Watson, Farley & Williams

# Natural Resources Briefing

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## Myanmar - The Investment Horizon Draws Nearer

Myanmar's continuing political and economic reforms and the relaxation of international sanctions have placed the country in the global spotlight as potential investors size up opportunities in what is considered by many to be one of the world's remaining frontier economies. Yet the attraction of untapped natural resources and markets servicing a population of 60 million is tempered by the knowledge that Myanmar's legal system remains undeveloped and requires considerable effort to shape it into a system which addresses the legal and commercial expectations of international investors with a degree of certainty similar to other developing economies.

The administrative branch of the government is also modernising, although there is a great deal of ground to cover and it would be unrealistic to expect that all government departments are able to make public the degree of information typically encountered on government websites in developed or developing economies. The result is that early investors are unlikely to have available to them the amount of information that they would typically require in determining whether and how to invest in a particular economy.

Such absence of information is likely to prove particularly challenging to foreign investors conducting due diligence on potential local partners in the country which is, as experience has taught us, an important step in any investment in an emerging market and, in the case of Myanmar, one which is fundamental in view of the new Foreign Direct Investment Bill, which was approved by the country's MPs on Friday 7th September and limits foreign participation in certain businesses to a maximum of 49%. Timing on other key pieces of legislation remains to be seen.

Myanmar has announced wholesale reform of its legislation and is prioritising new laws addressing foreign investment, mining and employment. As is the case in most countries, it is unlikely these laws will be drafted overnight, despite the authorities' optimism as to the timeframe within which the most important new measures can be put in place. The dilemma faced by many investors in the energy, mining and service sectors is therefore whether to enter the market now and accept the

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current regulatory risk, or to enter after the new laws have been enacted, accepting that others may, by taking this risk, also benefit from a first-to-market advantage.

Our in-country discussions suggest there is a third way, offering a combination of both of the above approaches.

A consistent message from Myanmar government officials at conferences and presentations in Myanmar and neighbouring countries throughout 2012 has been that the procedure for investment (in particular in the mining and energy sectors) requires a formal approach to be made at ministerial level via the embassy of the investor's country.

Although this approach may seem overly formal to some, the advantage is direct access to senior level officials with whom investors can discuss proposed investments. The perspective conveyed to us by Myanmar government officials and diplomatic personnel in Myanmar is that it would be advantageous for investors to have concrete investment proposals ready to discuss at the first meeting, rather than to regard the initial meeting as merely introductory.

Investors targeting Myanmar as a market for obsolete technologies are likely to be disappointed. The Myanmar government is presently very sensitive to the views of its citizens and is unlikely to embrace any technology which exposes its citizens to hazards not found in developed countries. Proposals for a large conventional coal fired power plant have already been rejected by the Myanmar government, and investors in the mining sector should expect to be requested to demonstrate minimal environmental and social impact in connection with their projects.

The implied advantage of meeting with government officials while the new laws on investment, employment and mining are being drafted is that investors will have the opportunity to shape policy by presenting approaches taken in other jurisdictions. As enthusiastic as Myanmar's officials are to develop workable legislation, the result of decades of isolation from foreign private investment is that there is insufficient in-country expertise for Myanmar to draw on during a public consultation phase, and contact with foreign experts in the field is likely to be one of the ways in which Myanmar is able to gather information required to progress foreign investment policy.

In addition to the opportunity of being able to shape policy, making an early approach to the relevant ministry is also likely to provide investors with the advantage of information asymmetry - the lack of detailed publically available information will continue to be a barrier to investors who seek to access information remotely.

There is no doubt that investment in Myanmar at this early stage in its transformation requires a certain appetite and readiness for risk, perhaps over and above that which foreign investors may be used to in other developing economies. In that context, there is no substitute for taking the time and making the journey to Myanmar to investigate the opportunities, familiarise oneself with the business landscape and begin building the connections and relationships at all levels that will be vital to any investment. Our recommendation: investors serious about Myanmar should arrange in-country meetings now, rather than after the new laws have already been passed.



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