANMAR

Good corporate governance is fundamental to value creation. Myanmar companies who recognise and act on this are being rewarded by the market, including through access to finance. The lifting of most sanctions, and reforms under the 2017 Companies Law has opened up the country to private investors, including private equity funds, as well as to development finance institution (e.g. IFC).

In November 2018, the Central Bank announced that Myanmar companies would be able to borrow from foreign banks, to assist them with access to finance<sup>19</sup>. However they, and other investors, will be looking for good corporate governance, as well as transparency and responsible business conduct, to mitigate the risk of investing in Myanmar. A vanguard of Myanmar companies has recognised this, and several of these have attracted IFC investment. The average score for an IFC investee company is 38%, almost eight times the average for all companies assessed.

There is also an internal business case for better CG and transparency. A company with a reputation for transparency is better placed to recruit and retain qualified staff, which is a significant problem reported by many Myanmar companies. Furthermore, a website and a Facebook page are a vital tool for any company to engage, inform and motivate its own staff, as well as customers. Staff who can easily access up to date information about the company's approach to responsible business on a website are more likely to be able to apply that approach in their work. They will also be better ambassadors for the company with external stakeholders. As discussed in Box 1 on YMDPC, the company should also see more accurate media reporting of its activities if factual information written and uploaded by the company is easily available to journalists.

Recognising the internal and external value of benchmarking, some smaller companies have volunteered to be included in *Pwint Thit Sa*. In February 2017, Irrawaddy Green Towers was the first to be benchmarked, and has been included again in 2019<sup>20</sup>.

19 [Central Bank greenlights corporate loans by foreign banks](#), Frontier Magazine, 24 November 2018

20 [www.myanmar-responsiblebusiness.org/news/irrawaddy-green-towers-mini-pwint-thit-sa.html](http://www.myanmar-responsiblebusiness.org/news/irrawaddy-green-towers-mini-pwint-thit-sa.html)

## **SUPPORTING IMPROVED COMPANY GOVERNANCE AND PERFORMANCE**

Many Myanmar companies lack management capacity, as well as dedicated functions for corporate governance and compliance. As one private equity investor told MCRB:

*'One hurdle we keep facing when we look at companies for investment is that the management bench can be limited. The expertise within the company is so concentrated within one or two key management members. We then end up discounting the business' value or doubting their ability to execute long term strategy. Where there is strong and broad management and where there is good governance and corporate records, investors and lenders will assign very high value'*<sup>21</sup>.

Recognising this, an increasing number of Myanmar companies have started to establish functions charged with overseeing corporate governance and compliance. They have also often brought in foreign or re-patriate advisers to establish these functions and draw on good international practice. Those that have put resources into this have tended to be the best performing companies in *Pwint Thit Sa*. The launch of the Myanmar Institute of Directors (MIoD) Director Certification programme will also significantly boost the availability of capacity-building training on CG for senior leaders in Myanmar<sup>22</sup>.

An important feature of MCRB's work is to support companies in improving their governance, with a particular focus on human rights, and business integrity<sup>23</sup>. MCRB publishes a variety of handbooks and briefing papers, both original and in translation (see Box 3) and holds free workshops open to all businesses, with presentations available on MCRB's website. In 2018, MCRB and a group of leading multinationals launched a series of Responsible Business Seminars, which to date have addressed responsible business due diligence, workplace dialogue, and corruption<sup>24</sup>.

### **BOX 3:**

#### **MCRB Publications for Business**

MCRB has published Handbooks and Toolkits for companies on business integrity and employing people with disabilities as well as a number of Briefing Papers for business, as well as bilingual FactSheets on issues related to environmental and social impacts of business including Cultural Rights, Worker Housing, Environment and Ecosystem services, In-Migration, Livelihoods, Labour Rights, Access to Remedy, Housing, Land Acquisition and Resettlement, Public and Community services, Groups at Risk and Community Consultation. It has also undertaken sector-wide impact assessments (SWIAs) on Oil and Gas, Tourism, ICT and Mining.

21 Personal communication with MCRB, March 2018.

22 [Myanmar's first directors certification course concludes](#), Myanmar Times, 9 April 2019

23 Collective capacity-building for companies is part of MCRB's donor-funded programme but the Centre does not provide paid consultancy services, which are available in Myanmar on the commercial market.

24 [www.myanmar-responsiblebusiness.org/tags.html?tag=responsible+business+seminars](http://www.myanmar-responsiblebusiness.org/tags.html?tag=responsible+business+seminars)

## **PROFESSIONAL ADVISERS AND AUDITORS**

It is essential to recognise the role that professional advisers play in assisting companies to improve corporate governance, in particular auditors. Reliable audit reports are needed for a Board of Directors to exercise their duties to act with care and diligence.

There is also a regulatory requirement for audited financial statements (S.260b MCL). S.257 of the MCL requires all companies other than 'small companies'<sup>25</sup> to have their financial statements audited by certified auditors in accordance with the standards laid down by the Myanmar Accountancy Council (S.257 and S279). For public and publicly listed companies, these audited financial statements also need to be filed with the Companies Registrar (MCL S.266a).

An audit conducted to the appropriate standard can cost a significant amount, more than many Myanmar companies are currently paying, judging by the professional fees they report in their annual accounts. The *2017 Report on Observance of Standards and Codes (ROSC): Accounting and Auditing* by the World Bank, which was prepared in active collaboration with the Office of the Auditor General of the Union, the Myanmar Accountancy Council and the Myanmar Institute of Certified Public Accountants, identified concerns about audit quality, auditor independence and the low level of audit fees, all of which have major corporate governance implications, and made a number of recommendations<sup>26</sup>.

On 5 December 2018, DICA issued an Announcement encouraging auditors to comply with International Auditing Standards, in line with Myanmar Accountancy Council's 2018 Notification that requires public accountants to comply with international auditing standards by 2022/23 FY<sup>27</sup>, and encouraged them to do so earlier. The CBM has laid down more detailed requirements for audit of banks (see below).

As part of ongoing reforms to taxation (see below), Tax Officers also need to give more weight to audited reports for tax assessment. This is not always the case. Historic suspicion about companies and auditors 'cooking the books', and continued operation by Township Tax Offices of the 'official assessment system' (OAS) - which puts the responsibility, and therefore the power, to assess tax liability with the Tax Officer - has led to some Tax Officers disregarding audited financial statements<sup>28</sup>.

25 MCL S.1 xxxviii defines small companies as having less than 30 employees and a revenue of less than 50 million kyats (approx. \$33,000). See S.146e and S.257c lists those requirements not applying to small companies

26 The [Report on Observance of Standards and Codes \(ROSC\): Accounting and Auditing Module: Myanmar](#), World Bank with support from the Korean Ministry of Strategy and Finance under the Bank Executed Korean Trust Fund, June 2017

27 [Notification No. \(20/2018\) of 4 July 2018, Myanmar Accountancy Council](#) and [EN summary](#) by Myat and Associates.

28 Personal communications by SMEs with MCRB, January 2019

**PART 2:  
DEVELOPMENTS  
SINCE THE 2018  
PWINT THIT SA  
REPORT**

**MYANMAR  
SUSTAINABLE  
DEVELOPMENT  
PLAN 2018-2030**

The situation concerning corporate governance, transparency and business integrity in Myanmar has generally been improving since reforms began in 2011 under then President U Thein Sein. The National League for Democracy (NLD) government which was elected in November 2015 and assumed power in March 2016 has continued with the regulatory reforms initiated by the previous government, including a new Investment Law, and a new Companies Law (see below). The government has also stressed the importance it attaches to sustainability, responsible business and fighting corruption.

In August 2018, the Myanmar Sustainable Development Plan was adopted<sup>29</sup>. It includes a number of action points relevant to corporate governance:

**1.4.5:** Review and strengthen anti-corruption related legislation, enforcement measures and policies, including strengthening grievance and whistleblower mechanisms

**3.3.1:** Ensure the systematic, predictable, and transparent enforcement of rules, procedures, notifications, orders, directives and permits

**3.3.4:** Improve corporate governance and disclosure rules and enforce them

The MSDP also prioritises modernization of Myanmar's tax collection systems, by making it more transparent and addressing corruption as well as using ICT and expanding tax education.

**STATE-OWNED ECONOMIC ENTERPRISES (SEEs)**

The MSDP covers reform of State Economic Enterprises. Strategy 2.5 commits the government to 'Enhancing the efficiency and competitiveness of State Economic Enterprises' and action 2.5.1 involves the development of a national SEE policy based on a comprehensive review and assessment of existing SEEs, clarifying their functions, professionalizing management, enhancing oversight and transparency, and where appropriate equitizing or privatizing assets. Information about SEE budgets is available on the MoPF website<sup>30</sup>.

SEEs have been included in *Pwint Thit Sa* for the first time in 2019 (see Table 6). Reform will require SEEs to invest more in corporate governance and disclosure, particularly where the enterprise plans to transform into a public company. Natural resources SEEs, which have significant revenue, were the subject of a 2018 report which recommended that the Government needed greater oversight of SEE compliance and performance, as well as greater disclosure of information. It recommended establishing independent boards of directors for SEEs and independent external audit<sup>31</sup>. This report noted that:

29 Myanmar Sustainable Development Plan 2018-2030

30 [https://www.mopf.gov.mm/sites/default/files/upload\\_pdf/2018/08/2018-2019\\_SEEs%20Commercial.pdf](https://www.mopf.gov.mm/sites/default/files/upload_pdf/2018/08/2018-2019_SEEs%20Commercial.pdf)

31 [State-owned Economic Enterprise Reform in Myanmar: The Case of Natural Resource Enterprises](#), Renaissance Institute and Natural Resources Governance Institute (NRGI), July 2018 . See Box 2 for an analysis of the state of 'corporatisation' of SEEs.

"Myanmar's SEEs are generally not independent of government ministries, but are rather firmly entrenched under ministry authority. According to the latest count, only four SEEs have quasi-independent boards to monitor SEE activities: Myanmar National Airlines, Myanmar Economic Bank (MEB), Myanmar Investment and Commercial Bank, and Myanmar Foreign Trade Bank (MFTB). In the case of Myanmar National Airlines, the board consists of five retired civil servants, which would not constitute an independent board in most contexts. While other SEEs have boards, these act as management committees rather than oversight bodies. In nearly every case, SEE management reports to a line ministry, and its capital budget is set by the line ministry".

**MILITARY OWNED ENTERPRISES**

There has been increased interest in Myanmar's military-owned companies, not least as a result of the recommendation in the report of the UN Fact-Finding Mission set up to examine the human rights situation in Rakhine, Kachin and Shan States<sup>32</sup> that:

*"No business enterprise active in Myanmar or trading with or investing in businesses in Myanmar should enter into an economic or financial relationship with the security forces of Myanmar, in particular the Tatmadaw, or any enterprise owned or controlled by them or their individual members, until and unless they are re-structured and transformed as recommended by the Mission".*

There are two main military owned entities, Myanmar Economic Corporation (MEC), and Myanmar Economic Holdings Public Company Limited (MEH) (previously known as Union of Myanmar Economic Holdings Limited or UMEHL, and still referred to as 'oo-bine', meaning 'holdings'). These two entities differ in nature: one is an SEE and one is a public company (see below for more details on what being a public company means in Myanmar).

MEC is a military owned enterprise controlled by the Tatmadaw (army) established in 1997 and not under civilian control, or subject to the Auditor-General. It has – confusingly – also registered a subsidiary company, Myanmar Economic Corporation Ltd as a private company limited by shares for which the only shareholder is MEC, the military-owned enterprise identified as the Ultimate Owner on the MyCo registry. MEC has 16 Directors, who although mostly ex-military, are registered without military titles. It is involved in a variety of sectors, and claims to be now taking a fully commercial approach<sup>33</sup>. However, in view of its control and ownership, in *Pwint Thit Sa* it is included as in the list of SEEs.

MEH (formerly UMEHL which was created in 1990), is a public company, with 11 active and retired military personnel assigned as Directors on 1 August 2018. According to the MyCo companies register, it has no Ultimate Holding Company, and the holders of its 242,527,359 shares (each of 1,000 MMK) are believed to be current and former military personnel. In *Pwint Thit Sa* it

32 See Para 1717 of the Report to the UN Human Rights Council of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, 17 September 2018, A/HRC/39/CRP.2

33 Personal communication with MCRB, March 2019

## **LEGISLATIVE DEVELOPMENTS IN CORPORATE GOVERNANCE AND DISCLOSURE**

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has therefore been classed as a Public company, and included in the main list of companies assessed.

Both entities operate in sectors such as banking, retail, mining and gemstones<sup>34</sup>. They also have subsidiaries registered as ‘private companies limited by shares’. MEH subsidiaries include Myawady Bank, Myawady Trading, Myanmar Imperial Jade, all of which were included in this report since they are significant taxpayers. They are identified as ‘Private’. Private company subsidiaries of MEC include Innwa Bank and Star High Co Ltd, a shareholder in MyTel, the 4<sup>th</sup> telecoms operator which is a JV with Viettel.

There is a growing trend in Myanmar towards regulatory requirements for better corporate governance and greater corporate disclosure, led by the Directorate for Investment and Companies Administration (DICA), and complemented by the rules of the Securities and Exchange Commission of Myanmar (SECM) and the Central Bank. This section summarises current corporate governance and disclosure requirements for both public and private companies, to the extent MCRB/Yever have been able to determine them.

### **MYANMAR COMPANIES LAW**

A new Companies Law was adopted in December 2017 (MCL)<sup>35</sup> to replace the 1914 Burma Companies Act and came into force in August 2018 following adoption of the Myanmar Companies Rules<sup>36</sup>.

Although the most high-profile change is the possibility for a ‘Myanmar company’ to have up to 35% foreign ownership, which allows Myanmar companies to access foreign capital, a significant CG-related change is that the law now includes a comprehensive set of ‘directors’ duties’ (Sections 165 to 172) to ensure that a company is properly run and managed in the best interests of the shareholders as a whole. These duties include:

- Duty to act with care and diligence;
- Duty to act in good faith in the company’s best interest;
- Duty regarding use of position;
- Duty regarding use of information;
- Duty to comply with the new Companies Law and constitution;
- Duty to avoid reckless trading;
- Duty in relation to obligations (of a company); and
- Duty to disclose certain interests.

In some circumstances directors may become individually liable to penalties if they breach their duties. Significant penalties for failure to comply with

34 Details of the mining and quarrying licences held by MEC and MEH are available in [Appendix 10 of the 2016/2017 Myanmar Extractives Industries Transparency Initiative \(MEITI\) report](#)

35 2017 Myanmar Companies Law ([EN](#)) and [MM](#).

36 [Myanmar Companies Regulations 2018 and Notifications \(EN\)](#)

the Law may be imposed by DICA multiple times (on the company, on each director, on each officer involved...) through penalty notices without court intervention (S. 439 CL). DICA may also seek to prosecute (S.440).

### **What are public and private companies?**

A ‘private company’ (or Private Limited Liability Company), which is the normal form of company, and usually limited by shares<sup>37</sup>, is defined in the Myanmar Companies Law s.1.xxv as ‘a company incorporated under this Law or under any repealed law which:

- must limit the number of its members (i.e. shareholders) to 50 not including persons who are in the employment of the company;
- must not issue any invitation to the public to subscribe for the shares, debentures or other securities of the company; and
- may by its constitution restrict the transfer of shares.

MCL S.1.xxviii defines a “public company” (or Public Limited Liability Company) as a company incorporated under the MCL, or under any repealed law, which is not a private company. A ‘public company’ can issues shares to the public. It must have at least 7 shareholders/members (no maximum number), and at least 3 directors, at least one of whom must be a Myanmar citizen, ordinarily resident in Myanmar (MCL s. 4(a)(vi)). It must also apply for a Certificate of Commencement of Business before its operations begin<sup>38</sup>. Generally public companies in Myanmar are not foreign owned, although the provision in the 2017 Companies Act to allow a foreign shareholding of up to 35% will change that. Five public companies have listed on Yangon Stock Exchange (see below).

In the last decade, there was a trend to register as a public company in Myanmar, with several hundred being formed. This was attributed to the perception that those who registered as public companies would be prioritised in tenders by the U Thein Sein government<sup>39</sup>. However, many of these companies were barely operational and had poor compliance on governance and disclosure<sup>40</sup>. In *Pwint Thit Sa* 2018, the average score of a ‘public company’ (not including listed companies) was 4% compared to an overall average of 7%. In the 2019 assessment, the equivalent figures are 4% for public and 5% overall. The re-registration process under the new MyCo registry and delisting of legacy companies is expected to further reduce the number of public companies.

DICA Notification 59/2018 of July 2018<sup>41</sup> reminded public companies of their obligations to both DICA and the SECM concerning public offering of shares by public companies, issuance of prospectus, as well as the

37 The MCL also contains provisions to register a Company Limited by Guarantee, an option for a not-for-profit.

38 <https://dica.gov.mm/en/step-by-step/registration-myanmar-public-companies>

39 [DICA to re-educate public companies](#), Myanmar Business Today, 17 September 2016

40 To discourage frivolous formation of public companies, registration fees for public companies were raised in May 2016 from K1 million to K2.5 million [Revised Registration Fees](#), Directorate of Investment and Companies Administration (DICA), May 2016

41 [Requirements for Public Companies](#), DICA Notification 59/2018 9 July 2018

requirement for online filing with the Registrar of changes to the public company's register of members in respect of the 50 members holding the largest number of shares in the company. Other statutory filings for public companies are listed below.

#### ***Disclosure Requirements in the Companies Law***

Another significant reform related to the new Companies Law has been the establishment of online registration, online filing of company documentation, and its public availability. MyCO ([www.myco.dica.gov.mm](http://www.myco.dica.gov.mm)) is DICA's online searchable database which provides free, open access to company name, company type, registration number, address and a list of company officers. Any other information filed with the Registrar (i.e. DICA) is available to the public upon payment of a 10,000 kyats' fee to DICA (MCL S. 421(e)).

The MCL and Rules require companies (except small companies<sup>42</sup>) to report certain information annually to the Registrar. Although the Companies Law does not require the company to publish the information which it has filed, this information is in principle public. Companies filing it should therefore consider disclosing it voluntarily on their websites, particularly as some of this information for public companies also falls under compulsory disclosure requirements under the Securities and Exchange Law (see below).

#### ***Annual Return***

All companies (MCL s.257) are required to file an Annual Return (MCL s.97) within 2 months of incorporation and once at least every year (but no later than 1 month after the anniversary of its incorporation) using the prescribed form<sup>43</sup>. The Annual Return requires companies to provide information on, or confirm the accuracy of existing information on:

- Names of Company, Director(s), Company Secretary (if there is one) and Address;
- Share capital details and list of (up to) top 50 shareholders including names, addresses, nationality and shareholdings;
- Date of last AGM (if applicable);
- Mortgages and charges granted by the company;
- Status as foreign or small company;
- Any Myanmar Investment Commission permits or endorsements;
- Company principal activities;
- (for private companies only) certificate confirming no invitation to the public for shares or debentures.

42 "Small company" is defined in MCL s.1.c. (xxxviii) as 'a company, other than a public company or subsidiary of a public company, which satisfies the following conditions:

(A) it and its subsidiaries have no more than 30 employees (or such other number as may be prescribed under this Law); and  
(B) it and its subsidiaries had annual revenue in the prior financial year of less than 50,000,000 Kyats (around USD 33,000) in aggregate

43 [Annual Return Form](#) under MCL Section 97

The penalties for failing to file an annual return or doing so fraudulently are contained in MCL s.430d and include suspension of company registration and a financial penalty of 100,000 kyats, with a further 100,000 kyats for the company to be reinstated if suspended<sup>44</sup>.

#### ***Statutory report***

S.148(a) and (b) of the Myanmar Companies Law 2017 require directors of every public company, and every company limited by guarantee and which has a share capital, to circulate a "statutory report" to every member of the company at least 21 days before the day on which the general meeting is held, which should cover *inter alia* total number of shares allotted, fully or partially paid up, and cash received for them; a balance sheet; names, addresses, nationalities and descriptions of the directors, auditors and secretary, if any, of the company and the changes, if any, which have occurred since the date of the incorporation. This must be certified (MCL s.148c) by not less than two directors of the company, or by the chairman of the directors if authorized by the directors, or by the sole director in the case of a company with only one director. The certified statutory report must be filed (s.148e) with the Registrar using Form G-1<sup>45</sup>.

#### ***Financial Statements and Director's Report***

Additionally, companies (other than small companies – MCL s.257c) are required to prepare audited Financial Statements and a Director's Report (MCL s.266a) as approved by their AGM, using form G-5.<sup>46</sup> Private companies are required to prepare these documents but do not have to file them with the registrar (MCL s.266c). The Directors' Report is a report 'with respect to the state of the company's affairs' which forms part of the Financial Statements (MCL s.261a). It must include:

- (i) a fair review of the company's business, including a description of the company's primary business;
- (ii) an analysis of the company's performance during the year;
- (iii) a description of risks and uncertainties facing the company and;
- (iv) any other matters which may be prescribed.

