

Myanmar Centre for
Responsible Business



PWINT THIT SA
Transparency in Myanmar Enterprises

Pwint Thit Sa

Transparency in Myanmar Enterprises

Sixth Report | 2020

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

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Based in Yangon, **Yever** is a consultancy offering custom made solutions to corporate leaders. We aim to foster their company business transformation while building their market leadership responsibly and sustainably. We support Myanmar organisations in their journey and provide them support to enhance their corporate governance and disclosure, strengthen their performance, and develop sound management practices. Established in 2016, our team combines Myanmar talents and international expertise. Purpose-driven, we aim to walk the talk: we are the only B Corp certified company in Myanmar and are proud to contribute *pro bono* for various projects.

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ABBREVIATIONS

ACGS	ASEAN Corporate Governance Scorecard
ACMF	ASEAN Capital Markets Forum
AML	Anti-Money Laundering
ASEAN	Association of South East Asian Nations
BoD	Board of Directors
CDD	Customer Due Diligence
CG	Corporate Governance
CSR	Corporate Social Responsibility
DICA	Directorate of Investment and Company Administration
DNFBP	Designated Non-Financial Businesses and Professions
ESG	Environmental, Social and Governance
FY	Financial Year
GRI	Global Reporting Initiative
IFC	International Finance Corporation
IIRC	International Integrated Reporting Council
IPO	Initial Public Offering
KPI	Key Performance Indicator
MCL	Myanmar Companies Law
MCGS	Myanmar Corporate Governance Scorecard
MCRB	Myanmar Centre for Responsible Business
MERPP	Myanmar Economic Resilience and Reform Plan
MIC	Myanmar Investment Commission
MIFER	Ministry of Investment and Foreign Economic Relations
MIL	Myanmar Investment Law
MIoD	Myanmar Institute of Directors
MIR	Myanmar Investment Rules
MoPFI	Ministry of Planning, Finance and Industry
MSDP	Myanmar Sustainable Development Plan
MyCO	Myanmar Companies Register Online
NRGI	Natural Resources Governance Institute
OECD	Organisation for Economic Cooperation and Development
OTC	Over the Counter (an organized market for trading of unlisted securities)
SAMCO	State Assets Management Corporation
SASB	Sustainability Accounting Standards Board
SECM	Securities and Exchange Commission of Myanmar
SEE/SOE	State-owned Economic Enterprise
UMFCCI	Union of Myanmar Federation of Chambers of Commerce and Industry
YMDC	Yangon Metropolitan Development Company
YSX	Yangon Stock Exchange

This is the sixth *Pwint Thit Sa*/Transparency in Myanmar Enterprises (TiME) report. It assesses information disclosure on the corporate websites of 260 large Myanmar companies (248 in 2019). It examines publicly listed and ‘public’ companies, and privately-owned companies which are influential or significant taxpayers, as well as smaller companies which volunteered for inclusion. As in 2019 it includes the corporate disclosure of all significant state-owned economic enterprises (SEEs). *Pwint Thit Sa* remains the most extensive public report published about the state of corporate disclosure (CD) in Myanmar.

The 2020 report continues with the approach adopted in 2018 by using the ASEAN Corporate Governance Scorecard (ACGS) (Table 3) to rate companies’ corporate disclosure. The ACGS is used widely in the region to assess disclosure of corporate governance by large companies. It was also used in 2018/19 by Myanmar regulatory bodies to develop a Myanmar Corporate Governance Scorecard to assess the current corporate governance practices of 24 large Myanmar companies. It has also been adopted as a disclosure framework by five further Myanmar companies (Dagon, MAEX, Max Myanmar, TMH and uab bank) joining CMHL, FMI and Shwe Taung. This demonstrates the influence of *Pwint Thit Sa* in encouraging companies to align to appropriate international frameworks.

However not all ACGS criteria have been used for *Pwint Thit Sa*, and some additional performance criteria concerning sustainability and its relationship to the company’s business model are added, aligned with the Integrated Reporting Framework <IR>, as in 2019. This is intended to challenge and stretch the leading companies, and reflect and support the Myanmar Sustainable Development Plan and Myanmar’s achievement of SDGs 12 and 16.

The scoring methodology therefore uses 71 of the most relevant criteria from the ACGS (see Annex 2). Once again, it assesses four dimensions - Corporate Profile, Corporate Governance, Sustainability Management and Reporting - using 143 criteria (82 disclosure-based, 61 performance-based) with a maximum possible score of 204 (82 Disclosure, 122 Performance). This year a few additional criteria on governance of philanthropy, and SDGs, were added. A few which were not considered meaningful were dropped. Furthermore, our scorecard aimed this year to reward companies that embraced a more holistic and comprehensive approach to disclosure: a compliance-driven approach to *Pwint Thit Sa* was therefore not sufficient to secure the maximum score possible.

For most companies in this study, with the exception of those who are publicly listed and ‘public companies’ with more than 100 shareholders and banks, there is no legal requirement to disclose this information on their website under Myanmar law. However, to do so can help a company to obtain a competitive edge with potential business partners and investors whose first research on a company may involve looking at their website.

This year, we distinguished more clearly between where companies have a legal obligation to disclose and where private companies are choosing to do so. To incentivize disclosure beyond compliance, bonus points were added where companies chose to disclose information such as financial statements. Further details are in the Methodology section in *Part 4*.

Average scores in 2020 are 7% compared to 5% in 2019: overall disclosure has improved, with some leading companies rising to the challenge of both disclosing Corporate Governance (CG) information and reporting performance.

The top three companies in 2020 scoring highest for disclosure are uab bank, CMHL and Shwe Taung. These companies featured in the Top 10 of the 2019 *Pwint Thit Sa* reports, but the order has changed, and all of them have made added efforts in *Pwint Thit Sa 2020* to enhance disclosure, particularly on corporate governance and non-financial reporting. Indeed, this was true for the 32 companies who opted to meet (virtually) with MCRB/ Yever to discuss their draft scores or to gain a better understanding of the criteria and what they mean for company disclosure. On average, this direct engagement process helped them to improve their score by 231%.

Listed companies, which scored average 39%, are outperforming public (5%) and private companies (7%). However, the variance within each category is significant: Figure 1 indicates, for each type of company, the maximum, minimum and mean scores. There are 19 companies whom we identify as champions, which have scored higher than the average score of the listed companies. All the companies in the Top 20 score at least five times the overall average score of 7%.

**FIGURE 1:
Score breakdown by type of company**

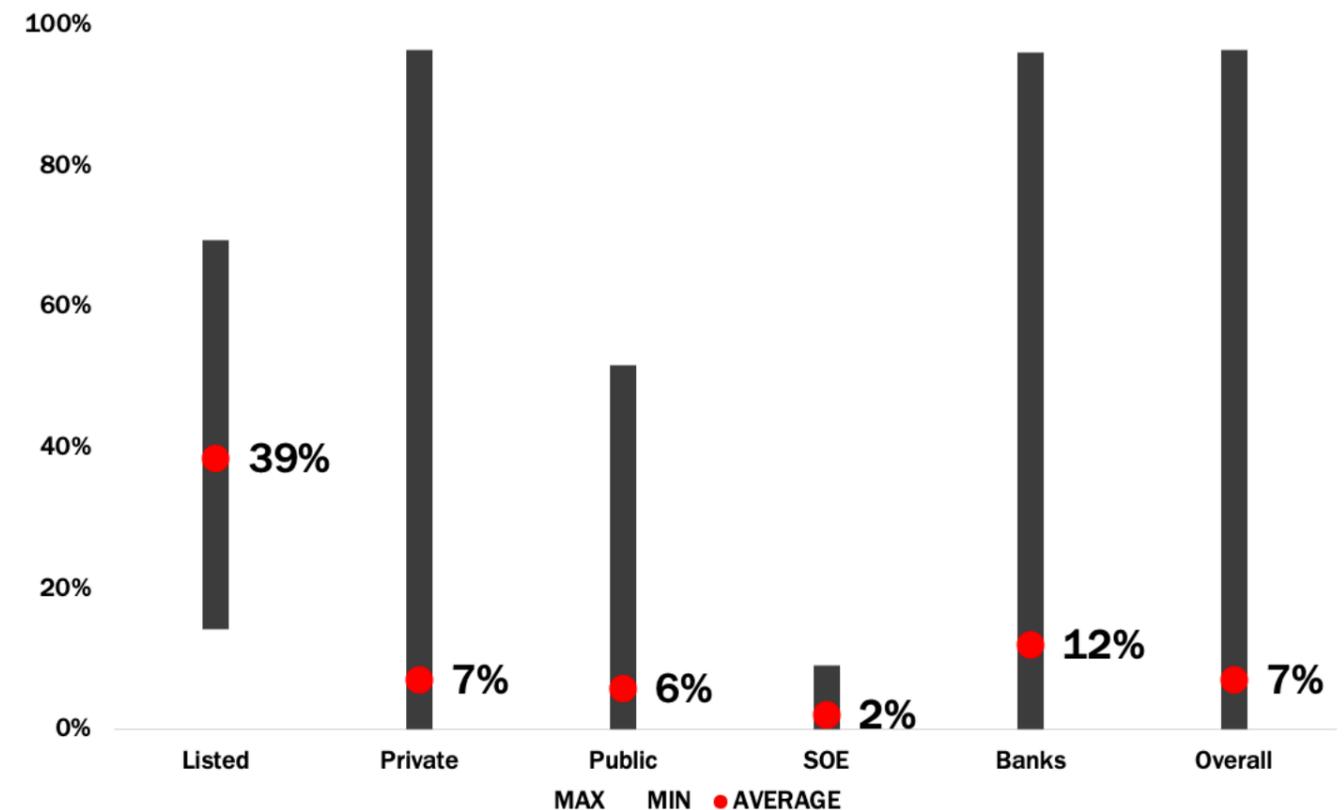


Figure 1 shows that the highest performing company, uab bank, is privately owned, not publicly listed. This shows that private companies can choose to measure and disclose significant quantities of CG and performance information. Furthermore, some private companies which have previously not featured in the Top 20 have joined it in 2020 such as Yoma Bank, IME Group, Alpha Power Engineering, Proven Group and Maha Agriculture Microfinance. This demonstrates that *Pwint Thit Sa* has had an impact in encouraging Myanmar companies to raise their game on corporate governance, disclosure and sustainability. This has been reinforced by the interest which international investors and business partners are showing in these issues and the reforms which Myanmar is undertaking, particularly the 2017 Myanmar Companies Law.

SEEs are the poorest performing category. The leading SEEs for disclosure are Yangon Electricity Supply Corporation (YESC) and Myanmar Shipyards. Because of the special nature of these companies, and the corporate governance challenges they face, they have also been ranked separately (Table 9), using the same methodology. SEEs will need to enhance corporate governance and disclosure under the reforms envisaged by the 2018 Myanmar Sustainable Development Plan and the forthcoming Myanmar Economic Recovery and Reform Plan (MERRP).

The main area of strength amongst the leading companies is Corporate Governance, with an average score of 129% for the top 10; bonus points for private companies voluntarily disclosing on specific dimensions led them to score above 100%. The weakest areas are Reporting and Sustainability Management with an average score, respectively, of 56% and 55% for the top 10.

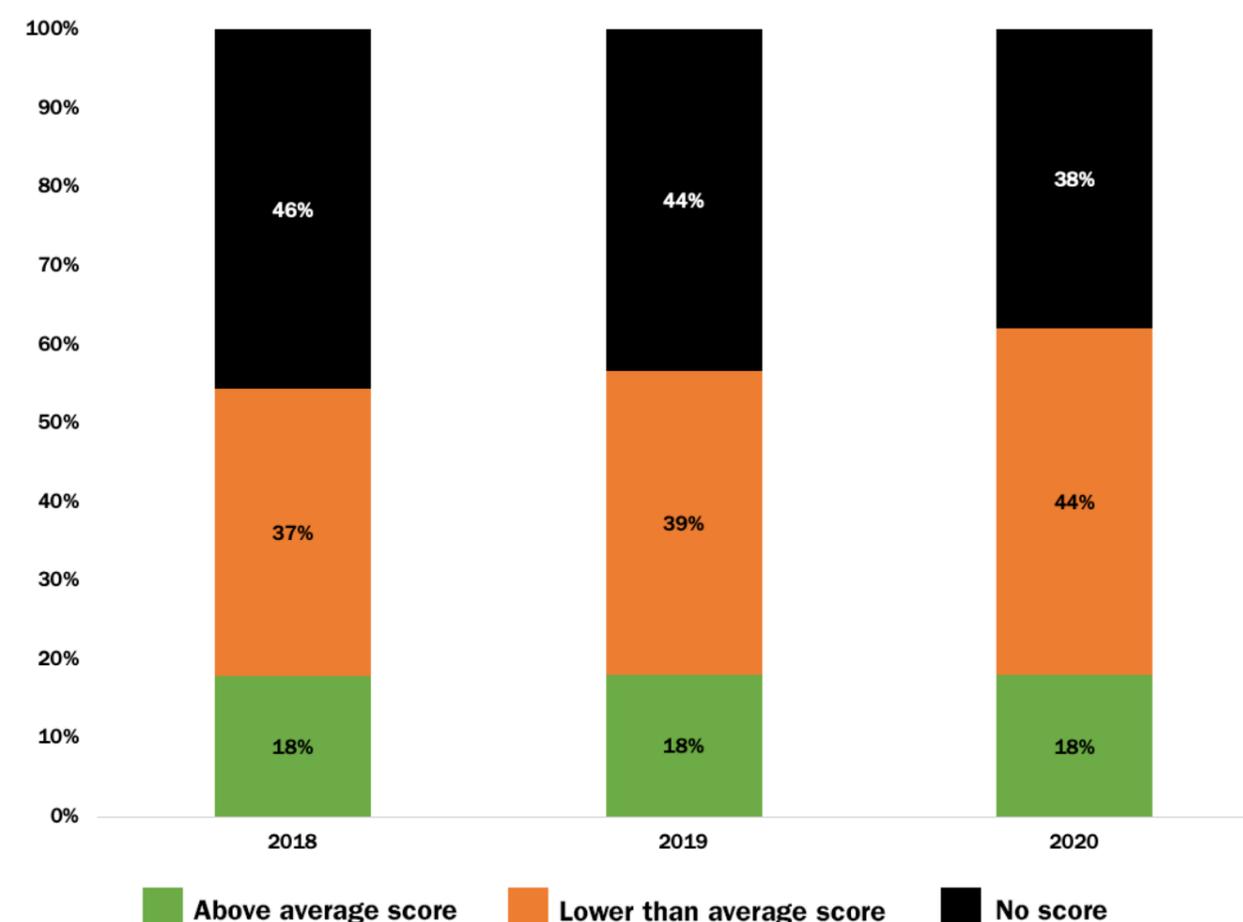
Of the 260 companies surveyed, 98 (38%) still do not have a corporate website or do not disclose anything at all (in black in Figure 2) compared to 44% in 2019. Even where companies do have websites, many of them publish little or no data relating to the criteria covered in this survey. Of those companies which disclosed corporate information (including SEEs), 44% of those assessed scored less than the overall average score for all companies assessed (in orange in Figure 2).

As ever, this survey and the ranking it produces is limited by the fact that it only uses publicly available information provided by the companies. It does not assess the quality or detailed performance of the company or the accuracy of the data, something which requires the assurance of an independent expert audit. This year, however, we incorporated a new sliding scale (0,1,2) for some criteria relating to policies and sustainability to reflect how closely commitments were genuinely aligned to the business. Furthermore, our direct engagement with companies suggested that those who have higher scores are also those developing a stronger corporate governance culture and understanding of sustainability.

Part 1 of the report introduces the current context, including the impact of COVID-19 on governance and disclosure in Myanmar. As previously, **Part 2** of the report summarises the context for disclosure, transparency and corporate governance in Myanmar from a policy, regulatory and stakeholder perspective. This background information is provided with the intention of

FIGURE 2:

Evolution of Corporate Transparency in Myanmar Enterprises between 2018 and 2020



raising awareness and encouraging compliance. It is also intended to support corporate governance capacity-building initiatives such as those being undertaken by Directorate of Investment and Companies Administration (DICA), the Central Bank of Myanmar (CBM), and Myanmar Securities and Exchange Commission (SECM), including those related to beneficial ownership/politically exposed persons, and anti-money laundering, and to promote a more coordinated approach.

Part 3 highlights some of the emerging issues for corporate governance and transparency internationally which are of relevance to Myanmar, such as human rights due diligence, combatting corruption, and sustainability reporting, including on gender. It also addresses the consequences of the report on military economic interests issued in August 2019 by the United Nation's Independent Fact-Finding Mission on Myanmar, and examines the corporate governance of the two military-owned conglomerates which featured in that report.

Part 4 reveals the 2020 *Pwint Thit Sa* results and explains the methodology. Finally, **Part 5** includes recommendations for Myanmar companies,

government, the Anti-Corruption Commission, Parliament, institutional investors and civil society and the media. These are intended to enhance corporate governance and transparency.

In these times of COVID-19, nothing is certain. But MCRB and Yever plan to use 2021 to support interested companies to improve their policies, reporting, disclosure, and website accessibility – including for persons with disabilities – complementing the training provided by the Myanmar Institute of Directors on corporate governance. Our plan is to publish the next *Pwint Thit Sa* report in 2022.

BOX 1:

MCRB and Yever's Partnership

Who is Yever? Yever is an independent and purpose-driven business consultancy, which aims to enable Myanmar business leaders in embracing more responsible and sustainable practices. In 2018 MCRB decided to join forces with this new Myanmar-based business sustainability consultancy, whose Director, Nicolas Delange, had been conducting a similar private benchmarking exercise of sustainability reporting indicators of Myanmar companies for several years. Nicolas Delange has also supported the IFC on the SECM corporate governance scorecard initiative, and works for IFC as a consultant on corporate governance since November 2017.

Respective roles: As in 2018 and 2019, for *Pwint Thit Sa 2020*, MCRB managed the relationships with the companies that were analysed during the project. Yever performed the assessment for each company (on a *pro bono* basis, which included around 300 days of *pro bono* work), and compiled the feedback on draft scores. MCRB and Yever then provided this to the companies, and where companies asked for it, provided pointers for improvement.

Conflict of Interest Declaration: Yever provided paid consultancy services in 2020 to 6 companies included in the *Pwint Thit Sa 2020* report namely Alpha Power Engineering, City Mart Holdings Limited, IME Group, Shwe Taung Group, TMH and Yoma Bank. To avoid conflict of interest, their final scores were independently checked by MCRB. All companies were provided with the same information and the same offers of dialogue and deadline extensions where requested.

Practice what you preach: MCRB and Yever both benchmarked their own disclosed information against the same criteria as the companies. MCRB's overall score is 17%, equivalent to 28th, while Yever's overall score of 16% places them 30th. Although the survey questions were designed for large enterprises, these scores show that many of the disclosure criteria for the ASEAN CG Scorecard can be applicable even to micro-enterprises (MCRB has 17 employees, Yever has 8). Yever is also the only certified B Corp member in Myanmar, demonstrating its own commitment to sustainability and disclosure.¹

1 bcorporation.net/directory/yever

PART 1: INTRODUCTION

The objective of the *Pwint Thit Sa*²/Transparency in Myanmar Enterprises (TiME) report is to incentivise greater publication of corporate governance (CG) and other information by Myanmar companies through publicly recognising them for their disclosure and transparency. MCRB published its first report in July 2014, and further reports were published in 2015, 2016, 2018 and 2019.

Since 2018, the report has covered an expanded number of companies, and used criteria aligned with the emerging corporate governance agenda in Myanmar, and specifically the ASEAN Corporate Governance Scorecard (ACGS). As in 2018 and 2019, this report has been jointly authored by MCRB and Yever, whose contribution is *pro bono* (see Box 1).

Pwint Thit Sa remains one of MCRB's most popular reports, with over 6,000 downloads of the 2019 report in English (compared to 2,000 of the 2018 report) as well as around 2000 MM and 1400 EN hard copies distributed to stakeholders in, and visitors to, Myanmar, including foreign and Myanmar companies, government Ministers and officials, parliamentarians and civil society organisations. It has received extensive media coverage and has also served as a reference point for international organisations and companies conducting due diligence. High-scoring Myanmar companies have publicised it in their annual reports and websites and even on their ATM machines! Furthermore, some banks and other institutions use *Pwint Thit Sa* ranking to assess risks before granting loans or providing financing.

PWINT THIT SA, CORPORATE GOVERNANCE AND DISCLOSURE IN THE ERA OF COVID-19

COVID-19 restrictions had a practical impact on the production of this year's report. All interactions with companies other than February's launch were conducted online. However, despite, or perhaps because of this, engagement with company senior management has increased, and 11 companies which had not previously engaged with *Pwint Thit Sa* took advantage of the opportunity of a meeting to discuss their draft score.

The pandemic-driven shift to working more online further underlines the importance of companies maintaining an informative and accurate online presence through a website. Furthermore, corporate governance itself has shifted online, with Board meetings and AGMs conducted electronically, which can even increase shareholder participation. The Singapore government issued guidance and provided authority to hold AGMs electronically during COVID, and redefined what constitutes a quorum.³ Japan is planning changes to its Companies Act.⁴ DICA did not provide guidance, but a number of Myanmar companies decided to go online anyway (see Box 2).

Furthermore, COVID-19 has thrown a spotlight on companies' resilience and risk management processes, such as safety, business continuity plans, and human resource management. The Myanmar government's loans to

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

3 [COVID \(Temporary Measures\) Act 2020: Alternative arrangements for meetings for companies, variable capital companies, business trusts, unit trusts and debenture holders](#), Order 2020, Minister for Law, Singapore

4 [Spurred by COVID, Japan seeks fully online shareholder meetings](#), Nikkei Asia 19 November 2020

businesses have required them to show their governance documents, financial statements and tax returns.⁵ This has further highlighted the value of compliance and having reliable accounts and other documentation.

BOX 2:

Annual General Meetings during COVID-19

On 6 February 2020, listed company FMI published a health and safety update for their 28th AGM, due to be held on 17 February in which they announced measures to prevent possible spread of COVID-19 attendees. They cancelled stalls and gifts which might encourage AGM attendance, established temperature screening and offered shareholders the option of attending via “live streaming” on their website and Facebook, and to send in comments or queries on the annual report by 14 February, as well Proxy Forms. Another listed company, Myanmar Thilawa SEZ Holdings, went straight to Zoom and Facebook live for their 24 June AGM and arranged online voting.⁶ The entire AGM remains available to the public.⁷

Myanmar Institute of Directors (MIOD) took a similar approach to their first AGM on 25 June. Its AGM mailing, three weeks in advance, actively encouraged the 200+ members to appoint the (unnamed) Chair of the AGM, or someone else who would attend, as their proxy, so as to reduce attendance numbers, and submit any questions in advance. A limited number of people (4 members, including the Board member acting as AGM Chair, auditor, secretariat) attended the meeting in person, in line with COVID-19 social distancing guidelines. Around 30 members participated using Microsoft Teams. Additionally, MIOD used online voting software (ElectionRunner) to pre-select the slate of candidates to be put to the AGM for a vote, and achieved a turnout of 68%. Since online AGMs and Boards are likely to be the ‘new normal’ companies should review their Constitutions to ensure that they allow for the possibility to run meetings in this way and establish a quorum.

Many Myanmar companies lack management capacity, as well as dedicated functions for risk, corporate governance and compliance to enable them to plan, respond to and report on crises such as COVID. The IFC has published guidance for both listed and privately-owned companies on what to consider and how to disclose what they are doing to manage the economic, environmental, and social impacts of the pandemic.⁸ This uses the IFC’s Disclosure and Transparency Framework,⁹ which is focused on strategy,

⁵ Documents which companies are required to show to be eligible for COVID loans include Company Registration Certificate, Shareholders list, Director List, Meeting minutes and Decisions of Meeting (original document), company constitution, MyCo historical company extract, last two years of tax receipts and financial statements, as well as business plans, bank statements and employee lists. SMEs not registered on MyCo must show a municipal or other licence, as well as financial records, tax receipts and business plan. See [COVID fund documents, DICA](#)

⁶ [MTSH will hold its 7th Annual General Meeting online](#), MTSH website

⁷ www.facebook.com/mtshofficial/videos/272498320532561

⁸ Disclosure and Transparency during COVID, Corporate Governance Tipsheet, IFC, 2020

⁹ [Beyond the Balance Sheet - IFC Toolkit for Disclosure and Transparency](#), IFC 2018

governance, and performance. The framework promotes the issuance of standardized corporate reports and data, and provides investors and key stakeholders with the information they need to assess company resiliency, preparedness, and continued management of material environmental, social, and governance (ESG) issues both during and after the crisis.

As one private equity investor based in Myanmar told MCRB:

“In Myanmar, the immediate public health impacts of Covid-19 will likely be matched or exceeded by the global and national economic fall-out that could last well beyond the health crisis. One of the most important lessons to date has been the value of timely disclosure of accurate information, whether by government or by companies, and the confidence and accountability this promotes. As investors, making careful decisions about where to deploy capital at a time of uncertainty, we are putting a premium on companies where management is able to generate reliable information and where the Boards are developing a strategic vision for the post-COVID period, and have a clear view of the company’s main risks.”

As the competition for funds intensifies during the recovery, good corporate governance will strengthen a company’s chance of attracting investment including foreign bank loans,¹⁰ private equity funds, and loans and equity from development finance institutions (e.g. IFC). A visible and real commitment to sustainability will allow companies to attract increasing amounts of ‘green finance’ looking for investments which address the impacts of climate change.

Recognising the internal and external value of benchmarking, some SMEs have volunteered to be included in *Pwint Thit Sa*. The advice that the MCRB/Yever team provided following their first draft score enabled two of them Authentic and Mya Ayer to significantly increase final score.

Although COVID may have slowed staff turnover, the recovery may require different skills sets, such as digital. A company with a reputation for transparency is better placed to recruit and retain qualified staff. A website and a Facebook page are a vital tool for any company to engage, inform and motivate staff, including as they work from home. Staff who can easily access up to date information about the company’s approach to responsible business on a website are more likely to be able to apply that approach in their work, even at a distance. COVID-19 has therefore reinforced the business case for corporate governance, sustainability and transparency in Myanmar.

¹⁰ [Central Bank greenlights corporate loans by foreign banks](#), Frontier Magazine, 24 November 2018

SUPPORTING GOVERNANCE REFORM AND SUSTAINABLE DEVELOPMENT

Pwint Thit Sa is intended to support the implementation of the 2018 Myanmar Sustainable Development Plan¹¹ and in particular business' contribution to Sustainable Development Goal (SDG) 16:

SDG 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels;

SDG 16.5: Substantially reduce corruption and bribery in all their forms;

SDG 16.6: Develop effective, accountable and transparent institutions at all levels.

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

Furthermore, corporate disclosure supports **SDG 12** (Ensure sustainable consumption and production patterns) and specifically **SDG Indicator 12.6.1** - Number of companies publishing sustainability report. This is the only one of the 231 SDG indicators which monitors the practices of private sector entities. Given the varied approaches and quality of corporate sustainability reports, methodology is being developed globally to establish a minimum requirement for sustainability reports, as well as advanced level.¹² This will be based on international standards such as GRI, SASB and IIRC¹³ (see **Part 3** for more details). Countries will be able to use this at national level to measure progress.¹⁴ *Pwint Thit Sa* aims to incentivize uptake of international sustainability reporting standards in Myanmar, and thereby national progress against **SDG Indicator 12.6.1**.

The Myanmar Sustainable Development Plan includes a number of action points relevant to corporate governance and disclosure:

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

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

3.3.4: Improve corporate governance and disclosure rules and enforce them

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

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

12 [SDG Indicators, Metadata repository for SDG 12.6.1](#), United Nations Statistics.

13 SASB and IIRC announced their intent to merge in November 2020 into the Value Reporting Foundation.

14 [Myanmar's SDG Indicator Baseline Report](#), 2017, Myanmar Central Statistical Organisation and UNDP, identified the value of this indicator as zero in 2016.

Strategy 3.5 of the MSDP (Increase broad-based access to financial services and strengthen the financial system overall) highlights the importance of transparency and effective supervision particularly of financial institutions. Banks are regulated by the Central Bank under the 2016 Financial Institutions Law. The CBM issued a number of Directives related to CG in 2019.

In late 2020, to plan for a post-COVID-19 world, the Myanmar Government supplemented the MSDP by preparing a draft Myanmar Economic Resilience and Reform Plan (MERPP), focussed on the priorities of the two co-authoring ministries, MoPFI and MIFER for the next two years. *Pwint Thit Sa* supports the draft MERPP's Strategy 6 'Enhance Accessibility to Finance and Information' concerning the YSX as well as Strategy 9: Effective Utilization of Public Assets and the Digitalization of Public Information concerning state-owned economic enterprises (SEEs) (further details of both in Part 2).

As mentioned in the draft MERPP, the MoPFI and YSX launched on September 2020 a second-tier listing procedure at the YSX (see YSX, Part 3) and proposes to allow firms listed either on the first or second tier at the YSX to issue commercial bonds/debentures.¹⁵

BUILDING TRUST

Effective capital markets depend on transparency and trust in companies, particularly public ones and in financial institutions. *Pwint Thit Sa* seeks to build trust in business in Myanmar on the part of investors and the public. In the 2020 Transparency International Asia Corruption Barometer, 1,000 people in Myanmar were randomly surveyed by phone as to whether they believed that various institutions were involved in corruption.¹⁶ The most negative attitudes were towards local government officials (35%), the police (30%), and business executives (24%). Government officials (22%) the President / Prime Minister (20%) and Members of Parliament (18%) were viewed slightly positively. Most positively viewed were army leaders (4%), religious leaders (10%), bankers, and NGOs (both 11%), and judges and magistrates (12%).

The 2020 *Pwint Thit Sa* report compares the transparency of banks against one another (see Table 10). In the 2019 report, financial institutions scored on average 11% compared to an overall average of 5%; in 2020 those figures are 12% and 7% respectively, showing some relative improvement.

Professional advisers - in particular auditors - have an essential role to play in assisting companies to improve corporate governance and build trust. Reliable audit reports are needed for a Board of Directors to exercise their duties to act with care and diligence. There is also a regulatory requirement for audited financial statements (S.260b MCL) and for banks (CBM Directive 10/2019 – see below). S.257 of the MCL requires all companies other

15 <https://ysx-mm.com/pre-listing-board/about-plb/>

16 [Transparency International Asia Corruption Barometer 2020](#) Respondents were given the choice of answering 'none of them, some of them, most of them, or all of them'. It is debatable as to whether they would feel comfortable responding honestly to a question from a stranger about army leaders.

than ‘small companies’¹⁷ to have their financial statements audited by certified auditors in accordance with the standards laid down by the Myanmar Accountancy Council (S.257 and S.279). For public and publicly listed companies, these audited financial statements also need to be filed with the Companies Registrar (MCL S.266a). MyCo entries show that many companies which are clearly not ‘small’ are wrongly ticking this box, something which needs to be addressed by DICA.

An audit conducted to the appropriate standard can cost a significant amount, more than many Myanmar companies are currently paying, judging by the professional fees they report in their annual accounts. The *2017 Report on Observance of Standards and Codes (ROSC): Accounting and Auditing* by the World Bank, which was prepared in active collaboration with the Office of the Auditor General of the Union, the Myanmar Accountancy Council and the Myanmar Institute of Certified Public Accountants, identified concerns about audit quality, auditor independence and the low level of audit fees, all of which have major corporate governance implications, and made a number of recommendations.¹⁸

On 5 December 2018, DICA issued an Announcement encouraging auditors to comply with International Auditing Standards, in line with Myanmar Accountancy Council’s 2018 Notification that requires public accountants to comply with international auditing standards (IFRS) by FY2022/23,¹⁹ and encouraged them to do so earlier. The CBM has laid down more detailed requirements for audit of banks, and their Audit Committees (see below). Tax Officers also need to give more weight to audited reports for tax assessment. This is not always the case. Historic suspicion about companies and auditors ‘cooking the books’ has led to some Tax Officers to disregard audited financial statements.²⁰

Finally, quality media reporting remains essential to build trust in business and in government. To facilitate this, companies need to disclose accurate factual and easily available information to enable journalists to do their job. They also need to train their media relations staff, and journalists need access to training on business reporting.²¹ Companies should see more accurate media reporting as a result. Business reporting is being assisted by the increased information about companies available online from government, including MyCo, the online company registry, as well as the new MyINDY database, giving searchable details of companies with MIC

17 MCL S.146e and S.257c lists those requirements which do not apply to small companies. S.1.c xxxviii defines small companies as ‘a company, other than a public company or subsidiary of a public company, which satisfies the following conditions: (A) it and its subsidiaries have no more than 30 employees (or such other number as may be prescribed under this Law); and (B) it and its subsidiaries had annual revenue in the prior financial year of less than 50,000,000 Kyats (around USD 33,000) in aggregate.

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

19 [Notification](#) No 20/2018 of 4 July 2018, Myanmar Accountancy Council

20 Personal communications by SMEs with MCRB, January 2019

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

Permits, and the beneficial ownership database established as a part of EITI (see below). This allows journalists to have a real impact on driving governance reform (see Box 3).

BOX 3:

Business Reporting by Myanmar Now

Online newspaper Myanmar Now has run a number of articles investigating the opaque business interests of the two military conglomerates, Myanmar Economic Holdings Ltd (MEHL), and unlisted public company and Myanmar Economic Corporation, an enterprise owned by the Ministry of Defence (see Part 3 for more details on these two enterprises), making use inter alia of information available from MyCo, the online companies registry.

In May 2020, they highlighted the potential conflict of interest arising from two former generals, Ni Aung, Managing Director of the Myanma Port Authority and Kyaw Htin Director General of Customs both being Board members of MEHL.

Although both the Union Attorney General’s Office and the Transport Ministry initially commented that there was no conflict of interest, they reversed this position and the President’s spokesman announced on 17 July that the arrangement violates sections 10f and 37 of the 2013 Civil Service Personnel Law, and that both men had resigned from the MEHL Board on 6 July.²²

Myanmar Now’s investigative reporting on business, corruption and conflicts of interest, particularly relating to the military, which features in many of the footnotes in this report, may have contributed to an attack on its Chief Editor, Swe Win on 31 December 2019.²³

22 [President’s Office to seek investigation of possible conflict of interest on MEHL Board](#), Myanmar Now, 1 June 2020 and Ex-generals resign from MEHL board over conflicts of interest, Myanmar Now, 21 July 2020

23 [Myanmar Now editor suffered gunshot wound to leg during trip to southern Rakhine last year](#), Myanmar Now, 26 Nov 2020

**PART 2:
CURRENT
POLICY AND
REGULATORY
CONTEXT FOR
CORPORATE
GOVERNANCE
AND
DISCLOSURE**

There is a growing trend towards regulatory requirements for better corporate governance and greater corporate disclosure, led by the Directorate for Investment and Companies Administration (DICA), and complemented by the rules of the Securities and Exchange Commission of Myanmar (SECM) and the Central Bank.

This section summarises current corporate governance and disclosure requirements for both public and private companies related to Central Bank, SECM, DICA (Companies Law and Investment Law) and EIA, as well as relevant reforms including those relating to combatting money laundering and corruption.

