

Government Legal & Regulatory Framework



GOVERNMENT LEGAL AND REGULATORY FRAMEWORK

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This section provides a brief overview of Myanmar, including its government structure and its legal and policy framework. Further information about issues relating to responsible investment in the tourism sector is provided in [Part 3](#) on Sector-Level Impacts and [Part 4](#) on Cumulative and Project-Level Impacts.

A. Brief Background on Myanmar

Myanmar is the largest country in mainland Southeast Asia, at the cross-roads between India and China. Despite having the second largest economy in South-East Asia in the 1900's, it is currently one of the poorest countries in East Asia and the Pacific.³³ With a population of more than 52 million, one of the lowest population densities in the region, fertile lands, significant untapped agricultural potential, a rich endowment of natural

³³ Myanmar is currently ranked 150 out of 195 on the [Human Development Index](#) and is considered a Least Developed Country by the UN.

resources and a long coastline, Myanmar has the potential to re-establish itself as a growing and dynamic economy in the region. If managed well, some have estimated it could quadruple the size of its economy, from USD 45 billion in 2010 to more than USD 200 billion in 2030.³⁴ The challenge will be addressing the growing inequality in Myanmar's multi-ethnic society and ensuring that growth is inclusive and reaches the neglected rural and border areas and not just a privileged few. With the opening of the country, there is a risk of rising expectations leading to popular frustration and disillusionment if these important opportunities are missed, or worse, squandered.

Myanmar has a long and rich history dating back into the Bronze Age, with the rise and fall of numerous empires. More recently it was a British colony until it achieved independence from British rule in 1948. Since then, the country has been consumed by long-running civil wars, which are currently being addressed through a comprehensive peace process.³⁵ Myanmar was ruled by successive military governments starting with a 1962 coup led by General Ne Win who pursued an isolationist "Burmese Way to Socialism" that included nationalisation of the economy and severing links with the outside world. While some of the country's self-imposed isolation ended following Ne Win's resignation in 1988, when the State Law and Order Restoration Council (SLORC) took power, the Government's continued suppression of political opposition resulted in a broad range of sanctions by Western governments.

In March 2011, a new Government headed by former general U Thein Sein came to power articulating a policy framework for people-centred and sustainable development, giving "priority to improving the quality of life of ordinary citizens, and specially poor citizens"³⁶ and fulfilling the basic needs of the people.³⁷ He began talks with opposition leader Daw Aung San Suu Kyi, who had been freed from house arrest one week after the November 2010 elections. Her party, the National League for Democracy (NLD), contested the April 2012 by-elections and won 43 parliamentary seats. The next general election is expected to take place in late 2015.

The country is going through a "triple transition": first, from an authoritarian military system to democratic governance; second, from a centrally directed economy to a market-oriented economy, and; third, from 60 years of conflict to peace in its ethnic group, border areas.³⁸ The transitions take place against the backdrop of the integration of the Association of South-East Asian Nations (ASEAN) into a single economic community, which should provide an important opportunity for Myanmar's re-entry and integration to the sub-regional, regional, and global economies.³⁹ Myanmar is seeking to leave behind decades of isolation, fragility and conflict, but faces enormous capacity constraints in the face of such an ambitious agenda. Long-term reforms are needed to improve governance.

³⁴ [Myanmar's moment: Unique opportunities, major challenges](#), McKinsey Global Institute, 2013.

³⁵ See further [Myanmar Peace Monitor](#).

³⁶ U Myint (Chief Economic Adviser to the President and Chief of the CESD-MDRI), "Myanmar and the FDI Issue" (20 October 2012), p. 6, citing: [President U Thein Sein calls for more efforts in reform process for national development](#), *New Light of Myanmar*, 12 May 2012, and [Priority task of government is to satisfy desire, fulfill requirements of people](#), *New Light of Myanmar*, 13 May 2012.

³⁷ [People-Centred Development Tops Government's Agenda](#), *Eleven Media*, 11 August 2013.

³⁸ [Myanmar Overview](#), World Bank, accessed 15 July 2014.

³⁹ [Myanmar in Transition: Opportunities and Challenges](#), Asian Development Bank, August 2013.

President Thein Sein's March 2011 inaugural speech to the Pyidaungsu Hluttaw (Union Legislative Assembly), outlined economic reform as a key priority of his Government. Much of the recent economic growth has been in extractive industries (in particular mining and natural gas). However the agriculture sector accounts for the largest share of the economy and provides livelihoods for more than 70% of the population.⁴⁰ The President has repeatedly called for responsible investment as part of the renewed emphasis on economic reform.

B. Union, State/Region and Local Government in Myanmar

Government Structure

Under the 2008 Constitution, the Union of the Republic of Myanmar is organised into seven States and seven Regions (formerly known as Divisions), six Self-Administered Zones and Self-Administered Divisions and one union territory containing the capital Nay Pyi Taw and surrounding townships.⁴¹ Ethnic minorities live mostly in the seven States along the border of the country, and the ethnic majority Burman/Bamar people live mostly in the seven Regions which, with the exception of Tanintharyi and Sagaing Regions, mainly run through the middle of the country.

The population is organised into the following levels of administration, starting with the lowest administrative level: the village, with several grouped together into village tracts; urban wards; towns, with several grouped together into townships (where the lowest levels of government offices are generally located); townships are then organised into districts; several districts then comprise a region or state.⁴² Regions and States are constitutionally equivalent.

Currently, the President appoints a Chief Minister for each State and Region. Each State/Region has a unicameral legislative assembly (Hluttaw), but laws passed by the Union Legislative Assembly (Pyidaungsu Hluttaw) are superior to those passed at the Regional/State level.⁴³ The areas in which they can pass laws are limited to the eight sectors listed in Schedule Two of the Constitution.⁴⁴ The Region /State assemblies can legislate on matters of land revenue, municipal taxes on buildings and land and the sale, lease and other matters involving property of the Region or State.⁴⁵ On the other hand, revenues from the exploitation of the natural resources of a Region or State are to be paid to the Union Fund, and not the Region or State Fund.⁴⁶

⁴⁰ [Myanmar - Interim strategy note for the period FY13-14](#), World Bank, October 2012.

⁴¹ For a discussion of local governance, see MDRI and the Asia Foundation, "[State and Region Governments in Myanmar](#)" (September 2013). The six self-administered territories are the zones of Naga in Sagaing Region, Danu, Pa-O, Palaung, Kokaung, and the Self-Administered Division of Wa (all in Shan State).

⁴² See MDRI and the Asia Foundation, above.

⁴³ "[Constitutional Awareness Myanmar](#)", Bingham Centre for the Rule of Law, October 2013.

⁴⁴ Constitution of Myanmar, Art. 188. See also MDRI and the Asia Foundation, above, p. V, p. 12, pp. 62-64 and pp. 86-87. See Appendix I for a translation of Schedule Two of the Constitution.

⁴⁵ Constitution of Myanmar, Schedule Two, Article 1 (c, e, g). See also MDRI and the Asia Foundation, above.

⁴⁶ Article 231 of the Constitution provides that all taxes and revenues not listed in Schedule 5 to be collected by regions or states are to be paid into the Union Fund. Schedule 5 of the Constitution does not include revenues from natural resources, save land.

The Region/State Hluttaws have so far passed very few laws. Moreover, the effectiveness of these legislatures is further circumscribed by capacity issues at the local level. The Union Government does not need approval from state or regional governments for large-scale investments in their local jurisdictions, although they must be informed, and their views are sought as part of the evolving ESIA process and on foreign lease of land in their area. Local governmental authority is still quite limited, as is its capacity to take on some of the more technical dimensions of natural resource management such as geological assessments or negotiating contracts.⁴⁷

Before the new Government came to power in 2011, regional military commanders had absolute authority in their areas, as they served both as military chiefs and as heads of regional governments. Currently serving military generally play no formal role in Region/State administration other than on security issues.⁴⁸ However, of the 14 Region/State Chief Ministers, most are former military officers. The Region/State Border and Security Affairs Minister is a military-appointee, although other Ministers are appointed by the Chief Minister.

The Union Legislative Assembly (Pyidaungsu Hluttaw)

The Union Legislative Assembly, elected in November 2010, was convened in early 2011 and has shown a degree of independence from the executive branch, though it is dominated by the Union Solidarity Development Party (USDP), established by the previous Government, and the military. 25% of both the upper and lower Houses are reserved for serving military officers and appointed by the Commander-in-Chief, and the USDP won most of the other parliamentary seats in the 2010 elections, widely believed to have been neither free nor fair.

A major priority has been the implementation of a rapid programme of updating Myanmar laws (one source notes 68 laws enacted since autumn 2011, with 20 in the first three months of 2014 alone).⁴⁹ While there is justifiable urgency to the programme to update its laws, the lack of experience and expert knowledge of most legislators, the very ambitious legislative agenda, and the speed with which legislative decisions are being taken raises questions about the effectiveness and coherence of some of the new legislation. Due to the tendency to rush through legislation, there has been little effective consultation with the public, which is a serious deficiency. Not only does consultation develop a sense of participation and buy-in, it would improve the legislative process. Presently, the Parliamentary Rule of Law, Peace and Stability Committee, chaired by Daw Aung San Suu Kyi, is tasked with reviewing existing legislation and recommending changes. The Attorney General's Office also plays a role in checking draft laws, including for conformity to the country's international commitments and consistency with existing laws. The International Bar Association has recommended a law reform commission, in order to make reforms as consistent and efficient as possible.⁵⁰

⁴⁷ ["Natural Resources and Subnational Governments in Myanmar: Key considerations for wealth sharing"](#), Thet Aung Lynn and Mari Oye, June 2014, p. 31.

⁴⁸ ["Myanmar's Military: Back to the Barracks?"](#), International Crisis Group, April 2014, p. 8.

⁴⁹ ["Doing Business in Myanmar"](#), Myanmar Legal Services, April 2014; "Myanmar Laws Enacted in 2014" and ["Overview of Legal and Regulatory Regime. Sanctions, Cross-border Projects and ASEAN Integration 2015"](#), April 2014.

⁵⁰ ["The Rule of Law in Myanmar: Challenges and Prospects"](#), International Bar Association, December 2012.

The President has very limited scope to block the enactment of a bill passed by the Union Legislative Assembly. Under the Constitution, the President is obliged to enact into law any bill passed.⁵¹ If the President withholds signature, the bill is deemed to become law on the day after the end of the period prescribed for the President to sign the bill.⁵²

Constitutional amendments are currently under discussion in Myanmar after a Joint Committee for Reviewing the Constitution was formed in July 2013 and nationwide consultations took place. The Committee submitted its report to Parliament on 31 January 2014 and another committee was formed in Parliament to take the amendment process forward. Key issues which opposition politicians have identified for reform include: 25% of seats in parliament reserved for non-elected serving military; requirements to become President (which currently would exclude Daw Aung San Suu Kyi from running for President); the extreme difficulty in amending the constitution⁵³; broad Presidential powers to declare a state of emergency; and the need for more region/state government control over local resources and local governance.⁵⁴

Separation of Powers

The Constitution puts in place a governance structure that, to some extent, gives effect to the separation of powers principle. It provides for a system that permits reciprocal checks and balances, and requires that members of the executive and judicial arms of government cannot at the same time be members of the legislature.⁵⁵ A Constitutional Tribunal can determine whether measures taken by the executive authorities of the Union, States, Regions and self-administrative areas are in conformity with the Constitution.⁵⁶ This judicial review may be triggered by representatives of the Hluttaws,⁵⁷ the Chief Justice of the Union, the President or the leader of the executive government of a Region, State or self-administrative area.⁵⁸ It may also be triggered where a dispute arises over the constitutionality of a law in a hearing of a case before any court.⁵⁹

However, the Constitution makes an incursion into the separation of powers principle by entrenching the military in both the executive and legislative arms of government and placing the armed forces outside of the oversight of the executive, legislature and

⁵¹ Articles 105 and 106, Constitution.