#### ***CENTRAL BANK OF MYANMAR (CBM) DIRECTIVES***

On 25 March 2019, the Central Bank issued a number of Directives under the Financial Institutions Law (FI Law) relating to corporate governance of banks<sup>47</sup>. These give the Central Bank powers over Board composition and share ownership of banks which go beyond the powers of the Companies Registrar, and may have been stimulated by the APG Recommendations on money-laundering (see below).

44 Schedule Two of [DICA Notification 57/2018 on Prescribed Fees and Late Lodgement Fees under the Myanmar Companies Law](#), 9 July 2018

45 [Statutory report of public company](#), Form G-1

46 [Financial Statements of a Public Company](#), Form G-5

47 [www.cbm.gov.mm/content/2882](http://www.cbm.gov.mm/content/2882)

### **Directive on Fit and Proper Criteria**

Directive 8/2019 (effective 25.3.2020) applies to all Directors, Officers of a bank<sup>48</sup> and External Auditors as well as shareholders with a ‘substantial interest’ (defined as 10% - see below). It requires the Board to ensure the officers are ‘fit and proper’ and for Director/CEO appointments to be approved a month in advance by the CBM. Fit and proper criteria relate to honesty, integrity and reputation; competence and capability (with requirements for sector-specific experience listed in an Annex to the Directive); and financial soundness. These are significantly more detailed and demanding than those in the Companies Law s.175 which requires Directors to be over 18, of sound mind, and not undischarged bankrupts or otherwise disqualified.

### **Directive on Directors of Banks**

Directive 9/2019 (effective 25.3.2020) sets out requirements for Bank Boards, *inter alia* that all bank Directors must be approved by the CBM, and that all banks must have at least one Independent Non-Executive Director (NED) for a board of less than 11 Directors, and two where the Board is between 11 and 15 Directors. The CBM defines ‘Independent NED’ in a limited way, as a person who holds less than 5% of the voting shares of the bank and is not a Related Party (see below). However, this is the only Myanmar requirement for, or definition of, independent NED to date, as the Companies Registrar has not yet defined the ‘qualifications, rights and duties of independent directors’ as provided for in MCL s.175f, and there is no requirement for non-bank companies to have NEDs. Directive 9/2019 also lists detailed requirements for Board governance, conflict of interest and continuous professional development of Directors, again going well beyond the limited provisions in the Myanmar Companies Law.

### **Directive on External Auditors of Banks**

Directive 10/2019, effective for the next financial year, requires the bank to appoint a qualified external auditor at their AGM who is certified by the Myanmar Accountancy Council, and to have the appointment approved by the CBM. The external auditor must be replaced every five years and not conduct more than three successive audits. The Directives sets out audit requirements and also requires (Paras 34-35) every bank to publish its audited statement of financial position and statement of comprehensive income together with the external auditor’s opinion in at least one Myanmar newspaper and on its website within four months after FY end, as well as to exhibit them conspicuously all year in each of its offices and branches.

### **Related Parties Directive**

Directive 11/2019, effective immediately, sets out rules for lending to related parties as well as reporting to the CBM on payment for services rendered by related parties, or facilities used, such as premises, personnel, or equipment; or payment for assets sold.

It defines Related Parties as either (i) a person who has substantial interest

48 These include Chief Executive Officer, Managing Director, Deputy MD, Chief Financial Officer, Chief Operating Officer, Chief Compliance Officer, Chief Internal Auditor, Chief Risk Management Officer; and Chief Credit Officer

(see below) in the bank or the bank has significant interest in the person; (ii) a Director or Officer of the bank or of a body corporate that controls the bank; (iii) a relative of a natural person covered in paragraphs (i) and (ii); (iv) an entity that is controlled by a person described in paragraphs (i), (ii) and (iii); (v) a person or class of persons who has been designated by CBM as a related party because of its past or present interest in or relationship with the bank. A relative is defined as spouse, brother or sister of the individual, brother or sister of the spouse of the individual, any lineal ascendant and descendant of the individual or spouse of the individual and his dependents; and any such relationship created through adoption<sup>49</sup>.

### **Directive on Acquisition of Substantial Interest**

Directive 12/2019, effective immediately, defines ‘substantial interest’ as ‘owning, directly or indirectly, 10% or more of the capital or of the voting rights of a bank or, directly or indirectly, exercising control over the management of the bank as CBM may determine’. ‘Substantial interest’ is not a concept in the Myanmar Companies Law<sup>50</sup>. CBM approval is needed for acquisitions of substantial interest in a bank, and banks must file an annual report on those who have a substantial interest and their shareholdings.

Thresholds for ‘substantial interest’ in company laws elsewhere vary greatly (3% in USA, 5% in Netherlands, 20% in India, 30% of voting rights in UK). The 10% threshold in CBM Directive 12/2019 is higher than the 5% beneficial ownership threshold in Myanmar EITI (see below); 5% is also the threshold used in the ACGS and the *Pwint Thit Sa* survey.

## **SECURITIES EXCHANGE COMMISSION**

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The SECM was established by the 2013 Securities Exchange Law<sup>51</sup>, with responsibility for supervising public companies; securities companies; Over-the-Counter Market; Stock Exchange and their representatives, licence holders, auditors and agents. Supervision of public companies includes a requirement in Chapter VI of the Law to obtain approval of the SECM before public offering of its securities with a 60-day notice period; and publication of a prospectus.

The SECM is funded from the Union budget. It has limited skills and capacity to carry out its supervisory tasks, particularly the supervision of the continuous disclosure obligations of public companies and the Over The Counter (OTC) market. The SECM has also been charged with developing auditing and corporate governance standards for listed companies in line with regional and international standards. One missing piece is a Myanmar Code of Corporate Governance. This might be an output of IFC and OECD support to the Myanmar government (see below).

49 This differs from the definition of family member included in the Myanmar EITI report for defining Political Exposed Person (PEP), which extends to second degree relations i.e. an individual’s grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings, as well ‘close associates’ (professional or social).

50 The term ‘Ownership Interest’ is defined in the MCL, but in the context of defining a ‘Foreign Company’ – one with more than 35% foreign ownership.

51 [Securities Exchange Law](#) 20/13 of 31 July 2013

### **Continuous Disclosure**

Requirements for ‘continuous disclosure’ are established under the Securities Exchange Rules and SECM Notification 1/2016<sup>52</sup>. These requirements apply to:

- Companies listed on the Yangon Stock Exchange (YSX)<sup>53</sup>;
- Public companies which are traded over the counter (OTC);
- Public companies which have the SECM’s approval to make a public offering<sup>54</sup>;
- Public companies with more than 100 shareholders<sup>55</sup>.

These types of companies are required to submit:

- Annual reports (Rule 118), to be submitted within 3 months of FY end
- Half-yearly reports (Rule 121), to be submitted within 3 months after the first 6 months of FY end
- Extraordinary reports.

Annual reports must include balance sheet and profit and loss (P&L) accounts for the FY, as laid before and adopted by the company at the general meeting, and the associated auditor’s report, as well as the material particulars of the company. Material particulars are defined (Rule 109) as:

- Summary of the company’s affairs including the information about the history and development of the company, its parent and subsidiary companies and related companies, its employees, etc;
- Business overview including the performance of the company’s business, the activities and principal markets, the principal risks and uncertainties facing the company, material contracts, research and development, etc;
- Statement of the company’s plant and equipment including the information about its investment in equipment, its main plant and equipment, etc;
- Statement of the company including the information about major shareholders, dividend policy, organizational structure, management system, etc.

52 [Securities Exchange Rules](#), Ministry of Finance Order 1806/2015 of 27 July 2015 currently only available in Burmese and [Announcement of Continuous Disclosure](#), SECM Notification 1/2016 of 19 February 2016

53 There are five companies currently listed on YSX: [First Myanmar Investment Public Co., Ltd. \(FMI\)](#), [Myanmar Thilawa SEZ Holdings Public Ltd.\(MTSH\)](#), [Myanmar Citizens Bank Ltd.\(MCB\)](#), [First Private Bank Ltd.\(FPB\)](#) and [TMH Telecom Public Co., Ltd.\(TMH\)](#)

54 Presently only three companies, Yangon Bus Public Company, Myanmar Agro Exchange Public and Amata Holding Public Co, are [permitted by the SECM](#) to sell shares on the domestic OTC market.

55 Reporting exemptions are made for public companies which have ceased to do business, are being wound up, or where the total number of the holders of the securities of the company becomes fewer than the number specified in the notification issued by the Commission (i.e. 100).

Half-yearly reports must include audited balance sheet and profit and loss, together with an interim directors’ report or interim management statement providing an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the company and its controlled undertakings. They must also include a general description of the financial position and performance of the company and its controlled undertakings during the relevant period (Rule 121).

Extraordinary reports are required from public companies (including for significant subsidiary companies) in the case of the following:

- change of parent company or subsidiary;
- change of major shareholders owning more than 20% of voting rights;
- occurrence of a disaster suffered by the company;
- filing or settlement of a material lawsuit claiming damages against the company;
- transfer of the company’s material undertakings to another person or transfer of material undertakings from another person to the company;
- change of a managing director or manager of the company;
- resolution of the AGM/extraordinary AGM other than AGM resolutions approving financial statements;
- change of company auditor;
- filing of a petition for compulsory winding up, voluntary arrangements, etc;
- voluntary winding up or dissolution of the company;
- failure to pay or concern about failure to pay a significant amount of the company’s debts;
- occurrence of a matter or an event which falls under the subsequent events under the applicable accounting principles.

All the above-mentioned reports are required under the Rule 124 to be freely available in printed form, in both Burmese and English, and published on both the company and the SECM websites for 5 years in the case of annual reports, 3 years for half-yearly and 1 year for extraordinary reports. Listed companies must also publish them at the YSX.

### **Yangon Stock Exchange**

The Yangon Stock Exchange (YSX) was established under Chapter 8 of the 2015 Securities Exchange Rules and is supervised by the SECM. It was launched in March 2016 as a partnership between Japanese investment bank Daiwa Securities Group and majority-owner Myanmar Economic Bank (MEB). The Regulations governing YSX and disclosure primarily derive from the SECM (see above) although YSX has issued some regulations on securities and trading<sup>56</sup>.

56 YSX Regulations can be found at [ysx-mm.com/regulations/ysxregulations/](http://ysx-mm.com/regulations/ysxregulations/)

The 2016 Myanmar Investment Law (MIL)<sup>57</sup> created a single law for both foreign and domestic/Myanmar citizen investors which replaced the previous 2012 Foreign Investment Law and the 2013 Myanmar Citizens Investment Law. In March 2017, the Myanmar Investment Rules (MIR) were adopted<sup>58</sup>. The new Law and Rules introduce a number of changes to the previous 2012 Foreign Investment Law including:

- new types of permit, including a ‘full’ Myanmar Investment Commission (MIC) Permit, and a faster and lighter approval or ‘Endorsement’ for permission to lease land for more than one year as a foreign company. Full MIC Permits are necessary for strategic, large, or environmentally/socially impactful projects (Section 36 of the MIL, defined further in Article 3-11 of the MIR);
- applicability to all investors: the previous 2012 Foreign Investment Law applied only to those foreign investors holding an MIC permit. Under the new MIL, everyone who invests in Myanmar is an investor subject to the 2016 Investment Law, irrespective of whether they hold an MIC permit or not.

In December 2016 the government adopted an Investment Policy under the MIL<sup>59</sup>. This highlights that Myanmar welcomes ‘responsible and mutually beneficial foreign investments’, and promises that these will be facilitated ‘through transparent, clear and expeditious procedures’. Point 5 of the Investment Policy notes that ‘Local and foreign investors shall comply with the principles for responsible investment and business conduct, including environmental and natural resources matters on an equal basis and in a non-discriminatory manner at all times’.

While the MIL and MIR contains requirements for disclosure by both the Investment Commission and companies, to date MIC/DICA have not fully implemented or enforced these transparency provisions.

#### ***Disclosure by the MIC***

MIR 45 requires the MIC to publish a Summary of the Investment Proposal within 10 days of receiving the Proposal, and before the Proposal is considered by MIC. However, these proposal summaries have only been published after their adoption by MIC. Furthermore, information is incomplete and not in searchable format since it is often hand-written on a form completed by the investor, and then scanned as a PDF.

The Myanmar Investment Commission is required (MIL s.24g) to report annually to the Parliament on the progress of the investments approved by the Commission, and to publish this within 20 days on its website (MIR 148). The Rules state that this annual report must include information about:

- (a) investment trends;
- (b) the principal activities of the Commission, including a summary of the activities of the Investment Monitoring Division, Investor Assistance

57 VDB, [Client Briefing Note: What Changes in Practice under the New Investment Law?](#),

8 October 2016

58 [Myanmar Investment Rules](#), MIC Notification 35/2017, 31 March 2017

59 [Myanmar Investment Policy](#), December 2016

- Committee and One Stop Services;
- (c) a summary of Investor grievances; and
- (d) a list of all administrative penalties issued to Investors.

Only a summary of the report is currently available on DICA's website<sup>60</sup>.

#### ***Disclosure by the Investor***

There is a new requirement (Rules 196/199) for those issued an MIC Permit or a Tax Incentive Approval (at Union or State/region level)<sup>61</sup> to submit an annual performance report within 3 months of the end of the financial year and publish this. This should cover information about:

1. the management of the investment – progress, material changes, compliance with the law, and any instances of non-compliance, audited accounts;
2. tax incentives and investment zone exemptions (where relevant);
3. how the investment is meeting broader sustainability requirements, including information about:
  - employment performance;
  - impact of the investment on the environment and local communities;
  - land use; and
  - how the investment is demonstrating that it is meeting the objectives of MIL s.3 i.e. how is it being implemented responsibly and sustainably, meeting international standards, not causing harm to society and the environment and benefiting the country and its citizens.

Within three days from the date of submission (MIR 199), a summary of the investor’s Annual Performance Report must be published on the investor’s website (notifying the website address to the MIC) or if the investor does not have a website, provided in soft copy for publication on the MIC’s website.

In practice these Annual Performance Reports are not being submitted or published, even though DICA reminded investors on 12 June 2018 to submit them<sup>62</sup>. DICA needs to clarify the report format as their reminder referred to a Form 11<sup>63</sup>, but this does not cover the issues required for reporting under Rule 196. While further guidance is required from DICA on these reports, companies should nonetheless be submitting them and disclosing them on their company websites, including to support their wider stakeholder communication.

60 [Summary on Annual Investment Report of the Myanmar Investment Commission 2017-2018 Financial Year](#)

61 An MIC Permit is not required for most investment but is required if it meets certain criteria: these include businesses that are strategic to the Union; have large capital investments; have a large potential impact on the environment and local communities (defined as those which will require an EIA), involve State-owned land, or are designated by the Government as needing a permit required (MIL Art. 36).

62 [www.dica.gov.mm/en/news/notice-regarding-annual-performance-report](#), 12 June 2018

63 [www.dica.gov.mm/sites/dica.gov.mm/files/document-files/form\\_11\\_e.pdf](#)

## ENVIRONMENTAL IMPACT ASSESSMENT

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On 29 December 2015, the government published an Environmental Impact Assessment (EIA) Procedure requiring timely public consultation and publication of Initial Environmental Examination/Environmental Impact Assessments (which include social impacts). Full public disclosure requirements throughout the IEE/EIA process are detailed in draft Guidelines on Public Participation in Myanmar's EIA Processes<sup>64</sup>.

The EIA Procedure (Article 38 for IEE, Article 65 for EIA) requires project proponents, whether companies or public agencies, to publish the EIA report no later than 15 days after its submission to the Environmental Conservation Department (ECD); ensuring that it is available to civil society, project-affected people, local communities and other concerned stakeholders by:

- posting the EIA on the project or project proponent's website(s);
- communicating by means of local media (i.e. newspapers);
- at public meeting places (e.g. libraries, community halls); and
- at the offices of the project proponent.

The EIA Procedure also requires ECD to make the IEE/EIA report publicly available online upon receipt, and to disclose its decision (approval with an Environmental Compliance Certificate (ECC) or rejection (EIA Procedure, Art. 41, Art. 70, Art. 80) and any modification (EIA Procedure, Art. 75). Although there is no explicit requirement in the EIAP for the company to publish its ECC, the EIA Procedure Annexes provide for this. Six monthly monitoring reports by the company are also meant to be published within ten days of completion on the Project website and in public places.

With the exception of the oil and gas sector (dominated by multinational companies)<sup>65</sup> very few EIAs have been published. The same is true for ECCs, which should allow the public to know what requirements are included in the permit (however very few ECCs have been issued by ECD to date). Furthermore, the integrity of the EIA process is being damaged by a lack of transparency in administrative handling, including the absence of an online database to enable stakeholders to see which investments are undertaking IEE/EIA, and to track progress, and access disclosed reports. Development partners are working with ECD to try to remedy these issues.

Another problem is that as with audits, companies are unwilling to pay for the cost of a quality EIA . Most of those submitted lack sufficient baseline data, risk analysis and mitigation measures, and are conducted with minimal public consultation. Furthermore, 41% of EIA consultants polled at a workshop conducted by MCRB and Vermont Law School in November said that their biggest challenge was that Project Proponents were not willing to include an accurate assessment of negative environment and social impacts in their EIA<sup>66</sup>.

64 [www.myanmar-responsiblebusiness.org/pdf/2017-05-31-Draft\\_Guideline\\_Public\\_Participation\\_Myanmar\\_EIA.pdf](http://www.myanmar-responsiblebusiness.org/pdf/2017-05-31-Draft_Guideline_Public_Participation_Myanmar_EIA.pdf)

65 [www.myanmar-responsiblebusiness.org/news/mixed-picture-disclosure-environmental-impact-assessments.html](http://www.myanmar-responsiblebusiness.org/news/mixed-picture-disclosure-environmental-impact-assessments.html) and [www.myanmar-responsiblebusiness.org/news/eia-survey-update.html](http://www.myanmar-responsiblebusiness.org/news/eia-survey-update.html)

66 [www.myanmar-responsiblebusiness.org/news/consultants-biggest-challenge.html](http://www.myanmar-responsiblebusiness.org/news/consultants-biggest-challenge.html)

## DEVELOPMENTS IN COMBATING CORRUPTION

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Addressing bribery and corruption has been a priority of the NLD government. On coming to power they immediately published new guidelines on the acceptance of gifts by public servants which *inter alia*, reduced the maximum value of a gift from 300,000 kyats to 25,000 kyats (around \$15)<sup>67</sup>.

The 2018 Myanmar Sustainable Development Plan prioritises combatting corruption in public sector, and tax, reform, in support of SDG16.5 ("substantially reduce corruption and bribery in all its forms")<sup>68</sup> with two Action Points:

**1.4.5** Review and strengthen anti-corruption related legislation, enforcement measures and policies, including strengthening grievance and whistleblower mechanisms

**2.3.5** Introduce anti-corruption and tax evasion countermeasures to protect the integrity and reputation of the tax system, including expanding the focus of internal audit and establishing an Internal Affairs Unit

A reinvigorated 12-member Anti-Corruption Commission<sup>69</sup> headed up by former Minister U Aung Kyi was appointed on 24 November 2017<sup>70</sup>. With clear backing from President U Win Myint, the new Commission has already shown itself to be more active than its predecessor, and has been keen to engage with Myanmar and international companies<sup>71</sup>. Its investigations have led to action being taken against senior figures including the Head of the Food and Drug Administration and the Chief Minister of Tanintharyi. The ACC Chair recently decided to convene an advisory group comprising private sector and civil society experts.

Nonetheless, a reputation for cronyism and corruption continues to overhang Myanmar. For example, companies, government and political parties need to be more transparent in declaring cash and in-kind contributions from business to government, Ministers and political parties. This includes free of charge (FOC) travel, accommodation and hospitality, both personal and professional as well as 'charitable donations' (see below)<sup>72</sup>.

On 29 October 2018, the Inland Revenue Department (IRD) issued a Notification 1/2018 clarifying that bribes or similar payments to government officials were non-deductible expenses for income tax. "Public officials" were defined as: 1) government officials (including officials from outside

67 'NLD cracks down on nepotism', Myanmar Times, 27 April 2016.

68 SDG 16.5 indicators include 16.5.1: Proportion of persons who had at least one contact with a public official and who paid a bribe to a public official, or were asked for a bribe by those public officials, during the previous 12 months and 16.5.2: Proportion of businesses that had at least one contact with a public official and that paid a bribe to a public official, or were asked for a bribe by those public officials during the previous 12 months.