**STATE-OWNED
ECONOMIC
ENTERPRISES**

The Myanmar Sustainable Development Plan (MSDP) has been briefly mentioned in Part 1. Strategy 2.5 commits the government to ‘Enhancing the efficiency and competitiveness of State Economic Enterprises’ (SEEs) and action 2.5.1 involves the development of a national SEE policy based on a comprehensive review and assessment of existing SEEs, clarifying their functions, professionalizing management, enhancing oversight and transparency, and where appropriate equitizing or privatizing assets. Progress however has been slow on reforms to State Economic Enterprises (SEEs). In an apparent attempt to kickstart this, in November 2019, the Ministry of Planning and Finance was merged with the Ministry of Industry, which brought with it four loss-making SEEs (three in heavy industries, and pharmaceuticals).²⁴

The draft MERPP also reinforces the priority of reform and privatization of SEEs including through use of the Project Bank. Action Plans include:

- 9.1** Develop corporatization/equitization regulations and relevant policies to govern the transformation of SEEs based on systematic classifications
- 9.2** Enhance the productive efficiency and organizational performance of SEEs in tandem with the process of corporatization/equitization
- 9.3** Establish the State Assets Management Corporation (SAMCO) to manage government shares and assets in corporatized or equitized entities

Natural resources SEEs, which have significant revenue, were the subject of a 2018 report which recommended that the Government needed greater oversight of SEE compliance and performance, as well as greater disclosure of information. It recommended establishing independent boards of directors for SEEs and independent external audit.²⁵ This report noted that:

“Myanmar’s SEEs are generally not independent of government ministries, but are rather firmly entrenched under ministry authority. According to the latest count, only four SEEs have quasi-independent boards to monitor SEE activities: Myanmar National Airlines, Myanmar Economic Bank (MEB), Myanmar Investment and Commercial Bank, and Myanmar Foreign Trade Bank (MFTB).

²⁴ [‘Loss-making enterprises transferred to ministry’](#), Myanmar Times (Burmese version), 21 November 2019
²⁵ [State Owned Economic Enterprise Reform](#), Natural Resources Governance Institute, July 2018

In the case of Myanmar National Airlines, the board consists of five retired civil servants, which would not constitute an independent board in most contexts. While other SEEs have boards, these act as management committees rather than oversight bodies. In nearly every case, SEE management reports to a line ministry, and its capital budget is set by the line ministry”.

One significant breakthrough for reform took place in June 2019, when the Cabinet issued a directive to abolish the ‘Other Accounts’ at Myanmar Economic Bank. This required all SEEs to transfer revenues (mainly from natural resource extraction) to the treasury or Internal Revenue Department to ensure that they were channelled through the normal budget process and could be put to productive uses such as health and education.²⁶

SEEs were included in *Pwint Thit Sa* for the first time in 2019. In 2020 they continue to show the lowest levels of transparency and governance of all categories of company (see Figure 1). Reform will require SEEs to invest more in corporate governance and disclosure particularly where the enterprise plans to transform into a public company or where it is a ‘Private Company Limited by Shares under the Special Company Act 1950’.²⁷

**COMPANIES
FORMED UNDER
THE 1950 SPECIAL
COMPANIES ACT
(SCA)**

A company in which a Myanmar Government body holds any shares is formed under the SCA and registered under the MCL. Unless otherwise permitted under the SCA, a company formed under the SCA is subject to the provisions of the MCL. The government – particularly in Yangon – has used this form of company to pursue certain investments in which the government is the sole or a majority shareholder. For example, the New Yangon Development Company Limited (NYDC), established to undertake the development of the New Yangon City west of the city, is 100% owned by the Yangon Regional Government. The Board of Directors is chaired by Yangon’s Deputy Mayor, and includes the Secretary of Yangon City Development Committee, Serge Pun, CEO of the company, and two independent directors.²⁸ The Ultimate Holding Company is recorded on DICA as the Yangon Regional Government, which holds 999,999 shares with 1 share held by Yangon City Development Committee.²⁹ The company has made significant efforts to disclose information via its website and regular newsletters.

Yangon Urban Transportation Public Company is another company formed by the Yangon Regional Government under the 1950 Act after a decision in 2016 to reform Yangon’s fragmented bus lines and create a public-private partnership. It has a ‘patrons’ group comprising the Yangon Chief Minister, Mayor and the Transport and Energy Minister and a Board of nine Directors some of whom represent minority shareholders who are generally bus owners.³⁰ Their website discloses that it has 290 shareholders and their

²⁶ [Myanmar Ends Opaque Banking of Proceeds from State Enterprises](#), Natural Resources, Governance Institute, November 2019
²⁷ [Special Companies Act](#), 1950
²⁸ <https://www.nydc.com.mm/board-of-directors/>
²⁹ [Company extract obtained from DICA 1 December 2020](#)
³⁰ www.yuptpublic.com.mm/en/history.html The YUPT website discloses that there are 90 shareholders and their investment is MMK 5.6344 billion. Yangon Region government has invested MMK 35 billion to purchase new buses. Total capital investment is 40.6344 MMK billion

investment is MMK 5.6344 billion (14%). The YRG investment is MMK35 billion. However, even pre-COVID the company has not been commercially successful and shareholders have threatened to sue it and force it to buy back shares.³¹ The company scored 5% in *Pwint Thit Sa* 2020.

The poor disclosure practices of Yangon Metropolitan Development Public Company (YMDC), which contributed to the wrongful arrest of three journalists from Eleven, were covered in Box 1 of the 2019 *Pwint Thit Sa* report. YMDC is a real estate development company which is also registered under the Special Company Act. According to MyCo, it has 11 directors, a mixture of businessmen in construction, and Yangon government officials. It is believed to have a majority shareholding from Yangon Regional Government (YRG), and shareholdings by some businessmen, but this information still remains undisclosed. Yangon Regional Government's refusal to admit its interest in the company was also the subject of court proceedings relating to the renovation of the former Tourist Burma office.³² YMDC's MyCo Company Extract neither identifies the owners of its 589,000 shares nor states an ultimate holding entity. As a public company it must have at least seven shareholders, but as the SECM does not list it as a company under their supervision, it would appear to have less than 100 (see below). Despite being an entity making use of public funds, the company has no website and YRG's website carries no information on it.³³ The unclear hybrid governance and involvement of construction companies on the Board makes it particularly high risk for conflicts of interest and related party transactions.

STATE-OWNED BANKS

The prospects for near-term SEE reform look better for banks than for industrial and natural resources SEEs. The government announced in January 2020 that it intended to modernize and merge the four inefficient and loss-making state-owned banks.³⁴ Myanmar Economic Bank (MEB) would be merged with Myanmar Agriculture Development Bank (MADB), with the aim of enhancing its loan-making to farmers and SMEs. The other two banks undergoing reform are Myanmar Foreign Trade Bank (MFTB) and Myanmar Investment and Commercial Bank (MICB). All have been assessed in *Pwint Thit Sa* (see Table 10).

MoPFI issued a Directive 76/2019 on 27 September 2019 on a Corporate Governance Framework for Transformation of State-owned Banks.³⁵ This sets out the role of the Government (Cabinet, or delegated to MoPFI). As owner, MoPFI will establish the governance policies, including on conflict of interest, set the Vision and Mission of the SEE Banks, and define policies and regulation to avoid loss. Improving skills, corporate governance, transparency and accountability are all explicitly mentioned. The government will avoid interference in day-to-day management and allow Boards to operate independently within their delegated authorities. The Financial Regulation

31 [YUPT shareholders to file lawsuit for losses](#), Eleven Journal, 5 February 2020

32 [Court deals blow against man who claims to own the Tourist Burma building](#),

33 There is however an [unverified Facebook page for Yangon Metropolitan Development Company](#)

34 [Government plans to merge state-owned banks to facilitate more lending](#), Myanmar Times, 23 January 2020

35 Myanmar Gazette, Vol 72, No 47, page 3549 of 22 November 2019

Dept under MoPFI will oversee the directors and management of the state-owned banks concerning strategy, restructuring, and operational matters. MICB, MFTB and MEB must abide by the rules and reporting requirements of the Central Bank which supervises them under the 2016 Financial Institutions Law (FIL). Although MADB is exempt as a 'scheduled institution' under the FIL, it will now be encouraged to comply since ownership of MADB has transferred from MOALI to the MoPFI. All Ministries are encouraged to cooperate with MoPFI concerning their regulatory roles. An MoPFI Steering Committee and Working Committee is formed to coordinate with other ministries.

In Directive 76/2019, the Board of Directors of each bank is tasked with establishing and overseeing the implementation of the bank's strategy, and must constitute people with relevant experience who are capable of undertaking that role, and are committed to sustainable development. The Board must not interfere in day-to-day management decisions; the Management is tasked with ensuring strategy implementation.

Concerning transparency and accountability, SEE banks are required to act with regard to the public interest. They must produce financial reports according to international accounting standards, as well as disclose relevant non-financial information. They must develop operating procedures to allow them to obtain timely and accurate data and manage their operations effectively. Their reporting must be independently audited to improve its quality. Financial statements, and annual reports must be disclosed on their websites. These should include their vision, mission, and non-financial information such as social performance and stakeholder risks.

A Committee to Reform State-Owned Banks was established in September 2017 chaired by the Deputy Finance Minister and revamped in January 2019 with Deputy Bank Governor Bo Bo Nge as Deputy Chair. A Sub-Working Group was formed in August 2019, together with the World Bank, with responsibilities to address the business models and improve the corporate governance of the SEE banks. The restructuring programme is supported by the UK's Business for Shared Prosperity Programme³⁶ and implemented by the World Bank under its Financial Sector Development Programme (FSDP).

The current bank reforms therefore provide an opportunity for the new entities to significantly improve their governance, reporting and disclosure. They are also an opportunity for these banks to focus on more sustainable practices to support a green economy.

CENTRAL BANK OF MYANMAR

Financial institutions have more regulatory requirements concerning CG and disclosure than companies in other sectors, with good reason as they are responsible for other people's money. In Myanmar, they are governed by the Central Bank (CBM) under the Financial Institutions Law. Although not all aspects of bank governance are regulated, FI Law S.85 requires all banks to establish an Audit Committee and hold compulsory quarterly meetings. S.85(b) states that the membership of the Audit Committee shall consist of three members appointed by the general meeting of shareholders of the bank for periods of four years; S.85(c) states that it will be chaired by an

36 www.danafacility.com/the-financial-sector-development-programme/

Independent non-executive director (see below) and that bank management shall not concurrently serve on the Audit Committee. The role of the Audit Committee set out in S.85 (d) is to establish controls, and audit and monitor compliance, and deliver opinions to the Board.

The Central Bank (CBM) regularly issues Directives under the FI Law relating to corporate governance of banks, in addition to any issued by the Companies Registrar. With World Bank support, five were issued on 25 March 2019 giving the Central Bank powers over Board composition.

DIRECTIVE ON FIT AND PROPER CRITERIA

Directive 8/2019 (effective 25.3.2020) applies to all Directors, Officers of a bank³⁷ and External Auditors as well as shareholders with a 'substantial interest' (defined as 10% - see below). It requires the Board to ensure the officers are 'fit and proper' and for Director/CEO appointments to be approved a month in advance by the CBM. Fit and proper criteria relate to honesty, integrity and reputation; competence and capability (with requirements for sector-specific experience listed in an Annex to the Directive); and financial soundness. These are significantly more detailed and demanding than those in the Companies Law S.175 which requires Directors to be over 18, of sound mind, and not undischarged bankrupts or otherwise disqualified.

DIRECTIVE ON DIRECTORS OF BANKS

Directive 9/2019 (effective 25.3.2020) sets out requirements for Bank Boards, *inter alia* that all bank Directors must be approved by the CBM, and that all banks must have at least one Independent Non-Executive Director (NED) for a board of less than 11 Directors, and two where the Board is between 11 and 15 Directors. The CBM defines 'Independent NED' in a limited way, as a person who holds less than 5% of the voting shares of the bank and is not a Related Party (see below). This was the first time a government body had defined 'independent'. However, in October 2020 DICA issued a different definition (see below). Directive 9/2019 also lists detailed requirements for Board governance, conflict of interest and continuous professional development of Directors, again going well beyond the limited provisions in the Myanmar Companies Law.

DIRECTIVE ON EXTERNAL AUDITORS OF BANKS

Directive 10/2019, effective for the following financial year i.e., October 2019-September 2020, requires the bank to appoint a qualified external auditor at their AGM who is certified by the Myanmar Accountancy Council, and to have the appointment approved by the CBM. The external auditor must be replaced every five years and not conduct more than three successive audits. The Directives sets out audit requirements and also requires (Paras 34-35) every bank to **publish** its audited statement of financial position and statement of comprehensive income together with the external auditor's opinion in at least one Myanmar newspaper and on its website within four months after FY end, as well as to exhibit them conspicuously all year in each of its offices and branches. We found that only five banks have a website and disclose their annual report and financial statements; a further three decided to only disclose their financial statements (See Table 1).

³⁷ These include Chief Executive Officer, Managing Director, Deputy MD, Chief Financial Officer, Chief Operating Officer, Chief Compliance Officer, Chief Internal Auditor, Chief Risk Management Officer; and Chief Credit Officer

TABLE 1 - BANKS' COMPLIANCE WITH CBM DIRECTIVE 10/2019

Company Name	Website availability	Disclosure of annual report	Disclosure of Financial Statements
uab bank	Yes	Yes	Yes
Yoma Bank	Yes	Yes	Yes
Kanbawza Bank (KBZ Bank)	Yes	No	No
Ayeyarwady Bank (AYA Bank)	Yes	No	Yes
Ayeyarwaddy Farmers Development Bank Public (A Bank)	Yes	No	No
First Private Bank (FPB)	Yes	Yes	Yes
Co-operative Bank (CB Bank)	Yes	No	No
Myanmar Citizens Bank Public (MCB)	Yes	Yes	Yes
Myanmar Oriental Bank (MOB)	Yes	No	No
Global Treasure Bank Public	Yes	Yes	Yes
Asia Green Development Bank (AGD Bank)	Yes	No	No
Myawaddy Bank	Yes	No	Yes
Shwe (Rural and Urban Development) Bank	Yes	No	No
Nay Pyi Taw Development Bank (Nay Pyi Taw Sibin Bank)	Yes	No	Yes
Construction, Housing and Infrastructure Development Public Bank (CHIDB)	Yes	No	No
Myanma Investment and Commercial Bank (MICB)	Yes	No	No
Myanma Economic Bank	Yes	No	No
Myanma Tourism Bank Public	Yes	No	No
Mineral Development Bank	Yes	No	No
Myanmar Microfinance Bank	Yes	No	No
Small & Medium Enterprise Development Bank	Yes	No	No
Myanma Apex Bank	Yes	No	No
Myanmar Foreign Trade Bank	Yes	No	No
Tun Commercial Bank	Yes	No	No
Glory Farmer Development Bank Limited (G Bank)	Yes	No	No
Innwa Bank	Yes	No	No
Rural Development Bank	Yes	No	No
Farmers Development Bank Public	No	No	No
Myanma Agricultural Development Bank	No	No	No
Yadanabon Bank	No	No	No
Yangon City Bank	No	No	No

RELATED PARTIES DIRECTIVE

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

It defines Related Parties as either

- i. a person who has substantial interest (see below) in the bank or the bank has significant interest in the person;
- ii. a Director or Officer of the bank or of a body corporate that controls the bank;
- iii. a relative of a natural person covered in paragraphs (i) and (ii);
- iv. an entity that is controlled by a person described in paragraphs (i), (ii) and (iii);
- v. a person or class of persons who has been designated by CBM as a related party because of its past or present interest in or relationship with the bank.

A relative is defined as spouse, brother or sister of the individual, brother or sister of the spouse of the individual, any lineal ascendant and descendant of the individual or spouse of the individual and his dependents; and any such relationship created through adoption.³⁸ Again, this was the first Myanmar institution to define related party transactions. A similar definition is contained in the new SECM Instruction 3/2020 on Related Party Transactions (see below).

DIRECTIVE ON ACQUISITION OF SUBSTANTIAL INTEREST

Directive 12/2019, effective immediately, defines ‘substantial interest’ as ‘owning, directly or indirectly, 10% or more of the capital or of the voting rights of a bank or, directly or indirectly, exercising control over the management of the bank as CBM may determine’. CBM approval is needed for acquisitions of substantial interest in a bank, and banks must file an annual report on those who have a substantial interest and their shareholdings.

‘Substantial interest’ is not a concept in the Myanmar Companies Law. Thresholds for ‘substantial interest’ in company laws elsewhere vary greatly (3% in USA, 5% in Netherlands, 20% in India, 30% of voting rights in UK). The 10% threshold in CBM Directive 12/2019 is higher than the 5% beneficial ownership threshold in Myanmar EITI (see below); 5% is also the threshold used in the ACGS. It is lower than the 20% threshold used in the SECM RPT instruction.

DIRECTIVE ON CUSTOMER DUE DILIGENCE

On 15 November 2019, as an input to Myanmar’s response to the Recommendations of the Financial Action Task Force (FATF) (see below) the Bank issued a Directive 18/2019 for Customer Due Diligence (CDD) measures³⁹ as defined by Section 2(c) of the Financial Institutions Law

³⁸ This differs from the definition of family member included in the Myanmar EITI report for defining Politically Exposed Person (PEP), which extends to second degree relations i.e. an individual’s grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings, as well ‘close associates’ (professional or social).

³⁹ www.cbm.gov.mm/content/5262

and section 3(u) of the 2014 Anti-Money Laundering Law. This replaces an earlier CBM Directive 21/2015 (which required banks to determine the BO of their customers, and specifically mentioned those with >20% control of the company/customer). The Directive is effective immediately.

“Beneficial Owner” is defined as ‘the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

Banks doing CDD need to establish who has >20% control (S.26-32). They must ‘establish appropriate risk management systems to determine whether a customer or beneficial owner is a Politically Exposed Person (PEP) [or linked to one] and apply additional customer due diligence’ (S.21-23). The definition in s.3(l)/(m) of the AML for ‘PEPs or customers linked to a PEP’, including family members or close associates of such persons. S.22 on ‘Measures for determining who is a PEP (whether a customer or a beneficial owner) requires the banks to:

- Refer to commercial electronic databases of PEPs
- Take reasonable measures to determine whether the beneficiary(ies) of a life insurance policy and/or the beneficial owner of the beneficiary are PEPs.
- Seek relevant information from the customer
- Refer to information about the customer.

DICA AND THE MYANMAR COMPANIES LAW

The Directorate of Investment and Companies Administration (DICA), which houses the Myanmar Companies Registrar, transferred from the Ministry of Planning and Finance to the Ministry of Investment and Foreign Economic Relations (MIFER) in November 2018. One of its main tasks is to oversee implementation of the Companies Law which was adopted in December 2017 (MCL)⁴⁰ to replace the 1914 Burma Companies Act, and came into force in August 2018 following adoption of the Myanmar Companies Rules.⁴¹ As a consequence of the new MCL, companies have all been requested to reregister with MyCO, the online companies database, under new, more systematic rules and simpler online procedures. To date, almost 70,000 companies have reregistered, with a cleansing of the Companies Register and greater awareness of company filing obligations (see below).

An important change in the new MCL was the possibility for a ‘Myanmar company’ to have up to 35% foreign ownership, which allows Myanmar companies to access foreign capital including through YSX. A significant CG-related change is that the law now includes a comprehensive set of ‘directors’ duties’ (S.165-172) to ensure that a company is properly run and managed in the best interests of the shareholders as a whole. These duties include:

- Duty to act with care and diligence;
- Duty to act in good faith in the company’s best interest;

⁴⁰ 2017 Myanmar Companies Law (EN) and MM.

⁴¹ [Myanmar Companies Regulations 2018 and Notifications \(EN\)](http://www.dica.gov.mm/content/5262)

- Duty regarding use of position;
- Duty regarding use of information;
- Duty to comply with the new Companies Law and constitution;
- Duty to avoid reckless trading;
- Duty in relation to obligations (of a company); and
- Duty to disclose certain interests.

In some circumstances, directors may become individually liable to penalties if they breach their duties. Significant penalties for failure to comply with the Law may be imposed by DICA multiple times (on the company, on each director, on each officer involved...) through penalty notices without court intervention (S.439 CL). DICA may also seek to prosecute (S.440). In January 2020, DICA issued guidance on remuneration of Directors.⁴²

WHAT ARE PUBLIC AND PRIVATE COMPANIES?

A ‘private company’ (or Private Limited Liability Company), which is the normal form of company, and usually limited by shares⁴³, is defined in the Myanmar Companies Law S.1.xxv as ‘a company incorporated under this Law or under any repealed law which:

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

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

In the last decade, there was a trend to register as a public company in Myanmar, with several hundred being formed. This was attributed to the perception that those who registered as public companies would be prioritised in tenders by the U Thein Sein government. However, many of these companies were barely operational and had poor compliance on governance and disclosure. In Pwint Thit Sa 2019, the average score of a ‘public company’ (not including listed companies) was 4% compared to an overall average of 5%. In the 2020 assessment, the equivalent figures are 5% for public and 7% overall. The re-registration process under the new

⁴² [Guidance on the Approval Requirements for Payment of Remuneration and Other Benefits to Directors and Related Parties](#), DICA Notification 2/2020, 3 January 2020

⁴³ The MCL also contains provisions to register a Company Limited by Guarantee, an option for a not-for-profit.

MyCo registry and delisting of legacy companies may weed out dysfunctional public companies.

DICA Notification 59/2018 of July 2018⁴⁴ reminded public companies of their obligations to both DICA and the SECM concerning public offering of shares by public companies, issuance of prospectus, as well as the requirement for online filing with the Registrar of changes to the public company’s register of members in respect of the 50 members holding the largest number of shares in the company. Other statutory filings for public companies are listed below.

DISCLOSURE REQUIREMENTS IN THE COMPANIES LAW

Another significant reform related to the new Companies Law has been the establishment of online registration, online filing of company documentation, and its public availability. MyCO (www.myco.dica.gov.mm) is DICA’s online searchable database which provides free, open access to company name, company type, registration number, address and a list of company officers. Any other information filed with the Registrar DICA) is in principle available to the public upon payment of a fee to DICA (MCL S.421(e)). Initially restricted to a Company Extract (10,000 Kyats) from which could be determined shareholders, since October 2020, available information has included a Historical Company Extract (20,000 kyats – no obvious additional information), Certified Company Certificate (20,000 kyats) and Constitution (1,000 kyats per page)

The MCL and Rules require companies (except small companies – see Footnote 17 above) to report certain information annually to the Registrar. Although the Companies Law does not require the company to publish the information which it has filed, this information is in principle public. Companies filing it should therefore consider disclosing it voluntarily on their websites. Furthermore, for public companies with more than 100 shareholders, some of this information also falls under compulsory disclosure requirements under the Securities and Exchange Law (see below).

ANNUAL RETURN

All companies (MCL S.257) are required to file an Annual Return (MCL S.97) within 2 months of incorporation and once at least every year (but no later than 1 month after the anniversary of its incorporation) using the prescribed form.⁴⁵ The Annual Return requires companies to provide information on, or confirm the accuracy of existing information on:

- Names of Company, Director(s), Company Secretary (if there is one) and Address;
- Share capital details and list of (up to) top 50 shareholders including names, addresses, nationality and shareholdings;
- Date of last AGM (if applicable);
- Mortgages and charges granted by the company;
- Status as foreign or small company;
- Any Myanmar Investment Commission permits or endorsements;

⁴⁴ [Requirements for Public Companies](#), DICA Notification 59/2018 9 July 2018

⁴⁵ [Annual Return Form](#) under MCL Section 97

- Company principal activities;
- (for private companies only) certificate confirming no invitation to the public for shares or debentures.

The penalties for failing to file an annual return or doing so fraudulently are contained in MCL S.430d and include suspension of company registration and a financial penalty of 100,000 kyats, with a further 100,000 kyats for the company to be reinstated if suspended.⁴⁶

STATUTORY REPORT

S.148(a) and (b) of the Myanmar Companies Law 2017 require directors of every public company, and every company limited by guarantee and which has a share capital, to circulate a “statutory report” to every member of the company at least 21 days before the day on which the general meeting is held, which should cover inter alia total number of shares allotted, fully or partially paid up, and cash received for them; a balance sheet; names, addresses, nationalities and descriptions of the directors, auditors and secretary, if any, of the company and the changes, if any, which have occurred since the date of the incorporation. This must be certified (MCL S.148c) by not less than two directors of the company, or by the chair of the directors if authorized by the directors, or by the sole director in the case of a company with only one director. The certified statutory report must be filed (S.148e) with the Registrar using Form G-1.⁴⁷

FINANCIAL STATEMENTS AND DIRECTOR’S REPORT

Additionally, companies (other than small companies – MCL S.257c) are required to prepare audited Financial Statements and a Director’s Report (MCL S.266a) as approved by their AGM, using form G-5.⁴⁸ However, private companies are only required to prepare these documents but do not have to file them with the registrar (MCL S.266c).

The Directors’ Report is a report ‘with respect to the state of the company’s affairs’ which forms part of the Financial Statements (MCL S.261a). It must include:

- a fair review of the company’s business, including a description of the company’s primary business;
- an analysis of the company’s performance during the year;
- a description of risks and uncertainties facing the company and;
- any other matters which may be prescribed.

⁴⁶ Schedule Two of [DICA Notification 57/2018](#) on Prescribed Fees and Late Lodgement Fees under the Myanmar Companies Law, 9 July 2018

⁴⁷ [Statutory report of public company](#), Form G-1, DICA

⁴⁸ [Financial Statements of a Public Company, Form G-5](#)

INDEPENDENT NON-EXECUTIVE DIRECTORS

On 14 October 2020, DICA used its powers as provided for in MCL S.175h and S.462(a)(ii) to issue a Notification 90/2020⁴⁹ to define the ‘qualifications of independent directors’. This announced that an ‘Independent director’ means:

- a director not being employed by the said company or any of its related body corporate for the current or any of the past three financial years;
- a director who does not have a family member who is currently employed or has been employed in any of the past three financial years by the said company or any of its related body corporate;
- a director who does not directly or through any of the related body corporate own one fifth (i.e. 20%) or more of the capital or of the voting rights; and
- a director who is not an Executive Officer in other companies which have material pecuniary relationships with the company.

“*Related body corporate*” is defined in MCL S.1.c.XXXII as: (A) a holding company of the body corporate; (B) a subsidiary of the body corporate; or (C) a subsidiary of a holding company of the body corporate.

As it applies to listed and public companies with more than 100 shareholders, Notification 90/2020 may have given the impression that there would be a requirement for Independent Directors in public companies. However, the subsequent SECM Notification 2/2020 (see below) only reiterates the requirement for listed companies to have one independent NED. However, it also requires listed companies and public companies with more than 100 shareholders to disclose how many independent NEDs they have, and therefore provides a definition for them to do that.

Unfortunately, the definition of independent in DICA’s Notification is not easy to interpret. Better models exist and are used internationally.⁵⁰ It is also inconsistent with that of the Central Bank which sets, in CBM Directive 9/2019, a ceiling for independent directors’ voting shares of 5%, not 20%, as well as with their much clearer definition of Related Parties (Directive 11/2019). The maximum limit of 20% is high; the 2019 OECD Corporate Governance Factbook shows that most countries choose a threshold of between 5 and 15%.⁵¹ It may have been chosen because 20% is the definition of ‘substantial shareholder’ in other SECM Regulation (see below).

It therefore represents another confusing divergence in Myanmar’s still limited corpus of CG regulations which needs to be aligned and revised (see Section 3).

⁴⁹ Qualifications of Independent Directors, Notification 90/2020 DICA, 14 October 2020

⁵⁰ See for example [Independent Director, Indicative Definition](#), IFC Corporate Governance Methodology

⁵¹ www.oecd.org/corporate/corporate-governance-factbook.htm

SECURITIES AND EXCHANGE COMMISSION OF MYANMAR (SECM)

The SECM was established by the 2013 Securities Exchange Law,⁵² with responsibility for supervising public companies; securities companies; Over-the-Counter Market; Stock Exchange and their representatives, licence holders, auditors and agents. Supervision of public companies includes a requirement in Chapter VI of the Law to obtain approval of the SECM before public offering of its securities with a 60-day notice period; and publication of a prospectus. In 2019 the SECM published its first Annual Report (with pro bono support from Yever) covering the first years of its operation up to 2018.⁵³ This is the first report by a government body to refer to GRI Standards. It discloses financial and operational data, including its monitoring activity and human resources. The 2019 report will be published shortly.

The SECM's supervisory responsibilities are growing. Funded by the Union Budget, it is under-resourced to meet them. Currently it supervises 51 companies (6 YSX-listed companies,⁵⁴ 3 companies with SECM approval to make a public offering⁵⁵ and 42 unlisted public companies with more than 100 shareholders, including the military public company MEH).⁵⁶ It also supervises and inspects stock exchanges - currently the Yangon Stock Exchange, soon to expand its activities with a 'Pre-Listing Board (PLB)' (see below) and the six authorized Securities Companies.⁵⁷

In 2019/2020, the SECM oversaw the commencement of participation by foreigners in trading on the YSX,⁵⁸ following the adoption of the 2017 Myanmar Companies Law which allows up to 35% foreign ownership in a company considered 'Myanmar'. This will be a further driver for better disclosure and CG for public and listed companies seeking to raise capital.

CONTINUOUS DISCLOSURE

Requirements for 'continuous disclosure' are established under the Securities Exchange Rules and SECM Notification 1/2016.⁵⁹ These requirements apply to:

- Companies listed on the Yangon Stock Exchange (YSX);
- Public companies which are traded over the counter (OTC);
- Public companies which have the SECM's approval to make a public offering;
- Public companies with more than 100 shareholders.

⁵² [Securities Exchange Law](#) 20/13 of 31 July 2013

⁵³ 2018 Annual Report of the Securities and Exchange Commission of Myanmar, in [EN](#) and [MM](#)

⁵⁴ There are six companies currently listed on YSX: [First Myanmar Investment Public Co Ltd. \(FMI\)](#), [Myanmar Thilawa SEZ Holdings Public Co Ltd \(MTSH\)](#), [Myanmar Citizens Bank Ltd \(MCB\)](#), [First Private Bank Ltd. FPB](#), [TMH Telecom Public Co Ltd \(TMH\)](#) and [Ever Flow River Group Public Co Ltd.](#)

⁵⁵ Presently only three companies, Yangon Bus Public Company, Myanmar Agro Exchange Public and Amata Holding Public Co, are permitted by the SECM to sell shares on the domestic OTC market.

⁵⁶ <https://secm.gov.mm/en/public-companies/>

⁵⁷ <https://ysx-mm.com/trading/tradingparticipant/>

⁵⁸ <https://secm.gov.mm/en/foreign-investors/>

⁵⁹ [Securities Exchange Rules](#), Ministry of Finance Order 1806/2015 of 27 July 2015 currently only available in Burmese and [Announcement of Continuous Disclosure](#), SECM Notification 1/2016 of 19 February 2016

These types of companies are required to submit:

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

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

- Summary of the company's affairs including the information about the history and development of the company, its parent and subsidiary companies and related companies, its employees, etc;
- Business overview including the performance of the company's business, the activities and principal markets, the principal risks and uncertainties facing the company, material contracts, research and development, etc;
- Statement of the company's plant and equipment including the information about its investment in equipment, its main plant and equipment, etc;
- Statement of the company including the information about major shareholders, dividend policy, organizational structure, management system, etc.
- Half-yearly reports must include audited balance sheet and profit and loss, together with an interim directors' report or interim management statement providing an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the company and its controlled undertakings. They must also include a general description of the financial position and performance of the company and its controlled undertakings during the relevant period (Rule 121).

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

- change of parent company or subsidiary;
- change of major shareholders owning more than 20% of voting rights;
- occurrence of a disaster suffered by the company;
- filing or settlement of a material lawsuit claiming damages against the company;
- transfer of the company's material undertakings to another person or transfer of material undertakings from another person to the company;

- change of a managing director or manager of the company;
- resolution of the AGM/extraordinary AGM other than AGM resolutions approving financial statements;
- change of company auditor;
- filing of a petition for compulsory winding up, voluntary arrangements, etc;
- voluntary winding up or dissolution of the company;
- failure to pay or concern about failure to pay a significant amount of the company's debts;
- occurrence of a matter or an event which falls under the subsequent events under the applicable accounting principles.

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

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

CORPORATE GOVERNANCE NOTIFICATION

The SECM has also been charged with developing auditing and corporate governance standards for listed companies in line with regional and international standards. The SECM, working with DICA to ensure alignment with the Myanmar Companies Law, has issued a Notification on Requirements for Effective Corporate Governance.⁶⁰ This is intended to apply to companies under the SECM's supervision, i.e. listed and unlisted public companies with more than 100 shareholders, and those intending an Initial Public Offering. A list of these can be found on the SECM website and was used as the basis for selecting public companies for inclusion in *Pwint Thit Sa 2020*.⁶¹

This Notification, which is rules-based rather than principles based, was developed with Japanese funded OECD technical assistance. It mostly re-codifies existing legal requirements, reiterating the existing requirement for listed companies to have an Audit Committee and at least one independent director, but not extending this requirement to public companies. Both listed companies and public companies with more than 100 shareholders will be required to disclose how many independent directors they have. A definition of an independent director was adopted separately by DICA in October 2020 as Notification 90/2020 (see above).

Chapter III of Notification 2/2020 aims to protect shareholder rights by requiring the company to facilitate exercise of voting rights by all the shareholders including foreign investors, if any; and ensure that all shareholders access accurate and sufficient information in a timely manner

⁶⁰ [SECM Notification 2/2020 on Requirements for Effective Corporate Governance](#), 3 December 2020

⁶¹ <https://secm.gov.mm/en/public-companies/>

so that they can effectively exercise their rights. It also requires companies to establish and disclose a dividends policy.

The inclusion of a very short chapter on Related Party Transactions means there is overlap with SECM Instruction 3/2020 (below), issued on the same day. There is also inconsistency in the definition of 'family members' which Notification 2/2020 only identifies as a person's spouse, brother or sister, including by adoption, whereas Instruction 3/2020 includes a more extensive list which is similar to that in CBM Directive 11/2019.

RELATED PARTY TRANSACTIONS (RPTs)

IFC has assisted the SECM with the development of a SECM Instruction on Material RPTs under 71(b) of the Securities Exchange Law.⁶² The Instruction introduces stricter requirements on the approval and disclosure of significant/large RPTs in line with international best practice and aims to mitigate the risks of such transactions to shareholders and other stakeholders of listed firms and large non-listed public companies. It will apply to Listed Companies and Public Companies with >100 shareholders. It explains how material RPTs should be defined and monitored, and provides a template and guidance.

Related Parties are defined as:

- Board members of the company and related body corporate;
- Executive Officers of the company and its parent company;
- Substantial shareholders of the company and related body corporate;
- Related body corporate or any entity related through joint venture;
- Family members of any natural person listed in (i), (ii) and (iii);
- Any business, and the directors, Executive Officers of any business, in which the natural persons listed in paragraphs (i), (ii), (iii) and (v) own jointly or severally and directly or indirectly at least 20% of the voting rights;
- A person or class of persons who has been designated by SECM as a related party because of its past or present interest in or relationship with the company.