⁵² Articles 105(c) and 106(c), Constitution.

⁵³ Aung San Suu Kyi is currently not permitted to be President because her two sons have British rather than Myanmar nationality. Over 75% of parliament must vote for a constitutional amendment to change this. For an analysis of the constitutional amendment process, see "[Constitutional Reform in Myanmar: Priorities and Prospects for Amendment](#)", Bingham Centre for the Rule of Law, January 2014.

⁵⁴ Ethnic minorities are particularly concerned about resource and power-sharing in the seven ethnic minority states.

⁵⁵ This also applies to Defence Services personnel.

⁵⁶ Article 322(c), Constitution.

⁵⁷ These are the Speakers of the Pyidaungsu Hluttaw, Pyithu Hluttaw, Amyotha Hluttaw, the Region or State Hluttaw, or representatives numbering at least 10% of the Pyithu or Amyotha Hluttaw. Articles 325 and 326, Constitution.

⁵⁸ Articles 325 and 326, Constitution.

⁵⁹ Article 323, Constitution. The court hearing the case must then refer the dispute to the Constitutional Tribunal, whose resolution of the matter is final and conclusive and must be applied to all cases. Articles 323 and 324, Constitution.

judiciary.⁶⁰ As noted above, currently 25% of seats in the Union Legislative Assembly,⁶¹ and in the State and Region Assemblies⁶² are occupied by unelected members of the military. At the same time, members of the military are mandated or permitted to occupy positions in the executive arms of the Union, States and Regions. The military personnel for all these positions must be nominated by the Commander-in-Chief of the Defence Services. The reality is that the military's influence over the legislature is not limited to just the 25% of seats, as it has considerable influence over non-military Hluttaw representatives. Stability in government and prospects for further reforms that advance the rule of law and human rights are therefore, according to the Constitution, dependent to considerable extent on the military's will and restraint.

C. Myanmar's Legal Framework

Myanmar's Legal History

Myanmar inherited a common law system from Great Britain as implemented in colonial India with few updates of the laws after the 1950's, until the recent changes in 2011.⁶³ Since the 1950s, legal precedent has not been consistently used, nor significant case law developed. Many outdated and repressive laws from the colonial era remain on the books, including the Penal Code. The main sources of law in Myanmar, codified under the "Burma Code" (13 volumes, enacted 1841 – 1954), are still in force today, unless specifically superseded.

While many new laws relating to investment have been enacted since 2011, including the 2012 Foreign Investment Law, lawyers have noted that these laws provide broad discretionary powers for decision-making bodies, which could result in a lack of legal certainty. Flaws in a number of laws and in the justice system itself present major risks to companies operating in Myanmar.

The Myanmar 2008 Constitution

After the 1974 constitution was suspended in a September 1988 coup d'état to suppress mass nationwide pro-democracy demonstrations, the military government ruled by decree for over two decades. A new constitution was drafted with very little public participation and was approved in a flawed constitutional referendum held just days after Cyclone Nargis in May 2008. Many people who organised "Vote No" anti-referendum campaigns were arrested and imprisoned during that time.

⁶⁰ Firstly, the Defence Services has the right to not only independently administer all affairs of the armed forces, it also has the right to independently adjudicate on all such affairs (Art. 20(b), Constitution). Secondly, a "Courts-Martial" is established under the Constitution to "adjudicate Defence Services personnel" (Art. 319, Constitution). Its powers and activities are unfettered by the Constitution, and it is given complete independence from the Supreme Court (Art. 56, Constitution). Thirdly, the autonomy of the Defence Services may go beyond the exercise of military duties and functions; relevant provisions around military courts are vague and could be interpreted to confer on the Courts-Martial jurisdiction over acts committed by Defence Services personnel even outside of their military duties and functions – this is especially problematic due to the military's extensive record of human rights violations and corruption.

⁶¹ Articles 109(b) (in relation to the Pyithu Hluttaw) and 141(b) (in relation to the Amyotha Hluttaw), Constitution.

⁶² Article 161(d), Constitution.

⁶³ The courts in Myanmar adjudicate criminal and civil cases under the provisions of the Criminal Procedure Code, the Civil Procedure Code and the Evidence Act.

The 2008 Constitution contains a range of aspirational, though unenforceable, statements of principle related to business and economic development, including in relation to: equitable valuing of “peasants” agricultural produce; the rights of workers; a transition from manual to mechanised agriculture; facilitating industrial development; reducing unemployment; a number of free market-type principles such as declining to nationalise economic enterprises or demonetise currency in circulation; and affirming certain property rights.

The Constitution provides that “[t]he Union is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union. As various CSOs have pointed out, the Constitution does not grant citizens the right to a clean and healthy environment, nor are there any clauses granting freedom of information. There is no obligation for the revenue from natural resources to be subject to equitable sharing among the citizens.

The 2008 Constitution provides enforceable guarantees that relate to a range of rights, some of which apply to citizens only and some of which are more broadly applicable. Moreover, most of these guarantees do not fully reflect international human rights standards, due to the wide qualifiers and caveats they contain.⁶⁴

Box 6: Constitutional Rights of Citizens and Non-Citizens

Some Constitutional rights and guarantees are specifically designated to “**all persons**”, which on their plain wording should apply to both citizens and non-citizens, including broadly the right to:

- equality;
- life and liberty (security of the person is not recognised in the Constitution);
- freedom from forced labour and servitude
- work

While others are specifically designed to “**citizens**” **only**, including broadly the right to:

- freedom from discrimination
- privacy
- freedom of movement
- property
- freedom of expression
- freedom of assembly and association
- elect and be elected
- socioeconomic development of “less developed national races” (including education, health, economy, transport and communications)
- health
- education
- just and fair conditions of work
- participate in cultural life

⁶⁴ Of the rights covered by enforceable guarantees, only the following stand without qualification: the right to enjoy equal rights before the law and equal protection of the law, the prohibition on slavery and trafficking, the prohibition on being re-tried for the same crime after legitimate conviction or acquittal, and the prohibition on retroactive application of penal law. Notably, even the right to life and personal freedom comes with a wide caveat: “[n]othing shall, except in accord with existing laws, be detrimental to the life and personal freedom of any person.”

Access to Justice

Reforming the rule of law in Myanmar has been a major focus of the administration under President U Thein Sein. The Government’s “Framework for Economic and Social Reforms” notes “the lack of effectiveness and predictability of the judiciary”.⁶⁵ The judicial system is widely considered to be “under-resourced, politically influenced and lacking in impendence.”⁶⁶ However, reform will take a long time, and substantial resources, and not least, changes in attitude to the rule of law, starting from the bottom up with attention to legal education. The legal education system has been eroded by decades of under-investment, and the legal profession targeted by long-term political restrictions, leading to a major shortage of lawyers taking up cases.⁶⁷

Judicial independence in Myanmar to date has been essentially non-existent,⁶⁸ with judges accustomed to acting “as administrators rather than arbiters, basing decisions on state policy, instead of legal reasoning and the application of precedent.”⁶⁹ While there are basic principles of separation of powers integrated into the Constitution, it is not complete. The broad power of the President to appoint the judges of the Constitutional Tribunal, the Supreme Court of the Union, and the High Courts of Regions and States is problematic. The President’s nominees must be approved by the relevant Assembly “unless it can clearly be proved that the person does not meet the qualifications prescribed”.⁷⁰ A recent report by the parliamentary Rule of Law and Stability Committee, led by Daw Aung San Suu Kyi, found “continued intervention by administrative officials in the judicial system.”⁷¹ This indicates that structural changes will be required to put in place a rigorous separation of powers. There is no Ministry of Justice.

Systemic corruption in the administration of justice is a major concern, manifesting itself through bribes, delays, and obstructions,⁷² with a widespread local perception that the courts in Myanmar are corrupt and unfair.⁷³ As a result, many would “[resort] instead to local-level dispute resolution mechanisms they perceive to be more reliable, accessible and affordable.”⁷⁴ These local-level mechanisms generally involve village leaders and/or elders’ councils. Although the village leader has an obligation to inform the police about serious crimes, smaller issues and petty crimes can be settled by the village leader and/or the elders’ council, a small group of respected men within a village. If one party to a problem does not agree with the solution reached, they can take the matter to the township level. However, this rarely happens because it is seen as being too expensive, with administrative legal

⁶⁵ [Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan](#), January 2013 (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), para 116.

⁶⁶ [OECD Investment Policy Reviews: Myanmar 2014](#), OECD, March 2014, p. 27.

⁶⁷ [Right to Counsel: The Independence of Lawyers in Myanmar](#), International Commission of Jurists, December 2013.

⁶⁸ “Rule of Law for Human Rights in ASEAN: A Baseline Study” (May 2011), p. 163, citing Asian Legal Resource Centre, Amnesty International, [Myanmar: No Law At All – Human Rights Violations under Military Rule](#) (1992).

⁶⁹ [The Rule of Law in Myanmar: Challenges and Prospects](#), International Bar Association’s Human Rights Institute, December 2012, p. 56.

⁷⁰ Articles 299(c)(ii), 299(d)(ii), 308(b)(ii) and 328, Constitution.

⁷¹ [Interference in Judicial System Harming Burmese People: Lawmakers](#), *The Irrawaddy*, 14 August 2013.

⁷² See: International Commission of Jurists, above.

⁷³ [Burma/Myanmar Rule of Law Trip Report](#), USIP, June 2013, pp. 5 and 34.

⁷⁴ See: USIP, above, p. 5.

costs and bribes that would have to be paid. In addition, there is currently little in the form of a legal aid system in Myanmar, making it impossible for many to afford the time and cost commitments of using the court system. In conflict areas, the issue would be taken to the head of the controlling armed group.⁷⁵

In addition to the courts, other bodies responsible for the administration of justice, including the police, lack the training and capacity to enforce the rule of law (though the EU has been providing training to improve the human rights performance of Myanmar's police).⁷⁶

Judicial and Non-Judicial Mechanisms

With respect to the court system, according to the Constitution, Courts of the Union include: the Supreme Court of the Union; High Courts of the Region; High Courts of the State; Courts of the Self-Administered Division; Courts of the Self-Administered Zone; District Courts; Township Courts; other Courts constituted by law; Courts-Martial; and Constitutional Tribunal of the Union. As in most countries, the Supreme Court is the highest Court in the country, though it does not have jurisdiction over the powers of the Constitutional Tribunal or the Courts-Martial. There is no jury system in Myanmar. Cases are normally tried by a single judge (though in special cases the Chief Justice of the Supreme Court can order that a panel of judges is formed).

The Government has also taken a number of actions to provide non-judicial grievance mechanisms to the public in the absence of a fully functioning judiciary (see Box 8 below). However, these mechanisms are already overloaded with complaints and hindered by limited mandates.

Many businesses commonly seek to incorporate safeguards into their investment contracts by ensuring access to international – rather than domestic – arbitration tribunals in the event of an investment dispute.⁷⁷ Myanmar acceded to the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards in April 2013, which entered into force July 2013.⁷⁸ This solidifies the ability of foreign investors to submit disputes with Myanmar Government and commercial partners to international arbitration. The Myanmar legislature is now reportedly considering a new law based on the 1985 UNCITRAL Model Law on International Commercial Arbitration to replace the 1944 Arbitration Act, which would enable Myanmar courts to recognise and enforce international arbitral awards.⁷⁹

An equivalent assurance of access to remedies for most Myanmar people affected by private sector operations is still a practical impossibility. Accountability in Myanmar is a new phenomenon and one that will take time to take root. It is particularly important in these circumstances that companies provide operational-level grievance mechanisms for those working in or affected by their projects as they have few effective alternatives for remedy.

⁷⁵ See: USIP, above, p. 34.

⁷⁶ [EU Crowd Management Training Supports Reform of Myanmar Police Force](#), EU Delegation to Myanmar, February 2014.