69 [www.accm.gov.mm/acc/](http://www.accm.gov.mm/acc/)

70 [Presidential Order 30/2017 23 November 2017](http://Presidential Order 30/2017 23 November 2017) appointing the new Anti-Corruption Commission (Burmese only).

71 In July 2018, the ACC [signed an MoU](#) with the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI). On 5 December, MCRB, UMFCCI, the ACC and international businesses held a [workshop on business integrity](#).

72 '[A fine line between FOC and Corruption](#)', Op-Ed by Vicky Bowman, Myanmar Times, 12 January 2016; [A Lavish Wedding is the Talk of the Town](#), Irrawaddy Magazine, 11 January 2018.

Myanmar); 2) those with positions in the Legislative, Judicial, and Executive Branches of the Myanmar Government; 3) those who have been appointed to a Board or related Commission as organized by the Myanmar Government; and 4) those who work for public international organizations<sup>73</sup>.

#### **Facilitation Payments**

Facilitation payments (a payment made to a public or government official that acts as an incentive for the official to complete an action expeditiously) are widespread. They are not explicitly mentioned in the Anti-Corruption Law. However the Rule 7 in the Civil Service Code of Conduct prohibits bribe taking or giving, as well as asking for or taking cash or other benefits for services which are part of one's own or another's duties, or for not undertaking duties in return for cash or other benefits<sup>74</sup>.

A Perception Survey of civil servants conducted in 2016 as part of the preparation for the Myanmar Civil Service Reform Strategic Action Plan 2017-2020 showed that civil service personnel believe there are significant levels of bribery at their place of work. They believe that this is a way for civil servants to supplement their salary; small scale bribery was 'tolerated' or justified among survey respondents. More than half of survey respondents (56%) thought that some civil service personnel ask for additional payments, such as bribes, to do their work<sup>75</sup>.

A major driver of facilitation payments is unnecessary red tape and multiple approvals by bureaucrats. The government needs to take a risk-based, rather than controlling, approach to regulation.

Pillar 1 of the Private Sector Development Framework adopted by DICA in 2016 addresses 'Improving the Legal and Regulatory Environment'<sup>76</sup>. However, to date, the implementation of this remains fragmented. Consultation of businesses – both Myanmar and foreign investors - on the impacts of draft regulation and policy is not systematic. This contributes to poor quality and impractical regulation, which creates red tape. Some reforms and online processes have been adopted which should help, such as MyCo. However, in other areas it may be worsening, as new laws and decentralisation introduces more layers of approval processes.

As a consequence, Myanmar continues to score poorly in various economic governance indexes:

- **Transparency International Corruption Perceptions Index (CPI):** The 2018 CPI<sup>77</sup> showed a slight reduction in Myanmar's ranking, after an improvement was seen in 2017, falling from 130 to 132 out of 180, the same as Laos but better than Cambodia and Bangladesh.

73 [Myanmar Tax Update for November 2018](#), DFDL

74 [Civil Service Code of Conduct](#) (MM only), 2017

75 [Perception Survey on Ethics, Equal Opportunities, and Meritocracy in the Myanmar Civil Service](#), Union Civil Service Board and UNDP, July 2017.

76 [Myanmar Indicative Private Sector Development Framework and Action Plan](#), March 2016, Myanmar Investment Commission, Ministry of Commerce, UMFCCI with support from ADB, Mekong Biz and the Australian Government.

77 [Transparency International Corruption Perceptions Index 2018](#), 30 January 2019

- **World Bank Doing Business Index (DBI):** The DBI covers issues such as starting a business, dealing with construction permits, accessing electricity, registering property, obtaining credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency. Myanmar ranks 174/190 in the 2019 DBI, including 185/190 on protecting minority investors and 188/190 on enforcing contracts<sup>78</sup>. The overall ranking is unchanged since 2018, although the score has slightly improved. Furthermore, the survey was conducted in May 2018 before the launch of online company registration in August. The Government has set itself a challenging target of moving into the Top 100 by 2020. The DBI has been a useful signpost for reform of government departments, and one of the leading SEE in *Pwint Thit Sa*, Yangon Electricity Supply Corporation (YESC), articulated its business objectives based on the indicators in the DBI indicators for Getting Electricity.
- **World Bank Enterprise Survey:** The World Bank Enterprise Survey was conducted for the first time in 2014, and then repeated in 2016/2017 after the NLD government assumed power. This surveyed 607 business owners, and showed an improvement in scores on Corruption Indicators, not far off the regional average<sup>79</sup>.
- **Myanmar Business Environment Index:** The first Myanmar Business Environment Index (MBEI), supported by Dana Facility, was undertaken by The Asia Foundation (TAF) in 2018 and will be launched in 2019<sup>80</sup>. This research into economic governance at township, state and region level involved a township-level survey of 4,874 Myanmar businesses, mostly locally licensed MSMEs, in services and manufacturing (particularly food and machinery repair). It uses TAF methodology used elsewhere including for Vietnam's Provincial Competitiveness Index. Business issues examined in the survey included Entry Costs; Land Access and Security; Post-Entry Regulations; Informal Payments; Infrastructure; Transparency; Favoritism; Environmental Compliance; Labor Recruitment; and Law and Order.
- **Rule of Law Index:** World Justice Project's Rule of Law Index is another global index on which Myanmar continues to lag, with only Cambodia doing worse within ASEAN. With criteria extending beyond the business environment, it ranks 113 countries in 2017-2018 on the basis of constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice and criminal justice<sup>81</sup>.

## **LEGAL FRAMEWORK FOR COMBATING CORRUPTION**

### **UN Convention against Corruption (UNCAC)**

Myanmar ratified UNCAC in December 2012. It entered into force in January

78 [www.doingbusiness.org/en/data/exploreeconomies/myanmar](http://www.doingbusiness.org/en/data/exploreeconomies/myanmar)

79 See Table 1, page 23 of the *Pwint Thit Sa* 2018 report

80 [Myanmar Business Environment Index Survey Findings Explained](#), 25 March 2019, MITV

81 <http://data.worldjusticeproject.org/#/groups/MMR>

2013<sup>82</sup>. Myanmar was late in completing its First Cycle Review of UNCAC implementation in 2016. The Executive Summary of the Review has been published and this provides a useful gap analysis of the Myanmar legal framework against UNCAC requirements<sup>83</sup>. An UNCAC Second Cycle Review of Myanmar (which covers Preventive Measures, and Asset Recovery) has been under way since 2017. Critical areas for the second cycle review are Art 7.4 (Conflicts of interests), Art 8.5 and 52.5 (Asset declaration systems), Art 9 (Public procurement), Art 12.e (Revolving doors), and Art 14 and 52 (Beneficial ownership).

The peer review of Myanmar is being undertaken by Iraq and Uzbekistan, but little information is available<sup>84</sup>. More transparency is needed to achieve meaningful engagement and consultation with civil society and the business sector, in line with UNCAC Articles 5, 13 and 39.

#### **Anti-Corruption Law**

The 2013 Anti-Corruption Law covers most forms of bribery in the public sector, including criminalising active and passive bribery, extortion, attempted corruption and abuse of office<sup>85</sup>. Myanmar's Penal Code covers some public sector bribery offences, but it is unclear how much the Code will be invoked following the introduction of the Anti-Corruption Law. The maximum punishment for corruption is 15 years imprisonment and a fine (Article 55). Maximum sentences for corruption offences are 15 years for persons who hold political power, 10 for civil servants and 7 years for all others<sup>86</sup>.

The Law has undergone four amendments since 2013, most recently in June 2018<sup>87</sup> when for the first time private sector responsibility was mentioned, and a new power (Article 16p) given to the Commission to instruct private sector companies to establish effective codes of conduct to prevent corruption. Subsequently, in October 2018 the ACC issued eight principles for company controls which mirror those issued by its Thai counterpart<sup>88</sup>. In January 2019, DICA reminded companies to establish anti-corruption controls, referencing the ACC document<sup>89</sup>.

The Anti-Corruption Law is still not completely in line with Myanmar's UNCAC obligations to address private sector corruption. In particular, Article 26 of UNCAC requires that Myanmar establishes liability of legal persons for participation in corruption offences, whereas the Anti-Corruption Law

82 [Myanmar becomes the 165th State Party to UNCAC](#), UNODC, December 2012

83 [Myanmar First Cycle UNCAC Review: Executive Summary](#). Note by the Secretariat to the Conference of the States Parties to the United Nations Convention against Corruption 12 October 2016

84 [Workshop for National Experts on Preparation for the second cycle of the UNCAC Review Mechanism](#), June 2017. This was attended predominantly by government officials, but MCRB and Spectrum were present from civil society.

85 [2013 Anti-Corruption Law](#).

86 Business Anti-Corruption Portal, [Myanmar Legislation](#).

87 [Law amending the Anti-Corruption Law for the 4th time \(MM only\)](#), Pyidaungsu Hluttaw Law 20/18, 21 June 2018

88 [Fundamental principles for businesses to develop a strong code of ethics and establish appropriate internal control measures to prevent corruption](#), Myanmar Anti-Corruption Commission Notification 14/2018 19 October 2018 (bilingual)

89 [Announcement for fundamental principles of Anti-corruption Code of Ethics for Companies and Body Corporates](#) DICA 16 January 2019

(2013), the Penal Code and Myanmar Commercial Act (1914) appear to suggest that both domestic and foreign firms based in Myanmar are not liable for participating in corruption offences. There are also no penalties or sanctions specifically targeted at firms which are involved in corruption (e.g. dissolution, debarment from public contracts, significantly higher monetary penalties for legal persons, etc).

#### **Asset disclosure by public servants**

Section 13 of the Law requires senior public servants (referred to as 'competent authorities'<sup>90</sup>) in the executive, judicial and legislative branches of the Government to declare their assets, with penalties for those who do not comply. Chapter VIII of the 2015 Anti-Corruption Rules<sup>91</sup> concerning 'Declaration of Currencies, Properties, Liabilities and Assets Owned by the Competent Authority' requires (Rule 37) the Commission, with the approval of the Union Government, to 'determine the level of the 'competent authority' who has to make such a declaration. The information shall be compiled from the individuals by the relevant government organisations and be submitted to the Commission (Rules 38-41) on a Form 7<sup>92</sup>. However, there appears to be no requirement for the ACC to disclose publicly either the list of officials concerned, or their disclosures.

In late 2018, the Asia/Pacific Group on Money Laundering (APG) published a Mutual Evaluation Report on 'Anti-money laundering and counter-terrorism financing (AML/CFT) measures: Myanmar'<sup>93</sup> which looks at measures which were in place end 2017. It analyses the level of compliance with the 40 Recommendations of the Financial Action Task Force (FATF) and the level of effectiveness of Myanmar's AML/CFT system, and recommends how the system could be strengthened.

This detailed report noted that:

- "Financial Institutions and Designated Non-Financial Businesses and Professions (DNFBPs)<sup>94</sup> lack understanding of high-risk issues, and few banks have moved to a risk-based approach. Most DNFBPs do not have a basic understanding of AML/CFT obligations and have not begun to implement any AML/CFT controls. Only banks are reporting Suspicious Transaction Reports (STRs), and the STRs that are filed are generally of low quality.
- The scope and implementation of fit and proper checks on FIs require further improvement. For DNFBPs, measures to prevent criminals from controlling or owning the institutions require fundamental

90 Competent Authority means the public servant, foreign public servant, person who possesses the political post, senior official or administrator or representative of any public organization.

91 Anti-Corruption Rules, 10 July 2015, Anti-Corruption Commission [EN](#) and [MM](#).

92 [Form 7](#) (Burmese) for Asset Declaration.

93 APG (2018), [Anti-money laundering and counter-terrorism financing measures: Myanmar'](#), Third Round Mutual Evaluation Report, APG, Sydney

94 DNFBPs are non-financial institutions that pose a money-laundering risk such as casinos and other gambling businesses, accountants, lawyers, real estate agents, and dealers in gemstones, automatics and boats.

improvements, taking into account the risk and context.

- Despite the very significant risks, there has been no supervision of DNFBPs. There are serious capability concerns for the bodies designated to be AML/CFT supervisors for most DNFBPs.
- CBM has demonstrated significant progress towards risk-based supervision and has increased its capacity and the scope of supervision of banks. The current enforcement approach by CBM on banking institutions is ineffective, due to repetitive compliance issues and the absence of a structured enforcement framework".

The UK Prosperity Fund, through GovRisk, has been supporting the Myanmar authorities to strengthen their AML/CFT controls<sup>95</sup>. However the many weaknesses identified in the evaluation, particularly concerning implementation, suggest that although the Myanmar government committed to an action plan to address the issues, it is likely that Myanmar will return to the OECD 'grey list' of high-risk countries requiring enhanced due diligence by banks and governments<sup>96</sup>. A one-year observation period concludes in October 2019, and the FATF Plenary will take a decision in February 2020.

## BENEFICIAL OWNERSHIP

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Beneficial ownership, and the associated question of 'politically exposed persons' are issues rising up the international agenda in the context of money-laundering and transparency. In Myanmar it is also under discussion as a result of Myanmar's participation in the Extractives Industries Transparency Initiative (EITI).

Q7 of the *Pwint Thit Sa* 2019 survey (and criterion D.1.1 of the ACGS) asks: 'Does the information on shareholdings reveal the identity of beneficial owners, holding 5% shareholding or more?' Of companies assessed, 52 were found to disclose subsidiaries, and 19 companies disclosed Beneficial Ownership data.

### **Beneficial Ownership and Politically Exposed Persons in Myanmar laws**

The term 'beneficial owner' is used in several Myanmar laws but not consistently, and different thresholds are mentioned. Paras 24-29 of CBM Directive 21/2015 for Customer Due Diligence (CDD) Measures<sup>97</sup> mentions the need for banks to determine the beneficial owner, and specifically who 'Owns or controls directly or indirectly more than 20 percent of the legal entity or exercises control of the legal person or arrangement through other means'.

The 2014 Money Laundering Law Article 3(j) defines Beneficial Owner as 'a person who principally owns or controls a customer or delegates to conduct transaction with other person on his behalf. In this expression, a person who exercises effective control over any company or arrangement', and does not set a percentage.

95 [www.govrisk.org/current-events-view.asp?id=78&showstatus=1](http://www.govrisk.org/current-events-view.asp?id=78&showstatus=1)

96 [www.fatf-gafi.org/countries/#high-risk](http://www.fatf-gafi.org/countries/#high-risk) Cambodia and Sri Lanka were grey listed in February 2019

97 [CBM Directive 21/2015 for Customer Due Diligence \(CDD\) Measures](http://www.cbm.org.my/Portals/0/2015%20Customer%20Due%20Diligence%20(CDD)%20Measures.pdf)

The 2014 Money Laundering Law defines **PEPs** as: 3(l) **Domestic and foreign politically exposed person** means a person who is prominent or has been entrusted with public functions within the country or in any foreign country and family members or close associates of such persons. 3(m) **International politically exposed person** means a director, a deputy director, a member of the board of directors and a senior member of an international organization, a member who has the similar position or a person who has been entrusted with such function and family members or close associates of such persons.

The 2017 Myanmar Companies Law does not use the term beneficial owner or PEP although s.1(xxii) defines Ownership Interest as 'a legal, equitable or prescribed interest in a company which may arise through means including:

- a direct shareholding in the company;
- a direct or indirect shareholding in another company which itself holds a direct shareholding, or an indirect shareholding, in the first company; or
- through an agreement which provides the holder with a direct or indirect right to exercise control over the voting rights which may be cast on any resolution of the company'.

However, DICA requires information about the 'Ultimate Holding Company' at the time of registration and in the Annual Return and this information is available on the register (behind the payroll).

### **Beneficial Ownership in MEITI**

According to EITI Requirement 2.5 by 1 January 2020, EITI implementing countries have to ensure that all oil, gas and mining companies that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract in the country disclose the identity(ies) of their beneficial owner(s) (BO), the level of ownership and details about how ownership or control is exerted. In addition, any politically exposed persons (PEP) holding ownership rights must be identified. This information must be publicly available (published in EITI Reports and/or public registries) and updated regularly. BO and PEP disclosure is required of all companies in the sector, including companies that are not currently required to participate in the EITI Report.

The EITI Standard (2.5f) defines a "beneficial owner in respect of a company" as "the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity" but leaves it to national multistakeholder group (MSG) to agree an appropriate definition of the term beneficial owner aligned with this which takes international norms and relevant national laws into account, and should include ownership threshold(s).

MEITI released a Beneficial Ownership Roadmap outlining steps to beneficial ownership disclosure by 1 January 2020.<sup>98</sup> In 2018, the MSG adopted definitions for Beneficial Owner (Box 4) and for Politically Exposed Person (PEP) (Box 5)<sup>99</sup>. The World Bank supported a pilot study for disclosing

98 [Myanmar Beneficial Ownership Roadmap, March 2017](http://www.eiti.org/sites/default/files/2017-03/Myanmar_Beneficial_Ownership_Roadmap_March_2017.pdf)

99 [2nd Myanmar EITI report for 2014-2015, section 3.7.3 March 2018 .](http://www.eiti.org/sites/default/files/2017-03/2nd_Myanmar_EITI_Report_2014-2015.pdf)

beneficial ownership (and is also supporting the establishment of a cadastre system).

A 14-member BO task force was formed on 30 June 2018 through Ministry of Planning and Finance Order No. 60/ 2018 by the chaired by U Soe Win, MEITI National Coordinator, and comprising officials from Department of Mines, Myanmar Oil and Gas Enterprise, DICA, the Attorney General Office (AGO), the Office of Auditor General (OAG), the Central Bank of Myanmar, the Anticorruption Commission and the Financial Information Unit, as well as two private sector representatives and two CSO representatives. The ToRs of the taskforce include preparing and implementing a Work Plan, and addressing the need to align the legal framework and BO and PEP definitions and embed legal requirements for BO disclosure.

#### BOX 4:

#### **Definition of Beneficial Owner agreed by the EITI Multi-Stakeholder Group**

The Myanmar MSG has defined a **beneficial owner** as “a natural person(s) who, directly or indirectly, ultimately owns or controls a public or private company or corporate entity. A person is automatically considered to be a beneficial owner if they own or control 5% or more of the public or private company or corporate entity. The definition states that:

- The individual holds, directly or indirectly, 5% and above of the shares within reporting period in the public or private company or corporate entity.
- The individual holds, directly or indirectly, 5% and above of the voting rights in the public or private company or corporate entity. Voting rights held by the public or private company or corporate entity, itself are disregarded for this purpose.
- The individual holds, directly or indirectly, the voting rights in the public or private company or corporate entity. Voting rights held by the public or private company or corporate entity, itself are disregarded for this purpose.
- The individual holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the public or private company or corporate entity.
- The individual has the right to exercise, or actually exercises, significant influence or control over the public or private company or corporate entity.”

Reference to “ultimately owns or controls” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control. This definition should also apply to a beneficiary under a life or other investment.’

#### BOX 5:

#### **Definition of Politically Exposed Person agreed by the EITI Multistakeholder Group**

PEPs are defined as individuals belonging to one of the following categories:

- **Domestic PEPs:** individuals who are or have been entrusted domestically with prominent public functions, for example, Cabinet Members at Union level & State and regional level, Members of Parliament both Union level and state and regional level, senior government (Deputy Ministers, Permanent secretaries, DGs, DDGs, Directors, Auditor General, Central Bank, etc..), judicial or military officials including **Ethnic Armed Organizations’ senior leaders and officials**, senior executives of state owned corporations, important political party central committee members and key influencers.
- **Foreign PEPs:** individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government Officials, judicial or military officials, senior executives of state owned corporations, important political party officials and diplomats.
- **International organization PEPs:** persons who are or have been entrusted with a prominent function by an international organization, refers to members of senior management or individuals who have been entrusted with equivalent functions, i.e. directors, deputy directors and members of the board or equivalent functions, International Financial institution’s leaders and senior staffs.

PEPs shall also be defined to include:

- **Family members** who are related to a PEP in one of the categories above either directly (consanguinity) or through marriage or similar (civil) forms of partnership, to the second degree of relation.
- **Close associates** who are closely connected to a PEP in one of the categories above, either socially or professionally.

#### TAX REFORM

Despite – or perhaps because of – high rates of tax, the tax to GDP ratio in Myanmar is low compared to their countries in the region. The cost of collection (at 0.3%) is approximately eight times lower than most other developing countries<sup>100</sup>.

Myanmar began its tax ‘reform journey’ in 2012, and the second phase covers 2017/18 to 2021/22. The IMF and EU are amongst the development partners supporting tax reform. Reforms to date include restructuring the Internal Revenue Department (IRD) HQ along functional lines, and establishment of a Large Taxpayer Office (LTO) to manage high value taxpayers under a system of self-assessment, followed by the extension of this system to Medium Taxpayer Offices (MTOs).