A substantial/significant shareholding is defined as 20% or more of the voting rights of the company; and family members are defined as:

- spouse, brother or sister of the person;
- brother or sister of the spouse of the person;
- any lineal ascendant and descendant of the person or his/her spouse and their dependents; and
- any such relationship created through adoption by law.

⁶² [Instruction on Material Related Party Transactions for Listed Companies and Public Companies with More than One Hundred Shareholders](#) SECM Instruction 3/2020, 3 December 2020

ANTI-MONEY-LAUNDERING (AML), BENEFICIAL OWNERSHIP (BO) AND POLITICALLY EXPOSED PERSONS (PEPs)

Beneficial ownership (BO), and the associated question of ‘politically exposed persons’ (PEPs) are issues rising up the international and Myanmar agenda in the context of anti-money-laundering (AML), customer due diligence (CDD) and transparency, and the Extractives Industries Transparency Initiative (EITI).

In late 2018, the Asia/Pacific Group on Money Laundering (APG) published a Mutual Evaluation Report on Myanmar⁶³ which looked at measures which were in place end 2017. It analyses the level of compliance with the 40 Recommendations of the Financial Action Task Force (FATF) and the level of effectiveness of Myanmar’s AML/CFT system, and recommends how the system could be strengthened.

This detailed report noted that:

“Financial Institutions and Designated Non-Financial Businesses and Professions (DNFBPs)⁶⁴ lack understanding of high-risk issues, and few banks have moved to a risk-based approach. Most DNFBPs do not have a basic understanding of AML/CFT obligations and have not begun to implement any AML/CFT controls. Only banks are reporting Suspicious Transaction Reports (STRs), and the STRs that are filed are generally of low quality. The scope and implementation of fit and proper checks on FIs require further improvement. For DNFBPs, measures to prevent criminals from controlling or owning the institutions require fundamental improvements, taking into account the risk and context.

Despite the very significant risks, there has been no supervision of DNFBPs. There are serious capability concerns for the bodies designated to be AML/CFT supervisors for most DNFBPs.

CBM has demonstrated significant progress towards risk-based supervision and has increased its capacity and the scope of supervision of banks. The current enforcement approach by CBM on banking institutions is ineffective, due to repetitive compliance issues and the absence of a structured enforcement framework”.

Although the government committed to an Action Plan to address the many weaknesses identified in the evaluation, particularly concerning implementation, Myanmar was placed on the ‘grey list’ as a ‘Jurisdiction under increased monitoring’ on 21 February 2020 which means it has committed to resolve swiftly the identified strategic deficiencies in anti-money laundering regimes within agreed timeframes and is subject to increased monitoring.

FATF does not call for the application of enhanced due diligence to be applied to ‘grey-list’ jurisdictions, but encourages its members to take into account the information presented in their risk analysis. The APG’s first follow-up report of August 2019 re-rated Myanmar on Recommendations 1 (National Risk Assessment) and 19 (enhanced due diligence).⁶⁵ The APG’s

63 [Anti-money laundering and counter-terrorism financing \(AML/CFT\) measures: Myanmar](#), APG, FATF-GAVI, September 2018

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

65 [1st Follow-Up Report](#), Asia/Pacific Group on Money Laundering (APG), August 2019

BENEFICIAL OWNERSHIP IN MYANMAR LAW

2nd Enhanced Expedited Follow-Up Report of August 2020⁶⁶ re-rated five of the seven measures which Myanmar requested be re-assessed based on the new regulatory measures related to BO and CDD which Myanmar took in November 2019 described below.

The 2014 Money Laundering Law Article 3(j) defines Beneficial Owner as ‘a person who principally owns or controls a customer or delegates to conduct transaction with other person on his behalf. In this expression, a person who exercises effective control over any company or arrangement’.

The Law does not set a percentage. However, Rule 42 of the 2015 AML Rules says that ‘The reporting organizations shall take adequate action in order to understand the ownership and control structure of the following customer who are entitled to manage transfer of money and properties on behalf of other company, organization or other legal person: (a) with respect to legal entities, in identifying on each of the following natural person that: (i) owns or controls directly or indirectly more than 25 percent of the ownership of the legal entity; (ii) is responsible for the management of the company’.

The 2014 Money Laundering Law defines PEPs as:

3(l) Domestic and foreign politically exposed person means a person who is prominent or has been entrusted with public functions within the country or in any foreign country and family members or close associates of such persons.

3(m) International politically exposed person means a director, a deputy director, a member of the board of directors and a senior member of an international organization, a member who has the similar position or a person who has been entrusted with such function and family members or close associates of such persons.

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

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

DICA does, however, require information about the ‘Ultimate Holding Company’ at the time of registration and in the Annual Return and this information is available on the register (behind the paywall).

66 [2nd Enhanced Expedited Follow-Up Report](#), Asia/Pacific Group on Money Laundering (APG), August 2020

According to Requirement 2.5 of the 2019 EITI Standard⁶⁷ by 1 January 2020, EITI implementing countries including Myanmar had to ensure that all oil, gas and mining companies that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract in the country disclose the identity(ies) of their beneficial owner(s) (BO), the level of ownership and details about how ownership or control is exerted.

Information about the identity of the beneficial owner should include the name of the beneficial owner, their nationality, and their country of residence, as well as identifying any politically exposed persons. It is also recommended that their national identity number, date of birth, residential or service address, and means of contact are disclosed.

In addition, any politically exposed persons (PEP) holding ownership rights must be identified. This information must be publicly available (published in EITI Reports and/or public registries) and updated regularly. EITI recommends that implementing countries maintain a publicly available register of the beneficial owners of extractives companies and where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing. Where this information is already publicly available, the EITI Report should include guidance on how to access this information.

The EITI Standard (2.5f) defines a “beneficial owner in respect of a company” as “the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity” but leaves it to national multistakeholder group (MSG) to agree an appropriate definition of the term beneficial owner aligned with this which takes international norms and relevant national laws into account, and should include ownership threshold(s). The MSG has adopted definitions for Beneficial Owner⁶⁸ (Box 4) and for Politically Exposed Person (PEP)⁶⁹ (Box 5).

A 14-member BO task force was formed on 30 June 2018 through Ministry of Planning and Finance Order No. 60/ 2018⁷⁰ by the chaired by U Soe Win, MEITI National Coordinator,⁷¹ and comprising officials from Department of Mines, Myanmar Oil and Gas Enterprise, DICA, the Attorney General Office (AGO), the Office of Auditor General (OAG), the Central Bank of Myanmar, the Anticorruption Commission and the Financial Information Unit, as well as two private sector representatives and two CSO representatives. The ToRs of the taskforce include preparing and implementing a Work Plan, and addressing the need to align the legal framework and BO and PEP definitions and embed legal requirements for BO disclosure.

67 [Extractives Industries Transparency Initiative \(EITI\) 2019 Standard](#)

68 Myanmar EITI Definition of Beneficial Ownership in [EN](#)

69 Myanmar EITI Definition of PEP in [EN](#) and [MM](#)

70 https://myanmareiti.org/sites/myanmareiti.org/files/bo_notification_30_june_2018.pdf

71 Since mid-2020, the EITI National Coordinator role has been held by U Aye Lwin.

BOX 4:

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

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

1. The individual holds, directly or indirectly, 5% and above of the shares within reporting period in the public or private company or corporate entity.
2. The individual holds, directly or indirectly, 5% and above of the voting rights in the public or private company or corporate entity.
3. The individual holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the public or private company or corporate entity.
4. The individual has the right to exercise, or actually exercises, significant influence or control over the public or private company or corporate entity. (Reference to “ultimately owns or controls” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control. This definition should also apply to a beneficiary under a life or other investment.”)
5. For shareholding entities:
 - i. which are state-owned enterprises or their subsidiaries, disclose the parent ministry and country.
 - ii. which are publicly listed, disclose the name of the stock exchange and a web link to stock exchange filings.

BOX 5:

Definition of Politically Exposed Person agreed by the EITI Multistakeholder Group

As agreed, upon by the Myanmar Beneficial Ownership Taskforce and the Myanmar-EITI Multi Stakeholder Group: Definition, Politically Exposed Persons (PEPs) within the Myanmar EITI framework are defined as individuals who are or were entrusted with prominent public functions, either domestically or internationally. The coverage also includes: 1. family members defined as individuals related to a PEP, by common ancestry, through marriage or similar forms of partnership; and 2. close associates defined as those who are closely connected to a PEP in their public roles, either socially or professionally.

PEP Category	Ranks Covered
Heads & Deputy Heads of Union Government	President; Vice Presidents; State Counsellor
Union Government Ministers	Union Ministers; Deputy Ministers
Heads & Deputies of Region and State Governments	Chief Ministers; Head of special regions (Nay Pyi Taw Union Territory, Self-Administered Zones)
Region and State Government Ministers	Regional and State Government ministers
Members of Union Legislatures	Members, Pyithu Hluttaw (Lower House); Members, Amyotha Hluttaw (Upper House)
Members of Region and State Legislatures	Members, Region and State Hluttaws
Senior Civil Servants of Union Government (e.g. Departments, SOEs, Union Attorney General Office, Union Auditor General Office, Central Bank of Myanmar, Administrative Organisations and Monetary Management Organisation, etc.)	All senior positions equivalent to Director level and above
Senior Civil Servants of Region and State Governments	All senior positions equivalent to Director level and above
Senior Members of the Armed Forces	All senior positions equivalent to the rank of Lt. Colonel and above
Senior Members of the Police Services	All senior positions equivalent to the rank of Lt. Colonel and above

Senior Members of the Secret Services	All senior positions equivalent to the rank of Lt. Colonel and above
Senior Members of the Judiciary	Union Attorney General; Chief Justice of the Supreme Court of the Union; Judges of the Supreme Court of the Union; Attorney Generals of all Regions and States; Chief Justices of the High Court of the Regions and States; Judges of the High Court of the Regions and States; Judges of the Constitutional Tribunal; Judges of High Court; District Judges
City Mayors	Mayors and deputy mayors of all cities; Yangon City Development Committee members; Mandalay City Development Committee members; Nay Pyi Taw Council Chairman, Vice Chairman and Committee members
Embassy & Consular Staff	Ambassadors; Deputy Ambassadors or Chargé d'affaires; Attachés
Religious leaders	Leaders of all major religious organisations
Political parties' leaders	Central Executive Committee members
International Organisation Officials	Heads and deputies of international organisations, including sport organisations
Political Pressure and Labour Group Officials (e.g. unions, etc.)	Central Executive Committee members of these groups
National NGO officials	Central Executive Committee members
Ethnic Armed Group Leaders (signatories, non-signatories, militia)	Central Executive Committee members; All senior positions equivalent to the rank of Lt. Colonel and above
Foreign PEPs	Individuals who hold equivalent positions in their countries to PEPs in Myanmar as defined here
Relatives	Immediate family members (parents, children, siblings, grandparents, grandchildren, spouse, in-laws, etc)
Close associates	Personal assistants/ secretaries to the PEPs listed above, etc
Key influencers	Individuals who can influence politically, economically and socially

In December 2019, the MEITI Beneficial Ownership online database was launched by DICA. This currently lists BO data for 124 extractives companies.⁷² Although the BO online database is a very positive development, it is not complete or fully accurate and there is still much to do, including aligning work on BO thresholds and disclosure across government (see Recommendations).⁷³

Table 2 describes relevant criteria in *Pwint Thit Sa* concerning beneficial ownership, and the number of companies disclosing data. Sources for this data were taken both from company websites and the MyCo/MEITI BO database of 124 extractives companies - most of which are not assessed in *Pwint Thit Sa* - unless this information was obviously incorrect as in the case of the military-owned Myanmar Economic Holdings Public Co Ltd (see below).

TABLE 2 - BENEFICIAL OWNERSHIP IN PWINT THIT SA 2020		
Pwint Thit Sa Criterion		Number of Companies
6	Does the company disclose details of the parent/holding company, subsidiaries, associates, joint ventures and special purpose enterprises/ vehicles (SPEs)/ (SPVs)? (D1.5)	75
7	Does the information on shareholdings reveal the identity of beneficial owners, holding 5% shareholding or more? (D1.1)	28
8	Does the company disclose the direct and indirect (deemed) shareholdings of major and/or substantial shareholders? (D.1.2)	28
10	Does the company disclose the direct and indirect (deemed) shareholdings of senior management? (D1.4)	26

RECENT DEVELOPMENTS CONCERNING BENEFICIAL OWNERSHIP AND CUSTOMER DUE DILIGENCE

In mid-November 2019, new government directives were introduced that addressed BO and PEPs.

The Presidential Anti-Money Laundering Order 45/2019 Order of 14 November 2019 uses the BO definition in the AML Law. It covers banks, non-bank and financial institutions, mobile financial service providers, microfinance institutions, insurance businesses and securities companies. The UAGO advised that it is an enforceable means which is legally binding and subject to the sanctions regime outlined in the AML Law. The Order, and the Directives issued by various institutions including the Central Bank (Directive 18/2019 on Customer Due Diligence – see above), DICA and the SECM (see below) were assessed by the APG's August 2020 report. This examined several of the technical weaknesses previously identified concerning CDD, anonymous accounts, identifying BOs, tipping off etc.

⁷² bo.dica.gov.mm

⁷³ [Out of the Shadows](#), Global Witness Briefing 22 July 2020

SECM Instruction 1/2019, issued under S.69(c) of the Anti-Money Laundering Law and S.71(b) of the Securities Exchange Law⁷⁴ replaced their Instruction 3/2016 and requires enhanced due diligence and reporting by securities companies, stock exchange and Over-the-counter Market.

DICA Directive 17/2019 of 15 November introduced a requirement for companies to report their beneficial ownership, but did not give details of how these reports should be made. This has led to uncertainty in the business and legal community about how to comply with Directive 17/2019. In December 2019 DICA requested suggestions on disclosure of company ownership information. MCRB provided extensive comments and recommendations, drawing attention to inconsistencies between DICA Directive 17/2019 and the approach of the SECM and CBM.⁷⁵ In particular, ownership thresholds for BO differ across government. The Anti-Money Laundering Rules, the reference point for the SECM, sets this at 25% which is the international norm. However, the CBM uses 20% and DICA's Directive 17/2019, which applies to all companies, adopted the very low 5% threshold used in MEITI. While a lower threshold for extractives may be designated by the MEITI MSG, there is no logical reason for this to apply to all companies.

MYANMAR INVESTMENT COMMISSION

The 2016 Myanmar Investment Law (MIL)⁷⁶ created a single law for both foreign and domestic/Myanmar citizen investors which replaced the previous 2012 Foreign Investment Law and the 2013 Myanmar Citizens Investment Law. In March 2017, the Myanmar Investment Rules (MIR) were adopted.⁷⁷ The new Law and Rules introduce a number of changes to the previous 2012 Foreign Investment Law including:

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

In December 2016 the government adopted an Investment Policy under the MIL. This highlights that Myanmar welcomes '*responsible and mutually beneficial foreign investments*', and promises that these will be facilitated '*through transparent, clear and expeditious procedures*'. Point 5 of the Investment Policy notes that '*Local and foreign investors shall comply with*

⁷⁴ [Directive for the Enhanced Customer Due Diligence Measures of Anti-Money Laundering and Combating Financing to Terrorism in Securities Industry](#), Instruction 1/2019, SECM 18 November 2019

⁷⁵ [MCRB Provides Comments to DICA Consultation on the Disclosure of Company Information](#), MCRB 31 January 2020

⁷⁶ [Myanmar Investment Law, 40/2016](#)

⁷⁷ [Myanmar Investment Rules](#), Ministry of Planning and Finance, Notification 35/2017

the principles for responsible investment and business conduct, including environmental and natural resources matters on an equal basis and in a non-discriminatory manner at all times’.

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

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

An improvement took place in 2020 when these documents were uploaded onto the Myanmar Investment Directory (MyINDY) and were made searchable by company name, sector, state/region, and type of Permit.⁷⁸ Government institutions are also searchable. However, the poor quality and unsearchable historical information submitted by companies limits the usefulness of this. Further improvements in disclosure are expected with the imminent introduction of online submission of investment applications.

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

- (a) investment trends;
- (b) the principal activities of the Commission, including a summary of the activities of the Investment Monitoring Division, Investor Assistance Committee and One Stop Services;
- (c) a summary of Investor grievances; and
- (d) a list of all administrative penalties issued to Investors.

Only a two-page summary of the 2018-2019 report is currently available on DICA's website.

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

1. the management of the investment – progress, material changes, compliance with the law, and any instances of non-compliance, audited accounts;
2. tax incentives and investment zone exemptions (where relevant);
3. how the investment is meeting broader sustainability requirements, including information about: employment performance;

⁷⁸ www.dica.gov.mm/en/myindy/

4. impact of the investment on the environment and local communities;
5. land use; and
6. how the investment is demonstrating that it is meeting the objectives of MIL S.3 i.e. how is it being implemented responsibly and sustainably, meeting international standards, not causing harm to society and the environment and benefiting the country and its citizens.

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

In practice these Annual Performance Reports are not being submitted or published, even though DICA reminded investors on 12 June 2018 to submit them.⁷⁹ DICA needs to clarify the report format as their reminder referred to a Form 11,⁸⁰ but this does not cover the issues required for reporting under Rule 196. While further guidance is required from DICA on these reports, companies should nonetheless be submitting them and disclosing annual reports on their company websites, including to support their wider stakeholder communication.

Despite these gaps, DICA, through the MyCO companies registry, MEITI BO database, and MyINDY, as well as extensive material online about procedures and fees, has the most extensive and user-friendly website of all Myanmar authorities involved in business regulation.

ENVIRONMENTAL IMPACT ASSESSMENT
— On 29 December 2015, the government published an Environmental Impact Assessment (EIA) Procedure requiring timely public consultation and publication of Initial Environmental Examination/Environmental Impact Assessments (which include social impacts). Full public disclosure requirements throughout the IEE/EIA process are detailed in draft Guidelines on Public Participation in Myanmar's EIA Processes, which unfortunately have remained in draft for over three years.⁸¹ Additions to Annex 1 of the EIA procedure were issued in December 2019.⁸²

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

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

⁷⁹ [Notice regarding Annual Performance Report](#), DICA 12 June 2018

⁸⁰ [Annual Performance Report \(Form 11\) DICA](#)

⁸¹ [Draft Guidelines on Public Participation in Myanmar's EIA Processes](#), 31 May 2017

⁸² MONREC Letter Number 264/2019, Construction and Telecommunication Development Activities, 20 December 2019, on file with MCRB

The EIA Procedure also requires ECD to make the IEE/EIA report publicly available online upon receipt, and to disclose its decision (approval with an Environmental Compliance Certificate (ECC) or rejection (EIA Procedure, Art. 41, Art. 70, Art. 80) and any modification (EIA Procedure, Art. 75). Although there is no explicit requirement in the EIAP for the company to publish its ECC, the EIA Procedure Annexes provide for this and these should allow the public to know what requirements are included in the permit. Six monthly monitoring reports by the company are also meant to be published within ten days of completion on the Project website and in public places. These should inter alia document the handling of complaints received by the project's 'operational grievance mechanism' which is now a standard requirement in ECCs.

Few EIAs have been published. Furthermore, the integrity of the EIA process is being damaged by a lack of transparency in administrative handling, including the absence of an online database to enable stakeholders to see which investments are undertaking IEE/EIA, and to track progress, and access disclosed reports. Development partners are working with ECD to try to remedy these issues.

Another problem is that as with audits, companies are unwilling to pay for the cost of a quality EIA. Most of those submitted lack sufficient baseline data, risk analysis and mitigation measures, and are conducted with minimal public consultation.

PART 3: EMERGING ISSUES FOR CORPORATE GOVERNANCE IN MYANMAR

BUSINESS AND HUMAN RIGHTS

Since the 2019 *Pwint Thit Sa* report, several reports and campaigns – mostly related to the human rights situation in Rakhine State - have demonstrated the critical importance of due diligence, corporate governance, transparency and accountability for businesses seeking to operate responsibly, and the need for ongoing legal and policy reforms. This is not new. Foreign investors have always had to navigate Myanmar's human rights and business integrity risks with care.⁸³ For several decades, investors in Myanmar been the subject of more activist attention than other countries with comparable governance and human rights records, underlining the importance of companies being able to 'know and show' that they understand and are managing human rights risks, i.e. undertake due diligence, act on it and disclose it.

The Rohingya crisis reawakened the debate about whether companies who want to do business responsibly should enter or stay in the Myanmar market. This takes place against an emerging trend in Europe to adopt laws mandating companies to undertake human rights due diligence on their global investments and their supply chain, and to report on measures taken, including on specific risks such as human slavery, and child labour.⁸⁴ This may lead companies to consolidate their businesses and supply chain in countries which they consider to be lower risk. It underlines the need for the Myanmar government to pursue reforms to protect human rights, and therefore facilitate an environment in which business can respect human rights. Otherwise, there is a risk that Myanmar will miss out on investments from investors who seek to operate to international ESG standards and are willing to actively engage in reforms that facilitate responsible business.

The spotlight in recent years has primarily been on the risk of having military-owned companies (see below) as business partners or suppliers.⁸⁵ However, not least a result of a number of Myanmar companies making donations which were solicited by the military at the time of the Rohingya crisis,⁸⁶ partnerships have also been put under scrutiny with these donor companies, sometimes referred to as 'Annex IV companies' as they are included in Annex IV of the 2019 report of the Independent International Fact-Finding Mission on Myanmar (see below).

An earlier 2018 Independent Fact-Finding Mission on Myanmar (IFFMM) report recommended that:

"1717. No business enterprise active in Myanmar or trading with or investing in businesses in Myanmar should enter into an economic or financial relationship with the security forces of Myanmar, in particular the Tatmadaw, or any enterprise owned or controlled by them or their individual members,

83 See for example the [Worldwide Governance Indicators \(WGI\)](#), produced by the World Bank, Natural Resources Governance Institute (NRGI) and Brookings; and [World Justice Project's Rule of Law Index](#)

84 Developments on mandatory due diligence are available on the [Business and Human Rights Resource Centre website](#). A proposal to introduce this, together with legal liability, was narrowly rejected in a Swiss referendum, in favour of mandatory reporting requirements [Switzerland votes against boosting business liability for rights abuses abroad](#), CNN 29 November 2020

85 Burma Campaign UK issued a [Boycott List](#) of MEH and MEC subsidiaries on 14 January 2020 to aid due diligence, updated [November 2020](#)

86 These business integrity risks were covered in [Pwint Thit Sa 2018 report page 36](#) and [Pwint Thit Sa 2019 report page 51](#) (page references are the EN versions)

until and unless they are restructured and transformed as recommended by the Mission".⁸⁷

The mission's 2018 recommendations for security sector reform included:

"1690. The Government of Myanmar, including the civilian authorities and the Tatmadaw as relevant, should immediately undertake significant security sector reform. It should:

(f).... require parliamentary approval of all funding for the Tatmadaw and prohibit any income for the Tatmadaw that is not under parliamentary control; consequently, remove the Tatmadaw from Myanmar's economic life, prohibiting it by law from engaging in any form of economic activity and prohibiting serving Tatmadaw officers from having a controlling interest in any economic ventures".⁸⁸

Since then, international investors and other organisations have been reviewing and deepening due diligence on all Myanmar business partners to look for evidence of military connections. They are also setting out their expectations of demonstrable improvements in corporate governance practices including of their philanthropy. For Myanmar companies who hope to access international funding and partnerships, this has increased the incentive to improve their corporate governance and disclosure.⁸⁹

Liberalization since 2011 means that it is possible to avoid military-owned companies in most sectors of the economy where they are active, such as banks, cement and telecommunications. However, the port sector is a problematic bottleneck. Most port options available fail due diligence by responsible international investors, either due to MEC/MEH ownership, acquired in 2010/11 as part of the pre-transition sell-off of government assets, or because there are other business integrity issues relating to non-military Myanmar companies operating them.⁹⁰

Further restructuring, modernisation and reform of corporate and individual military involvement in the economy is therefore necessary – ideally with the active engagement of the military - as highlighted by the 2018 FFM report in recommendation 1690(f). Development partners should continue to support the newly re-elected government in its economic and governance reforms, including action to ensure full application of relevant Myanmar laws to the military-owned companies. The government should accelerate and deepen

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

88 Para 1690 a) to e) make recommendations on the 25% of parliamentary seats reserved for serving military, military involvement in vice-Presidential and some ministerial appointments, civilian oversight of the Tatmadaw, and the composition of the National Defence and Security Council, all of which would require Constitutional reform for which the 2015 NLD government failed to achieve the necessary Parliamentary majority in 2020.

89 We identified 11 companies disclosing a specific policy on their charitable/ philanthropic activities and 18 which disclosed the amount donated.

90 [British company runs port that earns Myanmar military \\$3million a year](#), Myanmar Now, 14 February 2020

ongoing reform of public procurement⁹¹ (see below) and licensing processes, particularly in the minerals and gemstones sector, to increase transparency, a level playing field and better compliance and ESG performance.

Other areas which will contribute to reform of military economic interests are implementation of asset disclosure requirements under the Anti-Corruption Law, and beneficial ownership and PEP disclosure to identify companies which are owned by the families of senior military (see below). This process should also facilitate the ability to address conflicts of interest.⁹² Myanmar Now reported on MEH Directors simultaneously holding official positions as Director General Customs and Managing Director of Myanmar Ports Authority. This prompted a government review which resulted in a change in MEH Board composition in July 2020 (see Box 3).

2019 REPORT OF THE INDEPENDENT FACT-FINDING MISSION

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In August 2019, the UN's IIFFMM, which was set up to examine the human rights situation in Rakhine, Kachin and Shan States, published a report on 'The Economic Interests of Myanmar's Military'.⁹³ The 2019 report documented the nature of the military's main companies Myanma Economic Holdings (MEH) and Myanma Economic Corporation (MEC) and sought to identify subsidiaries and 'alleged affiliates'. It also documented the donations made by private companies or their foundations to the military and the civilian government in the aftermath of mass human rights abuses in Northern Rakhine State in August/September 2017. The report additionally touched on the complicity risk for companies undertaking construction on behalf of the Union Enterprise for Humanitarian Assistance, Resettlement and Development (UEHRD), an organisation established by the NLD civilian government. Reflecting the lack of online and English language information, the report did not address more obvious complicity of the Rakhine-based construction companies who won state government tenders in late 2017 to bulldoze and flatten ground previously occupied by Rohingya villages.⁹⁴

Within the UN system, the 2019 report is considered ground-breaking in its focus on business involvement in, and funding for human rights abuses.⁹⁵ In Myanmar, the report also had a big impact. It prompted debate by international companies and development partners about whether a company making donations to the military, including for building a border fence, or even to the civilian government's UEHRD was complicit in human rights abuses. It opened up space for discussions on these sensitive issues between the Myanmar companies and international partners. As a consequence of the report, some international companies and organisations reviewed and even

91 A draft Public Procurement Law was presented to Parliament and debated briefly in 2020 but was returned to MoPFI for further consideration and will be taken in the new Parliament.

92 [Preventing and Managing Conflicts of Interest in the Public Sector: Good Practices Guide](#), prepared at the request of the G20 Anti-Corruption Working Group by the World Bank, UNODC, OECD, July 2020

93 The Economic Interests of the Myanmar Military, Rev 3 Sept 2019, UN Independent Fact-Finding Mission on Myanmar

94 On 8 April 2020, the Myanmar President's Office belatedly issued Directive 2/2020 on Preservation of Evidence and Property in areas of northern Rakhine State

95 MCRB discussion with OHCHR, November 2020

terminated partnerships with ‘Annex IV’ companies⁹⁶ as well as MEC/MEH subsidiaries.⁹⁷

The report served as further encouragement, and in some cases a wake-up call, to Myanmar companies which were labelled as ‘cronies’, to improve disclosure and transparency. It also reinforced the recommendation to companies in previous *Pwint Thit Sa* reports to strengthen the governance and oversight of their corporate philanthropy and ‘Foundations’. In October 2019 MCRB held a workshop on Governance of Corporate Philanthropy attended by a number of companies mentioned in the report.⁹⁸ Furthermore, in this year’s report, a new criterion (75) has been added on whether or not a company has a donations/philanthropy policy.

Several Myanmar companies mentioned in the 2019 IFFMM report made contact with MCRB for the first time. MCRB used the opportunity to explain the UN Guiding Principles on Business and Human Rights, human rights due diligence, and complicity risk. MCRB referred to the *Pwint Thit Sa* framework as a guideline for how to improve their governance and disclosure. While many companies mentioned in Annex IV of the report as having donated to the military were already large enough to be covered in *Pwint Thit Sa*, those who were not were invited to volunteer to participate in *Pwint Thit Sa* 2020. Authentic – who were incentivized to improve their controls and disclosure due to their involvement with a project financed by the Netherlands government - took up this offer and rank 23rd in 2020.

However, the Fact-Finding Mission was under-resourced, which resulted in weaknesses. Its findings gave an important but partial account, not least as it was prevented from having access to Myanmar. It relied heavily on online English language sources, some of which were two decades old. Some were not to be relied on even at the time, given the difficulties of obtaining information about business during military rule. Consequently, the report was criticised for using out-of-date or inaccurate online information to frame its narrative of the Myanmar economy and specific companies. Some companies received a gratuitous mention in the report despite not having made Rakhine related donations, or being involved in military business partnerships, at least since the 2011 transition to civilian rule. The methodology of identifying some businesses as ‘Alleged affiliates’ of MEC and MEHL based on them sharing a director led to some misleading conclusions, although it highlighted the value of opencorporates.com and MyCo for investigative reporting. Myanmar companies were not given any opportunity before publication to make corrections or clarifications, or to provide the context for why they had responded to the call for donations, and in what terms that call had been made. Some subsequently issued public statements, responded to partners making enquiries, or sent letters to the FFM (some of which are available online).

96 These companies were listed in Annex IV of the report

97 Listed in Annex IIb

98 www.myanmar-responsiblebusiness.org/news/governance-of-corporate-philanthropy.html

MILITARY-OWNED COMPANIES

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The IFFMM report also focused the attention of investor and development partners on Myanmar’s two military-owned conglomerates, Myanmar Economic Corporation (MEC), and Myanmar Economic Holdings Public Company Limited (MEH), although it should be noted that business integrity risks are not unique to these two companies, particularly in areas affected by conflict. MEH was previously known as Union of Myanmar Economic Holdings Limited or UMEHL, and is still referred to as ‘oo-bine’, meaning ‘holdings’. These two entities differ in nature: one - MEC - is an SEE, albeit owned by the military, and with subsidiaries incorporated as private companies, while the other – MEH – is an unlisted public company which is a holding company for a number of subsidiaries some of which have joint ventures. Both entities operate in sectors such as banking, retail, mining and gemstones. They also have subsidiaries registered as ‘private companies limited by shares’. MEH subsidiaries include Myawaddy Bank, Myawaddy Trading, and Myanmar Imperial Jade. Except for Myanmar Imperial Jade, the others were included in this report since they are significant taxpayers or operating in the financial sector. They are identified as ‘Private’. Private company subsidiaries of MEC include Innwa Bank and Star High Co Ltd, a shareholder in MyTel, the 4th telecoms operator which is a JV with Viettel.

MYANMAR ECONOMIC HOLDINGS PUBLIC COMPANY LTD.

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MEH (formerly UMEHL which was created in 1990), is a public company. As of November 2020, it has 7 Directors, and one Alternate Director, all active/retired military personnel. According to the MyCo companies register, it has no Ultimate Holding Company. The holders of its 317,094,854 shares (each of 1,000 MMK) are determined by its constitution to be current and former military personnel.⁹⁹ In *Pwint Thit Sa* 2020, MEH has therefore been classed as a **Public** company with more than 100 shareholders and therefore falls under the supervision of the SECM.

MEH’s earliest (rather than largest) 50 shareholdings were published on the first version of the DICA MEITI beneficial ownership database.¹⁰⁰ This reveals that around 1/3 of shareholdings were held by organisations such as battalions and their welfare funds, and the other 2/3 were held by individuals.

MCRB requested and obtained a hard copy of MEH’s 2018/19 accounts and May 2020 Constitution from MyCo, at a cost of 2,000 kyats per page (162,000 kyats). Both documents should be available on request under S.421(e), having been submitted to the Registrar.

MEH’s Constitution says that the company’s objectives are:

- i) For the welfare of soldiers, their spouses and children.
- ii) For the welfare of military veterans, their spouses and children.
- iii) To support public welfare
- iv) To support the economic development of the country.

MEH’s Constitution (Art 5 and Art 111) show there is a body - the Patrons Group or Guiding Board - which oversees the Board, headed by

99 In October 2019, MEH had only 280,987,825 shares issued.

100 In the upgrade of the database, this document appears to have disappeared.

Commander-in-Chief Senior General Min Aung Hlaing, which therefore constitutes direct or indirect control by the Tatmadaw. Since both Min Aung Hlaing and his deputy Vice Senior-General Soe Win are subject to US and UK sanctions, this creates legal as well as reputational issues for companies doing business with them.¹⁰¹

MCRB/Yever met 15 members of MEH management in August 2020 to discuss its draft Pwint Thit Sa score and disclosure. Discussion focused on MEHL's legal obligations as a public company with more than 100 shareholders under SECM Directive 1/2016 on Continuous Disclosure; why MEHL was not disclosing its largest shareholders; and inconsistencies in the MEITI BO disclosure. Three MEH Board Members are wrongly identified as being the three beneficial owners of a company with 33% each, despite it having many thousands of shareholders. Furthermore, despite these individuals being Maj-Gen, Lt-Gen and Brig-Gen, none are identified as PEPs. MEHL also explained the use of dividends by 'institutional' shareholders such as battalions, insisting that these were spent on welfare and not military purposes, and confirmed that the company aims to pay a 30% dividend.

The 2018/2019 MEH Financial Statement, although lacking Notes, appears to show income from operating activities and other income totalling approximately USD 110M at the current exchange rate. Retained earnings are USD 40M, and the company proposed to pay approximately MMK 71.6 billion (around \$55 million)¹⁰² in dividends in 2018/2019. The 2018/2019 dividend was equivalent to approximately 28%, as it was in 2017/18¹⁰³ when the dividend was MMK 56.8 billion or \$44 million.

Article 176 of the company Constitution requires dividends only to be paid out of profit of the year or any other undistributed profit. Currently, the majority of MEH's profit is sourced from its JV Myanmar Brewery, in which it holds 49% of the shares and Kirin holds 51%. In November 2020, Kirin announced that dividend payments from Myanmar Brewery and Mandalay Brewery would be suspended 'in view of a significant lack of visibility regarding the future business environment for our Myanmar joint-ventures, including the ongoing assessment into the destination of proceeds from MBL and MDL and the spread of COVID-19 in Myanmar'.¹⁰⁴

In *Pwint Thit Sa 2020*, MEH scores 3% an improvement on 0% in *Pwint Thit Sa 2019*, when they had no functioning website.

