Corruption and Business in Myanmar – what needs to change?

Parami Talk Series, Parami Institute, Yangon
30 September 2017
My background

- Director of Myanmar Centre for Responsible Business (MCRB) since July 2013
- Mining company Rio Tinto: HQ lead on transparency, human rights and resource nationalism/resource curse issues
- Civil servant/Diplomat:
  - Director of Global & Economic Issues
  - UK ambassador to Myanmar 2002-2006 (and 2\textsuperscript{nd} Secretary 1990-1993)
  - European Commission, Cabinet of Commission Chris Patten, External Relations
  - Press spokeswoman
MCRB’s Objective

To provide an effective and legitimate platform for the creation of knowledge, capacity and dialogue concerning responsible business in Myanmar, based on local needs and international standards, that results in more responsible business practices.

Founders:

Current core funders:

- UK DFID
- DANIDA
- Norway
- Switzerland
- Netherlands
- Ireland

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myanmar.responsible.business
International Standards and Responsible Business

MCRB defines ‘responsible business’ as ‘business activities that work for the long-term interests of Myanmar and all its people’. A responsible business:

• Obeys the law
• Doesn’t pay bribes or tea money
• Respects its employees
• Respects the environment
• Treats other businesses responsibly
• Treats its customers responsibly
• Pays its taxes
• Is transparent
• Responds to and engages with stakeholders
• Respects human rights
MCRB’s work on business integrity and anti-corruption

- Part of ‘responsible business 101’ training for companies, government, civil society,
- Anti-corruption training for companies: Sept 2014, March 2016, August 2017
- Translation of Transparency International’s Business Integrity principles for SMEs
- Collaboration with British Embassy/Coffey on the December 2016 anti-corruption toolkit
- Engagement with local civil society organisations and NGOs with an interest in transparency and anti-corruption
- Cooperation with UN Office on Drugs and Crime
- Collaboration with World Bank/IFC on corporate governance training and plans to establish a Myanmar Institute of Directors, drawing on Thai IoD and other IoD expertise and experience (Myanmar Corporate Governance Initiative)
- Testing the system: Ngwesaung sand mining case submitted to Anti-Corruption Commission and State Counsellor’s office
- Pwint Thit Sa report (Transparency in Myanmar Enterprises)
MCRB’s Transparency in Myanmar Enterprises (TiME) aka Pwint Thit Sa Report

- Our aim: incentivise greater publication of information by Myanmar companies by publicly recognising them for transparency
- Websites of 100 large Myanmar companies (chosen on basis of top taxpayers list) ranked for information disclosure
- Based on 35 questions (2/3 drawn from a Transparency International methodology):
  - Anti-corruption programmes
  - Organisational Transparency (e.g. ownership, financial information)
  - Human Rights and HSE, including grievance mechanisms
- Civil society organisation/public input sought and recent media reports scanned.
- Recommendations to Myanmar companies, government, the Myanmar Parliament, institutional investors, civil society and the media.
Pwint Thit Sa/Transparency in Myanmar Enterprises 2016: Rankings based on disclosure of information on websites

<table>
<thead>
<tr>
<th>Company name</th>
<th>2016 position</th>
<th>2015 position</th>
<th>Anti-corruption</th>
<th>Organisational transparency</th>
<th>Health, safety, environmental and human rights</th>
<th>Total score</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Myanmar Investment</td>
<td>1</td>
<td>NA</td>
<td>2.82</td>
<td>3.33</td>
<td>3.17</td>
<td>9.32</td>
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<tr>
<td>Serge Pun &amp; Associates</td>
<td>2</td>
<td>1</td>
<td>2.82</td>
<td>2.92</td>
<td>3.17</td>
<td>8.91</td>
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<tr>
<td>Max Myanmar Group</td>
<td>3</td>
<td>2</td>
<td>3.08</td>
<td>2.41</td>
<td>3</td>
<td>8.49</td>
</tr>
<tr>
<td>Smart Technical Services</td>
<td>4</td>
<td>5</td>
<td>2.95</td>
<td>2.78</td>
<td>1.83</td>
<td>7.56</td>
</tr>
<tr>
<td>MPRL E&amp;P Group</td>
<td>5</td>
<td>8</td>
<td>2.44</td>
<td>1.67</td>
<td>2.83</td>
<td>6.94</td>
</tr>
<tr>
<td>AYA Bank</td>
<td>6</td>
<td>9</td>
<td>2.56</td>
<td>2.33</td>
<td>2</td>
<td>6.89</td>
</tr>
<tr>
<td>KBZ Group</td>
<td>7</td>
<td>3</td>
<td>2.56</td>
<td>2.64</td>
<td>1.67</td>
<td>6.87</td>
</tr>
<tr>
<td>City Mart Holding Company</td>
<td>8</td>
<td>4</td>
<td>2.56</td>
<td>1.85</td>
<td>2</td>
<td>6.41</td>
</tr>
<tr>
<td>Parami Energy Group</td>
<td>9</td>
<td>6</td>
<td>2.31</td>
<td>2.04</td>
<td>1.67</td>
<td>6.02</td>
</tr>
<tr>
<td>Dagon Group</td>
<td>10</td>
<td>10</td>
<td>2.18</td>
<td>1.48</td>
<td>0.83</td>
<td>4.49</td>
</tr>
<tr>
<td>Shwe Taung Group</td>
<td>11</td>
<td>7</td>
<td>2.5</td>
<td>1.11</td>
<td>0.83</td>
<td>3.99</td>
</tr>
<tr>
<td>Asia World</td>
<td>12</td>
<td>12</td>
<td>2.44</td>
<td>0.37</td>
<td>0.67</td>
<td>3.48</td>
</tr>
</tbody>
</table>
The scope of the report/assessment will be broadened to include more focus on corporate governance and sustainability,