<sup>100</sup> ‘Reform Journey: A Plan to Mobilize Domestic Revenue 2017-18 to 2021-22’ Internal Revenue Department, Ministry of Planning and Finance, on file with MCRB

Starting from the 2019-2020 FY, the IRD has announced the roll-out over the period 2019-2030 of the Integrated Tax Administration System (ITAS) in five phases<sup>101</sup>. ITAS is intended to be an electronically-based system that will administer the tax processes within the IRD in order to improve the accuracy of taxpayer data and to maintain confidentiality of information, reducing the need for paper-based submissions such as filing tax returns and issuing self-assessment confirmation letters. Currently, the online process is only applicable to payment procedures under the LTO and MTO and does not involve online registration and tax return filing<sup>102</sup>.

Overall, the aim to move from the Official Assessment System (OAS) - which still exists in Township Offices, and which provides opportunities for corruption and personal gain for taxpayers and staff - towards Self-Assessment, currently only practiced in the LTO and MTO. The aim is to bring paper-based processes online to reduce corruption and improve awareness, taxpayer compliance and enforcement in support of an effective self-assessment system.

By 2022, IRD hopes to have established an Internal Audit Directorate, focused on ensuring integrity of accounting and operational procedures and managing enterprise risks, as well an Internal Affairs Unit to identify and take action against corrupt behaviour. Other steps planned include separation of duties to minimize opportunities for corrupt behaviour, use of data to monitor IRD's core tax functions and a taxpayer charter and staff code of conduct.

Further changes are planned for the tax policy and legislation framework, but a draft unified Tax Administration and Procedures Law (TAPL) remains in Parliament<sup>103</sup>. This is delaying the next steps to modernize the Income Tax Law to improve clarity and reduce loopholes, for example on charitable donations. IRD Notification 1/2018 (see above) already clarified that bribes are not tax-deductible business expenses.

One step taken to improve taxpayer awareness and encourage compliance has been the issuing by IRD since FY 2012/2013 of lists of the Myanmar and Foreign companies paying the most Income Tax and Commercial Tax<sup>104</sup>, as well as Presidential recognition<sup>105</sup>.

This list – which is used to determine companies for inclusion in *Pwint Thit Sa* - now bands the taxpayers by amount of tax paid, rather than just ranking them, giving a clearer picture of the approximate amount of tax paid by each, although not yet exact amounts.

101 Phase 1: Large Taxpayers' Office ("LTO") and the Medium Taxpayers' Office ("MTO") No. 1; Phase 2: IRD Head Office and the MTO No. 2; Phase 3: MTO No. 3 and MTO No. 4 (to be created); Phase 4: Grade-A tax offices in Yangon and Mandalay Divisions; Phase 5: All other tax offices.

102 [Myanmar Tax Update: Myanmar IRD to Implement Integrated Tax Administration System Starting FY 2019-2020](#), DFID, 11 April 2019

103 [Draft Tax Administration and Procedures Law](#), March 2018

104 [Top income and commercial tax-paying Myanmar and foreign companies](#), IRD (MM only)

105 [President U Win Myint honors highest taxpayers for the 2017-2018 financial year](#), 25 January 2019, President's website

## DEVELOPMENT PARTNER INITIATIVES IN CORPORATE GOVERNANCE AND ANTI-CORRUPTION

Several development partners including IFC, OECD, UNODC and UNDP have provided corporate governance support programmes to the Myanmar authorities. The World Bank is also assisting the CBM on implementing the Financial Institutions Law.

### IFC's Myanmar Corporate Governance Initiative

The IFC, a member of the World Bank Group, has been implementing a Myanmar Corporate Governance Initiative (MCGI) in Myanmar since 2016 in partnership with the Australian Department of Foreign Affairs and Trade (DFAT), and the UK Department for International Development (DFID). MCGI aims to improve corporate governance standards and practices in Myanmar by focusing on the following:

- Raising public awareness and sharing knowledge on corporate governance issues by conducting seminars, disseminating best practice materials, and training business journalists;
- Building the capacity of local partners in delivering corporate governance training and consulting services, by training local trainers and sharing corporate governance tools and training modules/curricula on leading corporate governance practices;
- Working with regulatory bodies and government entities to improve corporate governance-related regulations and standards, thereby strengthening the overall business climate;
- Providing direct assistance to companies to improve their corporate governance practices.

Under a memorandum of understanding signed in March 2017, IFC is building the capacity of the Securities & Exchange Commission of Myanmar (SECM) in standard setting and supervision in the field of corporate governance. In 2018, the SECM, DICA, YSX and IFC initiated the Myanmar Corporate Governance Scorecard to benchmark corporate governance practices in twenty-four Myanmar public and listed companies as well as some large private companies (see Box 6)<sup>106</sup>.

In collaboration with the UMFCCI, IFC's MCGI has also conducted workshops for board directors, senior executives and significant shareholder including Corporate Governance Action Planning workshops, a specific offering for financial institutions, and Family Business Governance<sup>107</sup>. It also partnered with the UK-Myanmar Financial Services Taskforce to deliver, with the Thai Institute of Directors, the Myanmar Director Accreditation Program. Other IFC MCGI activities have included seminars, including one on Transparency and Disclosure at the SECM, in collaboration with MCRB<sup>108</sup>. IFC MCGI is

106 [Myanmar Corporate Governance Scorecard 2018: A Report on the Assessment of Myanmar Companies](#), launched 5 April 2019. Nicolas Delange (the MD of Yever) was a consultant to the project.

107 [IFC Helps Family Businesses Improve Corporate Governance, Attract More Investment](#), IFC 11 November 2016. Also, IFC Family Business Governance Handbook, 3rd edition, 2016, available in [English](#) or [Burmese](#).

108 [There is a growing regulatory trend in Myanmar towards greater corporate disclosure](#), MCRB, 22 June 2017.

**BOX 6:****What is the Myanmar Corporate Governance Scorecard 2018?**

The Myanmar Corporate Governance Scorecard (MCGS) was published in April 2019 as a collaboration between the Securities and Exchange Commission of Myanmar (SECM) with DICA, YSX and the IFC. The MCGS used 142 (or 98%) of the criteria of the ASEAN Corporate Governance Scorecard Level 1 indicators to assess the corporate governance practices of 24 Myanmar public and listed companies as well as some large private companies.

Although both *Pwint Thit Sa* and the MCGS benchmark companies against the ACGS, and most of the companies in MCGS are also assessed in *Pwint Thit Sa*, the methodology differs:

- *Pwint Thit Sa* uses only publicly available information, whereas the SECM/DICA/YSX/IFC team had the opportunities to consider data and information which were kept confidential;
- *Pwint Thit Sa* aims to capture and reflect the disclosure of the companies on a broader number of topics where the SECM/DICA/YSX/IFC project was more detailed and focused on CG to support further policy discussions with facts, data and evidence.

Three of the companies mapped in the MCGS, which are also covered in *Pwint Thit Sa* (CMHL, GGI and Shwe Taung) have published a mapping of their Corporate Disclosure against the ACGS.

also advocating for gender diversity on boards and in corporate leadership through the ‘Ring the Bell’ initiative held with YSX and SECM<sup>109</sup> as well as its ‘Igniting Change’ program for women corporate leaders<sup>110</sup>.

***Myanmar Institute of Directors (MIoD)***

The Myanmar Institute of Directors (MIoD) was launched in March 2018 to promote corporate governance standards and best practice, and later in the year appointed Cherry Trivedi as Interim CEO. MIoD has been formed with support from the IFC, and the governments of Australia and the United Kingdom, building on the work initially carried out by the UK-Myanmar Financial Services Taskforce and the Myanmar Corporate Governance Initiative.

Governed by a Board of Directors<sup>111</sup> comprising both public and private sector representatives, the institute aims to advance board professionalism, promote business ethics and transparency, create networks between corporate leaders and stakeholders, and boost investor confidence in Myanmar’s private sector. The Institute’s activities include providing board and corporate governance training, including a flagship director certification program for Myanmar directors developed with Singapore Management University delivered for the first time in April 2019.

<sup>109</sup> [IFC, SECM and Myanmar Stock Exchange Ring the Bell for gender equality](#), IFC, 9 March 2018.

<sup>110</sup> [Igniting Change: Women on Boards training](#), IFC with Government of Canada.

<sup>111</sup> <http://myanmariod.com/board-of-directors/>

***Organisation of Economic Cooperation and Development (OECD)***

As part of its ongoing OECD-Southeast Asia Corporate Governance Initiative, in 2018 the OECD launched a multi-year Myanmar-OECD Corporate Governance Reform Programme. This seeks to support corporate governance reform in Myanmar with the aim of developing a capital market and improving access to finance for companies in Myanmar.

As a first step, the OECD conducted a fact-finding survey using the G20/OECD Principles of Corporate Governance<sup>112</sup> as a benchmark, sponsored by the Japanese Ministry of Finance. The survey<sup>113</sup> - part of a regional approach in Laos, Vietnam, Cambodia and Myanmar - targeted 51 companies of which 25 responded (5 listed, 6 public and 14 private). It aimed to measure the gap between corporate governance practices by Myanmar companies and national regulations, as well as the gap between practices and the G20/OECD Principles of Corporate Governance. A Corporate Governance Reform Advisory Committee is planned in Myanmar, with support from the OECD<sup>114</sup>.

Other OECD involvement in Myanmar includes an ongoing 2<sup>nd</sup> Investment Policy Review of Myanmar, being undertaken at DICA’s request since July 2018. The UK Prosperity Fund is also funding the OECD to work on business integrity in Southeast Asia, although Myanmar is not a focus country.

***United Nations Development Programme (UNDP)***

The UNDP, funded by the UK FCO Prosperity Fund, has launched a multi-country initiative ‘Promoting Fair Business Environment in ASEAN (2018-21)’ with a focus on Indonesia; Malaysia; Myanmar; the Philippines; Thailand and Viet Nam. This will involve working with the Myanmar government, the Anti-Corruption Commission, and the private sector.

UNDP is also supporting the Myanmar Civil Service Reform Strategic Action Plan 2017-2020 of which Objective 4 covers ‘Integrity and Accountability across the Civil Service’ and increasing transparency, the 2018-2022 LEAP programme (Leadership, Effectiveness, Adaptability and Professionalism in Myanmar’s Civil Service)<sup>115</sup>. Actions include a revised code of conduct for civil servants, publication of all relevant civil service procedures, and a review of the Official Secrets Act to challenge the assumption that all official information should be assumed to be secret.<sup>116</sup>

***UN Office of Drugs and Crime (UNODC)***

In 2017, the UNODC office in Myanmar stepped up its activity on corruption, with support from the Swedish International Development Cooperation Agency. UNODC is supporting Myanmar to improve the legal and policy environment to support the Government anti-corruption efforts in line with international standards, including UNCAC; enhance institutional capacity to

<sup>112</sup> G20/OECD Principles of Corporate Governance ([2015 edition, English](#)), Myanmar language version in preparation.

<sup>113</sup> OECD (2018), [Corporate Governance Frameworks in Myanmar: A Fact-Finding Survey](#). The results were [summarised](#) by DICA DG U Aung Naing Oo on 5 December at a seminar on business integrity organised by MCRB.

<sup>114</sup> [Discussion with project leader of the OECD Corporate Governance Project](#)

<sup>115</sup> [www.mm.undp.org/content/myanmar/en/home/projects/leap.html](http://www.mm.undp.org/content/myanmar/en/home/projects/leap.html)

<sup>116</sup> [Myanmar Civil Service Reform Strategic Action Plan 2017-2020](#)

prevent, raise awareness of, detect, investigate and prosecute corruption; strengthen integrity of the judiciary and prosecution, and improve capacity of CSOs and the private sector to prevent and contribute to combating corruption. UNODC has supported the Anti-Corruption Commission to launch investigations into tip-offs such as indications of unusual wealth, in support of the new power included in the 4th amendment to the Myanmar Anti-Corruption Law in June 2018. Previously the Commission could only investigate when it received a complaint from a ‘victim’ of corruption<sup>117</sup>.

UNODC has also organised two conferences for civil society organisations on ‘Fast-tracking Implementation of UNCAC for Economic and Social Development in Southeast Asia’ in Bangkok in February 2017 and December 2018<sup>118</sup> and launched a Southeast Asian Anti-Corruption e-Platform in May 2018<sup>119</sup>. MCRB has participated in both and was a signatory to the civil society statement<sup>120</sup>; its recommendations are reflected in the *Pwint Thit Sa Recommendations*.

#### ***Extractives Industries Transparency Initiative (EITI)***

EITI is a global initiative to promote the open and accountable management of natural resources<sup>121</sup>. The EITI seeks to address governance of the oil, gas and mining sectors, in particular transparency surrounding how a country’s natural resources are governed. This includes looking at how extraction rights are issued, how the resources are monetised, and how they benefit the people and the economy. Myanmar was granted EITI Candidate status in July 2014 and issued its first EITI report on revenue paid by companies and received by government, based on 2013/2014 FY data, in December 2015. Following submission in 2018 of the 2<sup>nd</sup> and 3<sup>rd</sup> reports, Myanmar is currently undergoing ‘validation’ by the EITI under the 2016 standard<sup>122</sup> after which it will be rated as having made Satisfactory Progress, Meaningful Progress, Inadequate Progress, or No Progress. The 4<sup>th</sup> report (for 2016/17 data) was submitted in March 2019<sup>123</sup>.

Significant emerging areas of EITI work in Myanmar and at a global level include beneficial ownership (see above), and contract transparency<sup>124</sup>.

#### ***Civil Society and the Media***

There are not many civil society organisations (CSOs) active on corruption in Myanmar. It remains a risky area on which to be active, particularly on individual cases. The main CSOs are Myanmar Alliance for Transparency and

117 [Mentoring sessions for investigators in Myanmar to detect corruption cases](#), UNODC, 16 November 2018

118 [www.unodc.org/unodc/en/ngos/civil-society-roundtable-sets-future-priorities-in-asean-region.html](http://www.unodc.org/unodc/en/ngos/civil-society-roundtable-sets-future-priorities-in-asean-region.html)

119 [https://uncaccoalition.org/en\\_US/anti-corruption-platforms/southeast-asia/](https://uncaccoalition.org/en_US/anti-corruption-platforms/southeast-asia/)

120 [Recommendations of the Regional Conference on Fast-Tracking Implementation of the UN Convention Against Corruption \(UNCAC\) in Southeast Asia](#), Bangkok 31 Jan-3 Feb 2017 and *Civil Society Statement*

121 [Extractive Industries Transparency Initiative](#)

122 The [2016 EITI Standard](#)

123 [MEITI: The 4th Myanmar EITI report for the period 1 April 2016 to 31 March 2017](#)

124 [Contract disclosure good for business in Myanmar, Total says](#), Op-Ed by Sebastian Sahla, Natural Resources Governance Institute, Myanmar Times, 12 April 2019

Accountability (MATA), with a natural resources/EITI focus,<sup>125</sup> Spectrum,<sup>126</sup> and the Access to Justice Initiative (A2JI), supported by USAID.<sup>127</sup> There is no Transparency International in Myanmar although TI Czech has been working with local CSOs including MATA, and The Ananda.

#### ***Open Data***

CSOs are, however, active on promoting ‘open data’. On 4 March 2019, Friedrich Ebert Stiftung, Phandeeyar, and The Asia Foundation celebrated the 9<sup>th</sup> international Open Data Day in Myanmar for the first time for panel discussions, case studies, and knowledge sharing by local CSOs and international experts. Phandeeyar also run Open Development Myanmar (ODMm)<sup>128</sup>, part of the Open Development Network, a coalition of organizations co-managing a common open data and open knowledge platform aggregating and sharing information, maps and data to illuminate development trends in the Mekong region at country and regional levels. Open Data Myanmar has been working to collect and publish data on land disputes since 2014<sup>129</sup>. NRGJ has established an Open Data: Myanmar Jade portal<sup>130</sup>. The Ananda evolved from Open Myanmar Initiative and is working on many types of open data, particularly concerning budgetary transparency and parliament<sup>131</sup>.

Civil society groups, including Myanmar PEN and Pyi-gyi-khin (PGK), have also been advocating for an Access to Information Law to be adopted and provided proposals to the Ministry of Information: this was discussed at the third Myanmar Digital Rights Forum in January 2019<sup>132</sup>. Some regional Parliaments have been active on issues such as transparency in public procurement and the budget.

#### ***Construction Sector Transparency Initiative (CoST)***

CoST is a global initiative that works with government, industry and civil society to promote transparency and accountability in public infrastructure investment through standardised publication of 40 standard data points throughout the procurement process.<sup>133</sup> This helps to inform and empower citizens and enables them to hold decision-makers to account. Informed citizens and responsive public institutions help drive reforms that reduce mismanagement, inefficiency, corruption and improve value for money from public investment.

Following interest from the Ministry of Construction and other stakeholders, a DFID funded scoping study was undertaken in 2018 to examine how CoST could help improve transparency and accountability in public infrastructure investment in Myanmar. A draft report was submitted to government in March 2019.

125 [www.mata-nrg.org/](http://www.mata-nrg.org/)

126 [www.spectrumsdkn.org/en/home/economic-justice/integrity-building-anti-corruption](http://www.spectrumsdkn.org/en/home/economic-justice/integrity-building-anti-corruption)

127 [www.a2ji.org/wp-content/uploads/2018/01/Anti-corruption-day-report.pdf](http://www.a2ji.org/wp-content/uploads/2018/01/Anti-corruption-day-report.pdf)

128 [opendevolutionmyanmar.net](http://opendevolutionmyanmar.net)

129 [www.opendatamyanmar.com](http://www.opendatamyanmar.com)

130 <https://openjadedata.org/>

131 <https://international.thenewslens.com/article/106290> and [www.mmbudgets.info/budget\\_index.html](http://www.mmbudgets.info/budget_index.html)

132 [www.myanmar-responsiblebusiness.org/news/digital-rights-forum-2019-report.html](http://www.myanmar-responsiblebusiness.org/news/digital-rights-forum-2019-report.html)

133 [www.constructiontransparency.org/home](http://www.constructiontransparency.org/home)

### **Media reporting on corporate governance**

There is a lack of media reporting on business and corporate governance in Myanmar. Reporting on companies often focusses on reporting on their charitable donations, often a source of corruption in itself. The lack of publicly listed companies with a widely held shareholding also reduces interest.

However, effective media reporting is central to achieving good corporate governance.

*"Journalists have the unique ability to disseminate information on corporate governance to the business community and the wider public, and to make readers aware of company activities in ways that can have a significant impact not only on company shareholders but on society. Through their investigations and insight, journalists can show what happens when companies are poorly governed. Journalists can also illustrate how companies that abide by best practice not only perform better but are more resilient in a difficult economy"<sup>134</sup>.*

Limited media reporting on corruption and business is also partly a consequence of fear of prosecution, particularly under Article 66(d) of the Telecoms Law which has been used to silence both the media and civil society activists seeking to expose wrongdoing by individuals in government and business, as well as other Articles in the Penal Code<sup>135</sup>. Freedom of Expression Myanmar monitored the use of 66(d) over the last two years. They found that 10% of complainants using 66(d) between November 2015 and November 2017 were business-related, and 2% of defendants were in business<sup>136</sup>.

The continued retention and draconian use of these provisions including by members of government undermines their professed commitment to political reform and combatting corruption. The two prize-winning Reuters journalists, Wa Lone and Kyaw Soe Oo, detained in December 2017 for their reporting on events in Northern Rakhine, are the most well-known<sup>137</sup>, but harassment of journalists is widespread, and is sometimes carried out directly by companies<sup>138</sup>.

## **PART 3: EMERGING ISSUES FOR CORPORATE GOVERNANCE IN MYANMAR**

### **NON-FINANCIAL REPORTING**

A number of issues relating to corporate governance and transparency are rising up the agenda globally. These include sustainability management, Board and senior management diversity, including on gender, human rights, beneficial ownership, and the ‘non-financial’ or ‘integrated’ reporting of these issues.

Although many of these issues are not yet incorporated into the ASEAN Corporate Governance Scorecard, this study has benchmarked company disclosure on some extra criteria of relevance, since some if not all of them are part of the corporate governance debate in a high-risk environment like Myanmar. Indeed, *Pwint Thit Sa* 2019 found that leading Myanmar companies are already starting to report on some of these issues and use international non-financial reporting standards.