101 [Shipping giant Maersk to stop using Military Ports in Burma](#), Burma Campaign UK, 8 October 2020; [Progress report regarding Kirin's operations in Myanmar](#), 6 June 2020, Kirin

102 This dollar amount is significantly less than the value of dividends mentioned in Amnesty International's September 2020 report [Military Ltd: the company financing human rights abuses in Myanmar](#). Amnesty use the official exchange rate of 6.5 MMK to the dollar rather than the real exchange rate of around 900 in 2010/11. This overstates by around 140 times the USD value of the 2010/11 dividends whose details they obtained from a *Report on the Status of Share and Dividends of Directorate Offices, and the Military Units under respective Regional Military Commands for the fiscal year 2010-2011*. There is no reason to believe that any recipient of MEH's dividends in MMK in 2011 would have access to the 6.5 rate, which was abandoned in April 2012.

103 As the shares are not traded, this is calculated as dividend/paid up capital.

104 www.kirinholdings.co.jp/english/news/2020/1111_02.html

MYANMAR ECONOMIC CORPORATION

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MEC is a military owned enterprise controlled by the Tatmadaw (army) established in 1997 and not under civilian control, or subject to the Auditor-General oversight. It has – confusingly – also registered a subsidiary company, Myanmar Economic Corporation Ltd as a private company limited by shares for which the only shareholder is MEC, the military-owned enterprise identified as the Ultimate Owner on the MyCo registry. MEC has 16 Directors, who although mostly ex-military, are registered without military titles. It is involved in a variety of sectors and claims to be now taking a commercial/private sector approach.¹⁰⁵ However, in view of its control and ownership, in *Pwint Thit Sa*, MEC is included in the list of SEEs. In *Pwint Thit Sa 2020*, MEC scores 2%, as in 2019.

DEVELOPMENTS IN COMBATting CORRUPTION

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Addressing bribery and corruption is a priority of the NLD government and they have achieved some success in their first term. The 2018 Myanmar Sustainable Development Plan prioritises combatting corruption in public sector, and tax reform, in support of SDG16.5 ("substantially reduce corruption and bribery in all its forms") with two Action Points:

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

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

In August 2019, the Hluttaw approved Myanmar's accession to the International Anti-Corruption Academy, a Vienna-based international organisation.¹⁰⁶

ANTI-CORRUPTION COMMISSION, AND THE ANTI-CORRUPTION LAW

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

The Law has undergone four amendments since 2013, most recently in June 2018 when, for the first time, private sector responsibility was mentioned, and a new power (Article 16p) given to the Commission to instruct private sector companies to establish effective codes of conduct to prevent corruption. Updated Regulations to implement the 4th amendment have not been issued, but in October 2018 the ACC issued eight principles

105 Communication with MCRB, 2019. MCRB was unable to meet with MEC in 2020.

106 [Myanmar Joins IACA](#), 9 October 2019

for company controls which mirror those issued by its Thai counterpart.¹⁰⁷ In January 2019, DICA reminded companies to establish anti-corruption controls, referencing the ACC document.¹⁰⁸ Further information on the Myanmar legal framework for combatting corruption is contained in MCRB's July 2020 Handbook on Business Integrity.¹⁰⁹

A reinvigorated 12-member Anti-Corruption Commission was appointed in 2017, headed up by former Lieutenant-General and Minister, U Aung Kyi, who stepped down on 1 December 2020. It has opened branch offices in Yangon, Mandalay, Taunggyi and Mawlamyaing. The outgoing Chair was more active than his predecessors and made a commitment to investigate 'big fish'. Investigations in 2018 led to action being taken against senior figures including the Head of the Food and Drug Administration, Yangon Region Attorney-General, and the Chief Minister of Tanintharyi. Cases in 2019 have included Than Daing, the Managing Director of No 2 Mining Enterprise, who was originally charged under Section 56 of the Anti-Corruption Law, which carries up to a 10-year sentence. He was accused of taking benefits worth more than 7 million kyats (landscaping services for his property, and a family holiday in Ngapali) in connection with National Prosperity Development Company's Moe-Hti-Moe-Mi gold mine in Yamethin. However, he was sentenced by Mandalay Region Court under Article 165 of the Penal Code (which concerns abuse of power by public servants), and served only six months. This led the Mandalay Attorney-General's Office to seek a review of the sentence in June 2020.¹¹⁰ Managing Director of the company, Tun Aung Soe, was also charged with fabricating corruption claims, the first use of Article 59 of the Anti-Corruption Law.¹¹¹

Other prominent cases charged under Article 56 have included five top officials including the DG of the Irrigation and Water Utilization Management Department charged with misusing public finances;¹¹² the Medical Superintendent of Mandalay Orthopaedic Hospital who was found to have asked for bribes totalling 6 million kyats from two businessmen tendering for collecting hospital car parking fees;¹¹³ two Directors of the Hydropower Implementation Department arrested for accepting bribes from tender bidders relating to the design and construction of hydropower projects on the Myitnge river¹¹⁴ and the Pyithu Hluttaw MP for Monyo accused of taking money from nine fishpond licensees with the promise of a 3-year license

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

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

109 Business Integrity: A Handbook for Myanmar Businesses, MCRB July 2020

110 [Senior Mining Official Arrested for Corruption](#), Irrawaddy 1 April 2019 and [Mining MD's 1 year corruption sentence submitted for review](#), Irrawaddy (Burmese only) 12 June 2020

111 [Anti-Corruption Commission Sues Gold Mining Firm's Staff for False Bribery Claim](#) Irrawaddy, 3 April 2019

112 [5 Water resources officials face corruption charges](#), Irrawaddy, 11 April 2019

113 [Medical Superintendent at Hospital in Myanmar's Mandalay Arrested for Corruption](#), Irrawaddy, December 2019

114 [Two Myanmar Electricity Ministry officials arrested for corruption](#), Irrawaddy, 26 September 2019

extension.¹¹⁵

In 2018 and 2019, the ACC received more than 10,000 complaints, five times more than in 2017. Besides showing a growing recognition and trust in the ACC as an institution, this massive increase in complaints demonstrates a shift in public attitudes, where corrupt practices are increasingly viewed as an important matter to be addressed. Although many of the complaints fall outside the ACC's mandate, or fall short of warranting investigation, the number of actionable complaints has increased substantially, making effective management of information and incoming data a crucial part of the Commission's operations. The UNODC has provided the ACC with equipment and support for an online integrated investigative case management system (goCASE).¹¹⁶

The efforts of the ACC have been appreciated by the public. Transparency International's Global Corruption Barometer for Asia, published in November 2020, based on a random digital dialling (RDD) telephone survey in June-July 2020 of 20,000 people in Asia in 17 countries, including 1,000 in Myanmar¹¹⁷ showed that Myanmar had the highest percentage of citizens (93%) who think that the government is doing well in tackling corruption. The Anti-Corruption Commission also came out top amongst its peers with a 94% approval rating (Thailand came bottom with 34%).

CORRUPTION PREVENTION UNITS

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Another major initiative under the Anti-Corruption Commission's 2018-21 strategy has been the establishment in 2019 of Corruption Prevention Units (CPUs) in Ministries. As of September 2020, there were 36 CPUs in 22 Union Ministries.¹¹⁸

While larger corruption cases in public institutions will be investigated by the ACC, CPUs are intended to work under the leadership of the Ministry, and the guidance of the ACC, reporting monthly to both the President and the Commission. They should:

- Scrutinize and identify corruption problems in Department
- Solve corruption problems which have been identified
- Prevent civil servants from engaging in further corruption

115 [Monyo lower house MP accused of corruption](#), Mizzima 29 August 2019

116 [New case management system helps Myanmar's Anti-Corruption Commission to manage increasing workload](#), UNODC, 20 November 2020

117 [Global Corruption Barometer Asia 2020: Citizens Views and Experiences of Corruption](#) Transparency International, November 2020. The Myanmar survey was undertaken by Myanmar Survey Research (MSR) and Efficiency-3 in June/July 2020 on a randomly dialled sample size of 1,000.

118 These are Ministries of Foreign Affairs; Union Government Office; Home Affairs; Defence; Planning Finance and Industry; Investment and Foreign Economic Relations; Religious Affairs and Culture; Agriculture, Livestock and Irrigation; Transport and Communications; Natural Resources and Environmental Conservation; Electricity and Energy; Labour, Immigration and Population; Commerce; Education; Health and Sports; Construction; Hotels and Tourism as well as the Union Attorney General's Office; Central Bank; Union Election Commission; Anti-Corruption Commission and Naypyitaw Development Committee

All CPUs have six tasks to:

1. Develop terms of reference (ToR) to fit the needs of the individual organisation
2. Assist Departments to develop Standard Operating Procedures (SOPs) and distribute these to branches which provide public-facing services, and ensure that these are understood by the public
3. Propose amendment of laws, rules, regulations, orders and instructions which carry potential risks of corruption
4. Ensure that businesses connected to the organisations are operating ethically
5. Hold free and transparent discussions between departmental officials and businesses. Forums will be held among departmental officials and associated businesses
6. Ensure that public services are fulfilled through establishing face to face and phone-based feedback mechanisms (such as the SMS-based Public Feedback Programme (PFP) Pyi-Zi-Jin (meaning 'fulfilment')).

Governments should make processes for registering the company, getting licenses, or connection services like electricity and water, as simple as they can be, while still fulfilling the regulatory needs of government. This is recognised in CPU Task 3. CPUs are encouraged to conduct 'corruption risk assessments' to determine areas of risk in their Ministries, such as procurement and recruitment.¹¹⁹ The CRA approach is inspired by the Korean example.¹²⁰

FACILITATION PAYMENTS AND BETTER REGULATION

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

On coming to power, the 2016 NLD government immediately published new guidelines on the acceptance of gifts by public servants which inter alia, reduced the maximum value of a gift from 300,000 kyats to 25,000 kyats (around \$15).¹²¹

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

¹¹⁹ For example, the Ministry of Education is implementing a CRA on Procurement in the Primary Education sector.

¹²⁰ [Introduction to Korea's Corruption Risk Assessment: A Tool to Analyze and Reduce Corruption Risks in Bills, Laws and Regulations](#), UNDP August 2020 and [State of Integrity: A guide on conducting corruption risk assessments in public organisations](#), UNODC, August 2020

¹²¹ Contained in Annex C of the [Business Integrity: A Handbook for Myanmar Businesses](#), MCRB July 2020

officials" were defined as: 1) government officials (including officials from outside Myanmar); 2) those with positions in the Legislative, Judicial, and Executive Branches of the Myanmar Government; 3) those who have been appointed to a Board or related Commission as organized by the Myanmar Government; and 4) those who work for public international organizations.¹²²

Some information about the extent of facilitation payments has emerged from the **Myanmar Business Environment Index**, undertaken by The Asia Foundation (TAF) and supported by Dana Facility. This research into economic governance at township, state and region level in 2018 involved a township-level survey of 4,874 Myanmar businesses, mostly locally licensed MSMEs, in services and manufacturing (particularly food and machinery repair). It uses TAF methodology used elsewhere including for Vietnam's Provincial Competitiveness Index. Business issues examined in the survey at State/Region level included Entry Costs; Land Access and Security; Post-Entry Regulations; Informal Payments; Infrastructure; Transparency; Favoritism; Environmental Compliance; Labor Recruitment; and Law and Order. In 2020, the Foundation made methodological improvements and carried out the second instalment of the MBEI, surveying 5,605 businesses across the country.¹²³

As with the TI Corruption Barometer 2020, the 2020 MBEI reports that 'petty corruption is not a problem for respondents in Myanmar, but grand corruption remains a very serious concern. Bribes during business entry are close to zero, but nearly 70% of firms pay bribes to receive construction licences at a cost of 3.4 million MMK (US\$2,430) per firm'. However, the 2020 MBEI study shows that 'Most firms appear to think that government officials are above the law, and the situation has worsened over time. Just 26.5% of businesses believe that they can appeal an unjust decision to a higher government office, and only 20.1% believe that officials will discipline offending staff'.

A major driver of facilitation payments is requirements for permissions, often not risk-based or clearly published, which drives the need for face-to-face meetings and approvals by officials. As CPU Task 2 recognises, one way to reduce the incidence of facilitation payments is to publish clear information about processes and fees, both online and in the office. This should include the official fees for the service that the office delivers, and the time required for each step (permit, license, approval, utility connection, etc.). This empowers customers with knowledge and gives them a realistic understanding of what they should expect. Web sites, newspaper advertisements and even outdoor signs can be used to inform of fees, timelines, and required documents or prior approvals to help businesses prepare collectively. The MBEI sub-index 6 on Transparency (see Box 6) identifies criteria to measure state and region performance on this, with Yangon Region most transparent and Rakhine State least transparent.

As Box 6 shows, predictability in State/Region rules is also an important factor. New laws and decentralisation have introduced more layers of

¹²² [Deductibility of Gifts to Government Officials](#), Internal Revenue Department Practice Statement 1/2018, October 2018

¹²³ Malesky, E.J., D. Dulay, V. Peltovuori. 2020. [The Myanmar Business Environment Index: Measuring Economic Governance for Private Sector Development](#). The DaNa Facility and The Asia Foundation ([Burmese version](#))

BOX 6:**Myanmar Business Environment Index 2020
Subindex 6: Transparency**

1. Accessibility of state or region's budget (%)
2. Accessibility of Union laws (%)
3. Accessibility of implementing documents and regulations of Union ministries (%)
4. Accessibility of state/region laws and regulations (%)
5. Accessibility of new infrastructure plans (%)
6. Accessibility of public investment plans such as hydropower projects, airports and highways (%)
7. Accessibility of land-use allocation plans and maps (%)
8. Accessibility of planning documents for the development of state/region industries and sectors (%)
9. Accessibility of forms for completing regulatory procedures (%)
10. Predictability of changes in laws and regulations at the Union level (%)
11. Predictability of changes in regulations at the S/R level (%)
12. Predictability of implementation rules at the S/R level (%)
13. Share of GAD documents with information publicly posted (%)
14. Share of DAD documents with information publicly posted (%)

approval processes. The MBEI notes that:

“Weak and confusing economic governance structures inhibit the ability of Myanmar businesses to thrive and contribute to growth. Unclear business licensing procedures complicate business planning, inadequate infrastructure reduces the attractiveness of investing, and SMEs lack the capital to expand and integrate into regional supply chains. Opaque and overlapping governance structures often make it difficult for local administrators to implement procedures consistently across states and regions. While some business regulatory functions reside with Union ministries, others fall to S/R and township offices. As a result, local economic governance in Myanmar is at times inefficient and poorly understood by many of those affected by it.”

However, much depends on the leadership shown by local officials. The MBEI 2020 results show that ‘each state and region in Myanmar demonstrates different strengths and weaknesses with respect to governance. No state or region stands out as superior to all others with respect to overall economic governance’. It also notes that ‘Differences in economic governance are more pronounced among townships within state/regions than between state/regions, pointing to the importance of township authorities to the reform

process’.

To identify risk areas and poor-performing public services, particularly concerning low value facilitation payments, a number of CPUs have established SMS-based Public Feedback Programmes (PFP), known in Burmese as *pyi-si-jin* (fulfilment), with the support of the World Bank. As of February 2020, the Public Feedback Programme (PFP) was being implemented in ten ministries with interest from six more.¹²⁴ The response rate in Jan/Feb 2020 was 11.8 % (102,480 SMS sent, 12,058 responses).¹²⁵ The ACC has also mounted a nightly TV advertising campaign Tet-Nyi-Let-Nyi (All together now!) and Facebook page to encourage the public to report on corruption.¹²⁶ ID cards was identified in the Transparency International Corruption Barometer as one of the public services most subject to requests for bribes (27% of those who had used the services in the past 12 months), second only to the police (28%).¹²⁷

A shift to more online processes such as MyCo for company registration, accelerated by COVID-19, should help reduce the scope for facilitation payments. The introduction of self-assessment, rather than tax demands which were often ‘negotiated’, compulsory online payment for corporate taxes in 1 October 2020 and the end of a manual system of tax passbooks and payment using cash or cheque at the local tax office is a significant step forward.¹²⁸ This has removed the need to obtain a tax demand which could be withheld by the tax official unless a facilitation payment was made. Another positive development to reduce ambiguity and therefore the potential for corruption and evasion in tax collection was the adoption in June 2019 of the Tax Administration Law.¹²⁹ The launch of an online process for export/import licences in January 2021 is a further step forward in simplifying processes, reducing corruption and providing for an audit trail.¹³⁰

COVID-19 AND CORRUPTION

The COVID-19 response has been identified globally as a corruption risk. In June UNODC provided the ACC and CPUs with Guidelines on Prevention of Corruption during the Covid-19 Pandemic.¹³¹ Risks can arise from accelerated and simplified procurement systems and lack of oversight, bribery in provision of medical services, fraud related to falsified medicines, protective equipment (e.g. masks, gloves), and low quality of medical equipment due

¹²⁴ Implementing Ministries: Union Government Office; Home Affairs; Planning Finance and Industry; Transport and Communications; Labour, Immigration and Population; Commerce; Education; Health and Sports; Hotels and Tourism and Anti-Corruption Commission. Ministries showing interest: Religious Affairs and Culture; Agriculture, Livestock and Irrigation; Natural Resource and Environmental Conservation; Electricity and Energy; Construction; Naypyitaw Development Committee.

¹²⁵ Source ACC Chair speech

¹²⁶ www.facebook.com/tetnyiletnyi/

¹²⁷ www.transparency.org/en/gcb/asia/asia-2020/results/mmr

¹²⁸ Myanmar: IRD Introduces E-Filing System & Expands E-Payment Platforms to Taxpayers, DFDL, 10 September 2020

¹²⁹ Tax Administration Law, effective from 1st October 2019, PWC Tax Newsletter Issue 18, 24 July 2019

¹³⁰ Myanmar to launch TradeNet 2.0 system in January, Myanmar Times, 13 November 2020

¹³¹ Guidelines on Prevention of Corruption during the Covid-19 Pandemic (Myanmar version), UNODC, June 2020

to the lack of monitoring, as well as unfair/imbalanced distribution of relief measures and aid. In Myanmar, this is relevant to allocation of 1% interest 1-year COVID recovery loans. Three tranches have been allocated to date. Names and addresses of company recipients have been published, allowing for some transparency.¹³² Cash transfers such as the Myan-Ku programme for garment workers, supported by the EU, have made use of e-payments to reduce corruption risk.¹³³ The government has also opened complaints centres concerning cash transfers to the poor and vulnerable.¹³⁴

Private companies have also made significant contributions to support the COVID response, with companies like KBZ and Max/AYA paying more attention to oversight and governance after their 2017 mistakes on Rakhine.¹³⁵ For example, KBZ Bank opened an escrow account, whose receipts and spending are supervised by their Trusts Department, for donations to fund the Inya Centre temporary clinic.¹³⁶ Corporate philanthropy, taxation and transparency are examined further below.

The (now departed) ACC Chair, recognizing there is still much to do, began a process to develop a new Anti-Corruption Strategy (2022-2032).¹³⁷ He has invited business and civil society representatives to join a Working Committee to support this, consistent with the UN Convention Against Corruption which encourages meaningful engagement and consultation with civil society and the business sector. This would replace an informal Advisory Group which he established in 2018. In addition to the continuation of the reforms highlighted above, a number of other interconnected areas which promote corruption need to be tackled, in addition to those such as beneficial ownership raised in Part 2. Indeed, the need for issues and institutions related to public integrity and accountability, including the regulation and involvement of business, has led Transparency International Australia to propose viewing this as a 'national integrity system' with action plans to address specific weaknesses in Australia.¹³⁸ This is an approach which the Myanmar ACC might like to consider when developing its new strategy.

132 See [DICA's third list of 698 companies](#), 18 November 2020 and [Myanmar Government gives out third batch of COVID loans](#), Myanmar Times, 20 November 2020

133 <https://smartmyanmar.org/en/eu-myan-ku-fund>

134 Complaints made over COVID-19 cash assistance programme for poor people, Mizzima, 21 November 2020

135 See for example Myanmar's KBZ Takes Leading Role in Country's Fight Against COVID-19, Irrawaddy, 5 October 2020, Ayewarwady Foundation builds COVID-19 test centre in Taikkyi, Myanmar Digital News, 20 October 2020

136 Inya Centre Facebook page, 14 October 2020, www.facebook.com/InyaCentre/posts/127644719100428

137 Corruption is still rooted in many places: Anti-Corruption Commission, Eleven News Journal 27 October 2020

138 Australia's National Integrity System: The Blueprint For Action, Transparency International Australia, November 2020

Public Procurement

There is currently no effective legal framework for public procurement in Myanmar. Although the President issued Directive 1/2017¹³⁹ as a stop-gap measure, setting out basic tender and procurement requirements and thresholds, it is often ignored. Related parties are bidders in contracts, tender committees lack credibility, compliance with tender criteria and quality control is not always assured, and Parliamentary oversight is not always possible. A draft law on Public Procurement and Asset Disposal was published in 2018,¹⁴⁰ prepared with the assistance of the World Bank, but after a short discussion in Parliament in July 2020 it was returned to the government (MoPFI) for resubmission to the next Parliament.

The Construction Sector Transparency Initiative (CoST) is a global initiative that works with government, industry and civil society to promote transparency and accountability in public infrastructure investment through standardised publication of 40 standard data points throughout the procurement process.¹⁴¹ This helps to inform and empower citizens and enables them to hold decision-makers to account. Informed citizens and responsive public institutions help drive reforms that reduce mismanagement, inefficiency, corruption and improve value for money from public investment. CoST have also launched a new Infrastructure Transparency Index (ITI) to evaluate levels of infrastructure transparency and the quality of associated processes that improve participation and accountability.¹⁴² Thailand will participate.

Following interest from the Ministry of Construction and other stakeholders, a DFID funded scoping study was undertaken in 2018 to examine how CoST could help improve transparency and accountability in public infrastructure investment in Myanmar. A draft report was submitted to the Ministry of Construction in March 2019 but no further steps have been taken.

One option would be to incorporate a requirement in the draft Procurement Law requiring the procuring organisation to publish information about the purpose, scope, costs and execution of the contract in a timely manner at key stages during project preparation, tendering and implementation of the contract, in accordance with rules laid down by MoPFI. These rules could incorporate the 40 standard data points of CoST.

Whistleblower Protection

The ACC has been working on a draft Protection of Public Interest Whistleblowers Law.¹⁴³ This is an important gap in the legal framework. MCRB is aware of at least one company which was harassed by officials as a consequence of whistleblowing concerning corrupt practices in electricity

139 [Tender procedures to be followed by government departments and organisations in construction, purchase, procurement of services, lease and sale](#), President's Office Directive 1/2017, 10 April 2017 convenience translation, Lincoln Legal Services

140 [MHM Newsletter](#), November 2018

141 infrastructuretransparency.org

142 [Infrastructure Transparency Index Manual](#), Construction Sector Transparency Initiative, 9 December 2020

143 [Anti-graft Commission Readies Whistleblower Protection Bill](#), Myanmar Times 20 May 2019

meter tenders, something which a law would make illegal.¹⁴⁴ Whistleblower protection is a complex issue with a potentially wide scope beyond corruption. The draft law would benefit from wider public consultation prior to its submission to Parliament, and consideration of how it would affect business.

Regardless of whether the law is adopted, Point (g) of the ACC's 2018 guidelines¹⁴⁵ recommends that companies should 'Establish trustworthy reporting mechanisms to report suspected corrupt behaviours'. Independent non-executive directors play a particularly important role in this.¹⁴⁶ *Pwint Thit Sa 2020* examined whether Myanmar companies had established whistleblowing policies and processes in criteria 79/80/81 and found that 36 companies provided a contact point for their stakeholders to voice their concerns and/or complaints and 22 companies have a policy to protect an employee/person who reveals illegal/unethical behaviour from retaliation.

Myanmar should also consider whether a **requirement** for companies to establish whistleblower protection should be incorporated into either the draft Whistleblower Law, or an amendment to the Myanmar Companies Law. In 2019, Australia introduced amendments to both its Corporations Act (which served as inspiration for Myanmar's 2017 Companies Law) and Taxation Administration Act; the EU has also introduced regulation. The intent of the Australian changes were to encourage ethical whistleblowing and discourage white collar crime, while holding employers accountable for protecting eligible whistleblowers.¹⁴⁷ The Australia company registry (ASIC) has issued guidance on the new law.¹⁴⁸ The changes mean that more people can be 'eligible whistleblowers', including anyone who has ever been in a relationship with a company (such as former employees, contractors, employees of contractors, associates, and relatives of such individuals). Furthermore, more people can be 'eligible recipients' of disclosures, including senior managers, directors and auditors; and in certain circumstances, after exhausting other routes, even journalists and politicians.¹⁴⁹

Reform to Defamation Laws

There are 11 provisions in six criminal laws that outlaw defamation, none of which meets international human rights standards. Only one (the Penal Code of 1860) actually defines defamation or contains defences. These laws are used to punish statements of opinion rather than assertions of fact, used to silence critics, and impose highly punitive criminal sanctions with the courts usually choosing harsher punishments. The latest law to

144 [Unhappily ever after: Myanmar's power meter racket](#), Frontier Magazine, 6 September 2019 exposes corruption in the electricity meter market.

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

146 [What Non-Executive Directors Need to Know about Whistleblowing](#), NED on Board, 2020

147 [Treasury Laws Amendment \(Enhancing Whistleblower Protections\) Act 2019](#), Government of Australia

148 <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/>

149 [New whistleblower laws apply from 1 July 2019: three things employers should do](#), Hall and Willcox, 25 June 2019

include a defamation section – the Law Protecting the Security and Privacy of Citizens – was adopted in 2017 and also fails to meet international standards. This law also does not define defamation, does not specify that public officials must tolerate public criticism, does not prescribe truth or opinion as defences, and provides for imprisonment as a punishment.

Free Expression Myanmar, MCRB's partner in organising the annual Myanmar Digital Rights Forum, has launched a campaign to achieve reform of the defamation laws and their replacement with a single civil defamation law.¹⁵⁰ Without reform, the priority of the Myanmar government to improve economic governance and combat corruption will not be achieved because these laws have a chilling effect on journalists, human rights defenders and others and discourage them from reporting on corruption.

Asset disclosure by public servants

To implement Article 8 Para 5 of the UNCAC, countries have developed income and interest declaration systems that fall into three broad categories: systems aimed solely at managing conflicts of interest, systems designed to identify an inexplicable increase of wealth of public officials, and – most commonly - dual-purpose systems that aim to achieve both. Some make all or part of these disclosures public, or available on request, taking into account the need for data protection and security.¹⁵¹

Section 13 of Myanmar's Anti-Corruption Law requires senior public servants (referred to as 'competent authorities') in the executive, judicial and legislative branches of the Government to declare their assets, with penalties for those who do not comply. Chapter VIII of the 2015 Anti-Corruption Rules concerning 'Declaration of Currencies, Properties, Liabilities and Assets Owned by the Competent Authority' requires (Rule 37) the Commission, with the approval of the Union Government, to 'determine the level of the 'competent authority' who has to make such a declaration. The information shall be compiled from the individuals by the relevant government organisations and be submitted to the Commission (Rules 38-41) on a Form 7 concerning family-owned assets.¹⁵² However, it is not clear that any action has been taken by the ACC to enforce these requirements. Furthermore, there appears to be no requirement for the ACC to disclose publicly either the list of officials concerned – something which would contribute to establishing accurate lists of Politically Exposed Persons (PEPs) - or their disclosures.

Political Party Financing

Myanmar political party financing laws are not in line with the UN Convention against Corruption (UNCAC), which calls on states to 'enhance transparency in the funding of candidates for elected public office and, where applicable,

150 freeexpressionmyanmar.org/defamation/

151 [Asset and interest disclosure systems: Background Paper 21 June 2018 prepared for the Open-ended Intergovernmental Working Group on the Prevention of Corruption. Conference of the States Parties to the United Nations Convention against Corruption \(UNCAC\).](#)

152 [Asset Declaration Form \(MM\)](#), Myanmar Anti-Corruption Commission, 26 February 2018

the funding of political parties'. Transparency International's Corruption Barometer (conducted in July, four months before the 2020 election) suggests that vote buying in Myanmar is not - yet – a major problem. Only 3% of those surveyed reporting having been offered money for their vote, compared to 28% in Thailand or the Philippines.¹⁵³ However, this is likely to reflect the overwhelming popularity of Aung San Suu Kyi, and therefore the futility of vote buying by other parties, rather than strict oversight.

Furthermore, any business seeking to be in favour with the next government would in many constituencies see the National League for Democracy (NLD) as the safest bet. After the election, news emerged of a list of companies produced by the NLD's campaign chair in Thantlang Chin State, identifying them as having made party donations and the numbered Education Ministry tenders they had applied for. On 27 November, the Chin State NLD Campaign Committee announced that the matter was under investigation and that such an action would be contrary to an instruction they had issued on 2 October that donations which gave rise to obligations should not be accepted.¹⁵⁴

The only financing restrictions in the Myanmar Hluttaw Elections Law and the Political Parties Registration Law impose a ban on donations from foreign organisations, and a ban on parties using state resources. Additionally, there are spending limits for individual candidates. However, there are no limits on donations by business to parties, or by their owners in a private capacity. This includes donations in kind, such as flying politicians for free on the company's airline, or offering hotels or other facilities free of charge, or lending company staff to assist political parties. Nor are there requirements either on parties or companies to disclose donations. A survey of 22 large companies conducted in August 2020 by Myanmar Times found that most of them did not have disclosed policies on political party donations, let alone disclose those donations.¹⁵⁵ The sudden countrywide emergence of the well-funded United Democratic Party demonstrates the lack of scrutiny of party finances by the Union Election Commission. Only investigative reporting by Myanmar Now about its businessman founder Kyaw Myint led to the party's deregistration and the jailing of its leader.¹⁵⁶ The newly returned government needs to introduce laws for stronger oversight of party financing, as an anti-corruption measure to strengthen Myanmar's democracy.

Access to Information and Open Data

Several important statutory disclosure obligations related to business are summarized in Part 2 although not all of them are implemented and enforced.¹⁵⁷ EITI also generates useful natural resources data which NRG

¹⁵³ [How much is your vote worth?](#) Analysis by Transparency International, 2020 Corruption Barometer.

¹⁵⁴ https://web.facebook.com/nldchnstate/posts/3244870908954981?_rdc=1&_rdr

¹⁵⁵ [Companies in Myanmar quiet about political donations](#) Myanmar Times, 23 August 2020,

¹⁵⁶ [What Kyaw Myint's downfall tells us about doing business in Myanmar](#), Frontier magazine, 21 October 2020.

¹⁵⁷ These are also summarized in [The Right to Information and Natural Resources in Myanmar](#), Article 19, July 2019

has drawn on to establish the Open Jade Data portal.¹⁵⁸

Phandeeyar run Open Development Myanmar (ODMm),¹⁵⁹ part of the Open Development Network, a coalition of organizations co-managing a common open data and open knowledge platform aggregating and sharing information, maps and data to illuminate development trends in the Mekong region at country and regional levels. This publishes data on the economy, land, labour and the environment. The Ananda evolved from Open Myanmar Initiative and is working on many types of open data, particularly concerning budgetary transparency and parliament¹⁶⁰. Some regional Parliaments have been active on issues such as transparency in public procurement and the budget. Friedrich Ebert Stiftung, Phandeeyar, and The Asia Foundation celebrate the international Open Data Day annually in March.

However, Myanmar does not have a Right to Information Law. Many civil society groups, particularly Myanmar PEN and Pyi-gyi-khin (PGK), have been advocating for one, and provided proposals to the Ministry of Information.¹⁶¹ A bill was drafted in 2016 by the outgoing USDP government. However, due to the government's unwillingness to amend this bill to align it with international standards, progress stalled in 2018.¹⁶²

Tax Amnesties

Tax evasion continues to be a significant corruption problem in Myanmar, which contributes to Myanmar's low rates of tax collection, around 7% of GDP according to the IMF.¹⁶³ MSDP Action 2.3.5 notes that government will 'Introduce anti-corruption and tax evasion countermeasures to protect the integrity and reputation of the tax system, including expanding the focus of internal audit and establishing an Internal Affairs Unit'. This continues a tax reform journey which started in 2012.¹⁶⁴ However, evasion continues to be encouraged by the availability of tax amnesties. In FY2019-2020 (1 October 2019 to 30 September 2020), a tax amnesty was provided on undisclosed income with rates as low as 3% for an income amount up to MMK100 million, compared to 25% normally, and 30% for undisclosed income. Although the Internal Revenue Department did not propose a further amnesty in 2020-2021, the Hluttaw amended the 2020 Union Taxation Law to include an amnesty starting at 6%.¹⁶⁵

¹⁵⁸ www.openjadedata.org

¹⁵⁹ opendevelopmentmyanmar.net

¹⁶⁰ theananda.org

¹⁶¹ A list of other civil society organisations active on transparency and combatting corruption is contained in Annex E of MCRB's [Business Integrity Handbook](#), July 2020

¹⁶² <http://freexpressionmyanmar.org/right-to-information-bill/>

¹⁶³ www.imf.org/en/News/Articles/2020/03/26/pr20111-myanmar-imf-executive-board-concludes-2019-article-iv-consultation

¹⁶⁴ See *Pwint Thit Sa* 2019, pages 39-40 for more information on Myanmar's Tax Reform Journey

¹⁶⁵ [Parliament approves 2020 Union Tax Law with amnesty](#), Myanmar Times, 28 August 2020

Natural Resources Governance

Myanmar's participation in the Extractive Industries Transparency Initiative (EITI) since 2014 has enhanced transparency and accountability in the oil and gas, mining and forestry sectors and increased the availability of information,¹⁶⁶ including on beneficial ownership of extractives companies.¹⁶⁷ However, more remains to be done to combat corruption, with a particular focus on more transparent procedures for licence awards, and disclosure of contracts. EITI Standard 2.4 requires that implementing countries disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021.¹⁶⁸ Furthermore, implementing countries are encouraged to publicly disclose (pre-existing) contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals. Another emerging corruption risk are the bank accounts being established at township level for 'CSR' contributions from small-scale miners (see below).

Globally, a growing number of market participants recognise that environmental, social and governance (ESG) topics, above all climate change, are increasingly material to companies' businesses, risk management and value, and their ability to attract finance. 'ESG', which this report uses interchangeably with 'sustainability', incorporates human rights issues. While human rights might be understood as being by definition 'social', human rights principles relate as much to good governance and environmental management, which are themselves interrelated.

Examples of 'S' and 'G' linkage are board diversity, protection of whistle-blowers or the transparency of decision-making. 'E' and 'S' are obviously linked: global warming, pollution and the loss of biodiversity are already having a significant negative affect on human populations, a situation which will only worsen significant over the decades to come. In early 2020, Larry Fink, the CEO of major investor Blackrock, with around \$7 trillion under management, wrote to the companies in which Blackrock invests to tell them that 'climate risk is investment risk' and that 'climate change is almost invariably the top issue that clients around the world raise with BlackRock'.¹⁶⁹

In December 2020, Blackrock's **Global Client Sustainable Investing Survey** found that 425 investors in 27 countries with nearly US\$25 trillion in assets under management (AUM) planned to double their allocations to sustainable products over the next five years. A fifth said that COVID-19 would accelerate their sustainable investing. Although growth in sustainable assets is most pronounced in Europe, it is also growing in prominence in the Americas and Asia-Pacific.¹⁷⁰ Pursuing a sustainable business model, and ESG reporting is therefore an essential component for investors to

¹⁶⁶ See reports published under MEITI

¹⁶⁷ bo.dica.gov.mm

¹⁶⁸ [Contract Disclosure in Myanmar: A Guide for implementing the new requirements of the EITI](#), Natural Resources Governance Institute (NRGI), January 2020 also available in [Burmese](#)

¹⁶⁹ [A fundamental reshaping of finance](#), Larry Fink, CEO Blackrock, January 2020

¹⁷⁰ [Blackrock survey shows acceleration of sustainable investing](#), Blackrock 3 December 2020.

assess a company's ability to create long-term value, as well as offering accountability to stakeholders. By monitoring and reporting ESG issues, for example energy costs, companies will also make financial savings, as well as be able to access ESG-focussed capital.