⁷⁷ More recently, the EU and Myanmar have begun discussions on an investor-state dispute settlement mechanism with Myanmar. See for example: [Myanmar and the European Union to enter into an investment protection agreement](#), Herbert Smith Freehills, 13 March 2014.

⁷⁸ [New York Convention on the Recognition of Foreign Arbitral Awards](#) (1958), accessed 15 July 2014.

⁷⁹ [Draft Arbitration Bill in Myanmar](#), Singapore International Arbitration Blog, June 2014.

Box 7: Existing Non-Judicial Grievance Mechanisms in Myanmar

- Daw Aung San Suu Kyi was appointed to head up the new **parliamentary Rule of Law and Stability Committee** formed in August 2012 to serve as a mechanism for the general public to lodge complaints about government departments. In one month it received more than 10,000 complaint letters regarding courts within the Yangon Division alone.⁸⁰
- The **President's Office opened a public access portal** for people to submit opinions and complaints directly to the President.⁸¹
- A non-judicial **labour dispute settlement system** to resolve disputes between employers and workers is in place, but implementation is still weak due to lack of adequate knowledge about the newly enacted labour laws.
- There are a number of mechanisms to hear land disputes, including a **parliamentary committee on land confiscation inquiry**, but these do not have a mandate to give binding decisions. (See [Part 4.3](#) on Land)
- The **Myanmar National Human Rights Commission (MNHRC)**. While the MNHRC was established in September 2011, the MNHRC Law was only enacted on 28 March 2014. The MNHRC has a broad mandate of promoting and monitoring compliance with human rights. It is empowered to investigate complaints and contact the concerned person, company or government department and can recommend action. It can also make its recommendations public. It can undertake inquiries and will prepare an annual report to the President and Parliament. It is also mandated to consult different stakeholders including CSOs. The President selects members after proposals by a selection board. While the law provides that proposed members should have expertise or knowledge of different areas relevant to human rights including from civil society, it does not guarantee pluralism, nor a total independence from the Executive, in accordance with the Paris Principles.⁸² It received more than 1700 complaints in its first 6 months of operation, the majority of which involved land grabbing cases.
- The **ILO and Myanmar Government have agreed a complaints mechanism** to allow victims of forced labour an opportunity to seek redress/remedies from government authorities in full confidence that no retaliatory action will be taken against them.⁸³ The October 2013 report by the Myanmar Liaison Officer notes that there has been an increasing number of complaints about forced labour in association with land confiscation, with people either losing their livelihoods completely or being required to work on land which they have traditionally occupied.⁸⁴

⁸⁰ Regarding the various bodies noted, see further: [Business & Human Rights in ASEAN – A baseline study: Myanmar chapter](#), Hnin Wut Yee, April 2013.

⁸¹ [Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan](#) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), January 2013, para 114.

⁸² [OHCHR and NHRIs](#), OHCHR, accessed 15 July 2014.

⁸³ [Forced Labour Complaint Mechanism](#), ILO, accessed 15 July 2014.

⁸⁴ [Update on the operation of the complaint mechanism in Myanmar, report of the ILO Liaison Officer to ILO Governing body](#), ILO, Section 6 (319th Session, Geneva, 16–31 October 2013), GB.319/INS/INF/2.

D. Relevant Areas of Law Underpinning Responsible Business Conduct

Responsible business conduct is often underpinned by many areas of law at the international and national level and covering a range of issues (see [Part I.C](#) above). Where international laws or standards are incorporated into domestic law this can provide a predictable and familiar reference point, at least for international businesses that may be familiar with the standards from other countries of operation, and also provides a level playing field among operators. However, international standards may be partially or poorly transposed into domestic law. More detailed analysis of alignment between the international standards and national law is necessary (together with other areas of legal due diligence).

This section of the Report addresses two main areas:

- Myanmar's accession to **international human rights instruments**, which provides some indication of areas the Government considers priorities, as well as providing standards that business and civil society can point to in holding the Government to promises of action to protect human rights;
- the **Foreign Investment Law** and the **Citizens Investment Law**, to highlight provisions in the laws that either require or at least support responsible business conduct or undermine such conduct by prohibiting or limiting such an approach.

Similar analyses could usefully be made of other business laws applicable to the sector.

International Human Rights Instruments in Myanmar

Myanmar has acceded to relatively few international human rights treaties. The Government reportedly has not conducted any assessment of the compatibility of its existing laws with its obligations under international law.⁸⁵ Domestic courts cannot directly invoke the provisions of global or regional human rights instruments to interpret national norms unless such norms are incorporated into national legislation.⁸⁶ While it is not unusual for international law not to be automatically incorporated into domestic law, one implication of this is that Myanmar's judiciary cannot have recourse to international human rights law to circumscribe the wide discretionary powers that Myanmar's laws confer on the executive branch.

Box 8: Myanmar's Accession to International Human Rights Instruments

Myanmar has acceded to:

- Convention on the Elimination of Discrimination Against Women (CEDAW)
- Convention on the Rights of Persons with Disabilities (CRPD)
- Convention on the Rights of the Child (CRC) & the Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

⁸⁵ [Myanmar Rule of Law Assessment](#), DLA Piper et al, March 2013, p. 27.

⁸⁶ [Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 \(b\) of the annex to Human Rights Council resolution 5/1, Myanmar](#), UN General Assembly, A/HRC/WG.6/10/MMR/2 (15 Nov 2010), para. 5.

- Three of the eight ILO Fundamental Conventions:
 - Forced Labour Convention (ILO Convention 29);
 - Freedom of Association and Protection of the Right to Organise Convention (ILO Convention 87);
 - Worst Forms of Child Labour Convention, No 182 (entered into force December 2014);
- Nineteen of the 177 Technical Conventions of the ILO, including the ILO Hours of Work (Industry) Convention
- Convention against Transnational Organised Crime, and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and Protocol against the Smuggling of Migrants by Land, Sea and Air
- UN Convention against Corruption
- Geneva Conventions, I, II and III
- UN Convention for the Safeguarding of the Intangible Cultural Heritage

Myanmar has not signed:

- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (CAT)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)
- International Convention for the Protection of All Persons from Enforced Disappearance (CED)
- Optional Protocol to the Convention on the Elimination of Discrimination against Women (OP-CEDAW)
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (OP-CRC-AC)
- Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD-OP)
- Five of the eight ILO Fundamental Conventions:
 - Right to Organise and Collective Bargaining Convention No. 98
 - Equal Remuneration Convention No. 100
 - Abolition of Forced Labour Convention No. 105
 - Discrimination (Employment and Occupation) Convention No. 111
 - Minimum Age Convention, 1973 (No. 138)
- 158 out of the 177 Technical Conventions
- any of the four Governance Conventions⁸⁷
- Geneva Convention IV (which concerns the rights of civilians in armed conflict)

⁸⁷ [Up-to-date Conventions not ratified by Myanmar](#), ILO Normlex, accessed 7 February 2015.

Myanmar has been the subject of annual resolutions at the UN Human Rights Council for more than two decades.⁸⁸ The former Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, in his final report in March 2014 at the end of his six-year mandate, highlighted the strong progress that had been made during the reform since 2011, and most notably the release of more than 1,100 political prisoners. However, he also cautioned that “[a]ddressing the impunity for human rights violations in Rakhine State together with the marginalisation and discrimination against the Rohingya community remain the two fundamental challenges that the Government seems unwilling to address”.⁸⁹ The new Special Rapporteur, Lee Yanghee, took up the mandate in April 2014 and has visited in July 2014 and January 2015.⁹⁰

The Foreign and Citizens Investment Laws and MIC Permitting Process

The 2012 Foreign Investment Law (“FIL”)⁹¹ sets out certain key points relating to foreign investment in Myanmar. It provides a new set of incentives and prohibitions for investors who choose to apply for the optional investment permit from the Myanmar Investment Commission (MIC) (though a permit from the Directorate for Investment and Company Administration (DICA) is required to establish a business vehicle).⁹² Foreign-owned companies and foreign joint ventures with FIL permits, while subject to the same principles of company law as local companies, will have the advantage of certain benefits and preferential treatment to those foreign investors who choose not to obtain a FIL permit, including:

- (i) protection against state expropriation;
- (ii) repatriation of profits and invested funds;
- (iii) security of tenure through long-term use or lease of land with terms of up to 50 years (extendable twice to a maximum of 70 years);
- (iv) a means to enforce the terms of their contracts through the dispute settlement mechanism.⁹³

Companies 100% owned by Myanmar citizens can apply for an MIC permit under the 2013 Citizens Investment Law (“CIL”). The government plans to merge the FIL and CIL into a single Investment Law.⁹⁴ As the 1913 Burma Companies Act is in the process of being changed, it was not reviewed.

⁸⁸ In 1992 the Commission on Human Rights passed Resolution 1992/58, noting the seriousness of the human rights situation in Myanmar, and mandating the appointment of a Special Rapporteur. There are currently 14 country rapporteurs.

⁸⁹ [UN expert’s final report: ‘Prospect of a brighter future for the ethnic groups of Myanmar is real’](#), OHCHR, March 2014.

⁹⁰ [Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar](#), OHCHR, 26 July 2014 and [Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar](#), OHCHR, 16 January 2015.

⁹¹ Pyidaungsu Hluttaw Law No. 21/2012.

⁹² The FIL is implemented through Notification 1/2013 which sets out permitted activities for foreign investors and the activities which require a joint venture, and Notification 11/2013 which details the process for applying for a MIC permit, the use of land, transfer of shares, remittance of foreign exchange and the taking of security on land and buildings. See: [“Myanmar: Foreign investment rules in practice”](#), Clifford Chance, March 2013.

⁹³ [Myanmar’s New Foreign Investment Legal Regime](#), Jones Day Commentary, April 2013.

⁹⁴ Pyidaungsu Hluttaw law No. 18/2013. DICA is reported to be considering combining the 2012 Foreign Investment Law and the 2013 Citizens Investment Law to level the economic playing field between local and foreign investors and make the investment regime more economically attractive. See: [DICA confident of hluttaw approval on combined investment law](#), *Myanmar Times*, 15 December 2013.

Box 9: The Myanmar Foreign Investment Law, Citizens Investment Law and Human Rights

2

How the FIL aligns with or supports fulfillment of international human rights standards:

- by requiring the hiring and training of local workers and submission of annual capacity development plans
- by promoting local labour development as all jobs that do not require skilled labour must be given exclusively to Myanmar citizens⁹⁵
- by offering incentives for investments in less developed regions through tax exemptions and relief and lease rights for longer periods
- by requiring environmental and social impact assessments (ESIAs) for certain activities, including “the exploration, drilling and production of oil and gas”
- by requiring compliance with national labour laws, in particular ensuring equivalent salaries between local and foreign employees with equivalent experience
- by protecting “religious lands” and regions designated by the Government as regions of cultural or natural heritage
- through MIC supervision of land lease rates paid by foreign investors and a prohibition on resettlement if the people living in the location “do not wish to vacate”.⁹⁶

How the FIL, CIL and MIC regime potentially undermines human rights:

- The FIL provides expansive investment protections that do not require an equivalent and corresponding set of responsibilities on investors.
- MIC can approve a restricted or prohibited investment without MOECAP approval.⁹⁷
- Apart from requiring public consultations when MIC is asked to approve restricted or prohibited investments, the only other provision for transparency is for MIC to submit a bi-annual performance report to the National Assembly. At a minimum, there should be public notifications not just, as at present, of which companies have been granted MIC permits, but also the nature of those investment projects, including the approved period of the investment’s construction and operation, and other key terms and conditions on which the permit was granted.
- The lack of harmonisation between requirements of the FIL and CIL regarding investments prohibited on environmental and social grounds.⁹⁸
- The preclusion of appeals to court by those potentially affected to contest a MIC permit.
- A lack of any requirement to ensure that investors’ “corporate social responsibility programme” respond to social impacts.