There is a global trend towards requiring companies to disclose more non-financial data on the way they operate and manage social and environmental challenges. This is sometimes market-led, both from investors and consumers such as the FTSE4Good index<sup>139</sup> and the Dow Jones Sustainability Index.<sup>140</sup> These indexes help investors, consumers, policy makers and other stakeholders to evaluate the non-financial performance of large companies and encourage these companies to develop a responsible approach to business. To some extent, the new annual reporting requirements for MIC permitted projects under Rule 196 of the Myanmar Investment Rules (see above) go in a similar direction.

There are also a number of international standards and reporting frameworks for disclosure, the most relevant ones of which are described below.

#### **EU Non-Financial Reporting Requirement**

In some cases non-financial reporting is being driven by regulation, on a compulsory, or ‘comply or explain’ basis. For example EU law<sup>141</sup> requires large companies (some of which have operations in Myanmar) to disclose certain non-financial data in their annual reports from 2018 onwards. This includes reports on:

- a brief description of the undertaking’s business model;
- a description of the policies, risks and outcomes as regards to environmental matters, social and employee aspects, respect for human rights, anti-corruption and bribery issues, and diversity in their board of directors;
- the outcomes of those policies; and
- non-financial key performance indicators relevant to the particular business.

These rules on non-financial reporting only apply to large public-interest companies with more than 500 employees, which covers approximately

134 Philip Armstrong, Global Corporate Governance Forum, quoted in ‘[Who's really running the company: a guide to reporting on corporate governance](#)’, IFC 2012

135 [Dashed Hopes: The Criminalisation of Peaceful Expression in Myanmar](#), January 2019, Human Rights Watch.

136 [66\(d\): No real change](#)', Freedom of Expression Myanmar December 2017.Examples include '[Facebook user sued over road-sweeper claims](#)', 18 February 2017, and '[Defendant released on bail](#)', 7-Day News 29 December 2017 (Burmese only). This story concerned a Rakhine businessperson who had commented on Facebook about lack of transparency in a tender process to refurbish municipal market and was charged with defamation under 66(d) by a government official.

137 [www.reuters.com/subjects/myanmar-reporters](#)

138 [Two Kachin journalists say they were detained by mining company](#), Myanmar Times, 27 February 2019

139 [www.ftse.com/products/indices/FTSE4Good](http://www.ftse.com/products/indices/FTSE4Good)

140 [www.sustainability-indices.com/](http://www.sustainability-indices.com/)

141 The [Non-Financial Disclosure Directive 2014/95/EU](#) which amended the Accounting Directive 2013/34/EU.

6,000 large companies and groups across the EU. Companies have significant flexibility to disclose relevant information in the way they consider most useful, and may use international, European<sup>142</sup> or national guidelines to produce their statements. Some countries have also introduced specific regulatory requirements on conducting and reporting on human rights due diligence, such as the French ‘devoir de vigilance’ law. The European Parliament in June 2018 called on the European Commission to propose a mandatory legislative framework for human rights due diligence. A study of options is currently underway<sup>143</sup>.

### **Sustainability and Stock Exchanges**

Some non-financial reporting requirements for listed companies have been driven by stock exchanges. A number of ASEAN Stock Exchanges are members of the Sustainable Stock Exchange Initiative (Malaysia, Thailand, Singapore, Vietnam)<sup>144</sup> which has produced guidance for stock exchanges on reporting<sup>145</sup>. The Thai Stock Exchange is actively encouraging listed companies to undertake sustainability reporting<sup>146</sup>.

The Singapore Exchange (SGX) introduced mandatory sustainability reporting in June 2016, with effect from the 2017 Financial Year. This requires listed companies to publish annual sustainability reports covering environmental, social and governance (ESG) factors, sustainability targets and relevant policies<sup>147</sup>. The report, written on a “comply or explain” basis, must include a board statement to describe the company’s sustainability actions, identify ESG factors that affect business strategies, explain their practices and performances, and set targets. This practice is a step up from the voluntary sustainability reporting regime that had been in place since 2011<sup>148</sup>.

### **Reporting Frameworks**

#### **Integrated Reporting <IR> Framework**

The Integrated Reporting Framework was developed by an independent international organization, the International Integrated Reporting Council (IIRC) which is a global coalition of regulators, investors, companies and experts. The IIRC developed a framework to promote communication about value creation as the next step in the evolution of corporate reporting: the Integrated Reporting framework or <IR> Framework<sup>149</sup>. One company, MTSH,

142 [European Commission Guidelines on non-financial reporting](#), June 2017.

143 [European Commission study on human rights due diligence in supply chains](#), BIICL

144 [Sustainable Stock Exchange Initiative, list of partner exchanges](#)

145 [Model Guidance on Reporting ESG Information to Investors: a Voluntary Tool for Stock Exchanges to Guide Issuers](#), 2015

146 [How Thailand built Southeast Asia's most sustainable stock exchange](#), EcoBusiness, 17 October 2017

147 [SGX-ST Listing Rules Practice Note 7.6 Sustainability Reporting Guide](#)

148 [TODAY Online - Sustainability reporting for all listed companies mandatory from FY2017](#), 21 June 2016. This notes that a joint study by the Singapore Compact for Corporate Social Responsibility and National University of Singapore Business School found that as of end-2013, only about 160 out of 537 mainboard-listed companies filed these reports voluntarily.

149 See the [Integrated Reporting Framework](#) of the International Integrated Reporting Council.

mentioned <IR> in its last annual report. Others, like CMHL, FMI, GGI or UAB, include some components under Corporate Disclosure which are related to the <IR> Framework.

#### **Global Reporting Initiative (GRI)**

GRI is an independent international organization that, through a multistakeholder process, has developed the GRI Sustainability Reporting Standards, which are widely used by international companies as a reporting framework<sup>150</sup>. Three companies in *Pwint Thit Sa* 2019 – CMHL, Myan Shwe Pyi Tractors and Shwe Taung – reference GRI in their reporting<sup>151</sup>.

#### **UN Global Compact**

Members of the UN Global Compact (UNG) commit to reporting annually in a Communication on Progress (CoP) on responsible business activities related to ten principles encompassing human rights, labour rights, environment and corruption. As of March 2019, there were 164 Myanmar businesses (124 of them registered as SMEs) who were members of the Global Compact, compared to 186 in March 2018; however, 56 of them were designated as ‘non-communicating’ i.e. having failed to publish a CoP for over a year. Failure to publish a CoP for two years results in expulsion). This is a decline from the peak of 354 at the time of the 2016 *Pwint Thit Sa* report in August 2016<sup>152</sup>. Of those companies assessed in *Pwint Thit Sa* 2019, 17 were UNGC members.

CoPs are made available via the UNGC website<sup>153</sup>. Since it is possible to use a company’s annual sustainability report to meet the commitment to produce a CoP in future Myanmar companies may wish to considering focusing on that, rather than creating a tailored UNGC report. Not-for-profit UNGC members, including MCRB, submit a Communication on Engagement on a biannual basis<sup>154</sup>.

#### **Sustainable Development Goals**

Both the UN Global Compact and the GRI are encouraging businesses to incorporate SDG reporting into their existing reporting processes<sup>155</sup>. This will also help Myanmar companies to engage with the government on the MSDP agenda. Three companies in *Pwint Thit Sa* 2019 – CMHL, MTSH and Myan Shwe Pyi Tractors – mention the SDGs in their reporting.

## **STAKEHOLDER ENGAGEMENT AND MATERIALITY ANALYSIS**

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At the international level, there is greater emphasis on engagement not only with shareholders but also with stakeholders as an important part of good corporate governance. The G20/OECD CG Principles note that “**The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-**

150 See [Global Reporting Initiative](#) and the [database of reports](#)

151 Yoma Strategic Holdings, which as a SGP listed company is not covered in *Pwint Thit Sa* also publishes a report complying with GRI, but its sister company FMI, included in *Pwint Thit Sa*, does not.

152 [www.unglobalcompact.org/what-is-gc/participants](#) and [www.facebook.com/ungcmyanmar/](#)

153 [www.unglobalcompact.org/participation/report](#)

154 [Second Communication on Engagement](#), MCRB, August 2018.

155 [www.unglobalcompact.org/take-action/action-platforms/sdg-reporting](#)

*operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises”.*

This shift is recognised *inter alia* in the CG codes of Australia, South Africa, UK<sup>156</sup>, Malaysia, and Singapore<sup>157</sup>. Singapore's August 2018 CG Code has included a new Principle (13) that “**The Board adopts an inclusive approach by considering and balancing the needs and interests of material stakeholders, as part of its overall responsibility to ensure that the best interests of the company are served**”. Its accompanying Provisions set out “Comply or Explain” expectations for companies to:

- have arrangements in place to identify and engage with its material stakeholder groups and to manage its relationships with such groups;
- disclose in its annual report its strategy and key areas of focus in relation to the management of stakeholder relationships during the reporting period;
- maintain a current corporate website to communicate and engage with stakeholders.

These requirements are consistent with the criteria and methodology used in *Pwint Thit Sa*. Furthermore, the *Pwint Thit Sa* process, including company engagement, has demonstrated that leading Myanmar companies are interested in their stakeholders. AccountAbility, a global consultancy, has developed an international standard for stakeholder engagement (AA1000) which companies can adopt<sup>158</sup>.

Stakeholder engagement opportunities for companies in Myanmar are increasingly being created, both ‘by law and mutual agreement’. ‘By law’ includes the compulsory requirements for public participation (consultation, disclosure) in the Environmental Impact Assessment (EIA) which have been developed into draft guidelines<sup>159</sup>, as well as legal requirements for grievance mechanisms which are being integrated into Environmental Compliance Certificates (ECC) issued as a result of the EIA process.

‘Mutually agreed’ approaches include the EITI Multistakeholder Group (MSG) for the extractives industries and the multistakeholder discussions for the IFC Strategic Environment Assessment on Hydropower. If the Construction Sector Transparency Initiative (CoST) is pursued (see above), this would also have an MSG.

Of the companies assessed, 7 had some form of stakeholder mapping or stakeholder engagement commitment, and 4 had undertaken a materiality analysis (CMHL, FMI, KMD and Max Myanmar)<sup>160</sup>. Some companies have established teams for engagement with external stakeholders including media, communities and government, and for sustainability. This is welcome,

156 [UK Corporate Governance Code](#), Financial Reporting Council, July 2018

157 [Code of Corporate Governance](#), Monetary Authority of Singapore, August 2018 applicable to listed companies

158 See [www.accountability.org/standards/](http://www.accountability.org/standards/)

159 [Draft Guideline On Public Participation In Myanmar’s EIA Processes](#), 31 May 2017

160 KBZ have also published a materiality analysis, but too late for 2019 *Pwint Thit Sa* scoring.

since civil society groups tell MCRB that one of the main challenges of pursuing company accountability is finding company staff willing to take responsibility for receiving and acting on grievances and engaging with stakeholders, particularly for companies in joint ventures with government.

## DONATIONS AND ‘DO NO HARM’

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Many large Myanmar companies have established a ‘foundation’ from which they make donations. However the legal, tax and charitable status of such ‘foundations’ is unclear, as is their governance<sup>161</sup>. Foundations can be used in a way which contravenes good corporate governance, for example through donating to activities connected to Politically Exposed Persons, or to gain favour with the government. This was a widespread practice by ‘cronies’ under the military State Peace and Development Council (SPDC) government, in return for benefits such as car import permits, construction contract, land deals and other opportunities.

They can also be used to buy influence. MCRB’s field research for the Mining Sector-Wide Impact Assessment, found widespread use of Myanmar mining companies’ ‘CSR budget’ to make payments (‘donations’) to village elders and officials in return for signatures and support for mining projects<sup>162</sup>. The Rakhine crisis has also led government to turn to business for funds<sup>163</sup>. There is therefore a need for companies to ensure that not only their companies but also their foundations, have good corporate governance<sup>164</sup>.

This was highlighted as a result of the donations some companies made following the crisis in Rakhine State in 2017. Some donated as companies, or foundations, direct to the military in September 2017, for purposes which included the construction of a border wall, and support to the armed forces serving in Rakhine<sup>165</sup>. Most of the donations came from Myanmar companies, but Japanese company Kirin was highlighted by Amnesty International as having, through its Myanmar Beer joint venture, made donations to military bodies. Kirin responded by conducting an investigation, and publishing a new policy concerning donations and due diligence<sup>166</sup>.

While ‘CSR’ in Myanmar government and business circles remains widely used and understood – as in Asia more widely – as a matter of corporate philanthropy, other organisations, including some foreign Chambers of Commerce, are dropping the term and emphasising the importance of ‘responsible business conduct’, ‘creating shared value’ and earning a ‘social

161 The Myanmar legal framework on charities and foundations is unclear, including whether such Foundations should register as Associations under the Associations Law, and whether donations to them are tax exempt. These issues are being examined by MCRB for the [2020 Doing Good Index](#) sponsored by the [Centre for Asia Philanthropy and Society](#). Findings will be published in early 2020.

162 [Sector-Wide Impact Assessment on Limestone, Tin and Gold Mining in Myanmar](#), Myanmar Centre for Responsible Business, March 2018 p.51.

163 [Myanmar businessmen donate 167 billion kyat to Rakhine State](#), Mizzima, October 2017.

164 See for example CG guidance from the [Council on Foundations](#)

165 Information about companies donating was posted on the Commander in Chief’ Facebook page, now blocked by Facebook

166 [Investigate brewer Kirin over payment to Myanmar military amid ethnic cleansing of Rohingya](#), Amnesty International, 14 June 2018. [The Progress Updates Concerning The Letter From Amnesty International](#), Kirin, 14 December 2018

## GENDER EQUALITY AND DIVERSITY IN BUSINESS LEADERSHIP

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licence to operate<sup>167</sup>. These concepts and activities are more closely tied to business strategy, and therefore more likely to be pursued in business downturns when philanthropy budgets are squeezed. There is also less corruption risk associated with them.

There are several business-led initiatives intended to support women leaders in Myanmar, several supported by the Australian government. This includes the launch in October 2018 of the Myanmar Business Coalition for Gender Equality (MBCGEA).<sup>168</sup> At the launch, CMHL, Pun Hlaing Siloam Hospital (FMI), and six business lines of the Shwe Taung Group (Building Materials, Construction, Corporate Office & Padamya FM, Distribution, Infrastructure, and Real Estate) were awarded EDGE Certification<sup>169</sup> for their gender equality approaches, and other founding members are working on this. A Myanmar chapter of the Women Corporate Directors has been launched<sup>170</sup>. Members of the Business Coalition are working with the IFC on EDGE gender equality assessments of their companies. ‘Ring the Bell for Gender Equality’ events are held annually at the Stock Exchange for International Women’s Day<sup>171</sup>.

Reporting on board diversity, including gender, as a means of raising awareness of the need for equality, is increasingly a requirement in other countries (see for example the EU Non-Financial reporting requirement, above). In some countries such as Norway, and France there are mandatory requirements for Board gender diversity<sup>172</sup>.

The ASEAN CG Scorecard does not address gender equality in senior leadership of companies. However, Yever has compiled data about women directors in BoDs where this was disclosed in the companies surveyed. In the 42 companies where the identities of members of the Board of Directors were disclosed, 31 of them had one or more women members, and the average number of women members was 2.4. One company has a 100% female board. The Myanmar Corporate Governance Scorecard 2018 (see Box 1) found that around 72% of the boards surveyed had between 5 and 15 members, and each board, on average, had two female directors, while 22 percent had none.

Concerning a commitment to diversity, 20 companies assessed in *Pwint Thit Sa* either had diversity and/or non-discrimination policies, or contained this commitment in another document. Furthermore, 15 disclosed specific

<sup>167</sup> See for example '[Position Paper on Incentivising Shared Value](#)', September 2016, Responsible Investment Working Group of the Australian-Myanmar Chamber of Commerce (co-chaired by MCRB); and [Eurocham White Book 2018](#) (and in [Burmese](#)). Eurocham's CSR Advocacy Group has been replaced with the EuroCham Myanmar Responsible Business Initiative, which will be used as a platform to promote/value initiatives and projects undertaken by EuroCham's members (and their business partners) across all sectors.

<sup>168</sup> [Business Coalition for Gender Equality](#) Founding members are FMI (Yoma Group), CMHL, KBZ Group, Parami Energy, AYA Bank and Shwe Taung Group.

<sup>169</sup> <http://edge-cert.org/>

<sup>170</sup> [www.womencorporatedirectors.org](http://www.womencorporatedirectors.org)

<sup>171</sup> [YSX rings Bell for Gender Equality for third consecutive year](#), Myanmar Times, 11 March 2019

<sup>172</sup> In [France](#), it is mandatory to have > 40% women Board members for companies with > 500 staff and > €50Million revenue.

## HUMAN RIGHTS AND MODERN SLAVERY

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KPIs related to diversity, gender-equality and equal opportunities in their workplace.

The UN Guiding Principles on Business and Human Rights<sup>173</sup> established the ‘corporate responsibility to respect’ human rights. This requires companies to undertake due diligence of human rights impacts, and take steps to mitigate and remedy negative impacts. Since then, many international companies have adopted these principles into their corporate governance frameworks.<sup>174</sup>

In some countries, there is a trend towards a requirement for companies to publish information about the human rights impact of their activities, including the activities of their business partners. For example, the 2017 French *devoir de vigilance* Law (“Duty of Care of Parent Companies and Ordering Companies”) establishes a legal requirement for human rights due diligence, and the establishment and implementation of annual vigilance plans by companies registered in France with either:

- more than 5,000 employees working for the company and its direct or indirect French-registered subsidiaries, or
- more than 10,000 employees working for the company and in its direct or indirect subsidiaries globally.

Companies meeting these criteria are required to develop and enact annual “vigilance plans” that detail the steps they will take to detect risks and prevent serious violations with respect to human rights and fundamental freedoms, and the health and safety of persons and the environment, which result from company, subsidiary, supplier and subcontractor activities<sup>175</sup>.

The UK's Modern Slavery Act of 2015 requires businesses to publish an annual slavery and human trafficking statement reporting the steps - if any - the company has taken to ensure that slavery and human trafficking are not taking place in its own business and any of its supply chains<sup>176</sup>. For example, this could include whether there are labour broker fees leading to debt bondage or retention of workers' identity documents.

Myanmar companies who can publicly demonstrate that they are managing these risks will have a competitive advantage when it comes to attracting foreign business partners who are subject to these type of requirements in their home jurisdictions.

Of the Myanmar companies assessed in *Pwint Thit Sa* 2019, 18 had a human rights policy or included human rights in their code of conduct, and 20 included whistleblowing mechanisms in their code of conduct or specific policies.

<sup>173</sup> UN Guiding Principles on Business and Human Rights, 2011, in [English](#) and [Burmese](#)

<sup>174</sup> See [Corporate Human Rights Benchmark](#) March 2017 for examples. This initiative by one of MCRB's founding members, the Institute for Human Rights and Business (IHRB), assessed 98 of the world's largest publicly traded companies in 2016-2017 on 100 human rights indicators.

<sup>175</sup> [French Duty of Vigilance Law takes trend towards mandated corporate disclosure regimes to a new level](#), Freshfields, 8 April 2017.

<sup>176</sup> United Kingdom [Modern Slavery Act](#) 2015.

**PART 4:  
THE 2019 PWINT  
THIT SA REPORT**

**METHODOLOGY**

In 2018, MCRB and Yever decided to redesign *Pwint Thit Sa* scoring methodology to align it with the ASEAN Corporate Governance Scorecard (ACGS) (Box 5) and this approach has been retained for 2019. This enables Myanmar companies to compare their performance against their ASEAN peers and for Myanmar to align more closely with regional CG initiatives. It also is consistent with other Myanmar CG benchmarking initiatives using ACGS such as the Myanmar Corporate Governance Scorecard 2018, and therefore makes it simpler for companies being benchmarked in both exercises.

**BOX 7:**

### What is the ASEAN Corporate Governance Scorecard?

The scorecard was created by the ASEAN Capital Markets Forum (ACMF) in collaboration with the Asian Development Bank to reinforce and align capital market standards and practices across ASEAN countries. It is based on the OECD Principles of Corporate Governance. It is benchmarked against international good practices to encourage companies to go beyond legislative requirements. Like *Pwint Thit Sa*, the Scorecard uses publicly available information. The ACGS is currently being used in Malaysia, Thailand, Philippines, Indonesia, Vietnam, and Singapore to track and rank (mostly publicly listed) companies for corporate governance.

The Scorecard covers the following five areas of the OECD principles:

- **Part A:** Rights of Shareholders;
- **Part B:** Equitable Treatment of Shareholders;
- **Part C:** Role of Stakeholders;
- **Part D:** Disclosure and Transparency; and
- **Part E:** Responsibilities of the Board.