In February 2020, two Singaporean banks, OCBC and UOB, provided a \$44 million 'green loan' to Shwe Taung Group - which ranks 3rd in *Pwint Thit Sa* 2020 - to refinance its Junction City complex in Yangon.¹⁷¹ Junction City is the first shopping centre in Myanmar to attain the Singapore Building and Construction Authority Green Mark certification. This was Myanmar's first 'green loan'. It was extended based on Shwe Taung's green loan framework. This framework was developed with OCBC Bank to guide Shwe Taung's evaluation of eligible green projects and the management of net proceeds from green loans. It complies with the Green Loan Principles of the Loan Market Association.¹⁷²

This shows that companies in Myanmar which can demonstrate their ESG approach through ESG management and reporting will have access to a wider range of finance options, from multimillion dollar green loans, private equity, and development partner investment from organisations like the IFC and CDC, to smaller grants and technical support, for example from the new USAID RITA programme,¹⁷³ the Danish Embassy's Responsible Business Fund,¹⁷⁴ and the UK's Carbon Trust.¹⁷⁵ The Green Climate Fund (GCF) provides grant, loan and equity financing support to support countries' achievement of climate change and adaptation objectives. Myanmar's Nationally Designated Authority (NDA), for the GCF, the Environmental Conservation Department (ECD), is actively pursuing means to mobilizing green financing to support implementation of Myanmar's NDC targets.¹⁷⁶ This includes discussions with the Global Green Growth Institute (GGGI) and four potential 'green cities' - Naypyidaw, Taunggyi, Bago and Patheingyi - looking to access investment.¹⁷⁷ Furthermore, in a GCF Readiness project implemented by GGGI, Myanmar intends to support the nomination for accreditation of Myanmar public sector and private sector finance institutions to access funding directly from the Green Climate Fund, a process that requires them to disclose both fiduciary and ESG policies and practices.

In his 2020 letter, Larry Fink states his belief that *'all investors, along with regulators, insurers, and the public, need a clearer picture of how companies are managing sustainability-related questions. This data should extend beyond climate to questions around how each company serves its full set of stakeholders, such as the diversity of its workforce, the sustainability of*

¹⁷¹ [OCBC bank partners Shwetaung Group on Myanmar's first green loan](#), OCBC and Shwetaung, 5 February 2020

¹⁷² [Green Loan Principles](#), Loan Market Association, Asia-Pacific Loan Market Association and Loan Syndications and Trading Association (LSTA), December 2018

¹⁷³ [Burma—Responsible Investment and Trade Activity \(RITA\), 2020-2025](#), DAI

¹⁷⁴ The [Responsible Business Fund](#) has provided partial grants to 453 projects in Myanmar, mostly SMEs, to enable them to invest in resource efficiency, safety, food safety, waste management and skills. Further funding will be available in 2021.

¹⁷⁵ Technical assistance for energy efficiency will be available for companies in Myanmar in 2021 from the [Carbon Trust](#)

¹⁷⁶ www.greenclimate.fund/countries/myanmar

¹⁷⁷ GGGI's Myanmar Team holds inaugural GCF Green City Steering Committee Meeting, 6 August 2020

its supply chain, or how well it protects its customers' data. Each company's prospects for growth are inextricable from its ability to operate sustainably and serve its full set of stakeholders'.

Consistency and transparency are therefore essential to build trust in capital markets for sustainable finance. To facilitate this, in 2020 the EU adopted a 'Taxonomy Regulation' as part of its 2018 Action Plan on financing sustainable growth. It establishes an EU-wide classification system intended to provide businesses and investors with a common language to identify to what degree economic activities can be considered environmentally sustainable.¹⁷⁸ Closer to Myanmar, the ASEAN Capital Markets Forum (ACMF) has worked on the ASEAN Green, Social and Sustainability (combining green and social) Bond Standards.¹⁷⁹ The ASEAN Finance Ministers and Central Bank Governors decided in April 2019 to develop a Roadmap for ASEAN Sustainable Capital Markets. Priority Area 1 recognises that "ASEAN countries need to adopt consistent measures to increase the transparency and comparability of reporting in promoting sustainability."¹⁸⁰

The ACMF's ASEAN Corporate Governance Scorecard, on which *Pwint Thit Sa* is partially based does not yet fully incorporate E&S criteria, as it focusses mainly on governance. According to its Roadmap, the ACMF will either develop an ESG scorecard or enhance economic, environmental and social considerations in the ASEAN Corporate Governance Scorecard to increase the visibility of small and medium-sized companies with strong ESG performance. Therefore, and as in 2019, *Pwint Thit Sa 2020* has supplemented the ACGS with relevant E&S criteria to benchmark company disclosure. Leading Myanmar companies are already starting to report on E&S issues, and are using international non-financial reporting standards (see below).

AN OFFICIAL MYANMAR APPROACH TO ESG REPORTING?

Discussions have begun as to how the Myanmar government should approach ESG reporting, both in the context of reporting against SDG Indicator 12.6.1 ('Number of companies publishing sustainability reports'), and encouraging or mandating company ESG reporting, including on carbon emissions. The Low Carbon Energy Programme (LCEP), funded by the UK Government's Prosperity Fund, as part of its regional work on green finance (implemented by EY), is seeking to encourage the Environmental Conservation Department (ECD) and the Securities and Exchange Commission of Myanmar (SECM) to develop an ESG framework for Myanmar.

In view of the limited capacity of both institutions to enforce existing governance and environmental regulation, it might be wise for the Myanmar government to track, and aim to align with, evolving international and ASEAN standards and not develop Myanmar specific requirements. Furthermore, rather than introducing mandatory requirements for companies currently

178 [EU Regulation 2020/852 on the establishment of a framework to facilitate sustainable investment](#), 18 June 2020

179 Market participants in Philippines, Thailand, Malaysia and Singapore have issued Bonds and Sukuk aligned with these ASEAN [Green](#) (2017)/ [Social](#) (2018)/ [Sustainability](#) (2018) standards. Updated list available [here](#), ACMF

180 [Roadmap for ASEAN Sustainable Capital Markets](#) ASEAN Capital Markets Forum, April 2019

struggling to get to grips with basic corporate governance, the authorities should, in the short to medium-term, encourage companies voluntarily to adopt ESG reporting, aligned with evolving international frameworks (see below), including as a means to access green finance.

However, there is a need for the Myanmar government to obtain data on CO₂ emissions across multiple sectors to help them calculate emissions compared to targets defined in Myanmar's (draft) '2020 Nationally Determined Contribution' (NDC). Requirements to monitor and disclose CO₂ and other GHG emissions, in line with international reporting standards, should therefore be incorporated into the environmental permitting system, particularly for the energy sector.

INTERNATIONAL STANDARDS AND REPORTING FRAMEWORKS FOR DISCLOSURE

Progress is being made by the five global organizations that guide the majority of non-financial reporting to streamline the multiple sustainability reporting frameworks. The five organisations are the Carbon Disclosure Project (CDP), Climate Disclosure Standards Board (CDSB), the Global Reporting Initiative (GRI), International Integrated Reporting Council (IIRC), and Sustainability Accounting Standards Board (SASB). In September 2020, they committed to working together to provide:

- joint market guidance on how the frameworks and standards can be applied in a complementary and additive way;
- a joint vision of how these elements could complement financial generally accepted accounting principles (Financial GAAP) and serve as a natural starting point for progress towards a more coherent, comprehensive corporate reporting system; and
- a joint commitment to drive toward this goal, through an ongoing programme of deeper collaboration and engagement with other interested stakeholders. These include the International Organization of Securities Commissions (IOSCO), the International Financial Reporting Standards (IFRS), the European Commission, and the World Economic Forum's International Business Council.¹⁸¹

Pwint Thit Sa 2020's additional E&S criteria are currently drawn from two existing frameworks <IR>, and GRI, described below.

Integrated Reporting <IR> Framework

The Integrated Reporting Framework was developed by an independent international organization, the International Integrated Reporting Council (IIRC) which is a global coalition of regulators, investors, companies and experts. The IIRC developed the <IR> Framework to promote communication about value creation as the next step in the evolution of corporate reporting. In November 2020, the International Integrated Reporting Council (IIRC) and the Sustainability Accounting Standards Board (SASB) announced

181 Statement of Intent to Work Together Towards [Comprehensive Corporate Reporting](#): Summary of alignment discussions among leading sustainability and integrated reporting organisations CDP, CDSB, GRI, [IIRC](#), and [SASB](#), facilitated by the Impact Management Project, World Economic Forum and Deloitte, September 2020

their agreement to merge to form the Value Reporting Foundation.¹⁸²

MTSH mentioned <IR> in its last annual report. Others, like uab bank, CMHL, Shwe Taung, Yoma Bank and FMI, include some components under Corporate Disclosure which are related to the <IR> Framework.

Global Reporting Initiative (GRI)

GRI is an independent international organization that, through a multi-stakeholder process, has developed the GRI Sustainability Reporting Standards, which are widely used by international companies as a reporting framework. Nine companies in *Pwint Thit Sa 2020* – Alpha Power Engineering, CMHL, IME, MSP CAT, Proven, Shwe Taung, TMH, uab bank, and Yoma Bank – reference GRI in their reporting, up from three in 2019. Companies using the GRI framework to report can upload their reports to the GRI database.¹⁸³ This database is currently being used by Myanmar’s Central Statistical Organisation to track Myanmar’s progress against SDG indicator 12.6.1.

UN Global Compact

The UN Global Compact is a collective action initiative rather than a reporting standard like <IR> and GRI. As of December 2020, there were 125 Myanmar businesses (72 of them registered as SMEs) who were members of the Global Compact. This compares to 164 in March 2019. Of these, 23 were designated as ‘non-communicating’ i.e. having failed to publish a Communication on Progress (CoP) for over a year. Failure to publish a CoP for two years results in expulsion. This is a decline from the peak membership of 354 at the time of the *Pwint Thit Sa* report in August 2016. Of those companies assessed in *Pwint Thit Sa 2020*, 31 were UNGC members (of which 2 non-communicating).

Members of the UN Global Compact (UNGC) commit to reporting annually on responsible business activities related to ten principles encompassing human rights, labour rights, environment and corruption. Not-for-profit UNGC members, of which there are six in Myanmar, including MCRB, submit a Communication on Engagement (CoE) on a biannual basis.¹⁸⁴ Communications are made available via the UNGC website.¹⁸⁵ Since it is possible to use a company’s annual sustainability report under GRI or other international standards to meet the CoP requirement, Myanmar UNGC member companies should consider upgrading their sustainability reporting, so that it will carry more weight with investors. Both the UN Global Compact and the GRI encourage businesses to incorporate SDG reporting into their existing reporting processes.¹⁸⁶ This will also help Myanmar companies to engage with the government on the MSDP agenda. In *Pwint Thit Sa 2020* 23 companies mention the SDGs in their reporting.

There is no longer a UNGC Local Network in Myanmar. The UNGC headquarters

182 [IIRC and SASB announce intent to merge in major step towards simplifying the corporate reporting system](#), IIRC 25 Nov 2020

183 [database.globalreporting.org](#)

184 MCRB’s third [Communication on Engagement](#), covering July 2018-June 2020

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

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

will announce refreshed arrangements for local networks in early 2021, after which MCRB will assess appetite for launching a UNGC network in Myanmar.

THE ROLE OF STOCK EXCHANGES IN PROMOTING DISCLOSURE AND SUSTAINABILITY

Market regulators have a role to play as custodian of market players’ trust: they are tasked with protecting investors, maintaining fair and transparent market conditions, and reducing systemic risks. The International Organization of Securities Commissions (IOSCO) states that “*when ESG matters are considered material, issuers should disclose the impact or potential impact on their financial performance and value creation. Issuers are also encouraged to provide insight into the governance and oversight of ESG-related material risks.*”¹⁸⁷

Market regulators - in Myanmar’s case the SECM and Yangon Stock Exchange - should therefore encourage companies to disclose their material ESG risks, based on international reporting standards. In a high-risk environment like Myanmar with weak rule of law, E&S disclosures on issues such as climate resilience and land, are likely to be material in a number of sectors. Gaps in the Myanmar legal framework, such as on data protection, also create human rights risks, even for companies in sectors not normally considered high risk, such as ICT.

There is also a global trend, including in Asia, for stock exchanges to make sustainability reporting mandatory, although in some cases this is still on a “comply or explain” basis. The Sustainable Stock Exchanges (SSE) Initiative, which is supported by the UN Global Compact, UNEP, UNCTAD and the Principles for Responsible Investment, includes as members Japan Exchange Group (which part-owns Yangon Stock Exchange – see below), as well as Bursa Malaysia, Indonesia, Philippine and Singapore Stock Exchanges, Hanoi and Ho Chi Minh Exchanges, and the Stock Exchange of Thailand (SET). The SSE produces guidance on issues such as ‘How Stock Exchanges Can Grow Green Finance’¹⁸⁸ and has produced Model Guidance on ESG reporting.¹⁸⁹ All the above-mentioned exchanges have issued guidance to listed companies. The IFC has also created a toolkit to help companies navigate different standards.¹⁹⁰

Within Asia, Thailand leads on sustainability reporting. The Stock Exchange of Thailand (SET) was ranked 9th globally.¹⁹¹ Other Asian rankings were Bursa Malaysia 22nd, Singapore 24th, Philippines 30th, Tokyo 34th, Indonesia 36th and Ho Chi Minh 45th. Yangon Stock Exchange (YSX), with only six listed companies, does not yet feature.

YANGON STOCK EXCHANGE

YSX is a joint venture between Myanmar Economic Bank (MEB) (51%), the Daiwa Institute of Research of the Daiwa Securities Group (30.25%), and

187 IOSCO, Sustainable Finance and the Role of Securities Regulators and IOSCO, Final Report.

188 [How Stock Exchanges can Grow Green Finance](#), Sustainable Stock Exchanges initiative, 2017

189 Model Guidance on ESG reporting, Sustainable Stock Exchanges initiative, 2015

190 Beyond the Balance Sheet - IFC Toolkit for Disclosure and [Transparency](#), 2018

191 [Measuring Sustainability Disclosure: Ranking the World’s Stock Exchanges](#), Corporate Knights/Aviva 2019

Japan Exchange Group (18.75%).¹⁹² The JV received a Myanmar Investment Commission (MIC) Permit in December 2014 and a stock exchange permit from the SECM on 28 April 2015 under Chapter 8 of the 2015 Securities Exchange Rules. Trading on YSX was launched in March 2016. It is supervised by the SECM which conducts inspections of YSX and securities companies to check governance and compliance issues and publishes the outcome.¹⁹³

To further develop Myanmar's capital markets, the government is encouraging the establishment of a second-tier listing procedure at the YSX where SMEs can be listed to seek equity financing (Action Plan 6.4 of the draft MERPP). On 28 September YSX announced the establishment of a 'Pre-Listing Board (PLB)' for unlisted public companies, following approval from the President, MoPFI and the SECM.¹⁹⁴ YSX published a Securities Registration Business Regulations and Business Operation Manual for the PLB on 2 October 2020.¹⁹⁵

Unlisted public companies which have more than 100 shareholders; have audited financial statements prepared under IFRS/MFRS; have paid their taxes; are compliant with SECM rules and AML/CFT rules; and have share certificates in electronic format, will be able to register with the PLB. They will be 'nurtured' on their internal management structure, transparency and information disclosure to the point where they are fit to be listed. This nurturing is necessary, as existing public companies score consistently poorly on average in *Pwint Thit Sa* (see above, Public Companies and Table 8). It is possible that some of these companies will not seek to be registered, while other, currently family-owned companies, may seek to 'bridge' to being public and ultimately listed.

YSX argue that PLB Registered public companies will be able to raise funds more easily than at present. They will be able to trade their shares through the securities companies on YSX's platform, all under SECM supervision. YSX also hint that Registered Companies might enjoy the same income tax discount (20% instead of 25%) as listed companies, but given Myanmar's growing budget deficit, this seems questionable. The [draft] MERPP 6.5 also envisages allowing firms listed either on the first or second tier YSX to issue commercial bonds/debentures.

For the first time in March 2019, and again in April 2020,¹⁹⁶ YSX gave Awards to Listed Companies and Securities Companies. Categories included Disclosure Practice, Best Return on Equity, Best Share Price, and Best Dividend. In both years, FMI won the award for Best Disclosure Practice. This reflects their consistent position in *Pwint Thit Sa* as the most transparent listed company (and 5th overall in 2020, 2nd in 2019).

YSX also gave awards to Securities Companies for: Most Underwriting and Share-trading; Most Securities Accounts; and Most Proprietary Trading. In

¹⁹² [Japan Exchange Group](#) also owns the Tokyo Stock Exchange, Osaka Securities Exchange and Tokyo Commodity Exchange

¹⁹³ See for example [Announcement of Inspection Results for 2019](#), SECM Announcement 5/2020, 18 May 2020

¹⁹⁴ [ysx-mm.com/wp-content/uploads/2020/09/Press-Release-for-PLB_ENG.pdf](https://www.yse.or.mm/wp-content/uploads/2020/09/Press-Release-for-PLB_ENG.pdf) and [ysx-mm.com/pre-listing-board/about-plb/](https://www.yse.or.mm/pre-listing-board/about-plb/)

¹⁹⁵ [ysx-mm.com/notice/notice-02102020_01/](https://www.yse.or.mm/notice/notice-02102020_01/)

¹⁹⁶ [ysx-mm.com/news_release/news-07042020_01/](https://www.yse.or.mm/news_release/news-07042020_01/)

2020, all three awards were won by Myanmar Securities Exchange Centre, a JV established in 1996 between Myanma Economic Bank and Daiwa Securities, who are also JV partners in the YSX. In 2020, a Special Award was made to the new uab Securities to recognize its performance in terms of securities account opening in 2019.

Unlike other stock exchanges, the YSX awards therefore appear designed to recognize activity rather than sustainability, or company or CEO performance etc. With only six listed companies, the competition – and their value - is limited. Were YSX to introduce an award for sustainability reporting, it is likely that FMI would win this category too as it is the only listed company to have published a sustainability strategy, their first, which they disclosed through their YSX page in April 2020.¹⁹⁷

REGULATORY REQUIREMENTS FOR SUSTAINABILITY REPORTING AND HUMAN RIGHTS DUE DILIGENCE

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In addition to the requirements being introduced by stock exchanges, governments internationally increasingly require non-financial (i.e. ESG) reporting by certain types of companies, including of their human rights due diligence. These initiatives apply to companies which have investments in, or source from, Myanmar. Myanmar companies who can publicly demonstrate that they are managing ESG risks, including their human rights impacts, will have a competitive advantage when it comes to attracting foreign business partners who are subject to these type of requirements in their home jurisdictions.

Of the Myanmar companies assessed in *Pwint Thit Sa 2020*, 35 had a human rights policy or included human rights in their code of conduct.

EUROPEAN UNION REQUIREMENTS

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Non-financial reporting

The European Union requires large companies (some of which have operations in Myanmar) to disclose certain non-financial data in their annual reports from 2018 onwards.¹⁹⁸ This includes reports on:

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

These rules on non-financial reporting only apply to large public-interest companies with more than 500 employees, which covers approximately 6,000 large companies and groups across the EU. Companies have significant flexibility to disclose relevant information in the way they consider

¹⁹⁷ [First Myanmar Investment Sustainability Strategy](#), April 2020

¹⁹⁸ [EU Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups](#), Eur-Lex 22 October 2014

most useful, and may use international, European or national guidelines to produce their statements. In 2020, the European Commission held a consultation to review the Directive.¹⁹⁹

Diversity

Reporting on board diversity, including gender, as a means of raising awareness of the need for equality, is a requirement under the EU Non-Financial Reporting Directive. In some countries such as Norway, and France there are mandatory requirements (quotas) for Board gender diversity²⁰⁰.

The ASEAN CG Scorecard does not address diversity or gender equality in senior leadership of companies. However, Yever has compiled data about women directors in BoDs where this was disclosed in the companies surveyed. In the 57 companies where the number of members of the Board of Directors were disclosed, 43 of them had one or more women members, and the average number of women members was 1.8, which gives a percentage of women sitting on the Board of 21%.

Thirty-three companies assessed in Pwint Thit Sa either had diversity and/or non-discrimination policies, or contained this commitment in another document (Criterion 96). Furthermore, 9% of the companies disclosed specific KPIs related to diversity, gender-equality and equal opportunities in their workplace.

There are several business-led initiatives intended to support women leaders in Myanmar such as the Business Coalition for Gender Equality (BCGE), funded by the Australian government.²⁰¹ BCGE's founding members are City Mart Holding Limited (CMHL), KBZ Bank, KBZ MS, AYA Bank, FMI, Parami Energy, and Shwe Taung Group. Membership has grown since then and is open to all companies and organisations registered in Myanmar with a commitment to workplace gender equality initiatives. Yever has joined, and MCRB and BCGE established a strategic partnership in February 2020). BCGE serves as a centre of excellence to support a company's journey, with workplace gender equality assessments and training, including support for EDGE certification.²⁰²

Other organisations working to empower women in business include the newly formed Myanmar Women's Entrepreneurs Network,²⁰³ the Myanmar Women's Entrepreneurs Association, the Professional Women's Network sponsored by the UK Chamber of Commerce,²⁰⁴ Myanmar Institute of Directors (MIOD), and a Myanmar chapter of the Women Corporate Directors. 'Ring the Bell for Gender Equality' events to advocate for gender diversity on boards and in corporate leadership are held annually at the Stock Exchange on International Women's Day, organized by the IFC, YSX and SECM. The IFC also has an 'Igniting Change' program for women corporate leaders and

199 Consultation (closed) on [Non-financial reporting by large companies \(updated rules\)](#), European Commission, 2020

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

201 www.mbcgea.com

202 edge-cert.org

203 www.myanwen.org

204 www.facebook.com/ProfessionalWomensNetworkMyanmar/

works on this with MIOD and others.

To promote equality for other minority groups, MCRB has developed guides for business on disability inclusion and supported development of a government action plan on employment of persons with disabilities.²⁰⁵ MCRB has partnered with Colors Rainbow to encourage companies to fly the rainbow flag on the International Day Against Homophobia, Transphobia and Biphobia (IDAHOT) and published a new guide for LGBT+ equality in the workplace, based on the UN's Standards of Conduct for Business.²⁰⁶

Mandatory Human Rights and Environmental Due Diligence

The European Commission is also undertaking a consultation on 'sustainable corporate governance'. This is expected to lead to a proposal for a Directive in 2021 on mandatory human rights and environmental due diligence (mHREDD).²⁰⁷ mHREDD builds on the UN Guiding Principles on Business and Human Rights which state that companies should undertake human rights due diligence, and take steps to mitigate and remedy negative impacts.

NATIONAL REQUIREMENTS

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France

The 2017 French devoir de vigilance Law ("Duty of Care of Parent Companies and Ordering Companies") establishes a legal requirement for human rights due diligence, and the establishment and implementation of annual vigilance plans by companies registered in France with either:

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

Companies meeting these criteria are required to develop and enact annual "vigilance plans" that detail the steps they will take to detect risks and prevent serious violations with respect to human rights and fundamental freedoms, and the health and safety of persons and the environment, which result from company, subsidiary, supplier and subcontractor activities.²⁰⁸

United Kingdom

The UK's Modern Slavery Act of 2015 requires businesses to publish an annual slavery and human trafficking statement reporting the steps - if any - the company has taken to ensure that slavery and human trafficking are not taking place in its own business and any of its supply chains.²⁰⁹ For example, this could include whether there are labour broker fees leading to debt bondage or retention of workers' identity documents.

205 MCRB's activities to promote disability equality in the workplace are available here: www.myanmar-responsiblebusiness.org/tags.html?tag=disability+and+business

206 [LGBT+ Equality In The Workplace: A Bilingual Resource For Employers](#), MCRB May 2020

207 [Consultation on Sustainable Corporate Governance](#) by the European Commission, open until 8 February 2021

208 [French Duty of Vigilance Law takes trend towards mandated corporate disclosure regimes to a new level](#), Freshfields, 8 April 2017

209 [UK Modern Slavery Act, 2015](#)

Netherlands

The Netherlands adopted the Child Labour Due Diligence Law in 2019, effective mid-2022. This obliges companies to investigate whether their goods or services have been produced by child labour and to devise a plan to prevent child labour in their supply chains if they find it.²¹⁰ There are significant administrative fines and criminal penalties for non-compliance. The Law also imposes a reporting obligation.

Switzerland

A longstanding proposal for a Responsible Business Initiative which would have mandated Swiss firms to assess the human rights and environmental practices, not just of their own operations, but also of subsidiaries, suppliers and business partners, narrowly failed to pass in a referendum in November 2020.²¹¹ A controversial element was that Swiss companies could be held liable in Swiss courts for violations committed by subsidiaries and suppliers they control, unless management was able to prove proper due diligence had been carried out. Instead, Swiss companies will be required to increase reporting on environmental and social issues, with a particular focus on child labour and conflict minerals.

At the international level, there is greater emphasis on engagement not only with shareholders but also with stakeholders as an important part of good corporate governance. Larry Fink of Blackrock told companies that they *'cannot achieve long-term profits without embracing purpose and considering the needs of a broad range of stakeholders, etc. Ultimately, purpose is the engine of long-term profitability. Over time, companies and countries that do not respond to stakeholders and address sustainability risks will encounter growing skepticism from the markets, and in turn, a higher cost of capital. Companies and countries that champion transparency and demonstrate their responsiveness to stakeholders, by contrast, will attract investment more effectively, including higher-quality, more patient capital'*.

This approach is sometimes known as 'stakeholder capitalism': the idea that a company's purpose is to create long-term value, and it should serve the interests of all stakeholders, including customers, suppliers, employees, shareholders and local communities. The World Economic Forum's International Business Council is seeking to define 'Stakeholder Capitalism Metrics' for use in ESG reporting.²¹² The concept is not new. The 2015 G20/OECD Principles of Corporate Governance note that *"The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises"*.

210 [Mandatory human rights due diligence laws: the Netherlands led the way in addressing child labour and contemplates broader action](#), Allen and Overy, 2 September 2020

211 [Switzerland: Responsible Business Initiative rejected at ballot box despite gaining 50.7% of popular vote](#), 29 November 2020 CNN

212 [Measuring Stakeholder Capitalism: Towards Common Metrics and Consistent Reporting of Sustainable Value Creation](#), World Economic Forum, 22 September 2020

This shift is already recognised inter alia in the CG codes of UK,²¹³ Australia, South Africa, Malaysia, and Singapore. Singapore's August 2018 CG Code includes a new Principle (13) that *"The Board adopts an inclusive approach by considering and balancing the needs and interests of material stakeholders, as part of its overall responsibility to ensure that the best interests of the company are served"*.²¹⁴ Its accompanying Provisions set out "Comply or Explain" expectations for companies to:

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

These requirements are consistent with the aims of *Pwint Thit Sa*. Furthermore, the *Pwint Thit Sa* process, including company engagement, has demonstrated that leading Myanmar companies are interested in engaging their stakeholders.

Stakeholder engagement opportunities for companies in Myanmar are increasingly being created, including by law. These include compulsory requirements for public participation (consultation, disclosure) in the Environmental Impact Assessment (EIA) which have been developed into draft guidelines, as well as legal requirements for grievance mechanisms which are being integrated into Environmental Compliance Certificates (ECC) issued as a result of the EIA process.²¹⁵

Of the companies assessed, 12 had some form of stakeholder mapping or stakeholder engagement commitment, and 7 had undertaken a materiality analysis (it was 4 in 2019). Some companies have established teams for engagement with external stakeholders including media, communities and government, and for sustainability. This is welcome, since civil society groups tell MCRB that one of the main challenges of pursuing company accountability is finding company staff willing to take responsibility for receiving and acting on grievances and engaging with stakeholders, particularly for companies in joint ventures with government.

CORPORATE PHILANTHROPY AND 'CSR'

Many Myanmar companies, as well as government officials and community members, have difficulty distinguishing between 'responsible business conduct', a company's legal obligations, 'stakeholder engagement', 'CSR', and philanthropy. This confusion is not unique to Myanmar. It reflects the evolution and understanding of 'corporate social responsibility' (CSR) over recent decades.

The OECD's second Investment Policy Review on Myanmar²¹⁶ addresses this

213 [UK Corporate Governance Code](#), 2018

214 [Singapore Corporate Governance Code, Principle 13](#), eGuide

215 [Draft guidelines for public participation in Myanmar's EIA processes](#), 31 May 2017

216 OECD, November 2020

in Chapter 4 on Promoting and Enabling Responsible Business Conduct (RBC):

“RBC means integrating and considering environmental and social issues within core business activities, including throughout the supply chain and business relationships. Many businesses, governments and stakeholders are familiar with the term corporate social responsibility (CSR) which has historically been used to describe business interactions with society. Over the last years, CSR has increasingly been used alongside RBC and Business and Human Rights (BHR), with some using the terms interchangeably (e.g. the European Union). All these concepts reflect the expectation that businesses should consider the impact of their operations and supply chains on people, the planet and society as part of their core business operations and not as an add-on. A key characteristic of CSR, RBC and BHR is that they refer to corporate conduct beyond simply complying with domestic law and call on business to contribute positively to sustainable development while managing risks and any harm that may result from their activities and from that of suppliers and partners. These concepts are not and should not be understood to be equivalent to philanthropy”.

Whenever MCRB undertakes training on responsible business, it seeks to explain the spectrum of activities which may be labelled ‘CSR’ (see Figure 3). MCRB encourages business to first focus on ensuring legal compliance, undertake human rights due diligence and do no harm, and then consider how their businesses can create shared value (CSV), and be more sustainable and inclusive. CSV and sustainability are more closely tied to business strategy, and therefore more likely to be pursued in business downturns when philanthropy budgets are squeezed. As they are generally managed through spending within the company, rather than grants to others, there is also less associated corruption risk. All of this contributes to a company earning and retaining a ‘social licence to operate’. Companies and organisations in Myanmar are increasingly aligning with this approach.²¹⁷

However, many Myanmar companies still focus on philanthropy. Some larger companies have established a ‘foundation’ from which they make donations. Most of these ‘foundations’ have minimal governance and no registration under the Associations Law or other laws, and their tax and charitable status is unclear.²¹⁸

Whether or not they have a ‘foundation’, companies, or their owners, regularly contribute to local organisations, and initiatives, as well as humanitarian causes. According to the Doing Good Index 2020 (see Box 7), 37% of not-for-profits in Myanmar receive corporate support. This compares to 48% on average in Asia.²¹⁹

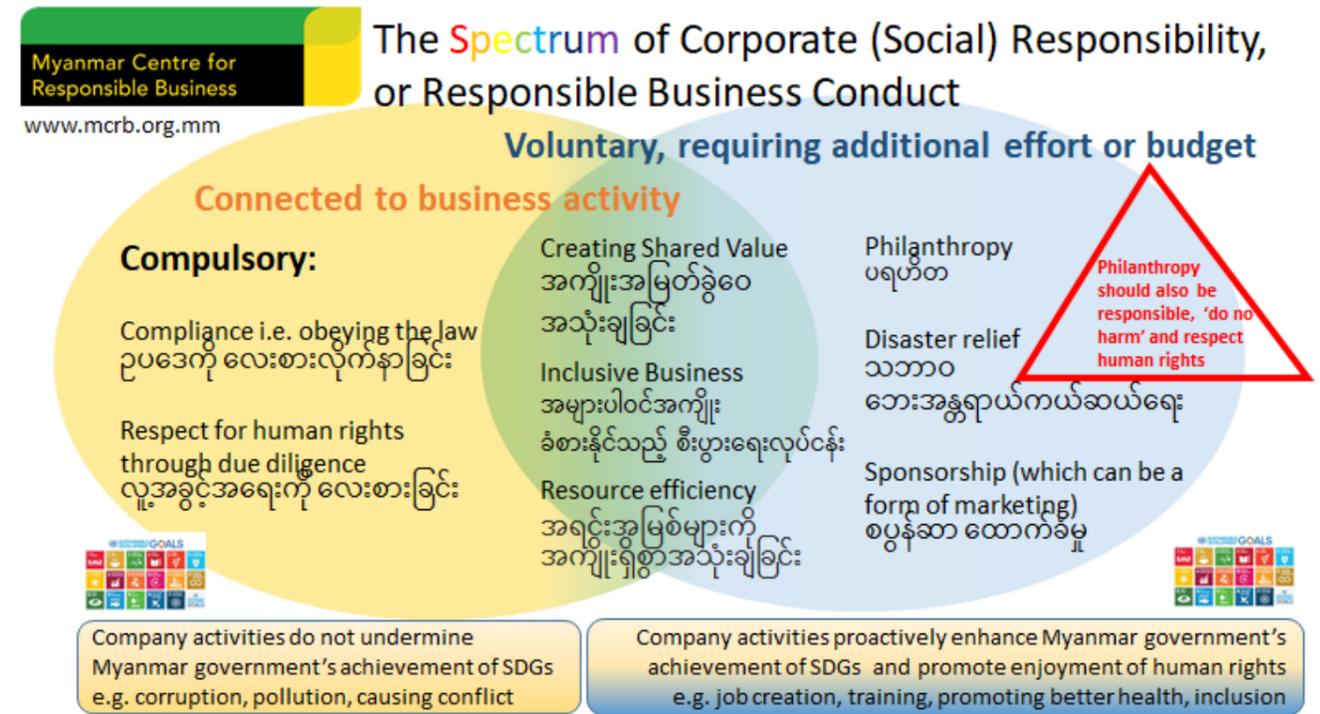
217 For example, the [EuroCham Myanmar Responsible Business Initiative](#) which evolved from their ‘CSR Advocacy Group’.

218 Shwetaung Foundation is an exception, having registered in 2018. It [publishes an annual report](#).

219 [doinggoodindex.caps.org/dashboard](#). The Doing Good Index measures philanthropy. This is different from casual giving as measured by the World Giving Index (WGI) of the Charities Aid Foundation. In the WGI measure, Myanmar comes second globally over a 10 year period, [CAF World Giving index 10th edition](#) October 2019.

FIGURE 3:

The Spectrum of Corporate (Social) Responsibility, or Responsible Business Conduct



BOX 7:

Doing Good Index 2020

In 2019, MCRB partnered with the Hong Kong-based Centre for Asian Philanthropy and Society (CAPS)²²⁰ on research for the Myanmar chapter of the 2020 Doing Good Index (DGI2020)²²¹ conducting a comprehensive online survey with 105 Myanmar not-for-profit ‘social delivery organisations’ as well as in-person meetings with government officials and experts.²²² The DGI report measures four different areas across 18 Asian countries including:

- tax and fiscal policy: incentives for donors; incentives for recipients
- regulatory regimes: efficiency, flow of funds, accountability, communication
- socio-cultural ecosystems: public perception, institutional recognition, talent infrastructure, good governance
- government procurement: access to procurement opportunities, procurement process.