Information sought will begin to be aligned with the ASEAN Corporate Governance Scorecard currently used in Thailand, Singapore, Malaysia, Philippines, Indonesia and Vietnam

MCRB will collaborate with Yangon-based sustainability consultancy Yever who have previously conducted a similar survey

Approximately 100 of the largest Myanmar family-owned companies, YSX listed companies, public companies, and those which have volunteered to be benchmarked in the mini-Pwint Thit Sa survey will be assessed

Initial information about the scope of the report will be sent to companies in September/October

Scoring will take place between October and February, with the report published in March 2018 (we hope!)
Corruption and Bribery: Definitions......

There is no comprehensive, and universally accepted definition of corruption. Most working definitions are variations of "the misuse of a public or private position for direct or indirect personal gain".

“Bribery is the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust”

(Business Principles for Countering Bribery, Transparency International)
Bribery

- In-kind help and support
- Agents
- Charitable contributions
- Political donations
- Grand corruption
- Hospitality
- Enhanced commission
- Education and training projects
- Employment of relatives
- Benefits and perks to relatives
- Gifts
- Offsets
Transparency International Corruption Perceptions Index: how does Myanmar score?

Not exact science (perceptions only) but Myanmar’s ranking is improving:

- 2013 new Anti-Corruption Law
- 2016 new NLD government

<table>
<thead>
<tr>
<th>Year</th>
<th>Position (out of approx. 175)</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>136th</td>
<td>28</td>
</tr>
<tr>
<td>2015</td>
<td>147th</td>
<td>22</td>
</tr>
<tr>
<td>2014</td>
<td>156th</td>
<td>21</td>
</tr>
<tr>
<td>2013</td>
<td>157th</td>
<td>21</td>
</tr>
<tr>
<td>2012</td>
<td>172nd</td>
<td>15</td>
</tr>
<tr>
<td>Indicator</td>
<td>Myanmar 2016 (2014 in brackets)</td>
<td>East Asia &amp; Pacific</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>---------------------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>Bribery incidence (% of firms experiencing at least one bribe payment request)</td>
<td>29.3 (42.9)</td>
<td>29.4</td>
</tr>
<tr>
<td>Bribery depth (% of public transactions where a gift or informal payment was requested)</td>
<td>26.7 (35.4)</td>
<td>23.3</td>
</tr>
<tr>
<td>Percent of firms expected to give gifts in meetings with tax officials</td>
<td>20.4 (37.1)</td>
<td>20.3</td>
</tr>
<tr>
<td>Percent of firms expected to give gifts to secure government contract</td>
<td>9.8 (32.5)</td>
<td>45.6</td>
</tr>
<tr>
<td>Value of gift expected to secure a government contract (% of contract value)</td>
<td>0.2 (1.0)</td>
<td>2.4</td>
</tr>
<tr>
<td>Percent of firms expected to give gifts to get an operating license</td>
<td>37.1 (38.9)</td>
<td>21.7</td>
</tr>
<tr>
<td>Percent of firms expected to give gifts to get an import license</td>
<td>26.4 (53.5)</td>
<td>29.9</td>
</tr>
<tr>
<td>Percent of firms expected to give gifts to get a construction permit</td>
<td>47.6 (46.5)</td>
<td>42.4</td>
</tr>
<tr>
<td>Percent of firms expected to give gifts to get an electrical connection</td>
<td>35.6 (55.8)</td>
<td>21.0</td>
</tr>
<tr>
<td>Percent of firms expected to give gifts to get a water connection</td>
<td>29.5 (30.1)</td>
<td>23.7</td>
</tr>
<tr>
<td>Percent of firms expected to give gifts to public officials &quot;to get things done&quot;</td>
<td>16.5 (26.8)</td>
<td>52.1</td>
</tr>
<tr>
<td>Percent of firms identifying corruption as a major constraint</td>
<td>6.3 (9.3)</td>
<td>15.9</td>
</tr>
<tr>
<td>Percent of firms identifying the courts system as a major constraint</td>
<td>5.3 (9.3)</td>
<td>6.3</td>
</tr>
</tbody>
</table>
NLD anti-corruption policy