⁹⁵ The FIL also contains additional local content requirements for skilled workers: for all jobs requiring skilled labour, foreign investors must meet specified local employment quotas, which substantially increase over a specified period of time, by the end of which at least 75% of skilled jobs must belong to Myanmar citizens.

⁹⁶ [Notification 39/2011](#), DICA, Art. 28.

⁹⁷ Article 47 of the 2012 Foreign Investment Law.

⁹⁸ Under the CIL, it is not possible to approve prohibited investments under the CIL that can be approved under the FIL.

- The express provision in the FIL that in the event of conflict between its provisions and an international treaty or agreement, the provisions of the latter should prevail. While this could be useful if it is interpreted to improve human rights or environmental protections around investments in line with international treaties, it may also (and more likely) be interpreted in line with international trade and investment agreements which commonly contain obligations that constrain policy-making and administrative action in protection of human rights and environmental protection.

E. Tourism-Related Institutional, Legal and Policy Frameworks

Tourism development is considered one of Myanmar's priority sectors. It has been prioritized in the Government's 'Framework for Economic and Social Reforms (FESR)' as "potentially one of Myanmar's most important sectors, with tremendous potential to contribute to greater business opportunities and balancing social and economic development if properly managed and developed".⁹⁹ A number of tourism sector specific policies have been launched in the past years.

Recognizing the country's unique situation, in February 2012 a responsible tourism week was held in Nay Pyi Taw involving 22 government ministries as well as private sector organizations and experts. Following extensive consultation, supported by Hanns Seidel Foundation (HSF), a Responsible Tourism Policy was published in September 2012.¹⁰⁰ It was followed by the Myanmar Tourism Master Plan (2013-2020) in June 2013, which was completed with Asian Development Bank technical assistance and financial support from Norway, to promote economic growth while attempting to safeguard Myanmar culture and the environment.¹⁰¹ In May 2013, the Policy on Community Involvement in Tourism¹⁰² was launched by the Ministry of Hotels and Tourism in collaboration with Hanns Seidel Foundation.¹⁰³

As a result of this activity, the Myanmar tourism sector has more widely consulted on, adopted and published government policies relating to responsible business and sustainability than any other economic sector. A review of these policy frameworks, the relevant tourism related laws and the government and non-government bodies overseeing them are outlined below.

Non-Government Bodies Involved in Tourism

⁹⁹ [Framework for Economic and Social Reforms](#), 14 December 2012, p. 34.

¹⁰⁰ [Myanmar Responsible Tourism Policy](#), Ministry of Hotels and Tourism of the Republic of the Union of Myanmar, 27 September 2012.

¹⁰¹ [Myanmar Tourism Master Plan, 2013-2020](#), Ministry of Hotels and Tourism of The Republic of the Union of Myanmar, Final Draft Report, June 2013 (hereinafter "Tourism Master Plan").

¹⁰² [Policy on Community Involvement in Tourism](#), Ministry of Hotels and Tourism

¹⁰³ [Official launch of the Policy on Community Involvement in Tourism](#), Hanns Seidel Foundation, Myanmar.

There are also a number of relevant non-government or multistakeholder bodies relevant to tourism which have been established by and/or are supported by the Union government, and include representatives from the private sector, civil society organizations and key development partners.

Myanmar Tourism Federation

The Myanmar Tourism Federation¹⁰⁴ is not a government body, but rather a federation established in 2012 to facilitate communication between the government and the private sector about tourism sector-related challenges. However, it currently operates under the guidance of the Union Minister for Hotels and Tourism and its current Chair is appointed by the Minister.

The Myanmar Tourism Federation's official mission is to promote Myanmar as a tourist destination, support sustainable tourism development, welcome and assist investors, and develop human resources for tourism-related industries. Its purpose is to voice private sector concerns about tourism-related challenges in Myanmar.

The Myanmar Tourism Federation's membership comprises 11 business associations, including the:

- Myanmar Hospitality Professionals Association;
- Myanmar Hoteliers Association;
- Myanmar Marketing Committee;
- Myanmar Restaurants Association;
- Myanmar Souvenir Entrepreneurs Association;
- Myanmar Tourist Guides Association¹⁰⁵;
- Myanmar Tourist Health Care and General Services Association;
- Myanmar Tourism Human Resources Development Association;
- Myanmar Tourism Transportation Association;
- Union of Myanmar Travel Association; and
- Domestic Pilgrimage & Tour Operators Association.

Addressing challenges concerning the Federation, the Tourism Master Plan noted that:

[The Myanmar Tourism Federation's] efforts are constrained by a lack of human and financial resources. Similarly, a shortage of resources has restrained MTF's aspirations to improve its members' environmental practices and develop tourism related human resources.¹⁰⁶

The Myanmar Tourism Federation drove Myanmar's tourism branding campaign, "Let the Journey Begin."

¹⁰⁴ [Myanmar Tourism Federation](#)

¹⁰⁵ The Myanmar Tourist Guides Association was formed in 2011 under the supervision of the MoHT. It seeks to develop Myanmar's service sector, and to protect tour guides' rights, support their capacity and coordinate with the MoHT and other organizations to develop the tourism sector, 'MTGA profile', available at: <http://myanmartouristguidesassociation.org/>.

¹⁰⁶ [Myanmar Tourism Master Plan 2013](#), p. 12.

Myanmar Business Forum – Hotels and Tourism Working Group

The Myanmar Business Forum was established by the International Finance Corporation and Union of Myanmar Federation of Chambers of Commerce and Industry to:

- promote communication, cooperation and ongoing dialogue between the private sector and the government;
- represent, express and advance the opinions of the private sector on matters of common interest, to stimulate domestic and foreign investments business performance, and also to encourage investment;
- stimulate and facilitate initiatives of both the government and the private sector on policy issues concerning private sector development; and
- promote the interests of the national and international business community in Myanmar.¹⁰⁷

Within the Forum is a Hotels and Tourism Working Group, which has prepared a position paper with recommendations to the Union government focused on licensing, visas, human resource development, financing and marketing.

Tourism Sector Working Group

The Tourism Sector Working Group was established to develop and support sustainable and responsible tourism in Myanmar. It is one of 17 Sector Working Groups established as a result of the Nay Pyi Taw Accord¹⁰⁸ between the Union Government and Development Partners at the Myanmar Development Cooperation Forum held in January 2013.¹⁰⁹ Sector Working Groups¹¹⁰ support the government to ensure that sector strategies and government priorities are better articulated, and to identify priority programmes and “quick win” initiatives. They also support effective coordination between government bodies and Development Partners. Each of the Sector Working Groups is coordinated by the secretariat of the Foreign Economic Relations Department – Development Partners Working Committee (also referred to as the FERD-DPWC).

Unlike other Working Groups, the Tourism Sector Working Group currently has a secretariat supported by Hanns Seidel Foundation and comprises a broad variety of national and international institutions, organizations and other stakeholders although few major donor governments have taken part. The Working Group has met every six months to discuss tourism-related issues, and also future projects and forms of cooperation, with a view to promoting efficiencies by preventing or minimising overlaps between different government bodies’ and other organizations’ activities.

At its second meeting in Yangon on 17 February 2014, the Working Group discussed progress on the implementation of the Myanmar Tourism Master Plan and the structure, scope and membership of the Working Group itself. The relationship between tourism and other areas of development activity was one key theme of the meeting's discussions.¹¹¹ The

¹⁰⁷ [‘Timeline’](#), Myanmar Business Forum, Facebook, 4 April 2014.

¹⁰⁸ See: [Nay Pyi Taw Accord for Effective Development Cooperation](#)

¹⁰⁹ See: [Myanmar’s Aid Policy and Coordination](#)

¹¹⁰ See: [Sector Working Groups dashboard](#)

¹¹¹ [‘HSF Co-organised 2nd Meeting of the Tourism Sector Working Group’](#), Hanns Seidel Foundation

Working Group has since met again on 31 October 2014, in Yangon. Approximately 60 participants, including tourism experts and representatives of private sector and civil society organizations, attended and heard presentations on responsible tourism initiatives and the status of the Tourism Master Plan's implementation.¹¹²

Tourism Advisory Body (proposed)

The Tourism Master Plan 2013-2020 also recommends the establishment of a tourism advisory body to support the Tourism Executive Coordination Board (see below), but it has not yet been established. The key activities identified in relation to Strategic Program 1 of the Tourism Master Plan include the invitation of international tourism agencies, such as the UN World Tourism Organization, and key development partners to join annual Tourism Executive Coordination Board meetings as advisors to facilitate the transfer of strategic industry knowledge and advisory support.¹¹³

The advisory group is intended to impart strategic intelligence, and share knowledge on good practice, to support strategic decision making by the Tourism Executive Coordination Board. In particular, it would:

- provide advice and strategic intelligence to the Tourism Executive Coordination Board¹¹⁴, the Tourism Technical Authority and the Ministry of Hotels and Tourism on global tourism issues, matters related to priority projects and activities, and issues related to the social and environmental impacts of tourism;
- provide policy advice, technical assistance and financial support to facilitate implementation of the Tourism Master Plan;
- liaise with international agencies to catalyse additional support to implement the Tourism Master Plan and enhance knowledge sharing; and
- meet with the Tourism Executive Coordination Board at least once per year.¹¹⁵

National Responsible Tourism Research Centre (Proposed)

Project 9 under **Strategic Program 2 of the Tourism Master Plan (Build Human Resource Capacity and Promote Service Quality)** has the objective to establish a national research centre, tentatively envisaged for Yangon University, to facilitate responsible tourism development. The Master Plan proposed an initial research focus on visitor management practices, community participation in the tourism economy, and environmental management at tourist destinations. It is envisaged that research findings will contribute to curriculum development for train-the-trainer modules and appropriately designed short training courses and tertiary degrees. To date, this project has yet to attract donor interest.

¹¹² Myanmar Centre for Responsible Business participated in the 31 October 2014 meeting.

¹¹³ [Myanmar Tourism Master Plan 2013-2020: Final-Draft Report](#), June 2013, p. 42.

¹¹⁴ Name originally proposed for the inter-Ministerial Tourism Development Central Committee – see below.

¹¹⁵ [Myanmar Tourism Master Plan 2013-2020: Final-Draft Report](#), June 2013, p. 39.

Government Bodies Involved in Tourism

There are a number of government ministries, committees and other bodies involved in the development and regulation of the tourism sector in Myanmar.

The Ministry of Hotels and Tourism is the lead government body with responsibility for the development of the tourism sector. It is supported by a number of tourism-focused committees, boards and authorities at the Union and State/Regional levels, and the future establishment of additional groups is identified in the strategic program set out in the Tourism Master Plan 2013-2020, including the recently formed inter-ministerial Tourism Development Central Committee headed at Vice-Presidential level (see below).

Ministry of Hotels and Tourism

The Ministry of Hotels and Tourism (MoHT) is a government agency mandated to guide the development of tourism in Myanmar.¹¹⁶ The Ministry comprises the Directorate of Hotels and Tourism (responsible for policy, planning, project management and tourism regulation) and the Myanmar Hotels and Tourism Services (responsible for business-related activities, such as tour operations and accommodation).

MoHT is the lead Ministry responsible for investment in the accommodation and tourist sectors. It sets requirements for the registration and classification of tourism-related business. It also coordinates with relevant government bodies to set licenses, duties and taxes relating to the hotel and tourism industry. Its main functions include the:

- systematic development of Myanmar's tourism industry;
- encouragement of national and international investment in the tourism industry;
- development of opportunities for the participation of private entrepreneurs in tourism;
- promotion of Myanmar as a world-renowned tourist destination;
- determination of hotel and tourism zones;
- coordination of relevant government bodies to formulate and define the functions of tourism and hotel supervisory bodies in States, Regions, districts and towns;
- upgrade of the quality, standards and technical skills of the tourism industry;
- creation of jobs and raising of standards of living through tourism development; and
- cooperation with ASEAN and other countries in respect of tourism.¹¹⁷

MoHT is led by the Union Minister for Hotels and Tourism, currently U Htay Aung, who has held the post since 2012. Unusually, neither of the two Deputy Ministers for Hotels and Tourism are from the ruling USDP. Dr Tin Shwe is from the National Democratic Force¹¹⁸, and Dr Sai Kyaw Ohn is from the Shan Nationalities Democratic Party (SNDP).