The scoring is conducted at two levels to better capture implementation of corporate governance policies:

**Level 1:** items related to laws, regulations, and rules (145 items in total);

**Level 2:** bonus for good practices and penalty for poor governance (13 bonus items, 25 penalty items)

ADB published its fourth overview of 'ASEAN Corporate Governance Scorecard Country Reports and Assessments 2015' in October 2017, in cooperation with the ACMF. It includes the assessment of over 500 publicly listed companies in the six ASEAN countries and presents a country-by-country analysis on rights of shareholders, equitable treatment of shareholders, role of stakeholders, disclosure and transparency, and responsibilities of the board.

**SELECTION OF  
BENCHMARKING  
CRITERIA**

The assessment questions used in the study are listed in Annex 2 and have been shared publicly on MCRB and Yever websites since September 2018. As a consequence of aligning with ASEAN CG Scorecard and adding performance criteria derived from other reporting standards, the number of criteria examined in *Pwint Thit Sa* 2019 has increased from 74 to 143, now arranged in four categories (see Table 1).

**TABLE 1:  
Issues covered in Pwint Thit Sa 2019 scoring**

	<b>NUMBER OF CRITERIA</b>	<b>WEIGHT (%)</b>
<b>Part 1 – Corporate Profile:</b> Company presentation; Ownership structure; Company strategy; Corporate communication	<b>21</b>	<b>17%</b>
<b>Part 2 – Corporate Governance:</b> Shareholders' Engagement; Board of Directors' structure; Board of Directors' responsibilities; Audit Committee; Nominating Committee; Remuneration Committee; Performance review & Board appointments	<b>44</b>	<b>29%</b>
<b>Part 3 – Sustainability Management:</b> Risk management; Strategy; Corporate policies; Business ethics; Whistleblowing; Sustainability reporting	<b>40</b>	<b>27%</b>
<b>Part 4 – Reporting:</b> Annual report; Framework; Financial & operations; Non-financial	<b>38</b>	<b>27%</b>

The scoring methodology uses a selection of the most relevant criteria from the ACGS. Four dimensions were assessed using 143 criteria (119 disclosure-based, 24 performance-based) with a maximum possible score of 167 (119 Disclosure, 48 Performance). 69 criteria were taken from the ASEAN CG Scorecard, drawing on the most relevant ones.

The criteria used in *Pwint Thit Sa* 2019 covered 53% of the ACGS level 1 criteria. The full ASEAN CG Scorecard was not used because there is heavy focus in Categories A and B on the Rights of Shareholders, and Equitable Treatment of Shareholders, neither of which is yet relevant to most Myanmar companies. Instead, and following discussion in 2017 with Dr Bandit Nijathaworn of the Thai Institute of Directors, who was closely involved in designing the ACGS and implementing it in Thailand, *Pwint Thit Sa* focusses on Categories C, D, and E of ACGS: Role of Stakeholders; Disclosure and Transparency; and Responsibilities of the Board (see Table 2).

**TABLE 2:**  
**Coverage of ACGS level 1 criteria by Pwint Thit Sa criteria**

	<b>COVERAGE</b>
<b>Part A:</b> Rights of Shareholders	<b>5%</b>
<b>Part B:</b> Equitable Treatment of Shareholders	<b>14%</b>
<b>Part C:</b> Role of Stakeholders	<b>100%</b>
<b>Part D:</b> Disclosure and Transparency	<b>56%</b>
<b>Part E:</b> Responsibilities of the Board	<b>68%</b>

*Pwint Thit Sa* 2019 also incorporates elements of the Integrated Reporting Framework <IR> into the performance criteria. <IR> covers a wider range of topics than the ACGS, and, importantly, connects financial and non-financial reporting, thereby clarifying how companies are creating and sharing value with their stakeholders. Table 3 identifies the links between the *Pwint Thit Sa* criteria, the ACGS and the Integrated Reporting Framework (<IR>).

**TABLE 3:**  
**ACGS and <IR> criteria used in Pwint Thit Sa 2019**

	Number of criteria	Weight (% of total score)	Number of ACGS criteria covered	Number of criteria related to <IR> (% of coverage)
Corporate Profile	21	17%	13	6 (29%)
Corporate Governance	44	29%	32	3 (7%)
Sustainability management	40	27%	18	22 (55%)
Reporting	38	27%	27	23 (61%)

**SOURCES OF INFORMATION CONSIDERED**

All official company information which was publicly available was used for the assessment, providing it was available online. This included:

- company websites;
- company corporate policies, if they are accessible through the website;
- annual, sustainability and ad hoc reports, if they are downloadable and/or accessible;

**SELECTION OF COMPANIES FOR INCLUSION**

- Communications on Progress (COP) to the UN Global Compact;
- information uploaded on Facebook pages.

MCRB/Yever decided to err on the side of generosity when assessing the companies' disclosure. For example, when Q91 was assessed, all communication channels were considered, not only the annual report, since some Myanmar companies do not yet disclose their annual report but do disclose corporate objectives and biographical details of their BOD members on their website.

MCRB/Yever selected 248 companies (*Pwint Thit Sa* 2018 covered 182 companies). This included:

- 5 companies listed on the Yangon Stock Exchange (YSX);
- 55 public companies previously recognised as such by DICA;
- 160 companies who either paid significant commercial and/or Income tax according to the top 1,000 Myanmar companies tax payers list for FY 2015/2016 and 2016/2017, issued by the Internal Revenue Department, or are either influential<sup>177</sup> in Myanmar;
- 28 State-owned Economic Enterprises (SEEs).

**Problems with identifying companies and ‘Groups’**

As previous *Pwint Thit Sa* reports identified, the word “Group” in Myanmar is used inconsistently. Some operate as a registered entity with a clear legal structure while some loosely form an alliance of companies and call themselves a Group without a legal registration as a single entity. Those companies with the characteristics of a ‘group’ were asked about their structure and how they would prefer to be assessed i.e. as a whole group or individually. Some companies opted to nominate a company for assessment which was treated as a ‘holding company’ even where it was not formally established as such.

**WEBSITE ASSESSMENT AND COMPANY ENGAGEMENT**

The research phase of the report was launched in Yangon on 10 September 2018 at a seminar for companies to explain the 2018 results and plans for 2019. Details of the research (companies, and assessment criteria) were uploaded to MCRB and Yever websites<sup>178</sup>. The companies to be assessed were informed by email and letter in September (to the extent MCRB had contact details) about the 2019 research methodology.

Yever led the online research which commenced in October 2018 after the public launch of the research phase. In the first assessment, one member from the Yever team undertook the assessment, and it was subject to internal/quality controls. The draft score was then shared with companies in hard copy and by email in January with an offer of a debriefing session to

<sup>177</sup> This includes companies who had previously been subject to EU or US sanctions.

<sup>178</sup> [www.myanmar-responsiblebusiness.org/pwint-thit-sa/2019.html](http://www.myanmar-responsiblebusiness.org/pwint-thit-sa/2019.html)

discuss the draft score, and an invitation to comment and disclose further information.

Over 40 companies contacted MCRB/Yever, and in some cases followed up with face to face meetings and debriefings on draft scores<sup>179</sup>. Companies had until the end of February to finalise the disclosure of information, although up to two further weeks were given to those who requested it due to late updating of websites.

Scores were finalised in March<sup>180</sup>. A final review was undertaken by Yever. The MCRB team then cross-checked the scores of the leading companies and of Yever's clients to avoid any potential conflicts of interest (see Box 1). Overall, over pro bono 150 working days were spent by Yever on preparing and analysing the data, and, together with MCRB, engaging with companies. As a result of this dialogue, the majority of these companies significantly increased their disclosure of information and improved their score, on average by 8% points between the draft and final score. The guidance from the *Pwint Thit Sa* process therefore had a significant effect. This suggests that similar guidance to companies on disclosure is needed from the regulators and would be welcome.

## SCORING

For the disclosure criteria, each criterion was weighted equally, using YES = 1 point and NO = 0 points. To receive a point, the disclosure by the company needed to be sufficiently clear and complete as well as easily identifiable as officially established by the company, and accessible for the reader. It also needed to be up to date, and in the case of annual reports, not more than two years old.

For the performance criteria, YES=2 and NO=0, thereby weighting the scoring to those who were demonstrating that they were 'walking the walk' rather than only 'talking the talk'. The total score for a company was then calculated by adding the score for each of the 143 criteria.

<sup>179</sup> Contacts were had (some of them face to face discussions) with A-Bank, Aung Kan Bo Trading, Ayeyar Hintha Holdings, Ayeyar Pathein Development Public Co, City Mart Holding Co, Dagon, Dawei Development Public Co, Eden Group, Elite Telecom Public Co First Myanmar Investment (FMI), First Private Bank, Global Treasure Bank Public Co, Golden Zaneka Public Co, Grand Guardian Insurance Public Co, Htoo Group, IGE Group, Irrawaddy Green Tower, KBZ Group, KMD, Mandalay Myotha Industrial Development Public Co, Max Myanmar Group, Min Zar Ni Co, Myanmar Oriental Bank, MTSH, Myan Shwe Pyi Tractors, Myanmar Agro Exchange Public, Myanmar Technologies and Investment Corporation , Myawaddy Bank, Parami, Proven Group, Royal Yatanarpon Telecom Public Co, Shwe Taung Group, Shwe Than Lwin Media, Smart Technical Services, Super One Group, UMG Group, United Amara Bank, Yatanarpon Teleport Public Co, Zaw Gyi Premier. Amongst State-Owned Economic Enterprises (SEEs), contacts were had with: Electricity Supply Corporation, Myanmar Foreign Trade Bank, Myanmar Oil and Gas Enterprise (MOGE), Yangon Electricity Supply Corporation

<sup>180</sup> Companies who updated their websites but did not meet the extended deadline included [Eden Group](#), and (partly) KBZ.

## LIMITATIONS OF THE RESEARCH METHODOLOGY

As with any corporate governance assessment based on publicly available information, there are limitations in the questionnaire and ranking of Myanmar companies. This research methodology simply assesses whether the information is accessible or not online. As the methodology relies on publicly available information via the internet, policies or reports that are only available in hardcopies are not captured in the assessment. Furthermore, although an attempt has been made in *Pwint Thit Sa* 2019 to benchmark the implementation of policies, and the quality of practices applied, unless audited by a reliable auditor, the reliability of the information is still dependent on self-disclosure.

## RESULTS

A total of 130 companies out of 248 assessed (52%) have a website.

**TABLE 4:  
Average score by company type**

All Myanmar companies assessed (248)	5%
Listed companies (5)	32%
Companies where the IFC is an investor	38%
Family-owned / private companies (160)	4%
Public companies (55)	4%
State-owned Economic Enterprises (28)	3%
Financial sector (20)	11%
Companies in the top 10	50%

Table 4 shows that continues to be a strong correlation between top-scorers and those companies with international investors, such as the IFC. This suggests both cause and effect: companies with a commitment to disclosure and transparency are more likely to attract the IFC (and other foreign partners) as a partner and pass their due diligence. Those partners in turn encourage them to improve their governance further.

Indeed this international investor effect on boosting CG and transparency is stronger than the influence of the YSX: IFC partners have the highest average score, 38%, which is higher than 32% for the listed companies. Public companies (22% of those measured) are performing on average below the Myanmar mean (Table 7 shows the Top 10). The worst-performing companies are the SEEs (Table 5 shows the best of them).

The spread for Total Score is from 0% to 70% (CMHL) (see Figure 1 in Executive Summary), with CMHL scoring particularly strongly on Sustainability

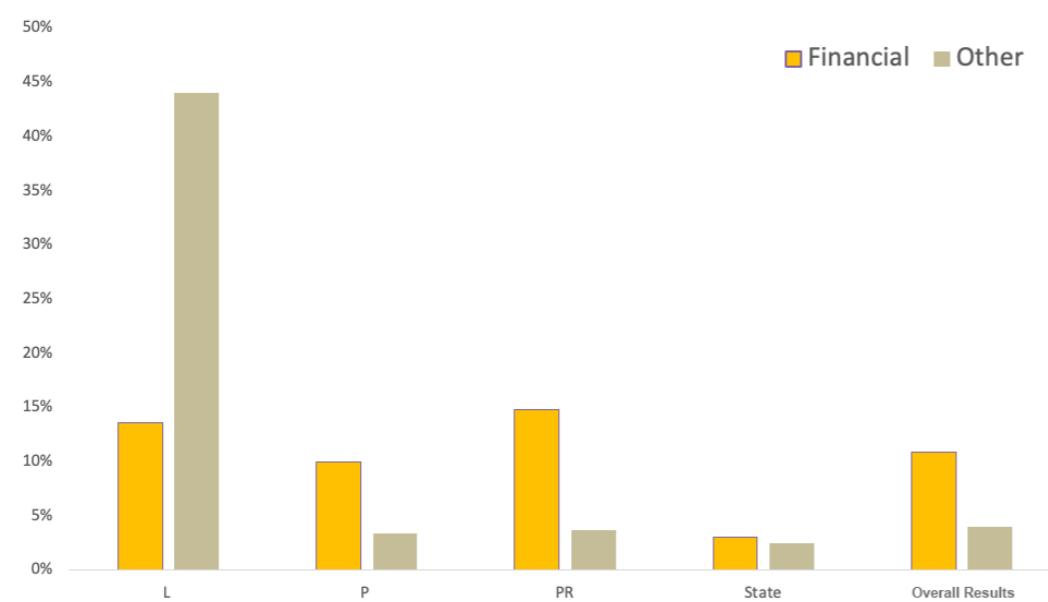
**TABLE 5: TOP 30 COMPANIES ASSESSED IN PWINT THIT SA 2019 WITH THE MOST DISCLOSURE OF INFORMATION**

Rank 2019	Rank 2018	Company Name	Type see Annex 1	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL
1	2	CITY MART HOLDING CO LTD	PR	75%	53%	84%	72%	70%
2	1	FIRST MYANMAR INVESTMENT CO LTD.	L	71%	61%	67%	49%	61%
3	5	MAX MYANMAR GROUP OF COMPANIES	PR	61%	55%	64%	40%	55%
3	6	SHWE TAUNG GROUP OF COMPANIES	PR	54%	51%	60%	53%	55%
5	-	UNITED AMARA BANK LTD	PR	50%	63%	60%	35%	53%
6	7	GRAND GUARDIAN INSURANCE PUBLIC CO LTD	P	71%	39%	49%	53%	51%
7	9	MYANMAR THILAWA SEZ HOLDING PUBLIC CO LTD	L	57%	49%	29%	60%	48%
8	7	DAGON GROUP OF COMPANIES	PR	57%	35%	44%	30%	40%
9	22	MYAN SHWE PYI TRACTORS LTD	PR	46%	22%	42%	49%	39%
10	4	AYA BANK LTD	PR	50%	37%	33%	35%	38%
11	10	KBZ GROUP	PR	43%	31%	49%	19%	35%
12	16	MYANMAR AGRIBUSINESS PUBLIC CORPORATION (MAPCO) CO LTD	P	54%	29%	31%	21%	32%
13	-	KMD	PR	46%	12%	38%	35%	31%
14	25	MYANMAR AGRO EXCHANGE PUBLIC LTD	P	46%	20%	31%	21%	28%
15	18	TMH TELECOM PUBLIC CO., LTD.	L	50%	35%	0%	21%	24%
16	12	GREAT HOR KHAM PUBLIC CO., LTD	P	39%	24%	11%	23%	23%
17	-	IGE GROUP OF COMPANIES	PR	43%	20%	18%	12%	21%
17	11	MYANMA AWBA GROUP CO LTD	PR	25%	18%	29%	12%	21%
19	15	SMART TECHNICAL SERVICES CO LTD	PR	32%	8%	29%	5%	17%
20	18	MYANMAR CITIZENS BANK LTD	L	43%	12%	0%	14%	15%
20	27	UNITED PAINT GROUP CO LTD	PR	14%	0%	20%	26%	15%
22	53	MYANMAR ORIENTAL BANK LTD	PR	18%	16%	18%	2%	13%
22	14	PARAMI ENERGY GROUP OF COMPANIES	PR	21%	2%	27%	7%	13%
22	37	AYEYAR HINTHAR HOLDINGS CO LTD	PR	25%	10%	18%	2%	13%
22	21	FIRST PRIVATE BANK LTD.	L	32%	12%	0%	14%	13%
22	99	MYANMAR TECHNOLOGIES AND INVESTMENT CORPORATION LTD	P	29%	14%	4%	9%	13%
27	12	IRRAWADDY GREEN TOWER LTD. (IGT)	PR	11%	6%	20%	9%	12%
27	37	HTOO GROUP OF COMPANIES	PR	18%	4%	20%	2%	10%
27	18	CO-OPERATIVE BANK LTD. (CB BANK)	PR	14%	10%	9%	7%	10%
30	37	MYANMAR PAYMENT UNION PUBLIC CO LTD	P	21%	6%	0%	14%	9%

Management and Reporting. Among the Top 10, 7 companies are privately owned. This ability of privately owned companies to achieve high scores indicates that *Pwint Thit Sa* criteria, together with ACGS level 1 criteria, are achievable for Myanmar companies regardless of their ownership structure's type. However, only 18% of the companies have a score higher than the average of 5% (see Figure 2). This share is stable compared to last year results.

The score of the companies operating in the financial sector is significantly higher compared to the mean score in Myanmar (respectively 11% and 5%), but interestingly, private banks outperform listed ones on disclosure (Figure 3). This shows that leadership by private company owners can have a significant impact on transparency; and that regulatory bodies should demand better compliance of the public companies they oversee and provide them with clear and relevant guidance on disclosure.

**FIGURE 3:  
COMPARISON  
OF FINANCIAL  
SECTOR AND  
OTHER SECTORS  
BY COMPANY  
TYPE**



Areas where many companies need to improve performance are Sustainability Management and Reporting. Many still focus on reporting donations and philanthropy. This might be better left to their foundations where they have them, leaving the business to adopt and report on a sustainability strategy more linked to business operations. Others tend to disclose vague statements regarding their performance, or KPIs whose scope or relevance are questionable. CMHL is the stand-out performer in this field, with strong linkage between sustainability, KPIs and the business agenda. It materiality analysis is also the only one aligning its sustainability strategy, its business strategy and the expectations of its stakeholders. UAB scores well on Corporate Governance, with the quality of its first annual report putting the privately owned bank into the top 10.

The Top 30 companies with greatest disclosure are listed in Table 5.

The full list of 248 companies assessed, and their scores, is in Annex 1.

**TABLE 6: TOP 10 STATE-OWNED ECONOMIC ENTERPRISES (SEES)**

	Company Name	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL
1	CONSTRUCTION AND HOUSING DEVELOPMENT BANK LTD.	14%	10%	0%	2%	6%
1	YANGON ELECTRICITY SUPPLY CORPORATION	18%	0%	2%	9%	6%
3	MYANMAR RAILWAYS	11%	0%	0%	14%	5%
3	THILAWA SEZ MANAGEMENT COMMITTEE CO LTD	18%	0%	4%	5%	5%
3	MYANMAR SHIPYARDS	18%	6%	0%	0%	5%
6	ELECTRICITY SUPPLY CORPORATION	7%	2%	4%	2%	4%
6	MYANMAR PEARL ENTERPRISE	14%	0%	0%	5%	4%
8	MYANMAR ECONOMIC CORPORATION	14%	0%	0%	0%	2%
8	MYANMAR ECONOMIC BANK	11%	2%	0%	0%	2%
8	MYANMAR INVESTMENT AND COMMERCIAL BANK	4%	4%	0%	2%	2%

**TABLE 7: TOP 10 PUBLIC COMPANIES**

	Company Name	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL
1	GRAND GUARDIAN INSURANCE PUBLIC CO. LTD	71%	39%	49%	53%	51%
2	MYANMAR AGRIBUSINESS PUBLIC CORPORATION (MAPCO) CO. LTD	54%	29%	31%	21%	32%
3	MYANMAR AGRO EXCHANGE PUBLIC LTD	46%	20%	31%	21%	28%
4	GREAT HOR KHAM PUBLIC CO., LTD	39%	24%	11%	23%	23%
5	MYANMAR TECHNOLOGIES AND INVESTMENT CORPORATION LTD	29%	14%	4%	9%	13%
6	MYANMAR PAYMENT UNION PUBLIC CO. LTD	21%	6%	0%	14%	9%
7	YANGON BUS PUBLIC CO. LTD	14%	12%	4%	2%	8%
8	EVER FLOW RIVER GROUP OF COMPANIES	18%	8%	0%	2%	6%
9	ELITE TELECOM PUBLIC CO. LTD	11%	6%	2%	5%	5%
9	ASIA BUSINESS SYNERGY PUBLIC CO. LTD	7%	8%	0%	0%	5%

**PART 5: RECOMMENDATIONS****TO MYANMAR COMPANIES:***Transparency and reporting*

- Establish or enhance websites with corporate information in both Myanmar and English languages, as a means to communicate with employees and stakeholders, establish contact points for stakeholders, and seek feedback.
- Keep websites under regular review, ensure that they are up-to-date and that information on them is consistent and, as a minimum fully meets regulatory requirements.
- Disclosure should particularly focus on:
  - Being more transparent about the company/Group's corporate structure, such as complete details of subsidiaries, affiliates, joint ventures and other related entities;
  - Disclosing more information about corporate governance policies and practices, including the Board Charter, and how the company manages CG and sustainability, including the financial and human resources dedicated to it;
  - Disclosing annual reports on company websites, particularly for listed and public companies;
  - Proactively disclosing audited financial accounts submitted to the Company Registrar;
  - Disclosing more documents and information, including non-financial data, to provide more information to stakeholders about company performance. This could include health and safety statistics, details of human rights due diligence, and complaints handling;
  - Ensuring that all publicly available information is easily accessible, and key documents are in both English and Myanmar.
- Adopt International Financial Reporting Standards (IFRS) as soon as possible.
- Publish a Sustainability Report using a recognised reporting framework such as the Global Reporting Initiative or the Integrated Reporting Framework, and referencing the Sustainable Development Goals (SDGs), and use this for UN Global Compact reporting where relevant.
- When compiling the annual Directors' Report under the Myanmar Companies Law, undertake a 'materiality assessment' by engaging with internal and external stakeholders to identify the material risks to the company; ideally comply with AA 1000 standards.
- Disclose environmental and social impact assessments, where relevant, and ensure that qualified consultants are used for the EIAs and that the contents of the assessment, and associated consultation and disclosure, meets the requirements of the EIA Procedure.