Basic principle

It is forbidden for members of the government, or of Commissions or organisations established by the government, or public employees to receive or accept Gifts from any person or organization which are offered due to their official position.

Gifts from persons and organizations which are prohibited

A person or organization that is seeking a favour based on one’s position or authority;

A person or organization that is doing business or seeking to do business with an organization that is under one’s responsibility or supervision;

A person or organization that will benefit from an action pursuant to one’s responsibilities; or

A person or organization that will benefit from an omission to act pursuant to one’s responsibilities.

Exceptions

(a) Gifts with a value of no more than 25,000 kyats (the maximum value of gifts which may be received from a person or organization within a year shall be 100,000 kyats);

(b) Gifts which are received not because of one’s official position but because of family relationship or personal relationship, unless one of the situations in section 5 pertain; and

(c) Gifts with a value of no more than 100,000 kyats and which are given on a special annual occasion such as Christmas or Thadingyut.
Myanmar: What needs to change?

- Greater government transparency:
  - Better tendering procedures
  - More procedures put on-line instead of face to face
  - Publication of fees and processing times

- Better regulation, less paperwork, reduced red tape and unnecessary check and controls
  - E.g. guesthouse licencing study by Myanmar Business Forum

- Visible enforcement of government anti-corruption legislation and codes as a deterrent

- A pro-active Anti-Corruption Commission focussed on corruption hotspots

- More transparency and accountability: active parliaments, freedom of the media, civil society activism (NB 66(d) is a deterrent to investigate journalism)

- Business commitment
  - by individual businesses, starting from the Chairman/CEO;
  - collectively
The link between ‘CSR Spending’ and Corruption

- Worrying emphasis by this and previous Myanmar government’s on defining ‘CSR’ as ‘a company’s spending as a % of pre-tax profit’ (2% or even ‘1-5’%)

- Bribery and ‘donation’ are becoming synonymous
  - Sand-mining in Ngwesaung: a 30,000 kyats per month ‘donation’ to local development funds to take as much sand as the company wanted each month from the beach
  - Mining companies and their ‘CSR’ budgets being used for regular payments to village headmen to get their signatures

- Also CSR budgets as a means to pay-off communities or a form of extortion by communities or ethnic armed groups
  - e.g. mobile phone tower companies
The Spectrum of Corporate (Social) Responsibility

**Compulsory**
- Compliance i.e. obeying the law
- Responsible Business Conduct
- Creating Shared Value
- Sustainability

**Voluntary: requires additional effort or budget**
- Philanthropy
- Sponsorship
- Disaster relief
- Voluntary: requires additional effort or budget

Connected to business activity
Creating Shared Value ‘CSV’: Myanmar examples

Creating Shared Value is the development of business strategies that are both profit making and respond to social needs; building competitive advantage by solving social problems.

A bank develops mobile money services which are accessible and affordable for those without access to bank accounts.

A hotel trains and provides initial support to local farmers to grow vegetables safely, and buys them for use in their catering. The farmers sell the excess production on the wider market.

A company making toothpaste and soap runs a nationwide programme in schools on handwashing and oral hygiene.

A hotel trains local young people in English and hospitality skills and offers all of them jobs on graduation.

To build a local supply chain, a drinks factory funds a social enterprise to train local SMEs in business management and on how to submit tenders and meet their contractual commitments, including compliance with labour laws, and safety.
Business responsibility is individual and collective: UN Global Compact Principle 10: Anti-corruption

Businesses should work against corruption in all its forms, including extortion and bribery.