Tourism Development Central Committee

The Tourism Development Central Committee chaired by Vice President Nyan Htun was formed in April 2014 by the Union government to plan and coordinate the tourism sector,

¹¹⁶ [Ministry of Hotels and Tourism](#)

¹¹⁷ [Myanmar Tourism Master Plan 2013-2020](#), Ministry of Hotels and Tourism, June 2013.

¹¹⁸ [Burma Opposition MP joins Thein Sein's Cabinet](#), *The Irrawaddy*, 7 February 2013.

which encompasses a number of ministries¹¹⁹, some of whose interests are not fully aligned. The Culture Ministry plays a particularly important role in the development of tourism in Bagan and other heritage sites, and recently announced that it will enforce fines for the misuse of culturally significant properties.¹²⁰ The Central Committee comprises the Vice-president, the ministers for Hotels and Tourism, Home Affairs, Foreign Affairs, Cooperatives, Communication and Information Technology, Transport, Environmental Conservation and Forestry (MOECAF), Immigration and Population, Culture, Finance, National Planning and Economic Development and Rail Transportation as well as the Region/State Chief Ministers and officials from the Myanmar Tourism Federation (see below) and the Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry.¹²¹

Tourism Technical Authority (proposed)

The Tourism Master Plan 2013-2020 (discussed in Part 2.F) identifies the need to establish a Tourism Technical Authority.¹²² It proposes that a Tourism Technical Authority would take the lead in identifying metrics and processes for performance monitoring at the national, state and regional levels, and also track indicators (such as international and domestic visitor spending) and information on associated impacts.

In particular, the Authority would:

- measure the flows and impacts of tourism activity;
- be staffed mainly by economists, statisticians, information technology specialists and marketing specialists;
- work closely with public and private sector agencies as well as global and regional tourism agencies (such as the ASEAN Secretariat and the Mekong Tourism Coordinating Office); and
- provide quarterly status reports to the Tourism Executive Coordination Board, the Ministry of Hotels and Tourism, the Myanmar Tourism Federation and other appropriate agencies and partners regarding Myanmar's tourism system.¹²³

The Plan anticipates that strengthened analytic capacity for tourism value chain analysis would support programs that enhance linkages between tourism and other areas of the economy.¹²⁴

The Authority has yet to be established. Tourism planners have emphasised that such an Authority is needed to measure industry performance and ensure the effectiveness of the Tourism Development Central Committee.¹²⁵

¹¹⁹ [Report of the 1/ 2014 Meeting of National Tourism Development Central Committee, 4th April 2014](#)

¹²⁰ [Culture Ministry to Protect Buildings, Nature](#), *The Sunday Times*, 8 September 2014.

¹²¹ [National Committee to be Formed for Tourism Development](#), *Eleven Media*, 10 May 2014.

¹²² [Myanmar Tourism Master Plan 2013-2020](#), Ministry of Hotels and Tourism, June 2013, p. 27.

¹²³ *Ibid.*, p. 39.

¹²⁴ *Ibid.*, p. 27.

¹²⁵ [Responsible Tourism – Are Development Partners Doing Enough?](#) *Myanmar Times*, 28 July 2014.

State and Regional Tourism Councils (proposed)

The Tourism Master Plan 2013-2020 states that State and Regional Tourism Councils should be established to undertake tourism planning and management at the subnational level. To date no Councils have been established. The Councils would aim to facilitate the implementation of destination-level projects and activities, and seek support from development partners to strengthen their ability to mainstream tourism planning into local government structures. In particular, they are to:

- engage with the Ministry of Hotels and Tourism, the Tourism Technical Authority, the Myanmar Tourism Federation and other actors to implement tourism-related policies, projects and activities as agreed with the Tourism Executive Coordination Board;
- report key tourism-related issues arising in States, Regions and destinations to the Tourism Executive Coordination Board; and
- provide appropriate guidance and support to Destination Management Organizations.

Destination Management Organizations (proposed)

The Tourism Master Plan 2013-2020 states that Destination Management Organizations (DMOs) would strengthen tourism planning and management at destinations and sites, operating under the guidance of State and Regional governments and the Ministry of Hotels and Tourism. They should include representation from public, private and civil society organizations and promote grassroots participation in tourism planning and decision-making.

The Union government is encouraged to actively support the engagement of NGOs and development partners to strengthen the capacity of DMOs. In particular, the DMOs are to:

- engage with the Ministry of Hotels and Tourism, the Tourism Technical Authority, the Myanmar Tourism Federation and other actors to implement tourism-related policies, projects and activities – as agreed with the Ministry of Hotels and Tourism and State and Regional Tourism Councils; and
- report tourism-related issues occurring in destinations that require the attention of the Tourism Executive Coordination Board, State and Regional Tourism Councils, and the Ministry of Hotels and Tourism.¹²⁶

While no DMOs have been established yet, some progress has been undertaken in the field of destination management plans in the two main foreign tourist destinations, Bagan and Inle Lake. With the assistance of Myanmar Institute for Integrated Development, a regional tourism destination management plan has been developed for the greater Inle Lake region, which includes a proposal for the formation and funding of a permanent DMO aligned with the Tourism Master Plan.¹²⁷ A Destination Management Plan for Bagan is currently being developed with the support of the Japan International Cooperation Agency (JICA).¹²⁸

¹²⁶ [Myanmar Tourism Master Plan 2013-2020](#), June 2013, p. 40.

¹²⁷ [Destination Management Plan for the Inlay Lake Region, 2014-2019](#), Ministry of Hotels and Tourism.

¹²⁸ [The Detailed Planning Survey on Establishment of the Pilot Model for Regional Tourism Development in the Republic of the Union of Myanmar, Final Report](#), Japan International Cooperation Agency, August 2014.

F. Tourism-Related Laws, Standards and Directives

There are a number of domestic laws, standards and directives that govern or otherwise impact the development of the tourism industry. An overview of key instruments is provided below.

Laws

Hotels and Tourism Laws

The Hotels and Tourism Law was first adopted in 1990, and replaced by the current law in 1993. The objectives of the 1993 Law include:

- systematic development of the hotel and tourism industry;
- enabling tourists to observe Myanmar's cultural heritage and natural scenic beauty;
- preventing the destruction and damage of cultural heritage and natural scenic beauty due to the hotel and tourism industry;
- contributing to international friendship and understanding through the hotel and tourism industry;
- developing technical knowledge and understanding through the hotel and tourism industry; and
- providing security and satisfaction for tourists.

The Law sets out rules, regulations and systematic procedures relating to the development of tourism and the licensing of businesses in the tourism sector. It also provides basic principles for the operation of the tourism industry. It establishes a process through which businesses may apply for a licence, and sets out guidelines for inspections and makes provision for the invalidation of licences. It also establishes penalties for certain business practices that damage the environment.

The Ministry of Hotels and Tourism has issued Orders that implement aspects of 1993 Law including:

- Order for Licensing of Hotel and Lodging-House Business (2011) which provides for the licencing of hotels and also sets out, in an annexure, minimum standard requirements for hotel businesses;
- Order Relating of (sic) Licensing of Tour Guide Business (2011), which provides for the licencing of tour guides;
- Order of Licensing of Tour Operation Enterprise (2011), which provides for the licencing of tour operation business and operators; and
- Order Relating to Licensing of Tourist Transport Business (2011), which provides for the licencing of tourist transport businesses (including transport by motor vehicle, water craft and gas balloon).¹²⁹

The Tourism Master Plan 2013-2020 identified as a priority the need to update this law. In an interview conducted in 2013, the Minister of Hotels and Tourism stated:

¹²⁹ The 1993 Law and each of these Orders is available from the [website of the Ministry of Hotels and Tourism](#), under 'About Us'/Myanmar Hotel and Tourism Law.

The law is very old. It is not suitable for this century. We are trying to reform the 1993 Hotels and Tourism Law now. ... We will consider the pros and cons of the tourism industry and how we can best prevent unwanted side effects. Not to ruin the culture and environment, those kinds of things. There are some new developments we have to consider. For example, we will study the recently introduced Environmental Conservation Law to help us when drafting the section on tourism's environmental impact. And we will study neighbouring countries' tourism laws and look at what our tourism law lacks. We also have to focus on the bylaws. We will try to introduce the new hotels and tourism law within one year.

A new Hotels and Tourism Law is in the process of being drafted. Several provisions of the draft new law reflect those of the 1993 law. However, the draft new law incorporates additional provisions and changes directed to promoting the sustainable development of the tourism industry for the benefit of all people in Myanmar, and facilitating better coordination across and between government bodies and the private sector.

The draft new law retains the objectives of the 1993 law and adds several further objectives, including¹³⁰:

- promoting and protecting tourism resources, and carrying out the development of tourism resources;
- protecting and supervising the provision of safety, security and satisfaction of foreign tourists;
- causing benefit to the State and the whole society with the foreign currency and domestic income obtained from the hotel and tourism industry;
- contributing to the reduction of poverty in the State;
- contributing to the preservation of the natural environment;
- upgrading the image of Myanmar;
- promoting the quality and raising the standard of hotel and tourism industry employees; and
- developing the hotel and tourism industry in accordance with prescribed norms, standards and regulations.

The draft law also proposes the formation of a:

- **Central Committee of the Development of the National Tourism** (Central Committee) to fulfill a number of functions, including setting out national tourism policies, providing guidance for planning significant projects, and supervising and regulating businesses involved those projects;
- **Hotel and Tourism Board Authority** to fulfill functions including setting out hotel and tourism industry policies, implementing the policies and guidance set out by the Central Committee, and providing guidance regarding the systematic development of the industry.

Directives for Coastal Beach Areas

Since 2004, the Ministry of Hotels and Tourism has circulated Directives to private entrepreneurs, owners and managers of coastal beach resorts to ensure:

¹³⁰ A draft of the Tourism Law was provided to Myanmar Centre for Responsible Business in October 2014 through MoHT.

sustainability of natural resources, for the preservation and conservation of the environment and for the creation of job opportunities and livelihood improvement of the people and for the leisure and recreation of the domestic and international tourists, as well as for the safety and serenity of tourists.¹³¹

These directives are intended to promote the systematic sustainable development and management of coastal beach areas consistent with the Myanmar Hotels and Tourism Law. They regulate construction, operation and management in coastal beach areas.

The Directives set out guidelines for the development of coastal areas, which address issues including the maximum height of buildings, architecture, construction materials and road construction. However, the directives do not include specific guidelines on social and environmental standards for private businesses.

Other Legal Frameworks Relevant to Tourism

Box 10: Further Legal Frameworks Relevant to Tourism: Environment, land, labour, cultural heritage

1. Land Acquisition Law 1894
2. Vacant, Fallow and Virgin Land Law 2012
3. Vacant, Fallow and Virgin Land Rules 2012
4. Farmland Law 2012
5. Transfer of the Immoveable Property Law 1987
6. Notification No. 39 of 2011 on the Right to Use of Land¹³²
7. Notification No. 11 of 2013, Foreign Investment Rules¹³³
8. Labour Organization Law 2011
9. Labour Dispute Law 2012
10. Employment and Skill Development Law 2013
11. Social Security Law 2012
12. Minimum Wage Law 2013
13. Occupation Health and Safety Law (expected in 2014)¹³⁴
14. Protection and Preservation of Cultural Heritage Regions Law 1998
(Amended by Law No. 1 of 2009)¹³⁵
15. Environment Conservation Law 2012
16. Environment Conservation Regulations 2014¹³⁶

Immigration and Visa Regulations

The easing of barriers to visitor entry and internal travel is identified as a key objective in the Tourism Master Plan 2013-2020.¹³⁷ On 1 September 2014, Myanmar introduced an e-

¹³¹ [Directives for Coastal Beach Areas](#), The Republic of the Union of Myanmar Ministry of Hotels and Tourism.

