12-2018

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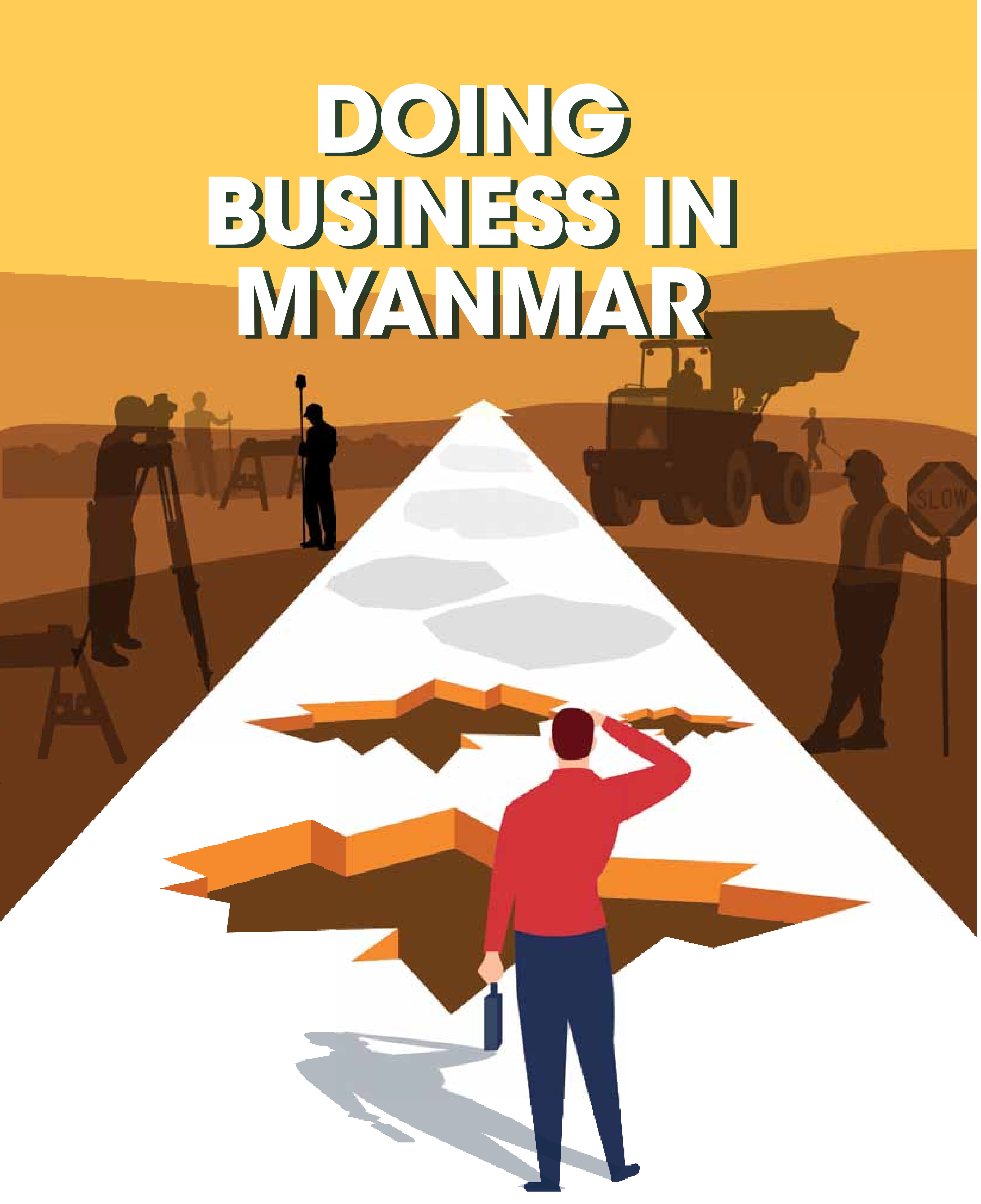
Ma Cherry Trivedi

Citation

Trivedi, Ma Cherry. Doing business in Myanmar: Dressing up the bride. (2018). *Asian Management Insights (Singapore Management University)*. 5, (2), 70-74.

Available at: https://ink.library.smu.edu.sg/ami/96

DOING BUSINESS IN MYANMAR



Dressing up the bride.