Through organisation change at the company level:

- companies are asked to integrate anti-corruption and compliance measures into their business strategies and operations.

- Companies develop their own code of conduct, including the implementation of a zero tolerance policy and a range of rules and regulations concerning gifts, political contributions, charities and travel.

- To apply these policies, companies implement a range of actions, including the establishment of anonymous hotlines, employee training, supply chain management, risk assessment and disciplinary measures.

Through collective action at the country level:

- companies are asked to take part in collective action, multi-stakeholder dialogue, and integrity or compliance pacts with industry peers.
Why Collective Action?

Individually → Collectively
Examples of Collective Action:
Thai Institute of Directors: Coalition against Corruption

Signatory companies to the Coalition agree that they:

- Will work internally to assess risks related to corruption, implement anti-corruption policies and compliance programs and provide business conduct guidance to managers and employees.

- Will disclose and share internal policies, experiences, best practices and success stories to foster ethical, clean, and transparent business transactions in Thailand.

- Will reach out to industry peers, suppliers and other stakeholders via the Coalition and participate in joint activities to fight corruption.
Examples of Collective Action: Construction Sector Transparency Initiative (CoST)

Geoff French, Past President of Institution of Civil Engineers (ICE) & International Federation of Consulting Engineers (FIDIC)

“Corruption occurs in the shadows, the great thing about CoST is it shines a light on the dark areas and illuminates them”

Global construction likely to be worth $15.5 trillion by 2030

Estimated that 10-30% lost through corruption

Potential savings of $5 trillion annually
What does CoST do?

CoST drives better value from public infrastructure investment.

- **CoST increases transparency & accountability**
- **CoST is a global standard**
- **CoST is a game-changer**
- **CoST changes lives**
A growing international programme

- Afghanistan
- Botswana
- Costa Rica
- Ethiopia
- El Salvador
- Guatemala
- Honduras
- Malawi
- Panama
- Philippines
- Tanzania
- Thailand
- Uganda
- Ukraine
- United Kingdom
- Vietnam
Common Excuses for Company Inaction

INADEQUACY: We thought our anti-bribery systems were up to the job.

SIEGE MENTALITY: We can only compete if....

PRETENDING IT’S NOT A BRIBE: It was only a helicopter trip and short holiday for him and his partner.

IGNORANCE: If only we’d known that it would be regarded as a bribe.....

OUTSOURCING BRIBERY: We no clue our agent was paying....

COMPLACENCY: We’ve always done it.

CITING CUSTOM: that’s the way things work round here.

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Six Step Anti-Corruption Programme
(Transparency International Business Integrity Toolkit)

Transparency International's Business Integrity Toolkit is a user-friendly six step process for building an effective corporate anti-corruption programme.

1. Commit to an anti-corruption programme ‘from the top’
2. Assess the current status and risk environment
3. Plan the anti-corruption programme
4. Act on the plan
5. Monitor controls and progress
6. Report internally and externally on the programme
Online Tools for Addressing Corruption

Institute of Business Ethics
Say No Toolkit

From responding to a demand for a facilitation payment, to offering a business partner a gift - do your employees know what to do?

Do you need an immediate and effective way of answering employee questions about what action to take?

The Say No Toolkit can help

The IBE Say No Toolkit is a decision making tool that has been designed to help organisations encourage employees to make the right decision in difficult situations. The Say No Toolkit delivers immediate guidance on a wide range of common business issues, especially those that could lead to accusations of bribery.

Put simply it answers the question "what do I do?" and

http://www.saynotoolkit.net/app/
Avoid
Help now
Report
Useful contacts
Definitions

What is the situation that you need help with?

- I have been offered, given or received
- I have been asked to pay
- I want to offer
- I have been asked to authorise
- I have a conflict of interest
- I am in an anti-competitive situation
- Immediate help
What would you like to offer?

- A gift
- Cash / money
- Hospitality

To whom?

- To a business contact
- To a government / state contact
- To a public official
- To another contact

http://www.saynotoolkit.net/app/
To whom?

- To a business contact
- To a government/state contact
- To a public official
- To another contact

ask

The company accepts that reasonable and proportionate hospitality is an accepted way of building and developing good business relationships. In the company, some hospitality can be offered but it must be for this purpose only and should never be used, or be interpreted by others, as an attempt to influence, persuade or bribe. At the company, we limit the value of hospitality that can be offered to reasonable amounts.

However, particular care must be taken when we are working with public officials.

Speak to the Legal department or someone responsible for Government contracts before taking any further action.

http://www.saynotoolkit.net/app/