The report, released in June 2020, showed Myanmar moving up to ‘Doing OK’, from ‘Not Doing Enough’ in 2018. This improvement was a result of improved registration and oversight efficiency for not-for-profits, probably linked both to greater familiarity with the 2014 Associations Law, and the introduction of an option to register as a Company Limited by Guarantee under the 2017 Myanmar Companies Law

220 [caps.org](#)

221 [doinggoodindex.caps.org](#)

222 [www.myanmar-responsiblebusiness.org/news/2020-doing-good-index-launched.html](#)

Businesses may also contribute to government relief efforts when requested to do so. Company contributions have been a significant part of Myanmar's COVID-19 response, and are widely appreciated by government and the public. But donations, particularly to government officials, can cross the line and become corruption.²²³ Donating to gain favour with the government was a widespread practice by 'cronies' under the military State Peace and Development Council (SPDC) government, in return for benefits such as car import permits, construction contracts, land deals and other opportunities. Donations can also be used to buy influence or silence dissent. MCRB's field research for the Mining Sector-Wide Impact Assessment found use of mining company 'CSR budgets' to make 'donations' to village elders and officials in return for signatures and support for mining projects, as well as to locally influential religious leaders.²²⁴

There is therefore a need for companies to ensure that not only their companies, but also their foundations, have good corporate governance and conduct due diligence on donations.²²⁵ This was reinforced by the UN FFM report on military economic interests (see above). Some companies mentioned in the report who had donated in September 2017 in response to requests from the military have since overhauled their philanthropic giving, and have put in place policies and controls.²²⁶ This should help them resist requests which pose a business integrity risk.

Pwint Thit Sa 2020 scored companies (criterion 75) on whether they had a policy on philanthropy/donations. Eleven companies did and eighteen disclosed their charitable expenditures.

There is still significant work to be done to improve regulation and governance of philanthropic activity and charitable giving in Myanmar. The 2014 Associations Law, under which a foundation or other charitable organisation would be expected to register, does not meet international human rights standards for freedom of association. It also limits the objectives of groups which can register: environment, sport and culture are not included, for example. It provides for interference – for example in activity perceived as 'sensitive', but not effective oversight to ensure financial probity. Such oversight is needed primarily to ensure that donations are used as intended and not misapplied or squandered through fraud, or – in high-risk situations

223 [IRD Practice Statement 1/2018 on Deductibility of Gifts to Government Officials](#) makes clear that gifts to government officials including through an associate or a family member are ineligible expenses for tax deduction, reflecting Myanmar's obligations under the UN Convention Against Corruption, as well as Myanmar's Anti-Corruption Law and Penal Code.

224 [Sector-Wide Impact Assessment on Limestone, Tin and Gold Mining in Myanmar](#), p.51, MCRB, March 2018

225 This was discussed in MCRB's [Governance of Corporate Philanthropy](#) workshop in October 2019. MCRB's [Handbook on Business Integrity](#), July 2020 gives further guidance.

226 KBZ's Bank [Social Purpose and Impact Partnership Committee \(SPIP\)](#), created in December 2019 is an example.

- used for terrorist financing.²²⁷

Registration under the Associations Law is decentralised across townships and at Union level. There is no unified Charities Register in Myanmar or a Charities Commission. This means that although Section 6(a) of the 2011 Income Tax Law states that 'contributions to religious or charitable institutions, sponsored by the State or recognised by notification by the Ministry of Finance and Revenue (now MoPFI) or to a fund relating to the said matter, shall be deducted'²²⁸ there is no easy mechanism for the Internal Revenue Department (IRD) to identify "recognised organisations" when conducting tax audits. Indeed, one company which makes significant donations was told by IRD that there were no "recognised organisations" within the meaning of the law.²²⁹

Internal Revenue Department (IRD) Practice Statement 2/2018 aimed to clarify eligibility for tax deductibility but this may have further muddied the waters. Perhaps as a reflection of historical abuse, donations to government causes were identified as ineligible.²³⁰ This means that recent COVID contributions by companies, many of which have been made to State/Region COVID Committees, would be ineligible. In practice, IRD may recognise that donations are deductible for the types of charitable causes specifically mentioned in the Explanation to Section 6a of the Income Tax Law.²³¹ But this lack of clarity in the Income Tax Law and the Practice Statement is frustrating for companies, which are regularly asked by government for contributions. The potential for interpretation by, and negotiation with, tax officers is also a business integrity risk.

There is therefore a case for a modern Charities Law to replace the Associations Law. A new Charities Law could meet the needs of donors and recipient organisations, as well as allow for necessary oversight and protection of the right to freedom of association. Together with the Income Tax Law, a Charities Law should provide appropriate incentives for donors (both corporate and individual), as well as incentives for recipients to register if they want to be treated as a charity. Such a Law should recognise the right **not** to register as a charity, but still be able to operate as an 'unincorporated association' that could for example open a bank account in the association's

227 Myanmar was ranked 'Partially Compliant' under Recommendation 8 of the Mutual Evaluation Report of the Financial Action Task Force (FATF) on Anti-Money Laundering and Counter Terrorism Financing (CTF), which noted that the risk of abuse of non-profit organisations for terrorist financing was low, something that the FATF has generally recognized to be true globally. However, the MER noted a lack of CTF guidance from the regulator.

228 Deductions cannot exceed the 25% of assessable income. The draft Income Tax law proposes to reduce the ceiling for tax deductible charitable giving to only 10%.

229 MCRB interview with a large Myanmar company, December 2020.

230 [Update on Tax Treatment on Donations based on Practice Statement 2/2018](#), PWC Newsletter 24 June 2019, and [Myanmar original of Practice Statement 2/2018](#) This lists '(c) 'Donations made directly to hospitals, schools, libraries or donation of useful equipment for public, donation of public buildings....' and (e) 'Donations to government organisations and ministry departments' as ineligible for deduction from income for tax purposes.

231 'Charity means contributions for the benefit of the public such as education, health, relief for the poor and for the persons affected by the natural disaster.' Explanation to S.6a of 2011 Income Tax Law.

MANDATORY AND VOLUNTARY SOCIAL AND ENVIRONMENTAL EXPENDITURE BY COMPANIES

name, or receive invitations to government consultations.

The role of corporate philanthropy and foundations should also be considered holistically, taking into account how companies voluntarily contribute to social and environmental objectives, and what mandatory requirements should be placed upon them. Currently there is significant confusion in government about this, particularly with regards to the EIA process. EIAs should focus on identifying potential adverse impacts and require companies to avoid them, or cover the cost of mitigating them ('polluter pays'). Instead, the current MONREC approach places more emphasis on getting companies to identify how much they will spend on 'community development' (which they often refer to as 'CSR').

A company which understands 'stakeholder capitalism' (see above) will understand that supporting community development - for example by prioritizing local training, employment and procurement - is in its interests and will strengthen its 'social licence to operate'. But mandating community development spending is not the purpose of an EIA. In particular, it should not be seen as an alternative to requiring companies to cover the cost of mitigating negative impacts.

There is also a widespread misunderstanding in government and some businesses that companies must by law 'spend 2% on CSR' (although they are unclear as to 2% of what). However, other than a few production sharing contract (PSC) requirements, the only Myanmar legal requirement for social expenditure/community donations is Section 56 of the 2019 Gemstones Law which requires 2% of a company's 'investment amount' to be paid to the State/Regional government for spending in accordance with the guidance of the local MP; another business integrity risk.

U Thant Sin Lwin, the Director-General of DICA, clarified at MCRB's Corporate Philanthropy workshop that there is no general legal obligation and that *'the Myanmar Investment Law, and the Myanmar Investment Commission do not require investors (foreign or Myanmar) to spend a percentage of their profits on philanthropy. Rather, the MIC encourages investors to consider the many different ways in which their businesses can enhance the welfare of the Myanmar people and deliver 'responsible and inclusive investment'*.²³²

Since 2019, businesses permitted at state/region level, such as small-scale mining, are increasingly being required by local officials to pay 'CSR contributions' into bank accounts established by township level officials jointly under the names of individuals, even though there is no legal basis and no apparent Auditor-General oversight. This raises significant corruption risks. It also reduces the flexibility of the mining company to work with the local community to determine spending, including through a possible 'Community Development Agreement'.²³³ In the pearl sector, the Tanintharyi Region Government (TRG) refused in August 2020 to accept the Tasaki Pearls' tax return which detailed how they had spent 37 million kyats social

²³² [Governance of Corporate Philanthropy](#), MCRB workshop October 2019

²³³ A forthcoming paper by Natural Resources Governance Institute (NRGI) will examine this in more detail.

expenditure in the 2019 mini-FY.²³⁴ These developments are taking place not least as Myanmar has yet to establish an effective system of revenue sharing in natural resources, leading to state/region governments to see 'CSR' as an option for local revenue raising.

Under the [Myanmar Extractives Industry Initiative](#) (MEITI) some extractives companies declare their 'social expenditure' and identify whether this is mandatory or voluntary expenditure. In Section 6.5 of the latest MEITI report, the social expenditure for those oil and gas, mining and pearl companies is recorded as 23.6 billion kyats (approx. US\$18 million), of which 3.4 billion kyats was voluntarily allocated to education, health and infrastructure by the Myanmar Oil and Gas Enterprise (MOGE), and is identified as '2% of their net profit'.²³⁵ Most of the other social expenditure is identified as voluntary. However, military owned MEH, a shareholder in the Letpadaung copper and Tagauntaung nickel mines, record 27 million kyats as voluntary and 676 million kyats as mandatory, probably a reflection of a requirement in the Letpadaung PSC.

Future mandatory expenditure for companies (depending on their size or impact) may also include contributions to an Environmental Management Fund and possibly Payments for Ecosystems Services (PES). This is foreseen in Chapter 5 of the 2014 Environmental Conservation Rules. An additional future levy could be raised to pay for a Skills Development Fund under Chapter 8 of the 2013 Employment and Skills Development Law.²³⁶ A holistic view is needed of all the taxes and mandatory contributions an investor in Myanmar must make, including those foreseen, but not yet in place, to ensure that companies in Myanmar can meet legal requirements and practice stakeholder capitalism, but not at the expense of their competitiveness.

DEVELOPING A CONSISTENT MYANMAR APPROACH TO CORPORATE GOVERNANCE AND DISCLOSURE

The Myanmar Sustainable Development Plan calls for a whole-of-government approach to achieving national development priorities. The different definitions and thresholds between regulatory regimes which are highlighted in Parts 2 and 3 show the need for a consistent and coordinated cross-government approach to responsible business, corporate governance and disclosure, including ESG reporting.

The establishment of the Beneficial Ownership (BO) Task Force by MoPF order 60/2018 MEITI (see Part 2) was a positive step towards cross-government coordination. However, the Task Force is focused on extractives and was established to deliver on the MEITI requirements. It was not designed to enable Myanmar to meet its wider international obligations to combat money laundering and corruption, including disclosure of BO and complying with the FATF recommendations so that Myanmar can exit the 'grey list'.

Consistency by regulators on definitions and thresholds will strengthen the Myanmar's government's ability to deliver on its anti-corruption, AML and CTF objectives, as well facilitate compliance by the private sector and

²³⁴ Documents on file with MCRB

²³⁵ [EITI Report 2017-2018](#), EITI Myanmar

²³⁶ [The Levy System of Establishing Skills Development Fund](#), Global New Light of Myanmar, 9 August 2020

access to finance. Areas for alignment include independent directors, beneficial ownership (BO), politically exposed persons (PEPs), related party transactions (RPTs), family members and conflicts of interest. If thresholds or definitions differ, this should be based on objective criteria, aligned to international good practice, rather than the subjective decision of one ministry, committee or development partner.

As opportunities for green finance, and demands for ESG reporting increase, coordination will be needed between MoPFI (including SECM and the YSX), MIFER, and MONREC, as well as the CBM, whose independence should not prevent its participation in a coordinated cross-government approach. These institutions not only need to ensure that regulation and initiatives are internally aligned, but also need to ensure they are consistent with the MSDP and other policies, Myanmar regulation, as well as with international standards, on which international investors are well placed to share advice. Donor coordination and consistency is also needed, in line with Myanmar's revised Development Assistance policy (DAP).²³⁷ As can be seen from the initiatives mentioned in this report and its footnotes, a number of partners in development (PID), including governments, NGOs and the private sector, are active in Myanmar in support of private sector development, including regulation of corporate governance and disclosure.

Also needed is a holistic cross-government understanding of the private sector's mandatory and voluntary contributions to environmental and social objectives. A process for drawing up a National Action Plan (NAP) on Responsible Business Conduct (or Business and Human Rights), as envisaged by the OECD's Investment Policy Review, might help this.²³⁸

Myanmar currently lacks a Corporate Governance Code. CG codes can encourage private sector commitment to good corporate governance and aspirations towards higher standards. They can provide guidance for financial and nonfinancial disclosure, stakeholder relations and foster better engagement of minority shareholders. They also can help clarify the roles of managers and directors. Over 140 countries now have Corporate Governance Codes. More than 50 of these were developed with assistance from the IFC, which has had a Corporate Governance Initiative in Myanmar since 2016 that has resulted in extensive understanding and development of Myanmar's CG landscape (see Box 8).²³⁹

In January 2019, a Corporate Governance Reform Advisory Committee (CGRAC) was established.²⁴⁰ This brings together government, private sector and development partner stakeholders. The CGRAC is chaired by Marcello Bianchi, former Chair of the OECD Corporate Governance Committee. It includes a de facto Deputy Chair in Aung Naing Oo, Permanent Secretary, Ministry of Investment and Foreign Economic Relations and representatives from the SECM, DICA, MICPA, UMFCCI, CBM, Hermes Fund Management, OECD, IFC, with the YSX subsequently added as an Observer. The objectives

²³⁷ [Myanmar Development Assistance Policy](#), September 2020

²³⁸ [OECD Investment Policy Review: Myanmar 2020](#)

²³⁹ [Corporate Governance Codes and Scorecards](#), IFC

²⁴⁰ Established by MoPFI Notification 17/2019 of 23 January 2019 (on file with MCRB)

BOX 8:

The IFC's Myanmar Corporate Governance Initiative (MCGI)

The International Finance Corporation (IFC), a member of the World Bank Group, has been implementing a Myanmar Corporate Governance Initiative (MCGI) in Myanmar since 2016 with support from the Australian and the UK governments. MCGI aims to improve corporate governance standards and practices in Myanmar by focusing on the following:

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

Under a memorandum of understanding signed in March 2017, IFC is building the capacity of the Securities & Exchange Commission of Myanmar (SECM) in standard setting and supervision in the field of corporate governance.

In 2018, the SECM, DICA, YSX and IFC initiated the Myanmar Corporate Governance Scorecard to benchmark corporate governance practices in twenty-four Myanmar public and listed companies as well as some large private companies. The scorecard report was finalized and published in April 2019 (see Box 6 of 2019 Pwint Thit Sa).

Since 2018, the IFC has further supported SECM's policy efforts in promoting better governance by: (i) peer reviewing/working together with SECM on the planned regulations; (ii) building the capacity of SECM staff to oversee and enforce the corporate governance/disclosure requirements and regulations and (iii) supporting the drafting of an SECM instruction on Material Related Party Transactions (see above).

of the CGRAC are to:

- take stock of current status of corporate governance in Myanmar companies;
- identify gaps between corporate governance in Myanmar and global standards; and
- make tailored recommendations for further corporate governance reform in Myanmar

This Committee – or an enhanced version of it - may be the vehicle through which a Myanmar Corporate Governance Code is pursued.

Such a CG Code needs to be developed systematically and transparently, with the involvement of all supervisory bodies, including the Central Bank, SECM and DICA. The Code should clearly distinguish between mandatory regulatory requirements, and guidance. It should reflect global and ASEAN practices, and cover issues commonly addressed in international standard CG Codes, such as ESG and stakeholder engagement. Its development should involve the private sector. Civil society stakeholders should also be involved, both in their role of promoting corporate accountability, but also because a Myanmar CG Code could be relevant for governance in the non-profit sector.

The Myanmar Institute of Directors (MIOD) is also well placed to make inputs to development of the Code, and later raise awareness of it through its training programmes. MIOD was established with financial support from the governments of Australia and the United Kingdom, and technical support from the IFC and held its first AGM in June 2020 (see Box 2). It aims to advance board professionalism, promote business ethics and transparency, create networks between corporate leaders and stakeholders, and boost investor confidence in Myanmar’s private sector, as well as build the capacity of the public sector.

PART 4: THE 2020 PWINT THIT SA REPORT: RESULTS

METHODOLOGY

The goal of the *Pwint Thit Sa/Transparency in Myanmar Enterprises (TiME)* report is to foster better corporate disclosure practices. These practices are changing rapidly, and therefore, every year, MCRB and Yever review the methodology to ensure its relevance. The 2020 methodology is very much aligned with the previous edition: the number of criteria and their distribution is almost identical (see Table 5). However, specific changes were implemented to reflect feedback previously received.

The *Pwint Thit Sa* (PTS) scoring methodology aims to assess the quality of the corporate disclosure of significant Myanmar companies, where:

- “**quality**” can be understood as the capacity for a company to provide material information on its strategy, governance, management and performance on Environmental, Social and Governance (ESG) topics. As with the 2018 and 2019 editions, we used the ASEAN Corporate Governance Scorecard, the GRI Standards and the Integrated Framework to structure the PTS scorecard. It is, however, important to note that MCRB/Yever do not assess the reliability and sincerity of the information: auditors typically perform such work, and, for the time being, no company in Myanmar has decided to disclose audited ESG information.
- “**corporate disclosure**” pertains to all publicly available information. MCRB/Yever mostly considers data, documents and information disclosed on websites, but we also review other communication channels such as social media.
- “**significant Myanmar companies**” refers to the companies that meet at least one of the following conditions. A company is included if it is:
 - listed on the Yangon Stock Exchange; and/or
 - a public company with more than 100 shareholders recognised as such by the SECM; and/or
 - Part of the top 100 tax payers for the commercial and/or corporate income tax; and/or
 - a bank; and/or
 - a SOE operating in the extractive, energy, financial or logistics sector; and/or
 - a prominent company; and/or
 - a company that has volunteered to be benchmarked.

To achieve our goal, we ensured that our work plan offered sufficient time for the companies not only to update their corporate disclosure but also to engage with us. The 2020 *Pwint Thit Sa* edition was launched in February 2020. Draft scores were shared with each company after Thingyan. From May until August, we offered companies the opportunity to engage with us and ask questions so that they could improve their corporate disclosure. The final assessment took place in September and October. This approach is designed to provide companies with specific, actionable feedback, but also to allow them to review and identify the potential weaknesses identified in

our initial assessment. We observed a significant improvement between the first and final scores for the companies with whom we met. This indicates the willingness of companies to improve the quality of their disclosure, provided they have clear guidance.

MAIN CHANGES IN THE 2020 SCORECARD

The 2020 scoring system covers 143 data points, the same as 2019. We also kept the previous structure of the scorecard with its four dimensions: **corporate profile; corporate governance; sustainability management and reporting.** Following the 2019 report, some privately-owned companies shared feedback that they believed the previous scorecard offered an advantage to listed, and public companies, since the scoring system covered information that was mandatory for them to report. This meant that we were assessing in the same way companies that had to comply with laws and regulations and companies that had voluntarily decided to disclose information. Having reflected on this feedback, MCRB/Yever decided to adjust the scoring system. While the same scorecard is used to assess all the companies, we distinguish two categories:

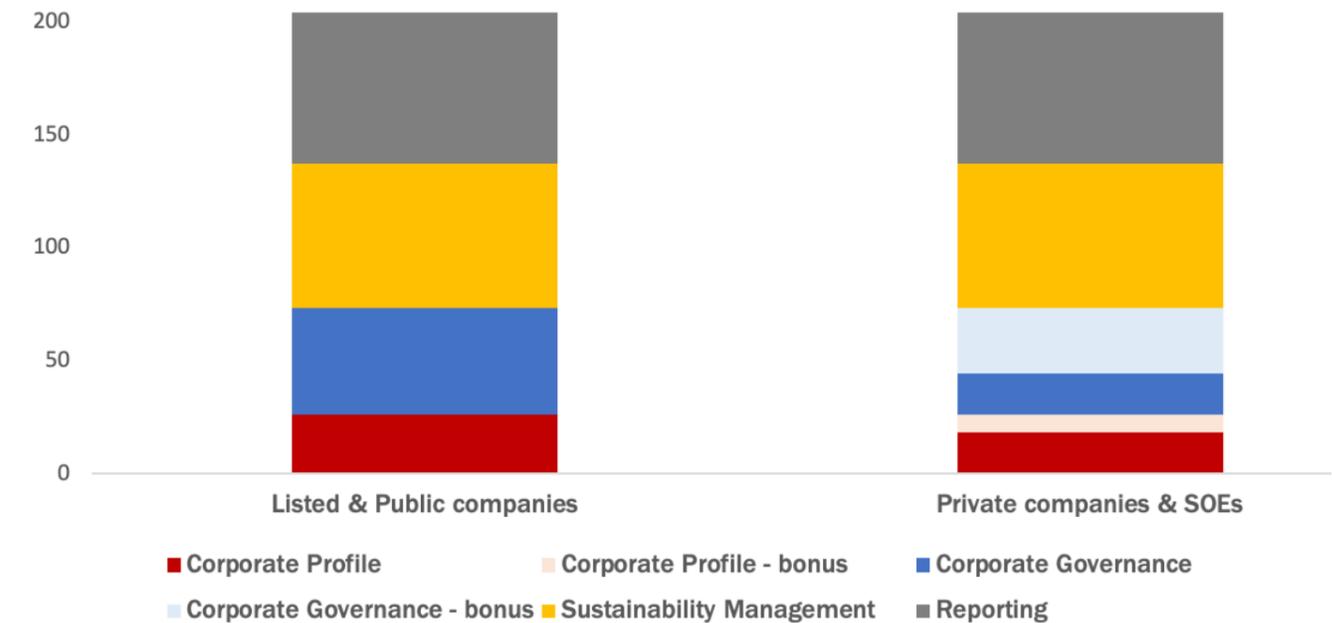
- **listed and public companies with over 100 shareholders:** these were assessed against 143 criteria which were all mandatory: the maximum in this category was 204 points: 82 for disclosure-related criteria and 122 for performance-related criteria.
- **privately-owned companies, and state-owned economic enterprises:** for them only 113 criteria were mandatory, and 30 were an opportunity to get bonus points. The maximum for the companies in this group was 167 points. An additional 37 points could be scored in Corporate Profile and Corporate Governance. Therefore, it was possible for these companies to score above 100% for those two areas. Some private companies achieved this, because they decided to disclose specific information voluntarily.

Figure 4 summarises the differences between the two categories in term of scoring.

The second adaptation is intended to counter ‘greenwashing’. Every ranking has flaws, and *Pwint Thit Sa* is no exception. We identified last year a trend among some companies to disclose just enough information to tick the box of our assessment. The 2019 scorecard had 83% of the criteria related only to disclosure; in 2020, this figure is only 57% (see Table 4). Our intention is that to get the maximum number of points, companies should disclose better and more comprehensive information. Just as the financial reports of a company would not only cover the cost of the head office, so the ESG reporting of the company needs to reflect the full scale of its operations. That is why we decided, for instance, this year to implement a scaling system for criteria 68, 71, 75 and 96.

These methodological changes were communicated to the companies during February’s launch and the documents were made available on MCRB’s and Yever’s websites.

FIGURE 4: Scoring systems for the two categories of companies



ALIGNMENT OF PWINT THIT SA WITH EXISTING STANDARDS AND FRAMEWORKS

The 2020 scoring methodology uses a selection of the most relevant criteria from the ASEAN Corporate Governance Scorecard (ACGS). We consider that 49% of the ACGS level 1 criteria are covered by at least one criteria of the PTS 2020 scorecard. As with previous *Pwint Thit Sa* reports, the full ACGS was not used because there is a heavy focus in Categories A and B on the Rights of Shareholders, and Equitable Treatment of Shareholders, neither of which is yet relevant to most Myanmar companies. Instead, and following a discussion in 2017 with Dr Bandid Nijathaworn (then CEO of the Thai Institute of Directors), who was closely involved in designing the ACGS and implementing it in Thailand, *Pwint Thit Sa* focusses on Categories C, D, and E of ACGS: Role of Stakeholders; Disclosure and Transparency; and Responsibilities of the Board (see Table 3).

TABLE 3 - COVERAGE OF ACGS LEVEL 1 CRITERIA BY PWINT THIT SA CRITERIA

	Coverage
Part A: Rights of Shareholders	5%
Part B: Equitable Treatment of Shareholders	36%
Part C: Role of Stakeholders	92%
Part D: Disclosure and Transparency	41%
Part E: Responsibilities of the Board	62%

TABLE 4 - CRITERIA USED IN THE 2020 SCORING SYSTEM

Category	Pillar	Disclosure	Performance	Bonus - Disclosure	Bonus - Performance	Total
Listed/ Public	Corporate Profile	14	6	–	–	20
	Corporate Governance	39	4	–	–	43
	Sustainability Management	18	23	–	–	41
	Reporting	11	28	–	–	39
	Total	82	61	0	0	143
Private/ SOEs	Corporate Profile	12	3	2	3	20
	Corporate Governance	18	0	21	4	43
	Sustainability Management	18	23	-	-	41
	Reporting	11	28	-	-	39
	Total	59	54	23	7	143

Pwint Thit Sa 2020 also incorporates elements of the Integrated Reporting Framework <IR>. <IR> covers a wider range of topics than the ACGS, and, importantly, connects financial and non-financial reporting, thereby clarifying how companies are creating and sharing value with their stakeholders.

Table 5 identifies the links between the *Pwint Thit Sa* criteria, the ACGS and the Integrated Reporting Framework (<IR>).

TABLE 5 - ACGS and <IR> criteria used in *Pwint Thit Sa 2020*

	Number of criteria	Number of PTS criteria related to ACGS	Number of PTS criteria related to <IR> (% of coverage)
Corporate Profile	20	8	7
Corporate Governance	44	37	2
Sustainability management	40	13	18
Reporting	38	26	30

SOURCES OF INFORMATION CONSIDERED

—

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

- company websites;
- company corporate policies, if they are accessible through the website;
- annual, sustainability and ad hoc reports, if they are downloadable and/or accessible;
- Communications on Progress (COP) to the UN Global Compact;
- information uploaded on Facebook pages.

MCRB/Yever decided to err on the side of generosity when assessing a company’s disclosure. For example, when Q89 was assessed, all communication channels were considered, not only the annual report, since some Myanmar companies do not yet disclose their annual report but do disclose corporate objectives and biographical details of their BOD members on their website.

SELECTION OF COMPANIES FOR INCLUSION

—

MCRB/Yever selected 260 companies (the 2019 and 2018 editions covered 248 and 182 companies respectively), of which 31 are banks. These include:

- 6 companies listed on the Yangon Stock Exchange (YSX), of which 2 are banks;
- 52 public companies – of which 8 are banks – identified by the SECM as regulated by them²⁴¹ because they have more than 100 shareholders;
- 174 privately owned companies – of which 17 are banks – who either:
 - paid significant commercial and/or Income tax according

²⁴¹ secm.gov.mm/en/public-companies/

to the top 1,000 Myanmar companies taxpayers list for FY 2018/2019, issued by the Internal Revenue Department

- are either influential in Myanmar²⁴² or
- volunteered to participate.
- 28 State-owned Economic Enterprises (SEEs), of which 4 are banks.

PROBLEMS WITH IDENTIFYING COMPANIES AND 'GROUPS'

As previous *Pwint Thit Sa* reports identified, the word "Group" in Myanmar is used inconsistently. Some operate as a registered entity with a clear legal structure while others form a loose alliance of companies and call themselves a Group without a legal registration as a single entity. Those companies with the characteristics of a 'group' were asked about their structure and how they would prefer to be assessed i.e. as a whole group or individually. Some companies opted to nominate a company for assessment which was treated as a 'holding company' even where it was not formally established as such. Others preferred to have related companies, which were each included by virtue of being significant taxpayers, benchmarked separately. Unlike in previous years, all banks were assessed separately from any 'group' they might be associated with.

WEBSITE ASSESSMENT AND COMPANY ENGAGEMENT

The research phase of the report was launched in Yangon on 3 February 2020 at a workshop for companies to explain the main changes and approach for the 2020 report, and answer initial queries. Details of the research (companies and assessment criteria), were uploaded to MCRB and Yever websites.²⁴³ The companies that were to be assessed were informed about the 2020 research methodology by email and letter (to the extent that MCRB managed to retrieve their contact details online).

Yever led the online research which commenced in February 2020 after the public launch of the research phase. In the first assessment, one member from the Yever team undertook the assessment, subject to internal/quality controls. The draft score was subsequently shared with companies in hard copy and by email in April.

On 14 May 2020, MCRB and Yever held a webinar to share the results after the first assessment. Companies were invited to contact MCRB and Yever to discuss their draft scores, and receive specific feedback on how to improve their disclosure. Over 40 companies contacted MCRB/Yever, and 32 followed up with a meeting to discuss their draft scores, with specific suggestions

²⁴² This includes companies who had previously been subject to EU or US sanctions.

²⁴³ www.myanmar-responsiblebusiness.org/pwint-thit-sa/2020.html & <https://yever.org/project/pwint-thit-sa-2020/>

provided by MCRB/Yever on how to improve their disclosure.²⁴⁴ Companies had until the end of August to finalise the disclosure of information, although up to three more weeks were given to those who requested it due to late updating of websites and/or due to a late decision to volunteer.

Scores were finalised in October when 60,000+ data were analysed and computed by Yever. Yever undertook a final review. The MCRB team then cross-checked the scores of the leading companies and of Yever's clients to avoid any potential conflicts of interest (see Box 1). MCRB did not identify any discrepancy and the reliability of Yever's assessment was over 99.9%. Overall, over 300 pro bono working days were spent by Yever on preparing and analysing the data and engaging with companies.

As a result of this dialogue, the majority of these companies significantly increased their disclosure of information and improved their score, on average by 14% points between the draft and final score. This suggests that similar guidance to companies on disclosure from the regulators would be welcomed.

SCORING

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

For the performance criteria, a YES scored 2 points. For specific criteria – Q68, 71, 75 and 96 – we introduced a scaling system to assess the alignment of companies' practices with international standards: for instance, companies which disclosed recent information covering their overall business scored more points than companies only disclosing information about part of their business. The total score for a company was then calculated by adding the score for each of the 143 criteria. As explained above (Table 4), the denominator used to calculate the percentage score was different between the listed/public company category, and private/SOEs.

LIMITATIONS OF THE RESEARCH METHODOLOGY

As with any corporate governance assessment based on publicly available information, there are limitations in the questionnaire and ranking of Myanmar companies. This research methodology simply assesses whether the information is accessible or not online. As the method relies on publicly available information via the internet, policies or reports that are only available in hard copies are not captured in the assessment. Furthermore, although an attempt has been made in *Pwint Thit Sa 2020* to assess the

²⁴⁴ MCRB/Yever met with: Alpha Power Engineering, Amata Holding Public, Ashro Group of Companies, Authentic Group, Ayeyarwaddy Farmers Development Bank Public, City Mart Holding, Dagon Group, Europe & Asia Commercial, Ever Flow River, Excellent Fortune Development, First Myanmar Investment Public, Kanbawza Bank, IGE, IKBZ Insurance, IME Group, KMD, Maha Agriculture Microfinance, Max Myanmar, Mya Ayer, Myanma Economic Holding Public, Myanmar Agribusiness Public Corporation, Myanmar Agro Exchange Public, Myanmar Thilawa SEZ Holdings Public, Parami Energy, Proven Group, Shwe Taung, Smart Technical Services, Supreme Group, uab bank, Yangon Electricity Supply Corporation, Yoma Bank, Zaw Gyi Premier.

quality and implementation of policies, in particular through the introduction of the points scale described above, unless audited by a reliable auditor, the reliability of the information is still dependent on self-disclosure.

RESULTS

More Myanmar companies are disclosing information

A total of 162 companies out of 260 assessed (62%) now have a website which is a significant increase compared to 2019 (52%). This is coherent with the evolution between 2018 and 2020 (see Figure 2 in the Executive Summary): over two years the proportion scoring 0 decreased from 46% to 38% when the number of companies assessed increased from 182 to 260: Myanmar companies are clearly improving their online disclosure.

The quality of the disclosure has improved

On average, the average score of the 260 companies was 7% in 2020, where it was 5% in 2019 (Figure 5). This increase of 2 percentage points is material as we assessed more companies in 2020. Interestingly, all the average scores improved in 2020 except for SEEs which went from 3% in 2019 to 2% in 2020, mainly attributable to their not expanding or updating data, while being scored against a more challenging scorecard. SEEs are still the worst-performing category of companies (Table 9 shows the better SEE performers).

The score of the Banks improved as well, to 12% from 11% in 2019. The spread of the Total Score for the banks is from 0% to 96% (uab bank). Three banks, all privately owned, made it to the Top 10 this year. The performance of public companies improved, but only slightly (Table 8 shows the Top 10). This shows that leadership by private company owners can have a significant impact on transparency; and that regulatory bodies should demand better compliance of the public companies they oversee and provide them with clear and relevant guidance on disclosure.

Furthermore, we consider that the 2020 scorecard was more demanding: companies that did not update their disclosure in 2020 lost on average between 10 and 20 points. Yet the average score for the Top 10 grew significantly from 51% to 70% and the score of the top performer, which was 70% in 2019 (Citymart), reached 96% in 2020 (uab bank).