¹³² For more information on land related laws 1-6, see Part 4, Land Impact Summary.

¹³³ For more information related to the Foreign Investment Law, see Part 2.

¹³⁴ For more on relevant labour laws 8-13, see Part 4.4.

¹³⁵ For more information on the Cultural Heritage law, see Part 4.6.

¹³⁶ For more information on environmental laws, see Part 4.8.

¹³⁷ [Myanmar Tourism Master Plan 2013-2020](#), Ministry of Hotels and Tourism, June 2013, p. 35.

visa system, through which tourists can apply electronically for visas.¹³⁸ Myanmar currently has a pact with Cambodia, Indonesia, Laos, the Philippines and Vietnam for a 14-day free visa for tourists. Myanmar has also initiated talks with other ASEAN countries to waive visa requirements for its nationals as well as other ASEAN residents. The common visa scheme is expected to be introduced in 2015.¹³⁹ Visa reform has also been identified as a strategic goal and the broader regional level, and advocacy for a single ASEAN visa was incorporated into the ASEAN Tourism Strategic Plan 2011-2015.¹⁴⁰

Movement within Myanmar – Restricted Areas

The Ministry of Home Affairs has defined restricted areas, which cannot be accessed by foreign visitors due to security concerns¹⁴¹. In each State and Region, areas are categorised as “Permitted Areas”, “Permitted only in the Downtown Areas” and “Areas which need to get the Prior Permission”. The list of areas subject to restrictions is lengthy and includes certain areas within Kachin State, Kayah State, Kayin State, Chin State, Sagaing Region, Tanintharyi Region, Mandalay Region, Rakhine State, Yangon Region and Shan State.

The Protection and Preservation of Cultural Heritage Regions Law 1998

The Protection and Preservation of Cultural Heritage Regions Law was enacted in September 1998 and amended in 2009¹⁴², with a number of objectives, including to:

- implement the protection and preservation policy with respect to the perpetuation of cultural heritage that has existed for many years;
- protect and preserve the cultural heritage regions and the cultural heritage therein so as not to deteriorate due to natural disaster or man-made destruction;
- uplift hereditary pride and cause dynamism of patriotic spirit of citizens heritage therein so as not to deteriorate due to natural disaster or man-made destruction;
- promote public awareness and will as to the high value of the protection and preservation of the cultural heritage regions;
- protect the cultural heritage regions from destruction; and
- carry out protection and preservation of the cultural heritage regions in conformity with the International Convention approved by the State.¹⁴³

The Ministry of Culture is empowered by the law to, amongst other things, determine cultural heritage regions, take steps to protect and preserve cultural heritage regions and undertake public education directed at the protection and preservation of cultural heritage regions.¹⁴⁴

As at September 2014, fourteen sites were under consideration for heritage site status.¹⁴⁵

¹³⁸ [‘Myanmar to Join ASEAN Common Visa Scheme’](#), *Eleven Media*, 8 September 2014.

¹³⁹ *Ibid.*

¹⁴⁰ [ASEAN Tourism Strategic Plan 2011-2015](#), ASEAN Secretariat, June 2014, p. 15.

¹⁴¹ [‘Permitted Areas’](#), Ministry of Hotels and Tourism

¹⁴² [Law amending the Protection and Preservation of Cultural Heritage Regions](#)

¹⁴³ [‘The Protection and Preservation of Cultural Heritage Regions Law No. 9/98’](#), The State Peace and Development Council, 10 September 1998, Chapter II, section 3.

¹⁴⁴ *Ibid.*

¹⁴⁵ [‘Culture ministry to protect buildings, nature’](#), *Democratic Voice of Burma*, 8 September 2014.

Protection of Wildlife and Wild Plants and Conservation of Natural Areas Law

The Protection of Wildlife and Conservation of Natural Areas Law (1994) addresses wildlife protection and natural areas conservation, protecting endangered species and wildlife, and contributing to the development of natural science research.¹⁴⁶ It identifies categories of natural areas and provides for the creation of certain committees and bodies tasked with the implementation and supervision of the Law's objectives. It also creates offences for acts including hunting without a licence, causing water and air pollution and possessing or disposing of pollutants in a natural area.¹⁴⁷

Environmental Impact Assessment Procedure

The 2012 Environment Conservation Law and 2014 Rules¹⁴⁸ introduced a requirement for MOECAF to establish a system for Environmental Impact Assessment (EIA). With the support of the Asian Development Bank (ADB), MOECAF has designed an EIA process that follows standard EIA practice. The 2014 Environmental Conservation Rules include some basic provisions on EIAs that are supplemented by more detailed provisions on EIA under the draft EIA Procedures, to be finalised shortly, including the 'Projects Categorization for Initial Environmental Examinations and Environmental Impact Assessments (IEE/EIAs)'. The Procedures establish a process through which an Initial Environmental Examination (IEE) or an Environmental Impact Assessment (EIA) are to be undertaken of projects that have the potential to cause significant adverse environmental impacts. The process comprises a number of steps, including project scoping, environmental impact assessment investigation, the preparation, submission and review of a report, and project approval. The procedure also provides for the monitoring of projects that may cause adverse environmental impacts, and inspection of such projects by the Ministry.

For tourism sector related development projects, the IEE/EIA requirements are as follows (subject to the final adoption of the Procedures):

- Hotel or resort construction projects near rivers or coastal areas of 80 or more rooms require an EIA.
- Resorts in the uplands or resort/hotel construction projects with 80-200 rooms and a utilization area of 4000-10.000 hectares (ha) require an IEE. An EIA is required for resorts with 80-200 rooms with a utilization area of 4000 ha or more, or for any resort or hotel covering more than 10,000 ha.
- Tourism and resort development projects in national or provincial protected areas of 50 ha or larger require an EIA.
- Golf course construction projects of 9 holes require an IEE and of 18 holes an EIA.
- All tourism projects on islands which are gazetted as national marine parks require an EIA.
- Other tourist service centres that have a waste water volume of 500 m³ or more require an EIA.
- Restaurants of more than 500 seats require an EIA.

¹⁴⁶ ['The Protection of Wildlife and Conservation of Natural Areas Law'](#) (1994), The State Law and Order Restoration Council Law No. 6/93, Chapter II, section 3.

¹⁴⁷ *Ibid.*, section 35.

¹⁴⁸ Environmental Impact Assessment Rules (final version in Burmese only), Notification 50/2014 14 August 2014, The Government of the Union of Myanmar.

- Projects for the improvement of river channel for boats of 200 tonnes or more require an EIA
- All airport related projects, regardless of size, require an EIA.

Consumer Protection

The Consumer Protection Law adopted in March 2014 guarantees safe products and services, including foodstuff, drugs and a number of other commodities.¹⁴⁹ The law guarantees the formation of a central committee for consumer protection, comprising the Union Minister for Commerce as a chairman, officials of related ministries and experts from NGOs. While the law is welcome, it is still considered weak and was drafted without public consultation.¹⁵⁰

Myanmar is currently also in the process of forming the country's first-ever National Standardization Council to standardize local products, production technology and services as a result of the Standardization Law which was passed in July 2014. So far Myanmar has had no standardization for its products. A total of 67 products will be included in the standardization process to bring them up to a certain quality level.¹⁵¹

Draft Building Code (proposed)

In July 2011, as a result of a joint initiative between the Ministry of Construction and UN-Habitat, the Myanmar Engineering Society organized a nation-wide initiative to create a National Building Code led by architects, engineers, and staff from government departments and professional associations¹⁵².

It is reported to incorporate international standards that address inspections, construction materials and technology, and which adhere to the British building code and US concrete technology, worksite standards and steel structural design standards,¹⁵³ such as the codes and standards of the American Society of Civil Engineers, as well as other international building codes as benchmarks to ensure buildings can withstand natural disasters. The draft Code, which is not publicly available, has been submitted to Parliament for comment before finalisation and publication as a voluntary code of practice.

Anti-Corruption Law

In December 2012 the President announced that the Government would tackle pervasive corruption in its ranks,¹⁵⁴ and ratified the UN Convention against Corruption (UNCAC).¹⁵⁵ An Anti-Corruption Law was enacted on 7 August 2013 by the legislature although the President's Office submitted comments highlighting weaknesses and inconsistencies with

¹⁴⁹ [Consumer Protection Law guarantees safe products, services to consumers](#), *The New Light of Myanmar*, 20 March 2014.

¹⁵⁰ [Consumer protection body, rules a step closer](#), *Myanmar Times*, 28 April 2014.

¹⁵¹ [Body formed to ensure standardization of consumer goods](#), *Eleven Media*, 16 November 2014.

¹⁵² [National Building Codes](#), Yangon Heritage Trust.

¹⁵³ [Building code adheres to international standards, deputy minister says](#), *THIYA*, 9 October 2014.

¹⁵⁴ [Third phase of reform tackles govt corruption, President says](#), *The Irrawaddy*, 26 December 2012.

¹⁵⁵ [United Nations Convention against Corruption Signature and Ratification Status as of 2 April 2014](#), United Nations Office on Drugs and Crime (accessed 15 July 2014).

UNCAC.¹⁵⁶ The law is to be implemented by the recently established Anti-Corruption Commission.

Tourism Policy Frameworks

In addition to the overarching Framework for Social and Economic Reforms¹⁵⁷ and the inclusion of the tourism sector as a priority area for implementation of the forthcoming National Export Strategy¹⁵⁸, Myanmar has developed a number of policies that set out an overarching framework for the development of the tourism sector. These include, most significantly, the Responsible Tourism Policy 2012, the Policy on Community Involvement in Tourism 2013 and the Tourism Master Plan 2013-2020. These policies are supported by policies, standards and strategies that address particular issues, including ecotourism, land use, biodiversity conservation, homestay and bed & breakfast accommodation, the advancement of women and human trafficking.

In developing its tourism-related policy frameworks, Myanmar's industry and government policy makers are increasingly being guided by the Global Sustainable Tourism Council Criteria and Suggested Indicators for Hotels and Tour Operators.¹⁵⁹ These Criteria articulate baseline standards that businesses and destinations should achieve to approach social, environmental, cultural and economic sustainability, and are designed to be adapted to local conditions. The Criteria address sustainable management, socio-economic impacts, cultural impacts and environmental impacts.¹⁶⁰

Responsible Tourism Policy 2012

The Responsible Tourism Policy¹⁶¹ was developed to promote swift economic development and manage effectively the challenges associated with ensuring the long-term and sustainable development of the tourism sector. It builds on stakeholder discussions during the First Responsible Tourism Week forum held in Nay Pyi Taw in February 2012, which was organised by the Ministry of Hotels and Tourism, in collaboration with the Myanmar Tourism Federation and supported by the Hanns Seidel Foundation.

The Policy sets out the following vision for tourism in Myanmar:

[W]e intend to use tourism to make Myanmar a better place to live in – to provide more employment and greater business opportunities for all our people, to contribute to the conservation of our natural and cultural heritage and to share with us our rich cultural diversity. We warmly welcome those who appreciate and enjoy our heritage, our way of life, and who travel with respect.

¹⁵⁶ The Republic of the Union of Myanmar President's Office, "[Press Release on the Promulgation of Anti-Corruption Law](#)" (8 August 2013). The Law incorporates provisions that are in certain respects narrower than those used in the Organization for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention). The definition of "bribe" incorporated in the law is narrower than that used in the OECD Convention. Further, Myanmar's anti-corruption law does not include provisions that address accounting and record-keeping standards.

¹⁵⁷ [Framework for Economic and Social Reform](#), The Republic of the Union of Myanmar, 2012, p. 1.