- For extractives companies including jade or gems mining and trading companies, proactively disclose data in line with the EITI standard. This should include what mining licences the company holds, what it pays to the government in taxes and other fees, what its production levels are, what the terms of contracts are and who the ultimate beneficial owners are.

#### **Directors and their duties**

- Use the opportunity of the new Companies Law and model constitution templates to update company constitutions to align them with best practices and the interests of different shareholders and stakeholders.
- Ensure all company directors are aware of their duties under the Myanmar Companies Law, and attend a Director Certification course such as that offered by MIoD.
- Consider establishing a Company Secretary to support quality corporate governance and board practices, or using professional Company Secretary services.
- Invest sufficient resources in financial and non-financial audit to enable effective BoD oversight. In particular, recognise the value, and also the cost, of good quality professional advice, particularly audit, to provide the Board with valid information, and for other specialist tasks such as HSE Management, and Environmental Impact Assessment.
- Promote gender equality on the company's Board(s) of Directors, and support mentoring programmes and other initiatives to encourage this in Myanmar more generally.
- Use the resources on [www.mcrb.org.mm](http://www.mcrb.org.mm) on issues such as non-discrimination and other guidance on how companies should fulfil their responsibility to respect human rights.

#### **Business integrity**

- Develop robust risk management systems to identify major risks faced by the company, how they will be mitigated, and track the outcomes.
- Establish and implement an anti-corruption programme consistent with Principles issued by the Anti-Corruption Commission, and demonstrate leadership from the highest level on business integrity, reminding all staff on a regular basis of the importance that the company leadership attaches to this.
- Publish annual information about the implementation of business integrity programmes on the company website, including policy dissemination, staff and director training, and any major related incidents.
- Pursue collective action with other businesses to combat corruption, for example concerning advocacy on public tender processes, or customs clearance.
- Ensure that the company's business integrity programme covers Conflict of Interest, and Political Party Donations.

- Where companies maintain Foundations or other budgets for donations, put governance in place, including independent Board members, to ensure that these do not give rise to business integrity issues, for example 'donations' which could be viewed as bribes, or involving Politically Exposed Persons.

## **TO THE MYANMAR GOVERNMENT**

#### **Corporate governance**

- Ensure that all companies registered in Myanmar:
  - comply with the Companies Law, especially regarding corporate governance;
  - are aware of their reporting obligations, particularly public companies.
- Ensure that SEEs are also compliant with Corporate Governance Principles.
- Develop a Myanmar Code of Corporate Governance, through a transparent consultation process. This Code should:
  - Provide different stakeholders with a clear definition of independence for board members and ensure that listed and public companies comply with this requirement.
  - Encourage companies to endorse the best practices in line with international standards and in line with requirements of the Companies Law.
  - Promote a "comply or explain" approach: if companies cannot comply with the Code, then they should explain why.
- Ensure that corporate governance and disclosure requirements issued by DICA, the Central Bank of Myanmar and the Securities and Exchange Commission are coordinated and consistent, recognising that one size does not fit all and some types of companies e.g. financial sector may require higher CG standards than others.
- Establish clear accountability for monitoring and enforcement of respective CG requirements, and ensure that the institutions have sufficient skilled resources to carry out their oversight tasks, guide companies on CG, credibly and visibly enforce obligations, and provide leadership on CG development, learning from practices in other jurisdictions.
- Introduce a regulatory requirement for all listed companies and public companies to have at least one Director who has successfully completed a Directors Certification or Accreditation programme run by MIOD or another recognised Institute of Directors<sup>181</sup>.
- Create incentives for improving CG performance and disclosure such as an award for best annual reports or listing companies who are failing to comply with CG requirements.

<sup>181</sup> Under [Rule 406\(a\) of the Singapore Listing Rules](#) w.e.f. 1 January 2019 all first-time directors of an SGX-listed company must undergo mandatory training in their roles and responsibilities within a year of appointment.

- Implement the recommendations of the 2017 ‘Report on Observance of Standards and Codes (ROSC): Accounting and Auditing: Myanmar’, in collaboration with Myanmar Accountancy Council and the Myanmar Institute of Certified Public Accountants.
- For the YSX, join the Sustainable Stock Exchange Initiative and use their guidance to adopt compulsory sustainability reporting requirements for listed companies.

#### ***Transparency and access to information***

- Implement the requirements in the Myanmar Investment Law concerning publication of Summary Proposals prior to Myanmar Investment Commission (MIC) decisions.
- Remind holders of MIC Permits of their requirement under Myanmar Investment Rule 196 to publish an annual sustainability report for the permitted project.
- Publish on the SECM website the annual reports of all public companies, in addition to the existing publication of listed companies, in open (e.g. PDF) format, not scanned, to enable information to be easily searched.
- Ensure that the disclosure and consultation requirements in the EIA Procedure, both for government, and Project Proponents are fully implemented, including through the systematic online availability of information about projects and their EIA documentation.
- Incorporate access to information provisions into all relevant laws, in addition to making progress on the adoption of an Access to Information Law.
- Ensure that the draft Procurement Law currently under discussion within government includes a phrase on data disclosure in the law, which could be expanded on in bye-laws, such as the following article inserted under the Chapter on General Provisions: ‘The Contracting Department shall publish information about the purpose, scope, costs and execution of the Contract in a timely manner at key stages during project preparation, tendering and implementation of the contract, in accordance with rules laid down by the Ministry.
- Take steps to disclose contracts and agreements that establish the terms for the exploitation of oil, gas and minerals, in preparation for the EITI requirement to do so for those signed after 1 January 2021. This is in addition to meeting requirement 3.12(b) of the EITI Standard, which requires that the EITI Report document the government’s policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals.

#### ***Beneficial Ownership and Politically Exposed Persons***

- Implement the EITI Beneficial Ownership Roadmap.
- Adapt MyCo reporting requirements to allow for the disclosure of

beneficial ownership, and politically exposed persons (PEPs), in line with requirements in Myanmar EITI and anti-money laundering.

- Fully and transparently implement the provisions for asset declaration in the Myanmar Anti-Corruption law. Undertake further reforms to establish, both in law, and practice, that a list of Politically Exposed Persons (PEPs) and their asset declarations should be made public in line with open data principles<sup>182</sup> and should include the family members of public officials.
- Ensure that the asset declarations are verified by an oversight body with the necessary financial expertise and, in case of omissions or false information, impose proportionate and deterrent sanctions.

#### ***Combating corruption***

- Ensure civil society participation in the fight against corruption in line with UNCAC Article 13, including through public consultation processes, inclusion in enforcement efforts and asset recovery processes and through making provision for private prosecutions and public interest litigation on behalf of victims.
- Publicly commit to and, where required, adopt measures to guarantee protection of civil society space and media freedom as well as citizen’s participation. This includes reform to the Telecommunications law (abolition of Article 66d), and ensuring that whistle-blowers are not hampered, for example, by misuse of official secrets or defamation laws.
- Prioritise whistle-blower protection with an action plan and legal reform, and financial and material resources that results in effective reporting mechanisms and protection of witnesses and whistle-blowers in both the public and private sectors.
- Amend the Myanmar Anti-Corruption Law, and other laws such as Anti Money-Laundering, in accordance with the points highlighted in the UNCAC First Cycle Review. Follow up the recommendations from the 1<sup>st</sup> cycle of the UNCAC Review process including recommendations for technical assistance, and ensure civil society participation in that process (UNCAC Article 63(4)(5)(6) and (7)).
- Reduce the scope for facilitation payments by stripping out unnecessary approvals. For example, the government could establish a Better Regulation Unit to ensure cross-government consultation of business and other stakeholders on proposals for draft laws, and to analyse and challenge unnecessary red tape and approvals in existing ones.
- Implement a pilot programme under the Construction Sector Transparency Initiative (CoST) to reduce corruption and inefficiency in public infrastructure procurement.
- Act on all elements of bribery and corruption, including issues such as goods and services provided ‘free of charge’ to government and PEPs, and conflicts of interest.

182 <http://opendatacharter.net/principles>

**TO THE ANTI-CORRUPTION COMMISSION:**

- Undertake corruption risk assessments, consulting with business about corruption and red-tape hotspots. Advocate to government and parliament for better regulation and permitting, through more public consultation, better public procurement and tendering procedures, and access to information provisions in all laws i.e. compulsory requirements for publishing certain information.
- Ensure a transparent and inclusive 2nd cycle of the UNCAC review process, publicly endorsing the UNCAC Review Transparency Pledge developed by the UNCAC Coalition, a global network of civil society organisations committed to the effective implementation and monitoring of UNCAC.
- Support transparency, media freedom and whistle blower protection, including of investigative journalists, civil society organisations and other whistle blowers working on corruption and accountability.

**TO PARLIAMENT:**

- Support amendments to laws covering criminal defamation, including 66(D) of the Telecoms Law, to ensure that these are not used to prevent legitimate investigative journalism.
- Take the above recommendations concerning the draft Procurement Law into account, and continue to press for transparent public tendering and procurement processes and publicly highlight questionable decisions.

**TO MYANMAR CIVIL SOCIETY ORGANISATIONS AND THE MEDIA:**

- Use the data published by companies to hold them accountable and monitor their public commitments about sustainability. Raise instances of companies failing to live up to those commitments with the company.
- Participate in consultations on environmental impact assessments, and other forms of stakeholder engagement by companies, and report on them.
- Strengthen media reporting on business, including corporate governance, financial issues, and tax.

**TO THE INVESTOR COMMUNITY:**

- Engage with Myanmar companies to ensure that they meet or exceed international standards on responsible business conduct and report robustly on how they manage risks and impacts associated with operations, including with respect to contractors and supply chains.

**ANNEX 1: FULL TABLE OF RESULTS**

L = Listed  
P = Public  
PR = Private  
SEE = State-owned Economic Enterprise  
NW = No Website previously

Rank 2019	Rank 2018	Company Name	Type	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL
1	2	CITY MART HOLDING CO LTD (CMHL)	PR	75%	53%	84%	72%	70%
2	1	FIRST MYANMAR INVESTMENT (FMI)	L	71%	61%	67%	49%	61%
3	5	MAX MYANMAR GROUP	PR	61%	55%	64%	40%	55%
3	6	SHWE TAUNG GROUP	PR	54%	51%	60%	53%	55%
5	-	UNITED AMARA BANK (UAB)	PR	50%	63%	60%	35%	53%
6	7	GRAND GUARDIAN INSURANCE PUBLIC CO	P	71%	39%	49%	53%	51%
7	9	MYANMAR THILAWA SEZ HOLDING PUBLIC CO	L	57%	49%	29%	60%	48%
8	7	DAGON GROUP OF COMPANIES	PR	57%	35%	44%	30%	40%
9	22	MYAN SHWE PYI TRACTORS	PR	46%	22%	42%	49%	39%
10	4	AYEYARWADY (AYA) BANK	PR	50%	37%	33%	35%	38%
11	10	KBZ GROUP	PR	43%	31%	49%	19%	35%
12	16	MYANMAR AGRIBUSINESS PUBLIC CO (MAPCO)	P	54%	29%	31%	21%	32%
13	-	KMD	PR	46%	12%	38%	35%	31%
14	25	MYANMAR AGRO EXCHANGE (MAEX) PUBLIC CO	P	46%	20%	31%	21%	28%
15	18	TMH TELECOM PUBLIC CO	L	50%	35%	0%	21%	24%
16	12	GREAT HOR KHAM PUBLIC CO	P	39%	24%	11%	23%	23%
17	-	IGE GROUP	PR	43%	20%	18%	12%	21%
17	11	MYANMAR AWBA	PR	25%	18%	29%	12%	21%
19	15	SMART TECHNICAL SERVICES CO	PR	32%	8%	29%	5%	17%
20	18	MYANMAR CITIZENS BANK	L	43%	12%	0%	14%	15%
20	27	UNITED PAINT GROUP	PR	14%	0%	20%	26%	15%
22	53	MYANMAR ORIENTAL BANK	PR	18%	16%	18%	2%	13%
22	14	PARAMI ENERGY GROUP	PR	21%	2%	27%	7%	13%
22	37	AYEYAR HINTHAR HOLDINGS CO	PR	25%	10%	18%	2%	13%

Rank 2019	Rank 2018	Company Name	Type	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL	Rank 2019	Rank 2018	Company Name	Type	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL
22	21	FIRST PRIVATE BANK	L	32%	12%	0%	14%	13%	46	53	PAHTAMA GROUP	PR	14%	0%	0%	5%	4%
22	99	MYANMAR TECHNOLOGIES AND INVESTMENT CORPORATION LTD	P	29%	14%	4%	9%	13%	46	29	SUPREME GROUP	PR	11%	4%	0%	2%	4%
27	12	IRRAWADDY GREEN TOWER	PR	11%	6%	20%	9%	12%	46	53	VICTORY MYANMAR GROUP	PR	7%	2%	0%	7%	4%
28	37	HTOO GROUP	PR	18%	4%	20%	2%	10%	46	32	WPG CAPITAL PUBLIC CO	P	7%	6%	0%	2%	4%
28	18	CO-OPERATIVE BANK (CB BANK)	PR	14%	10%	9%	7%	10%	60	29	A1 GROUP OF COMPANIES	PR	4%	4%	0%	5%	3%
30	37	MYANMAR PAYMENT UNION PUBLIC CO (MPU)	P	21%	6%	0%	14%	9%	60	99	AYEYAR PATHÉIN DEVELOPMENT PUBLIC CO	P	14%	0%	2%	0%	3%
31	37	YANGON BUS PUBLIC CO	P	14%	12%	4%	2%	8%	60	79	DENKO TRADING	PR	18%	0%	0%	0%	3%
31	26	ZAW GYI PREMIER	PR	14%	0%	13%	7%	8%	60	37	EDEN GROUP	PR	11%	0%	0%	5%	3%
33	-	PROVEN GROUP	PR	17%	4%	0%	4%	7%	60	94	GOLDEN MYANMAR AIRLINES (GMA) PUBLIC CO	P	18%	0%	0%	0%	3%
33	37	YATHAR CHO INDUSTRIES	PR	4%	0%	4%	21%	7%	60	37	ASIA GREEN DEVELOPMENT BANK	PR	11%	2%	0%	2%	3%
35	22	ASIA WORLD	PR	18%	0%	11%	0%	6%	60	NW	SHWE BYAIN PHYU CO	PR	14%	0%	0%	2%	3%
35	22	CONSTRUCTION & HOUSING DEVELOPMENT BANK	SEE	14%	10%	0%	2%	6%	60	53	TANINTHARYI DIVISION DEVELOPMENT PUBLIC CO	P	7%	6%	0%	0%	3%
35	-	EVER FLOW RIVER GROUP	P	18%	8%	0%	2%	6%	68	79	APEX GAS & OIL PUBLIC CO	P	7%	0%	0%	5%	2%
35	-	YANGON ELECTRICITY SUPPLY CORPORATION (YESC)	SEE	18%	0%	2%	9%	6%	68	53	EUROPE & ASIA COMMERCIAL (EAC)	PR	14%	0%	0%	0%	2%
39	29	ELITE TELECOM PUBLIC CO	P	11%	6%	2%	5%	5%	68	53	MYANMAR ECONOMIC CORPORATION (MEC)	SEE	14%	0%	0%	0%	2%
39	32	MYAWADDY BANK	PR	21%	6%	0%	0%	5%	68	-	MYANMAR ECONOMIC BANK	SEE	11%	2%	0%	0%	2%
39	-	MYANMAR RAILWAYS	SEE	11%	0%	0%	14%	5%	68	-	MYANMAR INVESTMENT AND COMMERCIAL BANK	SEE	4%	4%	0%	2%	2%
39	-	THILAWA SEZ MANAGEMENT COMMITTEE CO	SEE	18%	0%	4%	5%	5%	68	-	MYANMAR PORT AUTHORITY	SEE	14%	0%	0%	0%	2%
39	53	ASIA BUSINESS SYNERGY PUBLIC CO	P	7%	8%	0%	0%	5%	68	-	MYANMAR POSTS AND TELECOMMUNICATION	SEE	11%	0%	0%	2%	2%
39	-	MYANMAR SHIPYARDS	SEE	18%	6%	0%	0%	5%	68	53	NEW DAY ENERGY	PR	11%	0%	0%	2%	2%
39	53	MYANMAR DISTRIBUTION GROUP	PR	21%	0%	0%	5%	5%	68	-	YANGON AIRPORT GROUP	PR	14%	0%	0%	0%	2%
46	79	SMALL & MEDIUM INDUSTRIAL DEVELOPMENT BANK	P	18%	4%	0%	0%	4%	68	NW	YEE SHIN	PR	14%	0%	0%	0%	2%
46	53	MYANMAR AUTOMOBILE DEVELOPMENT PUBLIC CO	P	11%	4%	0%	5%	4%	68	79	AA GROUP (PACIFIC AA GROUP COMPANIES)	PR	7%	0%	0%	2%	2%
46	37	UMG GROUP OF COMPANIES	PR	21%	0%	0%	2%	4%	68	-	CONSUMER GOODS MYANMAR	PR	7%	0%	0%	0%	2%
46	53	GOLDEN ZANEKA PUBLIC CO	P	11%	4%	0%	2%	4%	68	-	LOI HEIN	PR	14%	0%	0%	0%	2%
46	79	GOOD BROTHERS	PR	18%	0%	0%	2%	4%	68	-	INLAND WATER TRANSPORT	SEE	11%	0%	0%	0%	2%
46	37	MANDALAY MYOTHA INDUSTRIAL DEVELOPMENT PUBLIC CO	P	11%	0%	0%	7%	4%	68	-	MYANMAR GEMS ENTERPRISE (MGE)	SEE	4%	0%	2%	2%	2%
46	53	MOTTAMA TRADING CO	PR	18%	0%	0%	2%	4%	68	-	MYANMAR INSURANCE	SEE	11%	0%	0%	0%	2%
46	79	GLOBAL TREASURE BANK PUBLIC CO	P	11%	4%	0%	2%	4%	68	-	MYANMAR OIL AND GAS ENTERPRISE (MOGE)	SEE	4%	0%	2%	2%	2%
46	-	ELECTRICITY SUPPLY CORPORATION	SEE	7%	2%	4%	2%	4%	68	-	MYANMAR PETROCHEMICAL ENTERPRISE (MPE)	SEE	4%	0%	2%	2%	2%
46	-	MYANMAR PEARL ENTERPRISE (MPE)	SEE	14%	0%	0%	5%	4%	68	-	MYANMAR PETROLEUM PRODUCT ENTERPRISE (MPPE)	SEE	4%	0%	2%	2%	2%