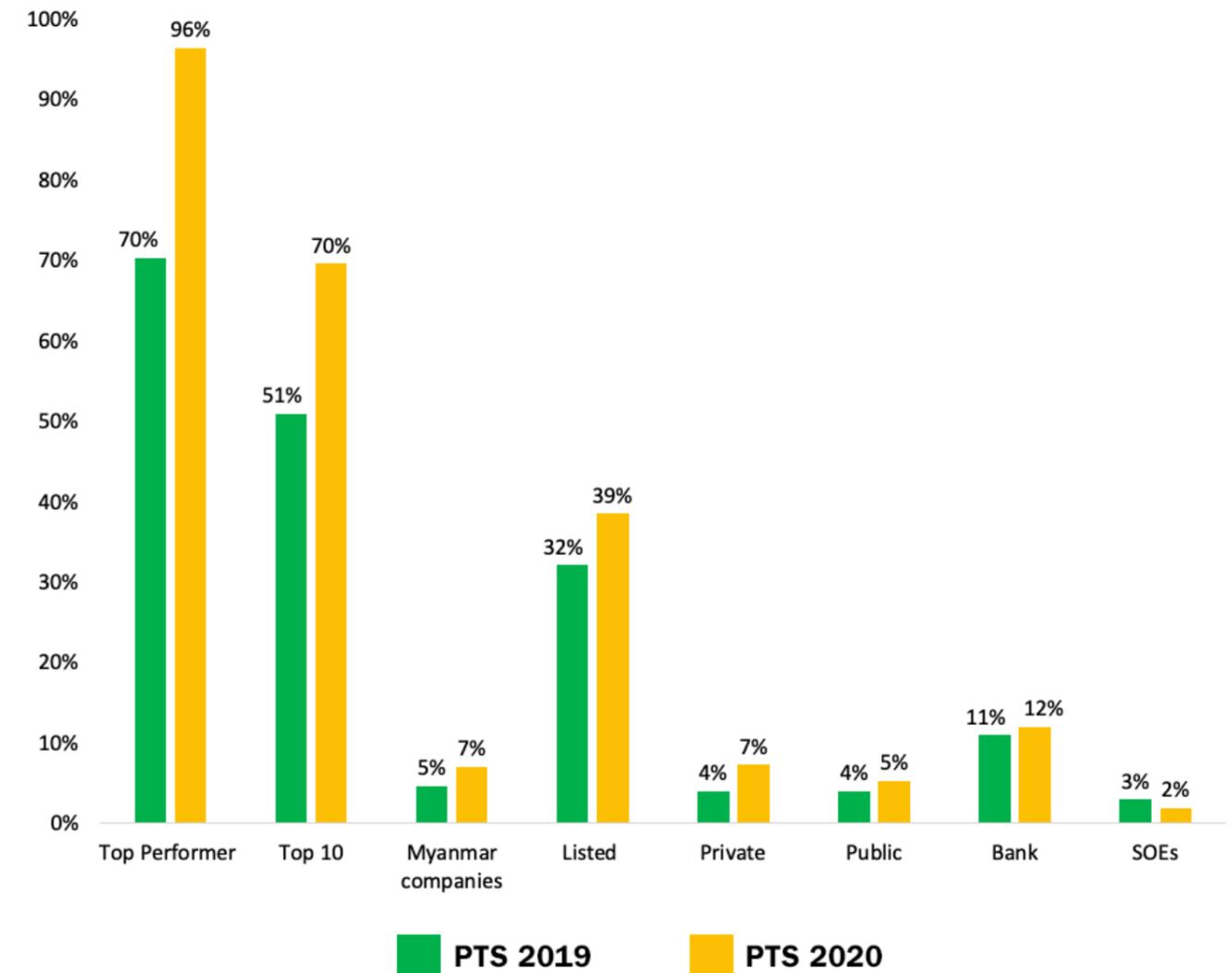
Most companies in the Top 10 are privately owned. Two – Yoma Bank and KBZ Bank - were assessed for the first time. In the Top 20, a total of six companies volunteered. This demonstrates that leading companies in Myanmar can transform and enhance their corporate disclosure practices effectively when they receive clear guidance and support, and that the *Pwint Thit Sa* approach provides that support.

Dialogue is crucial to foster better practice

MCRB/Yever took time to meet with 34 companies between the first and second assessment and the briefings they received supported them in improving their corporate disclosure. On average, the score of these companies went from 21% for their initial score to 36% for the final ones, a 75% increase in their score. One volunteer company, Authentic Group, managed to improve its score by 4,400%, and another, Mya Ayer by 633%.

FIGURE 5:

Evolution of the average scores between 2019 and 2020



Eight other companies managed to at least double their score thanks to the engagement.

Disclosure needs to be more strategic and more focused on material information

Only 3% of companies managed to clearly explain their goals and how they want to achieve them. Likewise, 6% of the companies detailed how they are addressing risks but only 2% of the companies disclosed a materiality analysis where the outcomes are articulated with business issues/priorities. Listed and public companies should improve their disclosure on these matters as they are essential for shareholders and market players.

Disclosures varied in their depth and completeness. On corporate governance,

26% stated that they had a Board of Directors, but only 22% disclosed the actual number of Directors, 13% the responsibilities of the Board and 8% the duties of the chairperson.

Companies should also make use of international reporting frameworks that are robust and facilitate the comparability of the performance with their peers (see Part 3). In 2020, 23 companies referred to the Sustainable Development Goals when disclosing their performance, 9 the ASEAN Corporate Governance Scorecard, 9 the Global Reporting Initiative Standards, 2 the Integrated Reporting Framework and 2 the SASB. Although

limited in number, these companies should be recognised for setting the trend for better corporate disclosure and reporting in Myanmar. Listed and public companies should be encouraged and incentivised to adopt similar practices.

Finally, regarding disclosure of performance on environmental and social issues, few companies disclose much information (Table 6). Most of them disclose vague statements regarding their performance or KPIs whose scope or relevance are questionable. There is a business case for identifying relevant KPIs. A company that can disclose its energy consumption is probably better positioned to reduce energy costs, and therefore to increase its future profitability. Likewise, offering good working conditions and motivating opportunities is essential to attract, retain and grow people's potential. So being able to disclose data on employee engagement surely reflects the quality of the management. Currently only 2% of the companies disclose such information.

The Top 30 companies with greatest disclosure are listed in Table 7. The full list of 260 companies assessed, and their scores, is in Annex 1.

TABLE 6 - ENVIRONMENTAL AND SOCIAL TOPICS DISCLOSED BY COMPANIES		
Themes	Topics	%
Social	Equal opportunity employer (gender, race, age)	8%
Societal	Philanthropic activities	8%
Social	Training	7%
Social	Turnover	7%
Environmental	Energy	6%
Social	Frequency rate / Fatality rate	6%
Social	Absenteeism rate	5%
Social	Careers' development / appraisals	5%
Social	HSE	5%
Societal	Product responsibility	4%
Environmental	Carbon	4%
Societal	Supply chain management	4%
Environmental	Water	3%
Social	Disability	3%
Environmental	Waste	3%
Social	Employees' engagement	2%

TABLE 7 – TOP 30 COMPANIES IN PWINT THIT SA 2020

TABLE 7 (CONTD.) – TOP 30 COMPANIES IN PWINT THIT SA 2020

Rank 2020	Company Name	Type	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL	Rank 2020	Company Name	Type	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL
1	uab bank	PR	128%	228%	73%	76%	96%	16	MYAN SHWE PYI TRACTORS (MSP CAT)	PR	72%	44%	23%	56%	44%
2	CITY MART HOLDING (CMHL)	PR	128%	156%	74%	76%	89%	17	IGE GROUP	PR	89%	128%	30%	21%	43%
3	SHWE TAUNG GROUP	PR	100%	100%	77%	75%	81%	18	PROVEN GROUP	PR	78%	56%	7%	59%	41%
4	YOMA BANK	PR	133%	161%	56%	65%	79%	19	GRAND GUARDIAN INSURANCE PUBLIC (GGI)	P	62%	30%	21%	55%	39%
5	FIRST MYANMAR INVESTMENT PUBLIC (FMI)	L	100%	77%	73%	50%	69%	20	MAHA AGRICULTURE MICROFINANCE	PR	67%	111%	27%	16%	36%
6	MAX MYANMAR GROUP	PR	106%	139%	48%	43%	62%	21	MYANMAR AGRIBUSINESS PUBLIC CORPORATION (MAPCO)	P	46%	49%	33%	13%	31%
7	KANBAWZA BANK (KBZ BANK)	PR	94%	172%	35%	38%	57%	22	ZAWGYI PREMIER	PR	72%	33%	23%	19%	28%
8	MYANMAR THILAWA SEZ HOLDINGS PUBLIC (MTSH)	L	85%	66%	38%	54%	55%	23	AUTHENTIC GROUP	PR	72%	28%	12%	24%	25%
9	TMH TELECOM PUBLIC	L	88%	60%	30%	59%	54%	24	EVER FLOW RIVER GROUP (E. F. R)	L	58%	32%	15%	12%	23%
10	DAGON GROUP	PR	117%	128%	42%	27%	53%	25	AYEYARWADY BANK (AYA BANK)	PR	28%	61%	23%	7%	21%
11	MYANMAR AGRO EXCHANGE PUBLIC (MAEX)	P	85%	64%	44%	39%	52%	26	AMATA HOLDING PUBLIC	P	46%	40%	2%	10%	19%
12	KMD	PR	94%	117%	29%	39%	49%	27	EXCELLENT FORTUNE DEVELOPMENT GROUP (EFD)	PR	67%	17%	16%	7%	18%
13	SMART TECHNICAL SERVICES	PR	67%	111%	26%	43%	46%	28	AYEYARWADDY FARMERS DEVELOPMENT BANK PUBLIC (A BANK)	P	19%	19%	21%	10%	17%
14	IME GROUP	PR	83%	50%	28%	48%	44%	29	MYANMA AWBA GROUP	PR	44%	33%	17%	4%	16%
15	ALPHA POWER ENGINEERING	PR	67%	28%	39%	48%	44%	30	FIRST PRIVATE BANK (FPB)	L	50%	17%	2%	15%	16%

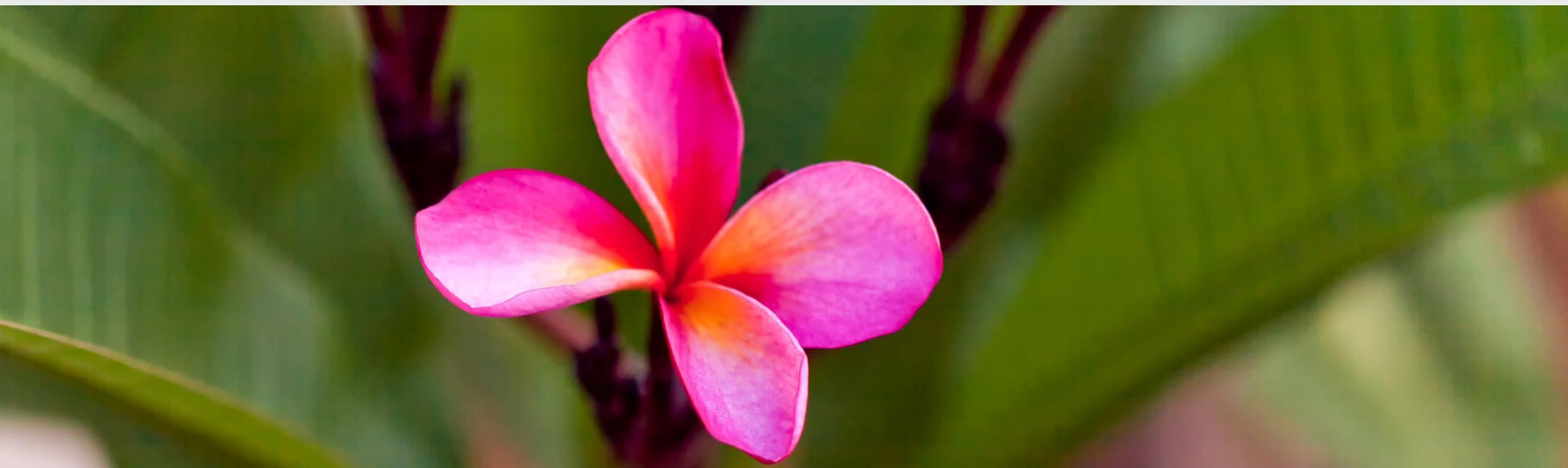


TABLE 8 – TOP 10 PUBLIC COMPANIES IN PWINT THIT SA 2020

Ranking among public companies	Company Name	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL
1	MYANMAR AGRO EXCHANGE PUBLIC (MAEX)	85%	64%	44%	39%	52%
2	GRAND GUARDIAN INSURANCE PUBLIC (GGI)	62%	30%	21%	55%	39%
3	MYANMAR AGRIBUSINESS PUBLIC CORPORATION (MAPCO)	46%	49%	33%	13%	31%
4	AMATA HOLDING PUBLIC	46%	40%	2%	10%	19%
5	AYEYARWADDY FARMERS DEVELOPMENT BANK PUBLIC (A BANK)	19%	19%	21%	10%	17%
6	GREAT HOR KHAM PUBLIC	35%	21%	15%	2%	14%
7	CO-OPERATIVE BANK (CB BANK)	35%	13%	14%	8%	14%
8	MYANMAR TECHNOLOGIES AND INVESTMENT CORPORATION	27%	15%	2%	6%	10%
9	GLOBAL TREASURE BANK PUBLIC	19%	13%	0%	10%	9%
10	ASIA GREEN DEVELOPMENT BANK (AGD BANK)	15%	9%	9%	1%	7%

TABLE 9 – TOP 10 SEES IN PWINT THIT SA 2020

Ranking among SEEs	Company Name	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL
1	YANGON ELECTRICITY SUPPLY CORPORATION	33%	6%	2%	10%	9%
2	MYANMAR SHIPYARDS	28%	17%	0%	0%	5%
3	MYANMA INVESTMENT AND COMMERCIAL BANK	11%	17%	0%	1%	4%
4	MYANMA ECONOMIC BANK	17%	11%	0%	0%	3%
5	ELECTRICITY SUPPLY CORPORATION	11%	6%	2%	1%	3%
5	MANDALAY ELECTRICITY SUPPLY CORPORATION	11%	11%	0%	1%	3%
5	MYANMAR PORT AUTHORITIES	22%	0%	0%	1%	3%
8	MYANMAR ECONOMIC CORPORATION	22%	0%	0%	0%	2%
8	MYANMAR PEARL ENTERPRISE	17%	0%	0%	1%	2%
8	MYANMAR POSTS AND TELECOMMUNICATION	22%	0%	0%	0%	2%
8	NO 1 MINING ENTERPRISE	22%	0%	0%	0%	2%



TABLE 10 – BANKS IN PWINT THIT SA 2020

Ranking among banks	Company Name	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL
1	uab bank	128%	228%	73%	76%	96%
2	YOMA BANK	133%	161%	56%	65%	79%
3	KANBAWZA BANK (KBZ BANK)	94%	172%	35%	38%	57%
4	MAHA AGRICULTURE MICROFINANCE	67%	111%	27%	16%	36%
5	AYEYARWADY BANK (AYA BANK)	28%	61%	23%	7%	21%
6	AYEYARWADDY FARMERS DEVELOPMENT BANK PUBLIC CO (A BANK)	19%	19%	21%	10%	17%
7	FIRST PRIVATE BANK (FPB)	50%	17%	2%	15%	16%
8	CO-OPERATIVE BANK (CB BANK)	35%	13%	14%	8%	14%
8	MYANMAR CITIZENS BANK PUBLIC (MCB)	46%	23%	0%	9%	14%
10	MYANMAR ORIENTAL BANK (MOB)	28%	28%	17%	2%	13%
11	GLOBAL TREASURE BANK PUBLIC	19%	13%	0%	10%	9%
12	ASIA GREEN DEVELOPMENT BANK (AGD BANK)	15%	9%	9%	1%	7%
13	MYAWADDY BANK	28%	17%	0%	3%	6%
14	SHWE (RURAL & URBAN) DEVELOPMENT BANK	17%	0%	8%	1%	5%
15	NAY PYI TAW DEVELOPMENT BANK (NAY PYI TAW SIBIN BANK	22%	17%	0%	1%	5%
16	CONSTRUCTION, HOUSING AND INFRASTRUCTURE DEVELOPMENT BANK	15%	11%	0%	0%	4%
17	MYANMA INVESTMENT AND COMMERCIAL BANK (MICB)	11%	17%	0%	1%	4%
18	MYANMA ECONOMIC BANK	17%	11%	0%	0%	3%
19	MYANMA TOURISM BANK PUBLIC	15%	0%	0%	0%	2%
20	MINERAL DEVELOPMENT BANK	17%	0%	0%	0%	2%
20	MYANMAR MICROFINANCE BANK	17%	0%	0%	0%	2%
22	SMALL & MEDIUM ENTERPRISE DEVELOPMENT BANK	12%	0%	0%	0%	1%
23	MYANMA APEX BANK	11%	0%	0%	0%	1%
23	MYANMAR FOREIGN TRADE BANK	11%	0%	0%	0%	1%
23	TUN COMMERCIAL BANK	11%	0%	0%	0%	1%
26	GLORY FARMER DEVELOPMENT BANK (G BANK)	8%	0%	0%	0%	1%
27	INNWA BANK	6%	0%	0%	0%	1%

TABLE 10 (CONTD.) – BANKS IN PWINT THIT SA 2020

Ranking among public companies	Company Name	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL
27	RURAL DEVELOPMENT BANK LTD	6%	0%	0%	0%	1%
29	FARMERS DEVELOPMENT PUBLIC BANK CO., LTD	0%	0%	0%	0%	0%
29	MYANMA AGRICULTURAL DEVELOPMENT BANK LTD	0%	0%	0%	0%	0%
29	YADANABON BANK	0%	0%	0%	0%	0%
29	YANGON CITY BANK LTD	0%	0%	0%	0%	0%

PART 5: RECOMMENDATIONS

TO MYANMAR COMPANIES:

Transparency and reporting

- Establish or enhance websites with corporate information in both Myanmar and English languages, as a means to communicate with employees, the media and other stakeholders, establish contact points for stakeholders, and seek feedback.
- Keep websites under regular review, ensure that they are up-to-date and that information on them is consistent and, as a minimum fully meets regulatory requirements.
- Disclosure should particularly focus on:
 - Being more transparent about the company/Group's corporate structure, such as complete details of subsidiaries, affiliates, joint ventures and other related entities;
 - Disclosing more information about corporate governance policies and practices, including the Board Charter, and how the company manages CG and sustainability, including the financial and human resources dedicated to it;
 - Disclosing annual reports on company websites, particularly for listed, public companies and banks;
 - Proactively disclosing audited financial accounts submitted to the Company Registrar;
 - Disclosing more documents and information, including non-financial ('ESG') data, to provide more information to stakeholders about company performance. This could include health and safety statistics, details of human rights due diligence, and complaints handling;
 - Ensuring that all publicly available information is easily accessible, and key documents are in both English and Myanmar.
- Adopt International Financial Reporting Standards (IFRS) as soon as possible.
- Publish a Sustainability Report using a recognised reporting framework such as the GRI Standards, SASB or the Integrated Reporting Framework. Reference the Sustainable Development Goals (SDGs). Use this for UN Global Compact reporting where relevant.
- When compiling the annual Directors' Report under the Myanmar Companies Law, undertake a 'materiality assessment' by engaging with internal and external stakeholders to identify the material risks to the company; ideally comply with AA 1000 standards.
- Report on COVID-related financial and ESG risks, drawing on the IFC TipSheet (See Part 1).
- Disclose environmental and social impact assessments, where

relevant. Ensure that qualified consultants are used for the EIAs and that the contents of the assessment, and associated consultation and disclosure, meets the requirements of the EIA Procedure.

- For extractives companies including jade or gems mining and trading companies, proactively disclose data in line with the 2019 EITI Standard. This should include what mining licences the company holds, what it pays to the government in taxes and other fees, what its production levels are, what the terms of contracts are (contracts signed after 1.1.2021 should be published) and who the ultimate beneficial owners are.
- Track and report on CO₂ and other greenhouse gas emissions.

Directors and their duties

- Use the opportunity of the new Companies Law and model constitution templates to update company constitutions to align them with best practices and the interests of different shareholders and stakeholders.
- Ensure all company directors are aware of their duties under the Myanmar Companies Law, and attend a Director Certification course such as that offered by MIOD.
- Consider establishing a Company Secretary to support quality corporate governance and board practices, or using professional Company Secretary services.
- Invest sufficient resources in financial and non-financial audit to enable effective BoD oversight. In particular, recognise the value, and also the cost, of good quality professional advice, particularly audit, to provide the Board with valid information, and for other specialist tasks such as HSE Management, and Environmental Impact Assessment.
- Promote gender equality on the company's Board(s) of Directors, and support mentoring programmes and other initiatives to encourage this in Myanmar more generally. Disclose information about diversity at Board and senior management level.
- Use the resources on www.mcrb.org.mm on issues such as non-discrimination and other guidance on how companies should fulfil their responsibility to respect human rights.
- Adopt, publish and implement a Related Party Transaction Policy, in accordance with SECM Instruction 3/2020 (compulsory for listed and public companies with more than 100 shareholders from 1.4.21)
- Identify which Board Directors are considered to be independent, drawing on the definition in DICA 9/2020 and international practice
- Ensure that company constitutions foresee the possibility of online AGMs and Board Meetings.

Business integrity

- Establish and implement an anti-corruption programme consistent with the eight Principles issued by the Anti-Corruption Commission.
- Develop robust risk management systems to identify the main corruption risks faced by the company, and how they will be mitigated. Track the outcomes.
- Demonstrate leadership from the highest level on business integrity, reminding all staff on a regular basis of the importance that the company leadership attaches to this.
- Publish annual information about the implementation of business integrity programmes on the company website, including policy dissemination, staff and director training, and any major related incidents.
- Pursue collective action with other businesses to combat corruption, for example concerning advocacy on public tender processes, or customs clearance.
- Ensure that the company's business integrity programme covers Conflict of Interest, and Political Party Donations.
- Where companies maintain Foundations or other budgets for donations or political contributions put governance and oversight in place, including independent Board members, to ensure that these do not give rise to business integrity issues, for example 'donations' which could be viewed as bribes, or involving Politically Exposed Persons. If a company decides to make a payment, this should be approved at owner and Board level, and ideally should be published, in line with the guidance from Transparency International.
- Where the owner(s) of the company makes donations, establish separate arrangements, ideally disclosed to ensure these are clearly separate from the company.

TO THE MYANMAR GOVERNMENT

Corporate governance

- (cross—government) Ensure that corporate governance and disclosure requirements issued by DICA, the Central Bank of Myanmar and the Securities and Exchange Commission are coordinated and consistent, recognising that one size does not fit all and some types of companies e.g. financial sector may require higher CG standards than others.
- (cross—government) Develop a Myanmar Code of Corporate Governance, through a transparent consultation process. This Code should:
 - Encourage private sector commitment to good corporate governance and provide guidance for financial and nonfinancial disclosure, stakeholder relations and foster better engagement of minority shareholders.

- Provide a clear definition of independence for board members that builds on DICA Directive 9/2020 but better aligns with international standards
- Promote a “comply or explain” approach: if companies, under SECM supervision, cannot comply with the Code, then they should explain why.
- (DICA) Ensure that all companies registered in Myanmar:
 - comply with the Companies Law, especially regarding corporate governance;
 - are aware of all of their public disclosure obligations.
 - do not abuse the option to declare themselves a ‘small company’.
- Ensure all corporate reports which are legally required to be submitted to the SECM, DICA or the Central Bank are automatically available to all three regulators.
- (SECM and DICA) Establish clear accountability for monitoring and enforcement of respective CG requirements, and ensure that the institutions have sufficient skilled resources to carry out their oversight tasks, guide companies on CG, credibly and visibly enforce obligations, and provide leadership on CG development, learning from practices in other jurisdictions.
- (SECM) Create incentives for improving CG performance and disclosure such as an award for best annual reports or listing companies who are failing to comply with CG requirements.
- (SECM and DICA) Introduce a regulatory requirement for all listed companies and public companies to have at least one Director who has successfully completed a Directors Certification or Accreditation programme run by MIOD or another recognised Institute of Directors.
- (DICA and SECM, with Myanmar Accountancy Council and the Myanmar Institute of Certified Public Accountants) Implement the recommendations of the 2017 ‘Report on Observance of Standards and Codes (ROSC): Accounting and Auditing: Myanmar’
- (MoPFI including FRD) Ensure that SEEs and companies established under the 1950 Special Companies Act are compliant with Corporate Governance Principles and practice effective disclosure and sustainability reporting. The current bank mergers are an opportunity for the new entities to overhaul websites, improve disclosure and develop a policy commitment to supporting a green economy.
- (Ministry to be determined) Embark on a public consultation to develop a modern Charities Law that meets international standards for freedom of association. This should replace the 2014 Associations Law, and meet the needs of donors and recipient organisations, including corporate foundations, Internal Revenue Dept and other oversight bodies., and reduces government interference in legal and legitimate civil society activity. Obtain development partner support for the consultation and drafting process (the Companies law is a model).

- (MIFER/DICA) Review all the taxes and mandatory contributions an investor in Myanmar must make, including those foreseen, but not yet in place, such as the Skills Development Fund and Environmental Management Fund.

Transparency and access to information

- (SECM) Publish on the SECM website the annual reports of all public companies with more than 100 shareholders, in addition to the existing publication of listed companies, in open (e.g. PDF) format, not scanned, to enable information to be easily searched.
- (ECD/MONREC) Ensure that the disclosure and consultation requirements in the EIA Procedure, both for government, and Project Proponents are fully implemented, including through the systematic online availability of information about projects and their EIA documentation.
- (DICA/MIC) Implement the requirements in the Myanmar Investment Law concerning publication of Summary Proposals prior to Myanmar Investment Commission (MIC) decisions via MyINDY. Make MyIndy more user friendly by requiring submission of searchable documents by companies.
- (DICA/MIC) Link projects on MyINDY with the EIA process and any EIA database to be established.
- (DICA/MIC) Remind holders of MIC Permits of their requirement under Myanmar Investment Rule 196 to publish an annual sustainability report for the permitted project.
- (DICA/MyCO) Require companies to identify the Principal Activities in which their business is engaged when they complete the Annual Return (AR-97), and make this searchable on MyCo. Many companies currently do not do this at all, and some do not do this accurately. Companies should not however be prevented from undertaking other activities.
- (Central Statistical Organisation) Engage with the private sector on SDG indicator 12.6.1 on sustainability reporting.
- (Cross-government) Incorporate access to information provisions into all relevant laws, in addition to making progress on the adoption of a Right to Information Law that meets international standards.
- (MoPFI) Ensure that the draft Procurement Law currently under discussion within government includes a phrase on data disclosure in the law, which could be expanded on in bye-laws, such as the following article inserted under the Chapter on General Provisions:
 - ‘The Contracting Department shall publish information about the purpose, scope, costs and execution of the Contract in a timely manner at key stages during project preparation, tendering and implementation of the contract, in accordance with rules laid down by the Ministry’.
- (MoPFI/Ministry of Construction) Implement a pilot programme under

the Construction Sector Transparency Initiative (CoST) to reduce corruption and inefficiency in public infrastructure procurement.

- (MoPFI, MONREC, MOEE) Take steps to disclose contracts and agreements that establish the terms for the exploitation of oil, gas and minerals, in preparation for the EITI requirement to do so for those signed after 1 January 2021. This is in addition to meeting requirement 3.12(b) of the EITI Standard, which requires that the EITI Report document the government’s policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals.

Beneficial Ownership and Politically Exposed Persons

- (MoHA/cross-government) Establish a Task Force/Committee under the Anti-Money Laundering (AML) Law to replace the EITI BO Taskforce and bring together all authorities with an interest in AML and the FATF ‘grey list’, beneficial ownership and PEPs, including in the context of EITI.
- (Cross-government) Establish a consistent approach, anchored in international standards and obligations to thresholds for disclosure of beneficial ownership and identification of Politically Exposed Persons (PEPs), applicable to all companies registered in Myanmar, not only extractives. The higher risk nature of the extractives sector may argue for an enhanced approach e.g. thresholds for EITI reporting, or PEPs. Therefore, for advice on disclosure by extractives companies, it should take recommendations from the relevant MEITI body.
- (Cross-government, including CBM, SECM and DICA) Standardise definitions of ‘family members’ across regulation addressing BO, PEP, asset declarations and RPT
- (Cross-government) Clarify the definition of ‘Domestic PEP’ to be applicable to all regulation to ensure that it takes the the Myanmar context and identify what ‘prominent public function’ and ‘senior’ means, as well as making mention of Ethnic Armed Organisations, as in the MEITI definition.
- (MoHA) Issue a legal instrument from the Central Board (chaired by MoHA) under Article 3(f) of the 2014 AML Law to appoint DICA as a competent authority to collect beneficial ownership information, and provide it with the necessary powers, including to maintain the relevant registry, and identify sanctions on companies which do not comply.
- (DICA) Publicly consult on, and then revise, DICA Directive 17/2019 to reflect these new powers and put it into practice with guidance to companies, and accompanying forms which can be incorporated into MyCO to make it the vehicle for publicly disclosing beneficial ownership of all companies. This should include:
 - Adapting the threshold to 25% rather than 5% to make it consistent with the AML Rules and international practice.

- Ensuring that the Directive makes clear the company's duty to obtain information and specify what the company is required to do in order to seek to obtain the beneficial ownership information, so that the scope of the company's duties is clear. This is particularly important where the beneficial owner of a company is another company registered in another jurisdiction, either as a company listed on a recognised stock exchange, or privately owned. There is no single approach to this in international practice, and it should be a matter of consultation with experts.
- Rather than asking people to self-declare as a PEP, use the form to ask specific questions of beneficial owners about positions held or formerly held by them, their family members and close associates. DICA should use this information to determine whether the individual should be considered as a PEP, and make this PEP determination publicly available including basic information on why the subject is considered a PEP e.g. Family member of former senior official.
- Incorporating privacy by design principles and train regulators on data protection concepts. Forms should clearly define what data will only be available to government agencies and parties with statutory obligations and what will be publicly disclosed. This particularly concerns any additional information provided on the identities of the beneficial owners, such identity number or residential address.
- Adapting MyCo annual and ad hoc reporting requirements to allow companies to inform DICA of any change in beneficial owner and PEPs within a prescribed timeframe.
- (DICA) Enhance MyCo functionality so that the public interface permits a search on individual Directors/Officers and all information about the appointments held by an individual is available through hyperlinks. This should be easy to achieve in DICA's internal database through linking by NRC number of the individual. The UK and New Zealand and many other Company Registries provide this facility in front of their paywalls.
- (DICA) Communicate the change and provide online training and guidance on to companies how to complete forms on BO and PEP and a reasonable deadline for companies to comply with new requirements.
- (DICA) Establish a confidential channel of information whereby a member of the public who believes the information on the register to be inaccurate can provide information. Informants/whistleblowers should be protected.
- Join the Sustainable Stock Exchange Initiative. Track and aim to align with evolving international and ASEAN standards
- Develop guidance based on SSE materials to encourage sustainability reporting by listed and PLB companies, with a longer-term aim of making this mandatory.
- Introduce awards for ESG reporting.

TO YANGON STOCK EXCHANGE

Combatting corruption

- Publicly commit to and, where required, adopt measures to guarantee protection of civil society space and media freedom as well as citizen's participation. This includes adopting a civil defamation law that meets international human rights standards to replace the six laws with criminal defamation provisions; and ensuring that whistle-blowers are not hampered, for example, by misuse of official secrets or defamation laws.
- Prioritise whistle-blower protection in both the public and private sectors with an action plan and legal reform, and financial and material resources that results in effective reporting mechanisms and protection of witnesses and whistle-blowers
- Amend the Myanmar Anti-Corruption Law, and other laws such as Anti Money-Laundering, in accordance with the points highlighted in the UNCAC First Cycle Review. Follow up the recommendations from the 1st cycle of the UNCAC Review process including recommendations for technical assistance, and ensure civil society participation in that process (UNCAC Article 63(4)(5)(6) and (7)).
- Reduce the scope for facilitation payments by conducting corruption risk assessments consulting with business about corruption and red-tape hotspots to identify and simplify approval processes and bring them online.
- Ensure business and civil society representatives are included in the Working Committee to support the process to develop a new Anti-Corruption Strategy (2022-2032) and that this is based on public consultation consistent with the UN Convention Against Corruption which encourages meaningful engagement and consultation with civil society and the business sector
- Fully and transparently implement the provisions for asset declaration in the Myanmar Anti-Corruption law.
- Undertake further reforms to establish, both in law, and practice, that a list of Politically Exposed Persons (PEPs) and their asset declarations should be made public in line with open data principles and should include the family members of public officials.
- Ensure that the asset declarations are verified by an oversight body with the necessary financial expertise and, in case of omissions or false information, impose proportionate and deterrent sanctions.
- Act on all elements of bribery and corruption, including issues such as goods and services provided 'free of charge' to government and conflicts of interest.
- Advocate to government and parliament for better regulation and permitting, through more public consultation, better public procurement and tendering procedures, and access to information provisions in all

TO THE ANTI-CORRUPTION COMMISSION

laws i.e. compulsory requirements for publishing certain information.

- Publicly endorse the UNCAC Review Transparency Pledge developed by the UNCAC Coalition, a global network of civil society organisations committed to the effective implementation and monitoring of UNCAC.
- Support a reform of defamation laws, transparency, media freedom and whistle blower protection, including of investigative journalists, civil society organisations and other whistle blowers working on corruption and accountability.