¹⁵⁸ [Priority items chosen for national export strategy](#), *Eleven Media*, 25 March 2014.

¹⁵⁹ [Global Sustainable Tourism Criteria for Hotels and Tour Operators](#), 23 February 2012.

¹⁶⁰ [Myanmar Taking Notice of the Global Sustainable Tourism Council](#), Steve Noakes, Global Sustainable Tourism Council, 25 August 2014.

¹⁶¹ [Responsible Tourism Policy](#), Ministry of Hotels and Tourism, June 2012.

This vision is supported by nine aims that provide direction for action points that will guide the Responsible Tourism Policy's implementation. The nine aims comprise:

1. **Tourism is a national priority:** Including the integration of domestic and international tourism into the national economic policy, and develop linkages between tourism and other economic sectors to maximise benefits.
2. **Broad based local social-economic development:** Including spreading benefits in the community, encouraging local entrepreneurship and civil society engagement to secure livelihoods for women and youth, and to alleviate poverty.
3. **Maintain cultural diversity and authenticity:** Including preserving national identity and encouraging the development of cultural heritage and living cultures.
4. **Conservation and enhancement of the environment:** Including taking leadership in applying responsible environmental practices through adherence to environmental legislation and encouraging conservation and sustainable use of natural resources.
5. **Compete on product richness, diversity and quality – not just price:** Including reflecting on tourism products and experiences that are traditional in Myanmar, as well as on market demands and visitors' expectations, with an interest in supporting responsible and sustainable tourism development.
6. **Ensure health, safety and security of our visitors:** Including meeting set standards on health, safety and security across the tourism industry.
7. **Institutional strengthening to manage tourism:** Including enhancing the understanding and effective management of tourism from a national to a local level, and with stakeholders in destinations.
8. **A well trained and rewarded workforce:** Including establishing an adequate and appropriate capacity building programme through continuing professional development, training and education.
9. **Minimising unethical practices:** Including applying ethical standards through tourism development to minimise social, economic and environmental harm.

The Responsible Tourism Policy identifies 58 action points assigned to the nine aims, to guide the implementation of the policy. The policy allocates responsibility for each action point to identified focal points, advisory roles and liaison roles, naming relevant government ministries to each role.

The policy also identifies the role of various stakeholders in the policy's implementation.¹⁶² Briefly, the public sector at the national level is responsible for ensuring that implementation mechanisms are in place, effective and participatory. This responsibility includes the preparation of suitable frameworks for responsible tourism development. Local authorities have a role in activating locally the action points identified in the policy, and to adapt the national policy aims and action points to the local level. The private tourism sector is identified as the guiding vehicle for responsible tourism promotion and development, including the delivery of quality tourism services and experiences.

¹⁶² *Ibid.*, p. 22-23.

The policy expects communities to play a role in tourism development also, including by engaging actively and being made aware of both the potential negative and potential positive impacts on their local economy, environment and culture. The policy states that they should seek and demand integration and involvement, and as individuals take on the role of tourism entrepreneurs and the responsibilities of the private sector. Further, women – especially those in rural communities – are identified to have a role in managing and creating socio-economic opportunities for families and communities.

Non-governmental and civil society organizations are expected to play an encouraging role in responsible tourism development, and to reach out, provide linkages to communities, and support and assist in the development and implementation of tourism-related projects. Further, national and provincial conservation agencies have a role in developing and managing state conservation land for tourism purposes.

Policy on Community Involvement in Tourism 2013

The Policy on Community Involvement in Tourism (CIT policy)¹⁶³ was developed to build on the Myanmar Responsible Tourism Policy by setting out how community involvement is to be implemented in practice. It is an addendum of the Responsible Tourism Policy, and several of its aims and objectives are directly linked to the strategic directions of the subsequently finalized Tourism Masterplan for Myanmar.¹⁶⁴

The CIT policy aims to “enhance community involvement in the tourism industry by creating opportunities for local communities and correspondingly expand the tourism product and appeal for domestic and international visitors”, and to manage tourism effectively to mitigate its potential negative impacts.¹⁶⁵ In his introduction to the policy, Union Minister of Hotels and Tourism, U Htay Aung, stated:

The Ministry fully believes that if communities are more involved in the decision-making process of tourism planning and management, their livelihoods can be affected directly in a positive way. Furthermore, the local long-term perspectives on how to develop and manage tourism in a sustainable way can be included in these processes beyond the mere consideration of commercial interests.¹⁶⁶

The development of the CIT policy appears to have been inspired by success of community-based tourism projects in Thailand, Indonesia and other countries. However, the decision to focus on “community-involved” rather than “community-based” tourism was a conscious one, stated to have been taken following workshops in which a majority of participants expressed concerns that a high level of community participation in tourism might not be possible in the short or medium terms due to lack of experience with decision-making processes.¹⁶⁷ Accordingly, the CIT policy aims to achieve a “medium level” of community participation:

This means that communities must be consulted and involved in decision-making processes on tourism planning and management, which directly affect their livelihoods. However, final

¹⁶³ [Policy on Community Involvement in Tourism \(CIT\) May 2013](#), *op. cit.*

¹⁶⁴ *Ibid.*, p. 47.

¹⁶⁵ *Ibid.*, p. 13.

¹⁶⁶ *Ibid.*, p. 5.

¹⁶⁷ *Ibid.*, p. 10.

decisions shall be made in coordination with the private sector and with the approval of the public administration.¹⁶⁸

The concept of community-involved tourism adopted by the CIT policy is further stated to: encompass all ethnic groups and be sensitive to local cultures; include mainstream tourism activities and service provision as well as cultural, village and ethnic tourism; and encourage community members to start their own small and medium enterprises, or to act as investors or joint venture partners with the public or private sector.¹⁶⁹

The objectives that guide the CIT policy include:

1. Strengthening the institutional environment and civil societies.
2. Capacity building or community related activities in tourism.
3. Developing safeguards, systems and procedures to strengthen community planning and management in tourism.
4. Encouraging local entrepreneurship through micro and local enterprises.
5. Diversifying and developing quality products and services at community level.
6. Monitoring positive and adverse impacts of community involvement in tourism.

The CIT policy sets out core principles to underlie each of these objectives, which include: do no harm to local communities; local community participation in tourism must be informed and willing; respect culture, traditions and beliefs; gender responsibilities; community tourism enterprises must be based on sound business planning; decent work; enhance rights over tourism resources; and respect relationships to land and land ownership.¹⁷⁰

It also identifies action points for the achievement of each objective, discusses the role of stakeholder engagement, sets out processes for the approval of community-level CIT projects and the monitoring and revision of the CIT policy, and provides major criteria and requirements for the Myanmar Bed & Breakfast Service Standards and the Myanmar Homestay Standard.

Tourism Master Plan 2013-2020

The Tourism Master Plan¹⁷¹ sets out a roadmap to shape the future of tourism in Myanmar, and seeks to define a clear vision, guiding principles and strategic programmes through a long-term implementation framework.¹⁷² It was developed through extensive stakeholder consultations, good practice reviews and situational analysis with technical assistance from the Asian Development Bank.¹⁷³

The Tourism Master Plan adopts the vision for tourism in Myanmar set out in the Responsible Tourism Policy, and the nine aims of that policy, as its guiding principles.¹⁷⁴ The goal of the Plan is to maximise the contribution of tourism to national employment and

¹⁶⁸ *Ibid.*, p. 11.

¹⁶⁹ *Ibid.*, p. 11.

¹⁷⁰ *Ibid.*, pp. 14-16.

¹⁷¹ [Myanmar Tourism Master Plan 2013-2020, June 2013](#)

¹⁷² *Ibid.*, Foreword.

¹⁷³ *Ibid.*, p. 1.

¹⁷⁴ *Ibid.*, p. i.

income generation, and to ensure the equal distribution of the social and economic benefits of tourism. The Plan also sets ambitious targets to increase the number of international visitors to more than three million in 2015 and more than seven million in 2020. To ensure that this growth is managed responsibly and for the benefit of Myanmar's people, the Plan includes 38 projects, 21 of which are stated to be critical to the Plan's successful implementation.¹⁷⁵

The Tourism Master Plan identifies six strategic programmes that align with the 2012-2015 policy priorities of the Framework for Economic and Social Reforms and the forthcoming National Comprehensive Development Plan.¹⁷⁶ These programmes (see Box 11) are intended to be interconnected and viewed as an integrated set of actions that require coordination in their timing and implementation.¹⁷⁷

Box 11: Main Objectives of the Six Strategic Programmes of the Tourism Master Plan

Strategic Programme 1: Strengthen the institutional environment

- establishment of a Tourism Executive Coordination Board to oversee tourism development and coordinate plans and programs of the government and private sector
- creation of state and regional tourism committees and local destination management organizations
- strengthening of the legal and regulatory environment to encourage inclusive and responsible investment in hotels and other tourism-related enterprises.

Strategic Programme 2: Build human resource capacity and promote service quality

- design and delivery of a comprehensive human resource development and capacity building strategy
- creation of conditions, programmes and actions to expedite the implementation of that strategy
- development of multi-stakeholder partnerships and policies to improve tourism products and service quality.

Strategic Programme 3: Strengthen safeguards and procedures for destination planning and management

- design and implementation of innovative, integrated and participatory approaches to destination planning
- strengthening of tourism-related social and environmental safeguards
- improvement of zoning practices
- development of climate change adaptation strategies
- strengthening of community involvement in tourism.

Strategic Programme 4: Develop quality products and services

¹⁷⁵ *Ibid.*, p.iii.

¹⁷⁶ [Union Minister of National Planning and Economic Development – Myanmar: Fighting Poverty and Supporting Sustainable Growth](#), *The European Times*, 24 March 2014.

¹⁷⁷ [Myanmar Tourism Master Plan 2013-2020, June 2013](#), p. 24.

- design and implementation of tourism product development strategies that meet market expectations and are suited to the local context
- development of an ecotourism management strategy for protected areas
- strengthening of tourism-related supply chain linkages.

Strategic Programme 5: Improve connectivity and tourism-related infrastructure

- promotion of complementary expansion of the aviation and tourism industries
- integration of tourism considerations into transportation planning, investment in tourism-related infrastructure and environmental services
- progressive easing of barriers to visitor entry and movement in Myanmar.

Strategic Programme 6: Build the image, position, and brand of Tourism Myanmar

- determination of supply, demand and gap characteristics of the tourism system
- creation of a strategic marketing map
- raising of national awareness about the nature and significance of the tourism industry, responsible tourism and the characteristics of quality service.

Implementation of the Tourism Master Plan will emphasise seven cross-cutting themes:

- gender equity
- environmental sustainability
- partnerships
- innovative financing
- regional cooperation
- access for disabled people
- consultation and participation.¹⁷⁸

The Plan's implementation envisaged the creation of new agencies – including the Tourism Executive Coordination Board, the Tourism Technical Authority and a multi-stakeholder advisory group – as well as the realignment of existing government departments.¹⁷⁹

The Tourism Master Plan identifies time frames for the completion of the various actions and programmes included, which extend up to 2020. The implementation of the Tourism Master Plan is to be monitored primarily by the Ministry of Hotels and Tourism, which is to produce an annual report of progress made in respect of each activity identified in the action plans for the strategic programmes and long-term implementation framework.¹⁸⁰ The Asian Development Bank has published a completion report that includes a self-assessment of the technical assistance provided by the Bank in respect of the Tourism Master Plan. The report recognises that there is a need to quickly mobilise the technical and financial

¹⁷⁸ [Myanmar Tourism Master Plan 2013-2020: Final-Draft Report, June 2013](#), pp. ii-iii.

¹⁷⁹ *Ibid.*, p. 38.