By Ma Cherry Trivedi

As one of the untapped frontiers of newly emerging markets, Myanmar is rich in natural resources, underpopulated but with growing purchasing power, and an easy place to do business. From the outside, the country is very inviting, and there is considerable interest in doing business in Myanmar today. But internally, we have several pockets of obstacles. I see Myanmar as a bride who we have yet to dress up and make pretty in order to find the right suitor.

So what are the ground realities of 'going to Myanmar'?

Law, laws everywhere, but...

In recent years, the government has taken proactive measures to introduce new legislation, the Myanmar Investment Law (MIL 2016) and a Companies Act, which was rolled out in August 2018, with the aim of opening up the economy to foreign investors. For instance, the new legislative decree allows foreigners to invest up to a 35 percent stake in local companies, paving the way for more foreign investor participation in industries like banking and sectors that were previously closed to foreigners.

However, the problem with the new business laws is the frequency of their creation and the speed of change needed to adapt to them. There are huge variations in the actual enforcement of these laws that, in turn, lead to vague interpretations of the laws in question. This is a big deterrent for an investor who is looking to invest in Myanmar versus other neighbouring ASEAN countries where the investment regime is reflective of clear laws, the regulatory engines are in full throttle, and they have very welcoming tax structures. Myanmar needs to provide such a clear and welcoming environment if it wants to attract investors.

Of these, the country's regulatory engine adds complexity. The policy of putting the burden on the investor to suggest exactly what needs to be done to fulfil the legal requirements, and the government taking a role to accept or reject the company's actions, do not always attract investments. A good example is the new Companies Act, which places a heavy responsibility on corporate governance and the company directors, in a nation where governance is mostly rudimentary. Most businesses in Myanmar are family run, with both the board and management run by the same set of people. Nowadays, while we have a rulebook on corporate governance and the role of a director, the question is: Who will regulate all the violations and ensure that penalties are enforced? Likewise, a related issue is the formation of a body to resolve investor concerns and issues, a matter that is yet to be addressed.

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As can be expected, enacting a law in itself doesn't necessarily make it easier for foreign businesses to negotiate through the opaque legal and regulatory frameworks and economic policies. Business ethics don't come automatically just because there is a law. What Myanmar needs today is a change in mindset and behaviour, and the people of Myanmar haven't been given enough incentive for them to change their behaviour. So locals are eager and willing when it comes to do business, and incoming foreign companies are impressed with the written laws—until they realise that the locals are not necessarily playing by the rules (of law) due to the lack of regulatory body or framework.

Crabs in a basket

Sometimes crossing a regulatory milestone does not mean that it would be smooth sailing from there. Let's take an example. If I get a Myanmar Investment Commission (MIC) permit to register my business, it should also allow for possible exemptions on imports of materials and equipment required to run the business. But we find that once a business is registered, there is still the customs hurdle relating to the import of equipment, and that taxes may be levied despite the MIC exemptions. This ambiguity creates further challenges for both local and foreign investors.

Taxes are another issue altogether. While all governments need to levy taxes for the running of the state, tax breaks bring foreign direct investment into the country. This is the dilemma the government needs to address. In addition, there needs to be a systematic overhaul of the tax system in Myanmar on how the government collects taxes from its citizens. New tax laws are aimed at levying taxes on businesses, but little is done to actually collect them from the citizens. There is also a need for a transparent and effective way to collect these taxes electronically. This will eliminate the old ways of negotiating on the amount of taxes and paying as little as possible. A further issue relates to service and commercial tax. We may be all for paying service tax–but there is a clear disconnect on what these taxes should be levied on.

Today, inflation is rampant in Myanmar. Basic commodities like rice are expensive because cartels are exporting their produce rather than selling locally to feed the population. And the government compensates labour for this induced inflation by offering higher wages. In an emerging market that is desperately trying to attract foreign investment, labour must be cheap. But policies are very often contradictory–the left hand may not coordinate well with what the right hand is trying to do.