TO PARLIAMENT

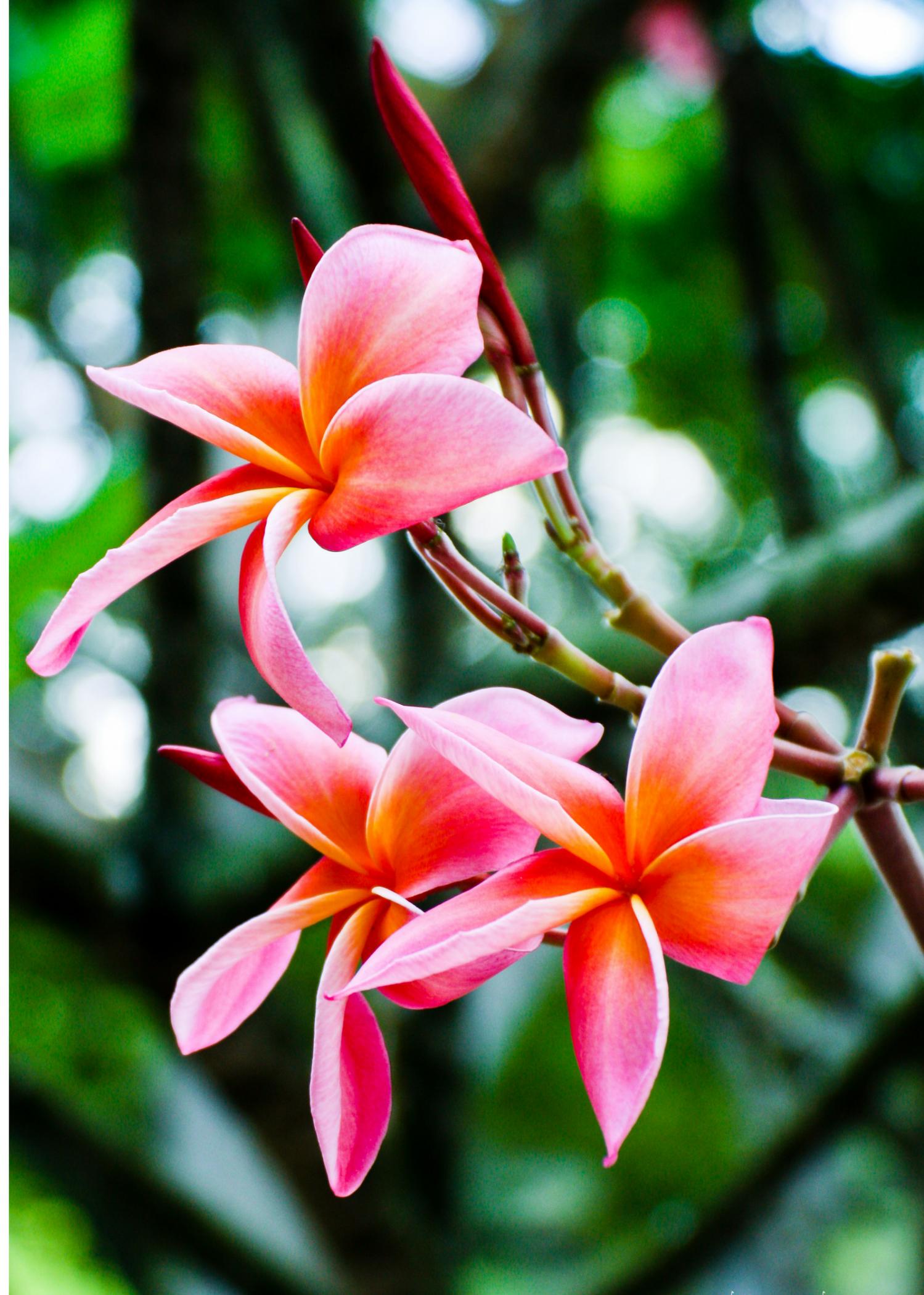
- Call for and support the reform of criminal defamation laws and the adoption of a single civil defamation law ensure that these are not used to prevent legitimate investigative journalism.
- Take the above recommendations concerning the draft Procurement Law into account, and continue to press for transparent public tendering and procurement processes and publicly highlight questionable decisions.
- Call for, and adopt, amendments to the Political Parties and the Elections Laws to strengthen laws concerning political party financing and donations, and their disclosure

TO MYANMAR CIVIL SOCIETY ORGANISATIONS AND THE MEDIA

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

TO THE INVESTOR COMMUNITY

- Invest in accordance with the Principles for Responsible Investing
- Engage with Myanmar companies to ensure that they meet or exceed international standards on responsible business conduct and report robustly on how they manage risks and impacts associated with operations, including with respect to contractors and supply chains.
- Encourage Myanmar companies to adopt international standards of ESG reporting



ANNEX 1: FULL TABLE OF RESULTS									L = Listed P = Public PR = Private SEE = State-owned Economic Enterprise								
Rank 2020	Rank 2019	Company Name	Type	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL	Rank 2020	Rank 2019	Company Name	Type	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL
									18	33	PROVEN GROUP	PR	78%	56%	7%	59%	41%
									19	6	GRAND GUARDIAN INSURANCE PUBLIC (GGI)	P	62%	30%	21%	55%	39%
									20	-	MAHA AGRICULTURE MICROFINANCE	PR	67%	111%	27%	16%	36%
									21	12	MYANMAR AGRIBUSINESS PUBLIC CORPORATION (MAPCO)	P	46%	49%	33%	13%	31%
									22	31	ZAWGYI PREMIER	PR	72%	33%	23%	19%	28%
1	5	uab bank	PR	128%	228%	73%	76%	96%	23	-	AUTHENTIC GROUP	PR	72%	28%	12%	24%	25%
2	1	CITY MART HOLDING (CMHL)	PR	128%	156%	74%	76%	89%	24	35	EVER FLOW RIVER GROUP (E. F. R)	L	58%	32%	15%	12%	23%
3	3	SHWE TAUNG GROUP	PR	100%	100%	77%	75%	81%	25	10	AYEYARWADY BANK (AYA BANK)	PR	28%	61%	23%	7%	21%
4	-	YOMA BANK	PR	133%	161%	56%	65%	79%	26	-	AMATA HOLDING PUBLIC	P	46%	40%	2%	10%	19%
5	2	FIRST MYANMAR INVESTMENT PUBLIC (FMI)	L	100%	77%	73%	50%	69%	27	-	EXCELLENT FORTUNE DEVELOPMENT GROUP (EFD)	PR	67%	17%	16%	7%	18%
6	3	MAX MYANMAR GROUP	PR	106%	139%	48%	43%	62%	28	104	AYEYARWADDY FARMERS DEVELOPMENT BANK PUBLIC (A BANK)	P	19%	19%	21%	10%	17%
7	-	KANBAWZA BANK (KBZ BANK)	PR	94%	172%	35%	38%	57%	29	17	MYANMA AWBA GROUP	PR	44%	33%	17%	4%	16%
8	7	MYANMAR THILAWA SEZ HOLDINGS PUBLIC (MTSH)	L	85%	66%	38%	54%	55%	30	22	FIRST PRIVATE BANK (FPB)	L	50%	17%	2%	15%	16%
9	15	TMH TELECOM PUBLIC	L	88%	60%	30%	59%	54%	31	22	AYEYAR HINTHAR TRADING	PR	28%	56%	11%	5%	15%
10	8	DAGON GROUP	PR	117%	128%	42%	27%	53%	31	20	UNITED PAINTS GROUP (UPG)	PR	33%	22%	8%	15%	15%
11	14	MYANMAR AGRO EXCHANGE PUBLIC (MAEX)	P	85%	64%	44%	39%	52%	33	16	GREAT HOR KHAM PUBLIC	P	35%	21%	15%	2%	14%
12	13	KMD	PR	94%	117%	29%	39%	49%	34	28	CO-OPERATIVE BANK (CB BANK)	P	35%	13%	14%	8%	14%
13	19	SMART TECHNICAL SERVICES	PR	67%	111%	26%	43%	46%	34	20	MYANMAR CITIZENS BANK PUBLIC (MCB)	L	46%	23%	0%	9%	14%
14	-	IME GROUP	PR	83%	50%	28%	48%	44%	36	-	MYA AYER GROUP	PR	50%	0%	19%	1%	13%
15	-	ALPHA POWER ENGINEERING	PR	67%	28%	39%	48%	44%	36	22	MYANMAR ORIENTAL BANK (MOB)	PR	28%	28%	17%	2%	13%
16	9	MYAN SHWE PYI TRACTORS (MSP CAT)	PR	72%	44%	23%	56%	44%	38	22	PARAMI ENERGY GROUP	PR	33%	6%	15%	4%	11%
17	17	IGE GROUP	PR	89%	128%	30%	21%	43%	39	-	INTERNATIONAL BEVERAGES TRADING	PR	22%	28%	8%	7%	11%

Rank 2020	Rank 2019	Company Name	Type	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL	Rank 2020	Rank 2019	Company Name	Type	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL																
40	46	SUPREME GROUP	PR	39%	17%	2%	10%	10%	62	30	MYANMAR PAYMENT UNION PUBLIC (MPU)	P	8%	9%	0%	5%	5%																
41	28	HTOO GROUP	PR	33%	17%	10%	2%	10%	62	-	YANGON URBAN PUBLIC TRANSPORTATION PUBLIC	P	15%	6%	0%	4%	5%																
42	-	MEDI MYANMAR GROUP	PR	44%	0%	5%	8%	10%	64	68	AA MEDICAL PRODUCTS (PACIFIC AA GROUP)	PR	33%	0%	0%	2%	4%																
43	22	MYANMAR TECHNOLOGIES AND INVESTMENT CORPORATION	P	27%	15%	2%	6%	10%	65	35	CONSTRUCTION, HOUSING AND INFRASTRUCTURE DEVELOPMENT PUBLIC BANK (CHID)	P	15%	11%	0%	0%	4%																
44	35	YANGON ELECTRICITY SUPPLY CORPORATION (YESC)	SEE	33%	6%	2%	10%	9%	65	-	GOLDEN LAND EAST ASIA DEVELOPMENT PUBLIC	P	12%	6%	0%	4%	4%																
45	46	GLOBAL TREASURE BANK PUBLIC	P	19%	13%	0%	10%	9%	67	-	PACIFIC ELECTRIC	PR	17%	22%	0%	0%	4%																
46	35	ASIA WORLD	PR	33%	0%	10%	3%	8%	68	-	AYE NYEIN THAR	PR	28%	0%	0%	3%	4%																
47	-	ASIA ROYAL	PR	22%	0%	9%	6%	8%	68	-	NATIONAL INFRASTRUCTURE HOLDINGS (NIHC)	PR	33%	0%	0%	1%	4%																
48	-	IKBZ INSURANCE	PR	33%	11%	2%	4%	7%	68	68	SHWE THAN LWIN MEDIA	PR	6%	0%	8%	1%	4%																
49	60	ASIA GREEN DEVELOPMENT BANK (AGD BANK)	P	15%	9%	9%	1%	7%	71	46	G.B.S AGRICULTURAL SERVICES PUBLIC	P	31%	0%	0%	0%	4%																
49	46	MANDALAY MYOTHA INDUSTRIAL DEVELOPMENT PUBLIC	P	31%	6%	0%	4%	7%	71	60	TANINTHARYI DIVISION DEVELOPMENT PUBLIC	P	19%	6%	0%	0%	4%																
51	31	YANGON BUS PUBLIC	P	15%	13%	3%	2%	7%	73	-	ASHRO MYANMAR	PR	33%	0%	0%	0%	4%																
52	-	CAPITAL DIAMOND STAR GROUP (CDSG)	PR	33%	0%	0%	7%	7%	73	60	DENKO TRADING	PR	28%	0%	0%	1%	4%																
53	-	DANAYARZAR	PR	22%	33%	0%	0%	6%	73	68	MYANMA INVESTMENT AND COMMERCIAL BANK (MICB)	SEE	11%	17%	0%	1%	4%																
53	39	MYAWADDY BANK	PR	28%	17%	0%	3%	6%	73	39	MYANMAR DISTRIBUTION GROUP (MDG)	PR	33%	0%	0%	0%	4%																
55	-	FORTUNE INTERNATIONAL	PR	44%	0%	0%	1%	5%	73	104	MYAWADDY TRADING	PR	17%	6%	2%	1%	4%																
55	-	SHWE (RURAL AND URBAN DEVELOPMENT) BANK	PR	17%	0%	8%	1%	5%	73	46	VICTORY MYANMAR GROUP	PR	33%	0%	0%	0%	4%																
55	46	UMG GROUP	PR	44%	0%	0%	1%	5%	79	-	MYANMAR ECONOMIC HOLDINGS PUBLIC (MEHL)	P	33%	6%	0%	0%	3%																
58	46	MOTTAMA HOLDING	PR	33%	0%	0%	4%	5%	80	-	WI SA RA INTERNATIONAL	PR	22%	0%	0%	2%	3%																
59	39	MYANMAR SHIPYARDS	SEE	28%	17%	0%	0%	5%	80	-	YADANAR KAUNG KIN GEMS & JEWELLERY	PR	28%	0%	0%	1%	3%																
59	-	NAY PYI TAW DEVELOPMENT BANK (NAY PYI TAW SIBIN BANK)	PR	22%	17%	0%	1%	5%	82	104	DECO-LAND GROUP	PR	28%	0%	0%	0%	3%																
59	33	YATHAR CHO INDUSTRY	PR	28%	0%	2%	3%	5%	82	104	ELEVEN MEDIA GROUP	PR	11%	17%	0%	0%	3%																
116																	117																

Rank 2020	Rank 2019	Company Name	Type	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL	Rank 2020	Rank 2019	Company Name	Type	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL
82	-	LWIN OO HTWE TRADING	PR	28%	0%	0%	0%	3%	98	46	PAHTAMA GROUP	PR	17%	0%	0%	1%	2%
82	68	MYANMA ECONOMIC BANK	SEE	17%	11%	0%	0%	3%	98	-	THAN TAW MYAT	PR	22%	0%	0%	0%	2%
82	-	YOUNG INVESTMENT GROUP	PR	28%	0%	0%	0%	3%	98	68	YANGON AIRPORT GROUP	PR	22%	0%	0%	0%	2%
87	-	MYANMAR TELECOMMUNICATION NETWORK PUBLIC	P	23%	0%	0%	0%	3%	109	-	MYO NAING-NINE GROUP	PR	17%	0%	0%	1%	2%
87	104	RAKHINE DEVELOPMENT CORPORATION	P	12%	6%	0%	0%	3%	110	60	GOLDEN MYANMAR AIRLINES PUBLIC	P	15%	0%	0%	0%	2%
89	60	EDEN GROUP	PR	22%	0%	0%	1%	3%	110	-	MYANMA TOURISM BANK PUBLIC	P	15%	0%	0%	0%	2%
89	46	ELECTRICITY SUPPLY CORPORATION	SEE	11%	6%	2%	1%	3%	112	-	BEST OIL	PR	17%	0%	0%	0%	2%
89	-	M9 GROUP	P	0%	0%	3%	4%	3%	112	-	BHOME YAUNG CHI	PR	17%	0%	0%	0%	2%
89	104	MANDALAY ELECTRICITY SUPPLY CORPORATION	SEE	11%	11%	0%	1%	3%	112	68	CONSUMER GOODS MYANMAR	PR	17%	0%	0%	0%	2%
89	68	MYANMAR PORT AUTHORITIES	SEE	22%	0%	0%	1%	3%	112	68	EUROPE & ASIA COMMERCIAL	PR	17%	0%	0%	0%	2%
89	68	NEW DAY ENERGY	PR	22%	0%	0%	1%	3%	112	-	MINERAL DEVELOPMENT BANK	PR	17%	0%	0%	0%	2%
95	39	ASIA BUSINESS SYNERGY PUBLIC	P	12%	4%	0%	0%	2%	112	68	MYANMAR INSURANCE ENTERPRISE	SEE	17%	0%	0%	0%	2%
95	-	MAW SHAN DEVELOPMENT PUBLIC	P	12%	2%	0%	1%	2%	112	-	MYANMAR MICROFINANCE BANK LIMITED	PR	17%	0%	0%	0%	2%
97	60	A1 GROUP	PR	22%	0%	0%	0%	2%	112	-	MYANMAR TIMBER ENTERPRISE	SEE	17%	0%	0%	0%	2%
98	-	AUNG THITSA OO INSURANCE	PR	17%	0%	0%	1%	2%	112	-	MYAT MYITTAR MON	PR	17%	0%	0%	0%	2%
98	68	LOI HEIN	PR	22%	0%	0%	0%	2%	112	60	SHWE BYAIN PHYU	PR	17%	0%	0%	0%	2%
98	68	MYANMAR ECONOMIC CORPORATION	SEE	22%	0%	0%	0%	2%	112	-	STEEL KING	PR	17%	0%	0%	0%	2%
98	-	MYANMAR KAIDO	PR	22%	0%	0%	0%	2%	112	-	U KYU FAMILY GRAINS & MANUFACTURING	PR	17%	0%	0%	0%	2%
98	-	MYANMAR PADAUK TRADING	PR	22%	0%	0%	0%	2%	124	68	INLAND WATER TRANSPORT	SEE	11%	0%	0%	1%	1%
98	46	MYANMAR PEARL ENTERPRISE	SEE	17%	0%	0%	1%	2%	124	68	MYANMAR OIL AND GAS ENTERPRISE (MOGE)	SEE	6%	0%	2%	1%	1%
98	68	MYANMAR POSTS AND TELECOMMUNICATION	SEE	22%	0%	0%	0%	2%	124	68	MYANMAR PETROCHEMICAL ENTERPRISE (MPE)	SEE	6%	0%	2%	1%	1%
98	68	NO (1) MINING ENTERPRISE	SEE	22%	0%	0%	0%	2%	124	68	MYANMAR PETROLEUM PRODUCT ENTERPRISE (MPPE)	SEE	6%	0%	2%	1%	1%
118									119								

Rank 2020	Rank 2019	Company Name	Type	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL	Rank 2020	Rank 2019	Company Name	Type	Corporate Profile	Corporate Governance	Sustainability Management	Reporting	TOTAL
128	-	MYANMAR INFORMATION & COMMUNICATION TECHNOLOGY DEVELOPMENT CORPORATION PUBLIC	P	4%	0%	0%	3%	1%	149	-	EVER SUNNY INDUSTRIAL (ESI FOOD)	PR	6%	0%	0%	0%	0.6%
128	-	MYANMAR LICENSED CONTRACTORS PUBLIC	P	4%	4%	0%	0%	1%	149	-	FIRST TOP EDIBLE OIL	PR	6%	0%	0%	0%	0.6%
128	46	SMALL & MEDIUM ENTERPRISES DEVELOPMENT BANK PUBLIC	P	12%	0%	0%	0%	1%	149	-	GA MONE PWINT	PR	6%	0%	0%	0%	0.6%
131	-	AIR KANBAWZA	PR	11%	0%	0%	0%	1%	149	-	INNWA BANK	PR	6%	0%	0%	0%	0.6%
131	104	DAGON BEVERAGES	PR	11%	0%	0%	0%	1%	149	104	KMA GROUP	PR	6%	0%	0%	0%	0.6%
131	-	DOUBLE CRANE (MYANMAR)	PR	11%	0%	0%	0%	1%	149	-	KYAW SAN	PR	6%	0%	0%	0%	0.6%
131	104	KHA YAY TRADING	PR	11%	0%	0%	0%	1%	149	-	NEW MEN INTERNATIONAL	PR	6%	0%	0%	0%	0.6%
131	-	MYANMA APEX BANK	PR	11%	0%	0%	0%	1%	149	104	NO (1) HEAVY INDUSTRIES ENTERPRISE	SEE	6%	0%	0%	0%	0.6%
131	104	MYANMA FOREIGN TRADE BANK	SEE	11%	0%	0%	0%	1%	149	104	NO (2) HEAVY INDUSTRIES ENTERPRISE	SEE	6%	0%	0%	0%	0.6%
131	68	MYANMAR GEMS ENTERPRISE	SEE	6%	0%	2%	0%	1%	149	-	RURAL DEVELOPMENT BANK	PR	6%	0%	0%	0%	0.6%
131	-	NCX MYANMAR	PR	11%	0%	0%	0%	1%	149	-	SHU SAN INDUSTRY	PR	6%	0%	0%	0%	0.6%
131	68	NO (2) MINING ENTERPRISE	SEE	6%	0%	0%	1%	1%	161	-	DAWEI DEVELOPMENT PUBLIC	P	4%	0%	0%	0%	0.5%
131	104	NO (3) HEAVY INDUSTRIES ENTERPRISE	SEE	11%	0%	0%	0%	1%	161	104	ACE GROUP	PR	4%	0%	0%	0%	0.5%
131	-	PT POWER TRADING	PR	11%	0%	0%	0%	1%									
131	68	SEIN WUT HMON	PR	11%	0%	0%	0%	1%									
131	104	SHWE WAH YAUNG AGRICULTURE PRODUCTION	PR	11%	0%	0%	0%	1%									
131	39	THILAWA SPECIAL ECONOMIC ZONE MANAGEMENT COMMITTEE	SEE	11%	0%	0%	0%	1%									
131	-	TUN COMMERCIAL BANK	PR	11%	0%	0%	0%	1%									
146	104	MYANMAR MOTION PICTURE DEVELOPMENT PUBLIC	P	8%	0%	0%	0%	1%									
147	-	GLORY FARMER DEVELOPMENT BANK LIMITED (G BANK)	PR	8%	0%	0%	0%	1%									
147	-	GOLD ENERGY	PR	6%	0%	0%	1%	1%									
149	104	BENHUR TRADING	PR	6%	0%	0%	0%	0.6%									
120									121								

Companies without disclosure (in alphabetical order)

PUBLIC COMPANIES (22)	PRIVATE COMPANIES (72)	PRIVATE COMPANIES (continued)	PRIVATE COMPANIES (continued)
Citizen Business Public	Annawar Tun	Kian Sein	Shwe Gone Myint
Farmers Development Bank Public	Asia Metal Construction	League-21 Trading	Shwe Mar Ga Golden & Mining
Forest Products Joint Venture Corporation	Bhone Kyaw San	Lighthouse Enterprises	Shwe Me
Hantharwady Development Public	Billion Soe Kaung San	Linn Lett Win Yadanar Gems	Shwe Myan Aung
Kayin State Development Public	Dagon Win Win	Lluvia	Six Winner Brothers
Kaytumadi Development Public	Diamond Dragon	Lwin and Myint Trading	Thein Than Brothers
Mandalay Industrial Zone Development Public	Eain Myint San	Min Dhama	Thit Sar Shwe Yi
Maubin Development Public	Eden Energy & Natural Resources Development	Moe Htet Gabar	Thu Gyi Min
Myanmar Agriculture & General Development Public	Excellent Myanmar	Moe Thu Kha Trading	TMW Enterprise
Myanmar Automobile Development Public	Farmer Phoyarzar	Moon Sun Trading	Total Supply Chain
Myanmar Edible Oil Industrial Public (MEICO)	Forever Group	Mya Gae Trading	U Sein Wan ML IPP
Myanmar Irrawaddy Development Public	Forever Winner	Myanmar GR	Unique Move Trading
Myanmar Sugar Development Public	Fu Xing Brothers Group	Myanmar Mayson Industries	Unlimited Channel
Myeik Future Development Public (MFD)	G and G	Myanmar United Power	Yadanabon Bank
Myeik Corporation Public	Great Genesis Gems	Myanmar Winery & Distillery	Yadanar Taung Tann Gems
National Development Group	Green Land (Food) International	Myanmar Zhulian Direct Market	Yangon City Bank
New City Development Public	Hein Htet Swam	Myat Myittar Mon (G & J)	Yuzana
Oleander Construction Group Public	Heyday Energy Trading	Naing Group	Zaykabar
Rakhine Economic Initiative Public	Htoo Construction Development Group	Ngwe Yi Pale Group	
Shanni Development Public	Information Technology Central Services	Nilar Yadanar	
Tavoy Trading Public	International Gateways Group	Nilar Yoma Trading	
Yangon Metropolitan Development Public	Jade King & Queen Gems & Jewellery	North East Gate Fruit	
SEEs (4)	Jing Hpaw Aung Jade & Jewellery	Petrol Star	
Electric Power Generation Enterprise	Khin Maung Win Family	Pro 1 (Myanmar)	
Myanmar Agriculture Development Bank	Khine Khine Phyo International Trading	Regency Material Trading	
Myanmar Pharmaceuticals Enterprise	Khwar Nyo Trading	Resources Group Trading	
Myanmar Railways	Kian Ho	Shwe Gandamar International Trading	

#		Disclosure/ Performance	Standard/ Bonus	Asean Corporate Governance Scorecard
CORPORATE PROFILE				
Company's Presentation				
1	Does the company have an updated vision and mission statement?	D	S	E.1.4
2	Does the board of directors/commissioners periodically review and approve the vision and mission and has it done so at least once during the last five years?	D	S	E.1.5
3	Does the company disclose its corporate values?	D	S	
4	Does the company explain its activities briefly? Does it provide its company profile?	D	S	
5	Does the company clearly explain their business model, and how it creates value for stakeholders?	P	S	
Ownership Structure				
6	Does the company disclose details of the parent/holding company, subsidiaries, associates, joint ventures and special purpose enterprises/ vehicles (SPEs)/ (SPVs)?	D	S	
7	Does the information on shareholdings reveal the identity of beneficial owners, holding 5% shareholding or more?	D	S	
8	Does the company disclose the direct and indirect (deemed) shareholdings of major and/or substantial shareholders?	D	S	
9	Does the company disclose the direct and indirect (deemed) shareholdings of directors?	D	S	
10	Does the company disclose the direct and indirect (deemed) shareholdings of senior management?	D	S	
Company's Strategy				
11	Does the company clearly explain their goals, and how they want to achieve them?	P	S	
12	Does the board of directors have a process to review, monitor and oversee the implementation of the corporate strategy?	D	S	E.1.6
13	Does the company clearly explain what challenges and uncertainties are likely to be encountered in pursuing its strategy, and what are the potential implications for its business model and future performance?	P	B	

#		Disclosure/ Performance	Standard/ Bonus	Asean Corporate Governance Scorecard
Corporate Communication				
14	Does the company use the following mode of communication:			
-	<i>Company website</i>	D	S	D.6.2
15	Does the company have a website disclosing up-to-date information on the following:			
-	<i>Downloadable annual report</i>	D	B	D.8.3
-	<i>Notice of AGM and/or EGM</i>	D	B	D.8.4
-	<i>Minutes of AGM and/or EGM</i>	P	B	D.8.5
16	Does the company have a separate corporate responsibility (CR) report/section or sustainability report/section?	D	S	C.1.7
17	Is the information reliable, accessible and up-to-date?	P	S	
18	Has the company performed a gap analysis between the information disclosed and the requirement from the Asian Scorecard?	P	B	
CORPORATE GOVERNANCE				
Shareholders' Engagement				
19	Does the company disclose the voting results including approving, dissenting, and abstaining votes for all resolutions/each agenda item for the most recent AGM?	P	B	A.3.6
20	Does each resolution in the most recent AGM deal with only one item, i.e., there is no bundling of several items into the same resolution?	D	B	B.2.1
21	Is the company's notice of the most recent AGM/circulars fully translated into English and published on the same date as the local-language version?	D	B	B.2.2
Board of Directors' Structure				
22	Does the company have a Board of Directors?	D	S	
23	Is the number of BoD members disclosed?	D	S	
24	Does the board of directors/ commissioners comprise at least five members and no more than 12 members?	D	S	
25	Do different persons assume the roles of chairman and CEO?	D	B	E.4.1
26	Is the chairman a non-executive director?	D	B	

#		Disclosure/ Performance	Standard/ Bonus	Asean Corporate Governance Scorecard
27	Is the chairman an independent director?	D	B	E.4.2
28	If the Chairman is not independent, has the Board appointed a Lead/Senior Independent Director and has his/her role been defined?	D	B	E.4.5
29	Were any of the directors CEO of the company in the past 2 years?	D	B	E.4.3
30	Among the directors, how many may be considered as 'independent' according to the definition provided by the company?	D	B	
31	Do independent, non-executive directors/commissioners number at least three and make up more than 50% of the board of directors?	D	B	E.2.4
32	Are the independent directors/commissioners independent of management and major/substantial shareholders?	D	B	
33	Has the company set a limit of five board seats in publicly-listed companies that an individual director/commissioner may hold simultaneously?	D	B	E.2.6
Board of directors' responsibilities				
34	Are the roles and responsibilities of the board of directors clearly stated?	D	S	E.1.3
35	Are the types of decisions requiring board of directors' approval disclosed?	D	S	E.1.2
36	Are the role and responsibilities of the chairman disclosed?	D	S	E.4.4
37	Does the company disclose the number of board of directors meetings held during the year?	D	S	E.3.2
38	Does the company disclose the attendance of each director/commissioner in respect of meetings held?	D	S	D.2.6 / E.3.3
39	Does the company have orientation programmes for new directors?	D	B	E.5.1
40	Does the company disclose the details of remuneration of the CEO and each member of the board of directors?	D	B	D.2.7 / E.3.12
Audit committee				
41	Does the company have an Audit Committee?	D	S	E.2.18
42	Is the Audit Committee comprised entirely of non-executive directors with a majority of independent directors?	D	B	E.2.19
43	Is the chairman of the Audit Committee an independent director/commissioner?	D	B	E.2.20
44	Does at least one of the independent directors/commissioners of the committee have accounting expertise (accounting qualification or experience)?	D	S	E.2.22

#		Disclosure/ Performance	Standard/ Bonus	Asean Corporate Governance Scorecard
45	Does the Annual Report disclose the number of Audit Committee meetings held?	D	S	E.2.23
46	Is the attendance of members at Audit Committee meetings disclosed?	D	S	E.2.23
Nominating committee				
47	Does the company have a Nominating Committee (NC)?	D	S	E.2.8
48	Does the Nominating Committee comprise entirely of non-executive directors with a majority of independent directors?	D	B	E.2.9
49	Is the chairman of the Nominating Committee an independent director/commissioner?	D	B	E.2.10
50	Does the Annual Report disclose the number of Nominating Committee meetings held?	D	S	E.2.12
51	Is the attendance of members at Nominating Committee meetings disclosed?	D	S	E.2.12
Remuneration Committee/ Compensation Committee				
52	Does the company have a Remuneration Committee (RC)?	D	S	E.2.13
53	Does the Remuneration Committee comprise entirely of non-executive directors with a majority of independent directors?	D	B	E.2.14
54	Is the chairman of the Remuneration Committee an independent director/commissioner?	D	B	E.2.15
55	Does the Annual Report disclose the number of Remuneration Committee meetings held?	D	S	E.2.17
56	Is the attendance of members at Remuneration Committee meetings disclosed?	D	S	E.2.17
Performance review & board appointments				
57	Does the company disclose how the board of directors plans for the succession of the CEO/Managing Director/President and key management?	P	B	E.5.3
58	Does the board of directors conduct an annual performance assessment of the CEO/Managing Director/President?	D	B	E.5.4
59	Does the company disclose the criteria used in selecting new directors/commissioners?	P	B	E.3.9
60	Is an annual performance assessment of the board of directors conducted ?	D	B	E.5.5
61	Does the company disclose the criteria used in the board assessment?	P	B	E.5.5

#		Disclosure/ Performance	Standard/ Bonus	Asean Corporate Governance Scorecard	#		Disclosure/ Performance	Standard/ Bonus	Asean Corporate Governance Scorecard
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SUSTAINABILITY MANAGEMENT

Risk Management				
62	Does the company disclose the internal control procedures/risk management systems it has in place?	D	S	E.3.19
63	Does the Annual Report disclose that the board of directors/commissioners has conducted a review of the company's material controls (including operational, financial and compliance controls) and risk management systems?	D	S	E.3.20
64	Does the company disclose how key risks are managed?	P	S	E.3.21
65	Are the following risks mentioned in the annual report?			
-	<i>Environment</i>	D	S	
-	<i>Social (HR)</i>	D	S	
-	<i>Social (Society)</i>	D	S	
-	<i>Governance</i>	D	S	
-	<i>Finance</i>	D	S	
66	Does the annual report clearly explain what the specific risks and opportunities are that affect the organization's ability to create value over the short, medium and long term, and how the organization is dealing with them?	P	S	

Strategy

67	Does the company have a sustainability manager / officer?	D	S	
68	Does the company have a sustainability strategy?	P	S	
69	Does the company explain its stakeholders' mapping process?	D	S	
70	Does the company disclose its materiality analysis?	D	S	
71	Does the company clearly explain how the materiality analysis is relevant for business issues ?	P	S	
72	Does the company disclose its mid-long term targets on sustainability topics?	P	S	
73	Are the sustainability targets explicitly aligned with the materiality analysis, with a high level of commitment and a reasonable timeframe?	P	S	
74	Does the company engage with its external stakeholders to get their views on specific topics?	D	S	

Corporate Policies

75	Are the following area covered by a specific policy?			
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-	<i>Board Policy</i>	P	S	E.1.1
-	<i>BoD's conflict of interest (abstention in specific meeting, ...)</i>	P	S	
-	<i>Code of conduct</i>	P	S	
-	<i>Disclosure of Directors's interest in transactions and any other conflicts of interest</i>	P	S	B.4.1 / B.4.2 / B.4.3
-	<i>Dividend policy</i>	P	S	D.2.4
-	<i>Employment / Labour</i>	P	S	
-	<i>Equal opportunities policies / Diversity</i>	P	S	
-	<i>Donations / Philanthropy</i>	P	S	
-	<i>Anti-harrasement</i>	P	S	
-	<i>Human rights</i>	P	S	
-	<i>Professional education programmes for director (on-going or continuous)</i>	P	S	
-	<i>Related Party Transactions</i>	P	S	B.4.2 / B.4.3 / D.3.1
-	<i>Remuneration (fees, allowances, benefit-in-kind and other emoluments) for executive directors and CEO</i>	P	S	
-	<i>Reward/compensation for the performance of the company beyond short-term financial measures</i>	P	S	C.3.3 / E.3.12
-	<i>Use of knowledge generally not available on the market / Insider trading</i>	P	S	

Business Ethics

76	Are the details of the code of ethics or conduct disclosed?	D	S	E.2.1
77	Does the company disclose that all directors/commissioners, senior management and employees are required to comply with the code?	D	S	E.2.2
78	Does the company disclose how it implements and monitors compliance with the code of ethics or conduct?	D	S	E.2.3

Whistleblowing

79	Does the company provide contact details via the company's website or Annual Report which stakeholders (e.g. customers, suppliers, general public etc.) can use to voice their concerns and/or complaints for possible violations of their rights?	D	S	C.2.1
80	Is it possible to submit an issue anonymously?	D	S	
81	Does the company have a policy or procedure to protect an employee/person who reveals illegal/unethical behaviour from retaliation?	D	S	C.4.2

Sustainability Reporting

82	Does the company use a dashboard to monitor and report its performance?	P	S	
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#		Disclosure/ Performance	Standard/ Bonus	Asean Corporate Governance Scorecard
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83	Does the company publish a COP / sustainability report for the current or the last fiscal year?	D	S	
84	Is the scope/perimeter of the report clearly described?	P	S	

REPORTING

Annual Report

85	Does the company publish an annual report?	D	S	
86	Is the annual report available in English?	D	S	
87	Is the annual report available in Burmese?	D	S	
88	Is the annual report released within 120 days of the end of the financial year?	D	S	D.7.2
89	Does the company's annual report disclose the following items:			
-	<i>Corporate objectives</i>	D	S	D.2.1
-	<i>Biographical details (at least age, qualifications, date of first appointment, relevant experience, and any other directorships of listed companies) of directors/ commissioners</i>	D	S	D.2.5

Framework

90	Is the company compliant with the following framework:			
-	<i>AA1000</i>	P	S	
-	<i>DJSI</i>	P	S	
-	<i>GRI</i>	P	S	
-	<i>Integrated reporting</i>	P	S	
-	<i>SASB</i>	P	S	
-	<i>SDGs</i>	D	S	

Financial & operations

91	Is the company publishing its main financial KPIs?	D	S	D.2.2
92	Is the company publishing its tax?	D	S	
93	Is the same firm engaged for both audit and non-audit services (i.e. advisory services)?	D	S	
94	Is the company publishing its expenditures related to charity for last fiscal year?	D	S	

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Non Financial

95	Does the company disclose the activities that it has undertaken to implement the following policies:			
-	<i>Customer health and safety</i>	P	S	C.1.1
-	<i>Supplier/Contractor selection and criteria</i>	P	S	C.1.2
-	<i>Environmentally-friendly value chain</i>	P	S	C.1.3
-	<i>Interaction with communities</i>	P	S	C.1.4
-	<i>Anti-corruption programmes and procedures</i>	P	S	C.1.5
-	<i>Creditors' rights</i>	P	S	C.1.6

96 Does the company disclose some quantitative KPIs on the following topics:

SOCIAL ISSUES

-	<i>Employees' engagement</i>	P	S	D.2.3
-	<i>Turnover</i>	P	S	D.2.3
-	<i>Absenteeism rate</i>	P	S	D.2.3 / C.3.1
-	<i>HSE</i>	P	S	D.2.3 / C.3.1
-	<i>Frequency rate / Fatality rate</i>	P	S	D.2.3 / C.3.1
-	<i>Training</i>	P	S	D.2.3 / C.3.2
-	<i>Careers' development / appraisals</i>	P	S	D.2.3
-	<i>Equal opportunity employer (gender, race, age)</i>	P	S	D.2.3
-	<i>Disability</i>	P	S	D.2.3

ENVIRONMENTAL ISSUES

-	<i>Waste</i>	P	S	D.2.3
-	<i>Energy</i>	P	S	D.2.3
-	<i>Carbon</i>	P	S	D.2.3
-	<i>Water</i>	P	S	D.2.3

SOCIETAL RESPONSIBILITY

-	<i>Product responsibility</i>	P	S	D.2.3
-	<i>Supply chain management</i>	P	S	D.2.3
-	<i>Philanthropic activities</i>	P	S	D.2.3

97	Are the non-financial data audited by a third party?	P	S	
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