Rank 2019	Rank 2018	Company Name	Type	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL	Rank 2019	Rank 2018	Company Name	Type	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL
68	-	MYANMAR TIMBER ENTERPRISE	SEE	4%	0%	0%	5%	2%	104	-	NO (3) HEAVY INDUSTRIES	SEE	7%	0%	0%	0%	1%
68	53	MYANMAR TELECOMMUNICATION NETWORK PUBLIC CO	P	11%	0%	0%	0%	2%	104	-	ORIGINAL GREAT POPULAR	PR	7%	0%	0%	0%	1%
68	-	NO (1) MINING ENTERPRISE	SEE	7%	0%	0%	2%	2%	104	37	P T POWER TRADING	PR	4%	0%	0%	2%	1%
68	32	NAING GROUP OF COMPANIES	PR	7%	0%	2%	0%	2%	104	32	RAKHINE DEVELOPMENT CORPORATION	P	7%	0%	0%	0%	1%
68	79	NATIONAL DEVELOPMENT COMPANY GROUP	P	7%	2%	0%	0%	2%	104	79	SHWE WAH YAUNG AGRICULTURE PRODUCTION	PR	7%	0%	0%	0%	1%
68	-	NATIONAL INFRASTRUCTURE HOLDINGS CO LTD (NIHC)	PR	7%	0%	0%	2%	2%	104	37	YOUNG INVESTMENT GROUP	PR	7%	0%	0%	0%	1%
68	-	NEW STAR LIGHT	PR	7%	0%	0%	2%	2%	104	-	ALL SEES INTERNATIONAL	PR	2%	0%	0%	0%	1%
68	-	NO (2) MINING ENTERPRISE	SEE	7%	0%	0%	2%	2%	104	-	ASIA ENERGY TRADING	PR	4%	0%	0%	0%	1%
68	-	NO (3) MINING ENTERPRISE	SEE	7%	0%	0%	2%	2%	104	94	BENHUR TRADING	PR	4%	0%	0%	0%	1%
68	NW	ROYAL YATANARPON TELECOM PUBLIC CO	P	11%	0%	0%	0%	2%	104	53	ELEVEN MEDIA GROUP	PR	4%	0%	0%	0%	1%
68	53	SEIN WUT HMON	PR	4%	0%	0%	5%	2%	104	99	EVER SUNNY INDUSTRIAL CO LTD (ESI FOOD)	PR	4%	0%	0%	0%	1%
68	79	SHWE THAN LWIN MEDIA	PR	7%	0%	0%	2%	2%	104	-	GLOBAL WORLD INSURANCE	PR	4%	0%	0%	0%	1%
68	94	STEEL KING	PR	11%	0%	0%	0%	2%	104	99	KAYTUMADI	PR	4%	0%	0%	0%	1%
68	-	SUPER ONE GROUP OF COMPANIES	PR	11%	0%	0%	0%	2%	104	53	KHA YAY TRADING	PR	4%	0%	0%	0%	1%
68	37	SUPER SEVEN STARS MOTORS INDUSTRY CO	PR	11%	0%	0%	0%	2%	104	59	KMA GROUP	PR	4%	0%	0%	0%	1%
68	53	THAN TAW MYAT	PR	7%	0%	0%	2%	2%	104	79	MYANMAR ICT DEVELOPMENT PUBLIC CO	P	4%	0%	0%	0%	1%
68	53	YATANARPON TELEPORT PUBLIC CO	P	7%	0%	0%	2%	2%	104	99	MYANMAR MOTION PICTURE DEVELOPMENT PUBLIC CO	P	4%	0%	0%	0%	1%
104	53	ACE GROUP	PR	7%	0%	0%	0%	1%	104	99	MYAWADDY TRADING	PR	4%	0%	0%	0%	1%
104	37	AUNG KAN BO TRADING	PR	4%	0%	0%	2%	1%	104	-	MYO NAING NINE INTERNATIONAL TRADING	PR	4%	0%	0%	0%	1%
104	53	CAPITAL DIAMOND STAR GROUP	PR	7%	0%	0%	0%	1%	104	79	NEW GOLDEN GATE (1991) COMPANY	PR	4%	0%	0%	0%	1%
104	53	DAGON BEVERAGES	PR	4%	0%	0%	2%	1%	104	NW	OK GROUP	PR	4%	0%	0%	0%	1%
104	-	DECO-LAND GROUP	PR	7%	0%	0%	0%	1%	104	79	TZTM GROUP	PR	4%	0%	0%	0%	1%
104	37	GOLDEN KEY CO LTD (MIKKO GROUP)	PR	4%	0%	0%	2%	1%	104	-	MANDALAY ELECTRICITY SUPPLY CORPORATION	SEE	4%	0%	0%	0%	1%
104	-	GOLDEN LAND EAST ASIA DEVELOPMENT LTD	P	4%	0%	0%	2%	1%									
104	53	MIN ZAR NI	PR	7%	0%	0%	0%	1%									
104	99	MYANMA GOLDEN STAR	PR	7%	0%	0%	0%	1%									
104	NW	AYEYARWADDY FARMERS DEVT BANK PUBLIC CO (ABANK)	P	7%	0%	0%	0%	1%			L = Listed						
104	NW	NCX MYANMAR CO LTD	PR	7%	0%	0%	0%	1%			P = Public						
104	--	MYANMAR FOREIGN TRADE BANK (MFTB)	SEE	7%	0%	0%	0%	1%			PR = Private						
104	-	NO (1) HEAVY INDUSTRIES	SEE	7%	0%	0%	0%	1%			SEE = State-owned Economic Enterprise						
104	-	NO (2) HEAVY INDUSTRIES	SEE	7%	0%	0%	0%	1%			NW = No Website previously						

## Companies without a website (in alphabetical order)

<b>PUBLIC COMPANIES (26)</b>	<b>PRIVATE COMPANIES (81)</b>	<b>PRIVATE COMPANIES (continued)</b>	<b>PRIVATE COMPANIES (continued)</b>
Cherry Yoma Group Public Co Ltd	Anawar Hlwam Co Ltd	Khine Khine Phy International Trading Co Ltd	Regency Material Trading Co, Ltd
Danya Gone Yee Development Public Co Ltd	Annawar Tun Co Ltd	Khwar Nyo Trading Co Ltd	Royal Great Asia Co Ltd
Dawei Development Public Co Ltd	Asia Myint Group Co Ltd	Kian Sein Co Ltd	Royal Myawaddy Distillery Group (Royal Club)
Farmers Development Public Bank Ltd	Asia Royal Co Ltd	Kyaw San Co Ltd	Sein Lom Taung Tan Gems Co Ltd
Forest Products Joint Venture Corporation Ltd	Asia World Port Management Co Ltd	Kyaw Thar Engineering & Construction Group (KTECG)	Shining Star Light Gems & Jewellery Co Ltd
Hanthawady Green Land Public Co Ltd	Aung Chantha Trading Co Ltd	Linn Lett Win Yadanar Gems Co Ltd	Shu San Industry Co Ltd
Htawara Aung Myae Public Co Ltd	Aung Thitsa Oo Insurance Co Ltd	Min Dhama Co Ltd	Shwe Me Co Ltd
Industrial Resources Development Public Co Ltd	Auspicious Millennium Trading Group Co Ltd	Moe Htet Gabar Co Ltd	Shwe Nar Wah Co Ltd
Kayin State Development Public Co Ltd	Ayar Jade Co Ltd	Moe Thu Kha Trading Co Ltd	Shwe Thet Tun Trading Co Ltd
Kaytumadi Development Public Co Ltd	Aye Nyein Thar Co Ltd	Mya Gae Trading Co Ltd	Shwe Tun Co Ltd
Maubin Development Public Co Ltd	Bhome Yaung Chi Co Ltd	Mya Power Trading Co Ltd	Six Winner Brothers Co Ltd
Myanmar Agriculture & General Development Public Co Ltd	Bhone Kyaw San Co Ltd	Myanma Annawa Swan A Shin Group Co Ltd	Taw Win Family company
Myanmar Construction & Development Public Co Ltd	Billion Soe Kaung San Co Ltd	Myanmar Imperial Jade (Gems & Jewellery) Co Ltd	Thit Sar Shwe Yi Co Ltd
Myanmar Economic Development Corporation Public Co Ltd	Dawn Construction Co Ltd	Myanmar Lighting (IPP) Co Ltd	Thu Gyi Min Co Ltd
Myanmar Edible Oil Industrial (MEICO) Public Co Ltd	Elite Tech Group Co Ltd	Myanmar United Power Co Ltd	Trade Friends Trading Co Ltd
Myanmar Industries Alliances Public Co Ltd	Excellent Fortune Group of Companies	Myat Myittar Mon Gems & Jewellery Co Ltd	Tunn Akaree Co Ltd
Myanmar Irrawaddy Development Public Co Ltd	Farmer Phoyerzar Co Ltd	Myat Yamon Gems Co Ltd	Universal Medical Center Co Ltd
Myanmar Native Land Public Co Ltd	Fortune International Ltd	Myo Nwe Gems & Jewellery Co Ltd	Wai Aung Gabar Gems Co Ltd
Myanma Tourism Bank Public Co Ltd	Fu Xing Brothers Co Ltd	Nay Pyi Taw Sabin Bank Ltd	Wi Sa Ra International Co Ltd
Myanmar Tourism Development Public Co Ltd	Golden Oriental Leaf Co Ltd	New Men International Ltd	Yadanar Kaung Kin Gems & Jewellery Co Ltd
Myeik Future Development (MFD) Public Co Ltd	Golden Village Co Ltd	Ngwe Yi Pale Group of Companies	Yadanar Yaung Chi Gems Co Ltd
Myeik Public Corporation Ltd	Great Genesis Gems Co Ltd	Nilar Yadanar Co Ltd	Yangon City Bank Ltd
New City Development Public Co Ltd	Green Comet Gems Co Ltd	Nilar Yoma Trading Co Ltd	Yangon Technical & Trading Co Ltd
Oleander Construction Group Public Co Ltd	Information Technology Central Services Co Ltd	North East Gate Fruit Co Ltd	Yuzana Company Ltd
Rakhine Economic Initiative Public Co Ltd	Jade Mountain Co Ltd	Pac Link Trading Ltd	Zaykabar Co Ltd
(Union of) Myanmar Economic Holdings Ltd	Jing Hpaw Aung Jade & Jewellery Co Ltd	Paing Family International Co Ltd	
<b>SEE (1)</b>	Kachin National Development and Progress Co Ltd	Phone Pyae Zaw Trading Co Ltd	
Hydro Power Generation Enterprise	Khin Maung Win Family Co Ltd	Phyo Thiha Kyaw Gems Co Ltd	

## **ANNEX 2: QUESTIONNAIRE**

#	ID		Asean CG Scorecard	Disclose or Performance	#	ID		Asean CG Scorecard	Disclose or Performance
28	9	Is the chairman an independent director?	E.4.2	D	46	27	Does at least one of the independent directors/commissioners of the committee have accounting expertise (accounting qualification or experience)?	E.2.22	D
29	10	If the Chairman is not independent, has the Board appointed a Lead/Senior Independent Director and has his/her role been defined?	E.4.5	D	47	28	Does the Annual Report disclose the number of Audit Committee meetings held?	E.2.23	D
30	11	Were any of the directors CEO of the company in the past 2 years?	E.4.3	D	48	29	Is the attendance of members at Audit Committee meetings disclosed?	E.2.23	D
31	12	Among the directors, how many may be considered as 'independent' according to the definition provided by the company?		D	<b>Nominating committee</b>				
32	13	Do independent, non-executive directors/commissioners number at least three and make up more than 50% of the board of directors?	E.2.4	D	49	30	Does the company have a Nominating Committee (NC)?	E.2.8	D
33	14	Are the independent directors/commissioners independent of management and major/substantial shareholders?		D	50	31	Does the Nominating Committee comprise entirely of non-executive directors with a majority of independent directors?	E.2.9	D
34	15	Has the company set a limit of five board seats in publicly-listed companies that an individual director/commissioner may hold simultaneously?	E.2.6	D	51	32	Is the chairman of the Nominating Committee an independent director/commissioner?	E.2.10	D
<b>Board of directors' responsibilities</b>					52	33	Does the Annual Report disclose the number of Nominating Committee meetings held?	E.2.12	D
35	16	Are the roles and responsibilities of the board of directors clearly stated?	E.1.3	D	53	34	Is the attendance of members at Nominating Committee meetings disclosed?	E.2.12	D
36	17	Are the types of decisions requiring board of directors' approval disclosed?	E.1.2	D	<b>Remuneration Committee/ Compensation Committee</b>				
37	18	Are the role and responsibilities of the chairman disclosed?	E.4.4	D	54	35	Does the company have a Remuneration Committee (RC)?	E.2.13	D
38	19	Does the company disclose the number of board of directors meetings held during the year?	E.3.2	D	55	36	Does the Remuneration Committee comprise entirely of non-executive directors with a majority of independent directors?	E.2.14	D
39	20	Does the company disclose the attendance of each director/commissioner in respect of meetings held?	D.2.6/ E.3.3	D	56	37	Is the chairman of the Remuneration Committee an independent director/commissioner?	E.2.15	D
40	21	Does the company have orientation programmes for new directors?	E.5.1	D	57	38	Does the Annual Report disclose the number of Remuneration Committee meetings held?	E.2.17	D
41	22	Does the company disclose the details of remuneration of the CEO and each member of the board of directors?	D.2.7/ E.3.12	D	58	39	Is the attendance of members at Remuneration Committee meetings disclosed?	E.2.17	D
42	23	Does the company clearly explain how its governance structure supports its ability to create value in the short, medium and long term?		P	<b>Performance review &amp; board appointments</b>				
<b>Audit committee</b>					59	40	Does the company disclose how the board of directors plans for the succession of the CEO/Managing Director/President and key management?	E.5.3	P
43	24	Does the company have an Audit Committee?	E.2.18	D	60	41	Does the board of directors conduct an annual performance assessment of the CEO/Managing Director/President?	E.5.4	D
44	25	Is the Audit Committee comprised entirely of non-executive directors with a majority of independent directors?	E.2.19	D	61	42	Does the company disclose the criteria used in selecting new directors/commissioners?	E.3.9	P
45	26	Is the chairman of the Audit Committee an independent director/commissioner?	E.2.20	D	62	43	Is an annual performance assessment of the board of directors conducted?	E.5.5	D
					63	44	Does the company disclose the criteria used in the board assessment?	E.5.5	P

#	ID		Asean CG Scorecard	Disclose or Performance	#	ID		Asean CG Scorecard	Disclose or Performance
<b>SUSTAINABILITY MANAGEMENT</b>									
<b>Risk Management</b>									
64	1	Does the company disclose the internal control procedures/risk management systems it has in place?	E.3.19	D	-	-	<i>Board Policy</i>	E.1.1	D
65	2	Does the Annual Report disclose that the board of directors/commissioners has conducted a review of the company's material controls (including operational, financial and compliance controls) and risk management systems?	E.3.20	D	-	-	<i>BoD's conflict of interest (abstention in specific meeting, ...)</i>		D
66	3	Does the company disclose how key risks are managed?	E.3.21	P	-	-	<i>Code of conduct</i>		D
67	4	Are the following risks mentioned in the annual report?			-	-	<i>Disclosure of Directors's interest in transactions and any other conflicts of interest</i>	B.4.1 / B.4.2 / B.4.3	D
	-	- <i>Environment</i>			-	-	<i>Dividend policy</i>	D.2.4	D
	-	- <i>Social (HR)</i>			-	-	<i>Employment / Labour</i>		D
	-	- <i>Social (Society)</i>			-	-	<i>Equal opportunities policies / Diversity</i>		D
	-	- <i>Governance</i>			-	-	<i>Human rights</i>		D
	-	- <i>Finance</i>			-	-	<i>Professional education programmes for director (on-going or continuous)</i>		D
	-	- <i>Related Party Transactions</i>			-	-	<i>Remuneration (fees, allowances, benefit-in-kind and other emoluments) for executive directors and CEO</i>	B.4.2 / D.3.1	D
	-	- <i>Reward/compensation for the performance of the company beyond short-term financial measures</i>			-	-	<i>Reward/compensation for the performance of the company beyond short-term financial measures</i>	C.3.3 / E.3.12	D
	-	- <i>Use of knowledge generally not available on the market</i>			-	-	<i>Use of knowledge generally not available on the market</i>		D
	-	- <i>Whistle-blowing policy</i>			-	-	<i>Whistle-blowing policy</i>	C.4.1	D
68	5	Does the annual report clearly explain what the specific risks and opportunities are that affect the organization's ability to create value over the short, medium and long term, and how the organization is dealing with them?		P	<b>Business Ethics</b>				
69	6	Does the company have a sustainability manager / officer?		D	78	15	Are the details of the code of ethics or conduct disclosed?	E.2.1	D
70	7	Does the company have a sustainability strategy?		D	79	16	Does the company disclose that all directors/commissioners, senior management and employees are required to comply with the code?	E.2.2	D
71	8	Does the company explain its stakeholders' mapping process?		D	80	17	Does the company disclose how it implements and monitors compliance with the code of ethics or conduct?	E.2.3	D
72	9	Does the company disclose its materiality analysis?		D	<b>Whistleblowing</b>				
73	10	Does the company clearly explain how the materiality analysis is relevant for business issues ?		P	81	18	Does the company provide contact details via the company's website or Annual Report which stakeholders (e.g. customers, suppliers, general public etc.) can use to voice their concerns and/or complaints for possible violations of their rights?	C.2.1	D
74	11	Does the company disclose its mid-long term targets on sustainability topics?		D	82	19	Is it possible to submit an issue anonymously?		D
75	12	Are the sustainability targets explicitly aligned with the materiality analysis, with a high level of commitment and a reasonable timeframe?		P	83	20	Does the company have a policy or procedure to protect an employee/ person who reveals illegal/unethical behaviour from retaliation?	C.4.2	D
76	13	Does the company engage with its external stakeholders to get their views on specific topics?		D	<b>Sustainability Reporting</b>				
77	14	Are the following area covered by a specific policy?			84	21	Does the company use a dashboard to monitor and report its performance?		P
					85	22	Does the company publish a COP / sustainability report for the current or the last fiscal year?		D
					86	23	Is the scope of the report clearly described?		D

#	ID		Asean CG Scorecard	Disclose or Performance	#	ID		Asean CG Scorecard	Disclose or Performance
<b>REPORTING</b>									
<b>Annual Report</b>									
87	1	Does the company publish an annual report?		D	96	10	Does the company disclose the activities that it has undertaken to implement the following policies:		
88	2	Is the annual report available in English?		D	-	-	<i>Customer health and safety</i>	C.1.1	D
89	3	Is the annual report available in Burmese?		D	-	-	<i>Supplier/Contractor selection and criteria</i>	C.1.2	D
90	4	Is the annual report released within 120 days of the end of the financial year?	D.7.2	D	-	-	<i>Environmentally-friendly value chain</i>	C.1.3	D
91	5	Does the company's annual report disclose the following items:			-	-	<i>Interaction with communities</i>	C.1.4	D
	-	<i>Corporate objectives</i>	D.2.1	D	-	-	<i>Anti-corruption programmes and procedures</i>	C.1.5	D
	-	<i>Biographical details (at least age, qualifications, date of first appointment, relevant experience, and any other directorships of listed companies) of directors/commissioners</i>	D.2.5	D	-	-	<i>Creditors' rights</i>	C.1.6	D
<b>Framework</b>									
92	6	Is the company compliant with the following framework:		P	97	11	Does the company disclose some KPIs on the following topics:		
	-	<i>AA1000</i>		P			<b>Social Issues</b>		
	-	<i>DJSI</i>		P	-	-	<i>Employees' engagement</i>	D.2.3	D
	-	<i>GRI</i>		P	-	-	<i>Turnover</i>	D.2.3	D
	-	<i>Integrated reporting</i>		P	-	-	<i>Absenteeism rate</i>	D.2.3 / C.3.1	D
	-	<i>SASB</i>		P	-	-	<i>HSE</i>	D.2.3 / C.3.1	D
	-	<i>Integrated reporting</i>		P	-	-	<i>Frequency rate / Fatality rate</i>	D.2.3 / C.3.1	D
	-	<i>SASB</i>		P	-	-	<i>Training</i>	D.2.3 / C.3.2	D
<b>Financial &amp; operations</b>									
93	7	Is the company publishing its main financial KPIs?	D.2.2	D	-	-	<i>Careers' development / appraisals</i>	D.2.3	D
94	8	Is the company publishing its tax?		D	-	-	<i>Equal opportunity employer (gender, race, age)</i>	D.2.3	D
95	9	Is the same firm engaged for both audit and non-audit services (i.e. advisory services)?		D	-	-	<i>Disability</i>	D.2.3	D
							<b>Environmental Issues</b>		
					-	-	<i>Waste</i>	D.2.3	D
					-	-	<i>Energy</i>	D.2.3	D
					-	-	<i>Carbon</i>	D.2.3	D
					-	-	<i>Water</i>	D.2.3	D
							<b>Societal Responsibility</b>		
					-	-	<i>Product responsibility</i>	D.2.3	D
					-	-	<i>Supply chain management</i>	D.2.3	D
					-	-	<i>Philanthropic activities</i>	D.2.3	D
					98	12	Are the non-financial data audited by a third party?		P



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