Shortfall in human and technological infrastructure

When we talk about the lack of infrastructure in emerging markets, we normally refer to physical facilities like transportation, energy and communications. In my opinion, Myanmar faces more of a critical shortfall in human infrastructure, which inhibits the country's ability to execute and implement its multitude of master plans and blueprints. No matter who is at the helm of a nation, leadership needs to bring in people who can actually execute. When there is a lack of relevant skills, regulations and legal enactments tend to be vague and often conflicting. Execution, therefore, becomes an impossible task.

The focus to date has been more on establishing internal political peace. While the agenda is noble, peace doesn't always lead to economic growth. But I believe that the converse, more pragmatic and less idealistic, can be true–if I have food in my stomach, I won't look for a fight.

The country also faces a technology gap. While future-oriented discussions in the world are taking place about the Fourth Industrial Revolution, blockchain, and robotics replacing human functions, Myanmar is still behind when it comes to having any sort of industrial revolution. The country produces raw materials, exports them to its neighbours, and imports finished goods. What the country really needs to do is to create secondary and value-added industries, so that the earnings on the same goods are elevated significantly.

There has been a steady growth in the number of small and medium-sized enterprises. However, access to capital remains a huge hurdle for them. Businesses and individuals in Myanmar do not have credit histories. Historically, all loans from banks have been personal, with a person's home typically serving as collateral. There needs to be change implemented by both the lending system and businesses on accepting output-based collateral or alternatively, creating a system where transparency on business operations, facilitated by technology platforms, will create a credit system to enable further lending.

Paralysis of analysis

The result of the human infrastructure shortfall is that many foreign consultants and consultant organisations are currently working with the Myanmar government and local businesses to facilitate the nation's development. These range from international agencies and private investors to industry experts and academics. Everyone is giving advice and the government seems not to know what to do with the information. There is probably an overload of advice right now but with no takers. We need to ask ourselves: Does Myanmar really need all this? While advice has its place at the macroeconomic level, we need to focus at the micro level–how to get businesses to work!

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Local and foreign investors are looking at growth and opportunity. Their thoughts run along the lines of: If there is lucrative business opportunity, how quickly can I enter? Are there laws and frameworks for me to secure the opportunity and run with it? Will I be able attain my return on investment and, in a foreign entity's case, repatriate that money efficiently? Therein lie Myanmar's challenges as an attractive place to do business.

We don't have to look too far for examples–our ASEAN neighbours have attracted huge amounts of foreign investment. Thailand has regime changes and political upheavals all the time, but the business environment, apart from a twitch here and there, remains untouched. The nation has clear, tight laws–it is solid. In contrast, the Myanmar Foreign Investment Law and Companies Act are heavy on rules but lack regulations and execution support; this brevity in fact makes it rather *ad hoc* and opaque, reducing business confidence, especially for foreign investors.

From territorialism to nationalism

Historically, there has been considerable territorialism across regions. The leaders of these territories have been running their kingdoms and benefit from it. They are kings in their domain, in total control of what is taken out of the ground, what is grown on the ground, and what is traded. So how do we entice these domain leaders with the spirit of democracy and nationalism, to work for the benefit of the nation as a whole? What incentive is the government offering these domain leaders for them to give up what they already have? Currently, they don't see economic gain in giving up their control. But once the economy gets going, the various ethnic groups will come to the table for a piece of the bigger economic pie. Hence there has to be a larger economic incentive.

Land reforms are a big part of the solution. Myanmar is sitting on the second largest landmass in Southeast Asia, and it is underpopulated compared to the landmass. Land is abundant, so it would make sense to let locals own the title to the land–giving autonomy to those who have been working and living on the land for generations–and making them feel proud of it. It's not just the land itself, but also what you do to the land, on the land and what you dig out from it that creates economic value. Instead, the government has kept all land ownership in its own hands. This has further accentuated the problem of ethnic discord and is also responsible for the chronic issue of land grabbing. Land is such a hard to quantify commodity that the speculative market on land ownership has at times driven prices higher than in Singapore or New York. Combine this with the traditional banking practice of using land and housing as collateral, and we can see why this makes access to capital a monumental task for businesses.