¹⁸⁰ *Ibid.*, p. 41.

resources to implement the Plan and to ensure effective coordination of tourism sector assistance.¹⁸¹

Ecotourism Policy and Management Strategy (ongoing)

The MoHT, the Ministry of Environment Conservation and Forestry and the Myanmar Tourism Federation, with support of the Asian Development Bank Greater Mekong Subregion Core Environment Program¹⁸², are developing an Ecotourism Policy and Management Strategy to ensure that tourism in protected areas supports biodiversity, conservation and community-based income generation, as well as the effective management of protected areas.¹⁸³

A consultation process was initiated in May 2014, and the most recent consultation workshops have been held on in October 2014 and February 2015.¹⁸⁴ An assessment of the ecotourism potential of 21 potential protected areas was undertaken in late 2014, and the policy and strategy is scheduled to be launched at an International Ecotourism Conference in 2015.¹⁸⁵

The Ecotourism policy is being developed in support of the National Biodiversity Strategy and Action Plan 2011¹⁸⁶. These recognised the importance of mainstreaming biodiversity into other policy sectors to prevent conservation efforts being undermined by incompatible initiatives such as infrastructure development and land use decisions.¹⁸⁷ Accordingly, five-year action plans were set out that address a number of goals, including sustainable ecotourism. Ecotourism-supporting activities to be implemented within a five year period include the:

- introduction of conservation awareness and environmental education into the syllabus of tourism-related courses provided by the MoHT and other relevant ministries;
- development of an ecotourism policy that ensures benefits for local communities;
- training of the Forest Department's staff to understand the essence of ecotourism and the needs of ecotourism operations;
- inclusion of visitor programs with conservation issues to promote conservation awareness, rather than simply facilitating recreational activities; and
- encouragement of private tour operators to undertake day-to-day ecotourism activities in compliance with relevant rules and regulations.¹⁸⁸

Bed & Breakfast (B&B) Service Standards

The Union Government does not officially permit foreigners to spend the night in the homes of villagers in Myanmar. The government's rationale for not permitting homestays concerns its perception of the different cultures, languages and living standards between villagers

¹⁸¹ Asian Development Bank, '[Technical Assistance Completion Report](#)' (2013).

¹⁸² [Ecotourism Support to Myanmar \(2014-2016\)](#), Asian Development Bank (ADB), Greater Mekong Subregion Core Environment Program, June 2014.

¹⁸³ [Consultations for Ecotourism Policy and Management Strategy in Myanmar](#), THIIHA, 28 October 2014.

¹⁸⁴ *Ibid.*

¹⁸⁵ ADB (2014), *op. cit.*

¹⁸⁶ [National Biodiversity Strategy and Action Plan](#) (2011), The Republic of the Union of Myanmar.

¹⁸⁷ [National Biodiversity Strategy and Action Plan](#) (2011), The Republic of the Union of Myanmar, p. 80.

¹⁸⁸ [National Biodiversity Strategy and Action Plan](#) (2011), The Republic of the Union of Myanmar, pp. 94-95.

and tourists, and the need to educate villagers. However, it recognises the potential economic benefits of both homestay tourism and B&B, including as a result of increased income in villages, and the potential educational and cultural-exchange benefits.¹⁸⁹

The Policy on Community Involvement in Tourism annexes the draft Myanmar Bed & Breakfast Service Standards. The draft Standards, which are currently being discussed by the Ministry of Hotels and Tourism, the Myanmar Tourism Federation and the Hanns Seidel Foundation, envisage a decentralised licensing process, so that communities can register their own B&Bs at the municipal level.¹⁹⁰ The Myanmar Tourism Federation has proposed that a B&B pilot project be undertaken in select rural areas.¹⁹¹

The Standards were developed following extensive community consultations conducted in connection with the Responsible Tourism Policy and the Policy on Community Involvement in Tourism. Community representatives that participated in these consultations identified the right to provide accommodation to foreign visitors as a crucial first step in bringing revenue into their areas. The introduction of Bed & Breakfast accommodation may also address the accommodation shortage that has emerged as tourist numbers have rapidly increased.¹⁹²

The Standards also set out major criteria and requirements for bed and breakfast services. They address accommodation, food and beverages, safety and security, activities offered to visitors as part of a home stay program, environmental conditions, B&B ownership and administration, marketing and promotion, joint ventures between communities and the private sector and local benefits to neighbouring communities.¹⁹³

Bilateral Tourism Agreements

Myanmar has negotiated bilateral tourism agreements and memoranda of understanding that emphasise tourism development with several Asian states, including Cambodia, China, Laos, Malaysia, Singapore, Sri Lanka, Thailand and Vietnam.¹⁹⁴ Myanmar and four ministries from ASEAN (Cambodia, Indonesia, Philippines and Thailand) signed a Letter of Intent on Smart Tourism at the World Economic Forum held in Nay Pyi Taw in July 2013. The Smart Tourism project aims to relax travel restrictions, open Myanmar to tourism and increase the accessibility of participant countries.¹⁹⁵

Other Policies, Standards and Guidelines Relevant to Tourism

Draft National Land Use Policy

On 18 October 2014, the Land Use Allocation and Scrutinizing Committee published a draft national land use policy¹⁹⁶ which, once finalised, is intended to guide the establishment of a

¹⁸⁹ [The government doesn't allow homestay tourism in Myanmar](#), *Globserver*, 'Myanmar', 17 February 2014.

¹⁹⁰ [Bed & Breakfast Pilot Project proposed at stakeholder discussion](#), Hanns Seidel Foundation, 2014.

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ [Policy on Community Involvement in Tourism \(CIT\)](#), *op. cit.*, May 2013, pp. 28-30.

¹⁹⁴ [List of Bilateral Tourism Agreements](#), Ministry of Hotels and Tourism.

¹⁹⁵ [Myanmar, Cambodia, Indonesia and the Philippines Agree to Work on ASEAN Common Smart Tourism](#), World Economic Forum, 2014.

¹⁹⁶ [National Land Use Policy \(Draft\)](#), Government of the Republic of the Union of Myanmar Land Use Allocation and Scrutinizing Committee, October 2014.

new overarching framework for the governance of land tenure and related natural resources, and facilitate the resolution of land use disputes.¹⁹⁷ The draft policy addresses land use management, planning and changing land use, the recognition grant, acquisition of land rights, and the resolution of disputes. It also incorporates provisions directed to:

- ensuring the use of environmental and social safeguard mechanisms;
- improving public participation and decision-making;
- improving public access to information; and
- developing independent dispute resolution mechanisms.¹⁹⁸

Land issues are significant in the context of Myanmar's political and economic transition. Resentment and protests have emerged over land acquisitions for infrastructure, development and large-scale agricultural projects.¹⁹⁹ The draft policy has been criticised by Transnational Institute (TNI) for its focus on investment rather than on distribution of democratic control.²⁰⁰ In particular, TNI has observed that the policy addresses land-related challenges posed by business and investment, but fails to adequately reflect the land-related implications of Myanmar's ongoing political and economic transition.²⁰¹

Civil society groups have called on the government to provide additional time for consultation on the draft policy.²⁰² The consultations for the land use policy have been extended by several months and it is expected to be finalised in 2015.²⁰³

National Plan of Action for the Advancement of Women 2011-2015

The National Plan of Action for the Advancement of women was prepared by the Women's Protection Technical Working Group at the request of the Department of Social Welfare. It outlines interventions and anticipated results for twelve priority areas identified in the Beijing Platform for Action, and also builds on principles of the Convention for the Elimination of Discrimination Against Women, to which Myanmar is a signatory.²⁰⁴ The Plan of Action does not address tourism expressly. However, it sets out a vision for women in Myanmar that is likely to have implications for tourism. Significantly, it envisions that Myanmar will be an equitable, inclusive and sustainable society in which all women can achieve both their rights and aspirations. Key objectives offered in the Plan of Action include the strengthening of mechanisms to mainstream gender interventions that improve livelihoods for women, ensure equal access to formal and informal education for women and girls, and ensure women's equal access to fair employment practices, credit, assets and other economic benefits.²⁰⁵

¹⁹⁷ [Pro-Business or Pro-Poor? Making Sense of the Recently Unveiled Draft National Land Use Policy, Preliminary Assessment](#), Transnational Institute, 23 October 2014. See also [National Land Use Policy Expected to Resolve Disputes, Says Official](#), Lapyae Wun, *Mizzima*, 8 September 2014.

¹⁹⁸ ['Burma Draft National Land Use Policy Open for Public Consultations'](#), Robert Oberndorf, 17 Nov 2014.

¹⁹⁹ ['Burma Farmers at Risk of Losing Land Under Legal Shift: Think Tank'](#), Thin Lei Lwin, *The Irrawaddy*, 31 October 2014.

²⁰⁰ Transnational Institute, *op. cit.*

²⁰¹ Transnational Institute, *op. cit.*, p. 2.

²⁰² [Land consultations too short, CSOs warn](#), Sandar Lwin, *Myanmar Times*, 24 November 2014.

²⁰³ Thin Lei Lwin, *The Irrawaddy*, October 2014, *op. cit.*

²⁰⁴ [National Plan of Action for the Advancement of Women 2011-2015](#) (Draft)

²⁰⁵ National Plan of Action for the Advancement of Women 2011-2015 (Draft), pp. 2-3.

Coordinated Mekong Ministerial Initiative Against Trafficking

The Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) was established in 2004 when Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam signed a Memorandum of Understanding (MOU) against Trafficking in Persons.²⁰⁶ Through this MOU, the six governments committed to responding to human trafficking. The MOU also underscored the need for multilateral, bilateral and government-civil society cooperation to combat human trafficking. Implementation of the Commit Process is likely to have implications for the development of Myanmar's tourism sector, including in particular as regards sex tourism. The Commit Process is governed by national COMMIT Taskforces in each participant State. Representatives from each of the six Taskforces convene at least twice a year to set priorities and discuss urgent issues at a regional level. Sub-Regional Plans of Action are being implemented in each country and also at a multi-country level, typically through partnerships between relevant government departments and non-government entities.

National Transport Development Master Plan

A draft National Transport Development Master Plan for Myanmar²⁰⁷ has been released. It was developed with support from the Japan International Cooperation Agency, and its implementation is expected to commence in late 2014.²⁰⁸ The vision set out in the Master Plan is “to build a safe, comfortable and impartial transport system and a sustainable and efficient public transportation system in order to guarantee the mobility and accessibility of urban services needed by the people and society”.²⁰⁹ The plan rests on three pillars:

- strengthening road maintenance and improvement;
- strengthening public transport development; and
- strengthening traffic management.

The results of a traffic volume survey and other data identified a shortage of transport capacity in multiple corridors in Myanmar. It sets a growth target averaging 7.2 per cent per year. To support this growth, the Plan proposes investment in basic transport infrastructure in the fields of aviation, roads, rail, harbours and inland water transportation. The Master Plan also seeks to link not only ASEAN member countries, but also India and China via air, land and/or marine corridors. The National Transport Development Master Plan is supplemented by the Project for Comprehensive Urban Transport Plan of the Greater Yangon.²¹⁰

²⁰⁶ Further information on the COMMIT Process, and copies of the MOU and Sub-Regional Plans of Action, can be accessed at the website of the United Nations Inter-Agency Project on Human Trafficking: <http://www.no-trafficking.org/commit.html>.

²⁰⁷ [Myanmar's National Transport Master Plan: A New Direction](#), Japan International Cooperation Agency (JICA), 24 July 2014.

²⁰⁸ [Myanmar's Transport Master Plan Will See More Regional Links](#), Sid Dharta and Oliver Slow, TIG Asia, 3 October 2014.

²⁰⁹ [Transport Master Plan Unveiled for Myanmar and the Yangon Metropolitan Area](#), Japan International Cooperation Agency (JICA), 28 August 2014.

²¹⁰ [Yangon Urban Transport Master Plan of the Project for Comprehensive Urban Transport Plan of the Greater Yangon \(YUTRA\)](#), Major Findings on Yangon Urban Transport and Short-Term Actions, JICA, 14 May 2014.