Dumping in the name of industrial growth

The cement industry is a good example of how the existing policies do not help realise the full potential of local industry. Myanmar is rich in limestone, gypsum and coal–key raw materials for cement production, and has good cement production facilities. But the government has allowed China, Thailand and India to dump cement into the country, claiming that the national facilities cannot produce enough for Myanmar's predicted growth. A better solution would have been to place tariffs on cement as a finished product, and then allow for lower tariffs on intermediate products like clinker (an intermediate product ground with gypsum to produce cement), facilitating the development of a clinker-grinding industry in the country; or better yet, produce domestic cement. In a country where there is a huge supply need to fuel infrastructure growth, it behoves us to support domestic production of essential inputs like cement.

Import tariffs should be determined in such a way that the local businesses are not wiped out, as it is in the national interest to have a healthy cement industry. Instead, these businesses are perishing, unable to withstand the onslaught of international competition, and incurring massive bank debts that they cannot repay because they cannot compete with imports. There is also an inherent lack of electric power in the country to support industries; another shortfall of infrastructure for economic growth.

Selling to buy, a colonialist model

Myanmar's food processing industry is almost non-existent, despite it being a produce-rich nation. It is cheaper to sell mangoes to Thailand and then import mango juice in return. Physical infrastructure presents huge obstacles as we see an alarming spike in cost structure combined with a declining demand base as soon as you move out of Yangon or Mandalay. So Myanmar ends up exporting its produce in bulk and importing finished products. And it doesn't end there—Myanmar sells gas to its neighbours like China and Thailand; and Thailand produces electricity and sells it back to Myanmar.

When multinationals like Nestlé, Johnson & Johnson and Procter & Gamble enter a country to sell their products, they typically don't set up their own facilities—they buy factories, distribution channels—and even local brands. But in Myanmar, there is no factory line available, no electricity, it is hard to find labour, and raw materials imports are expensive—not to mention laws that provide unsure footing. Thus, global fast-moving consumer goods (FMCG) companies prefer to import finished goods because the supply chain infrastructure is missing. They are not looking to produce in or even move a part of the production chain to Myanmar.

Although registration of new companies has been streamlined, it is still an uphill battle to start a facility because of the difficulty in acquiring land (although due to the cash crunch some landowners are now willing to put their land on a long lease) and setting up a factory. Procuring labour and importing equipment is expensive, and even bringing raw materials like fresh produce from one region to where the factory is set up is expensive. The factory is usually set up where the demand is, such as Yangon, but the supply of raw materials may be a distance away. Investment in infrastructure has become imperative to Myanmar's economic growth.

Putting the house in order and dressing up the bride

Because of the past history of land grabbing and concessions grabbing, most companies undertook massive debts from local banks to finance their acquisitions to build their supply chains. When those acquisitions did not result in actual production, the banks were left with massive non-performing loans. Things were going well during the times of the jade trade, which was primarily with China. The revenue streams from the jade trade were utilised to get loans to buy hotels, mines, or land for factories. But then China curtailed the jade trade. Businesses that had gotten themselves into this speculative mass of debt that hinged on the jade trade ultimately defaulted with the banks, including some very large companies that the central bank is hesitant to foreclose and liquidate.

Foreign investors wanting to enter Myanmar don't have a full inventory of the businesses that are available for investment. Also, the businesses are often in shambles, because they did not practise anything close to the global standards of governance or regulation. These are largely family-run businesses with personal and business accounting records intertwined, being managed like one big joint family household. So Myanmar today is an opportunistic merger and acquisition, and joint venture market. It needs locals to dissect these mega-conglomerates, relook at the portfolio and ring-fence each one, recognising assets they can revive and thereafter finding a strategic partner for each. If we can pick and choose parts of a company and find a strategic partner in a way that its bank debt is paid off, or alternatively dissolve the entity, it may free up the market. This is currently a huge opportunity in Myanmar, and a necessary first step to bringing in foreign investment.

Myanmar today offers tremendous opportunities, if one knows what to do and where to look. Investors are searching for low labour cost options in Asia, and the options are few and far between. Myanmar has the potential to draw in these investors. But before that can happen, the government needs to address the issues related to long-term planning and execution. We see a lot of Myanmar companies in debt, so we need to resolve this, dress up our brides, and find mutually beneficial partners.

Most of all, Myanmar needs support and engagement from the outside world if change is to take place in this very complex nation that is struggling to establish a democratic system of its own.

Ma Cherry Trivedi
is the Founder/Managing Director of Ayuroma Advisory International and an active corporate advisor to business entities in Myanmar