PHOTO: AMAWATERWAYS

THE MORE THINGS CHANGE, THE MORE THEY STAY THE SAME

There has been significant progress over the past five years but the regulatory environment in Myanmar remains challenging

BY CHESTER TOH & ALROY CHAN

"This is Burma, and it is unlike any land you know about." – Rudyard Kipling, *Letters from the East (1898)*. Even today, when one mentions Myanmar, the word may still evoke images of a mysterious Asian backwater. For others, it signals promises and opportunities. Decades of stunted development under military rule has given way to Asia's newest democracy after last year's victory by the National League for Democracy (NLD). Following the installation of a new NLD-led government, Singapore Prime Minister Lee Hsien Loong was the first Asean leader to make an official visit to Myanmar when he met Aung San Suu Kyi and President Htin Kyaw in June this year.

Is Myanmar therefore on an upward trajectory and the place for investment in Asean? The answer is probably a qualified yes. There is no denying that there has been significant progress over the past five years, and credit must be given to the previous Thein Sein administration. Myanmar has steadily lifted foreign ownership restrictions in a number of sectors, adding clarity to foreign investment application processes and establishing a thriving Special Economic Zone to the south of Yangon city.

While Myanmar's financial sector remains one of the least developed in South-east Asia, with few having access to banking services and an insurance sector still in its infancy, there is cause for optimism. Myanmar has embarked on a major reform of its financial systems, including the relaxation of capital controls, an overhaul of its commercial tax system, a floated exchange rate for the local currency and the introduction of a stock exchange. The country has granted banking licences to 13 foreign banks, and the microfinance sector is flourishing. Recognising that infrastructure development is much needed in the country, Myanmar opened its telecommunications and power generation sectors to foreign participation in 2013 and 2014 respectively. Earlier this year, the foreign investment regime was further refined to facilitate greater access to foreign investors, representing the third round of liberalisation of foreign ownership restrictions in a short span of just three years.

Question marks over ease of enforcement in the event of disputes over investments that have turned sour were somewhat addressed with the recent enactment of Myanmar's Arbitration Act 2016, which implemented Myanmar's obligations under the New York Convention. This legislation, which governs both domestic and international arbitration, provides a framework for the recognition and enforcement of arbitral awards from over 150 signatory countries, including Singapore. Together with the protections under the Foreign Investment Law and those afforded to investors in the Special Economic Zones, this is clearly a step forward to bring Myanmar's investment protections closer in line with more developed jurisdictions.

CHALLENGES REMAIN

Nevertheless, the regulatory environment in Myanmar remains challenging. As with other developing countries, restrictions in the form of administrative approvals, unwritten quotas, hidden costs and differential treatment may well surface as one digs deeper. It is also not uncommon to encounter civil servants who are more familiar with broad policies rather than the letter of the law that they are administering. A mismatch between written regulations and actual practice on the ground is also an oft-cited frustration.

In order for Myanmar to catch up with its neighbours in Asean, developing the capacity of the workforce and the civil service is of utmost priority. While top-level officials are generally experienced and often capable, implementation of well-intentioned regulations can be a challenge given the lack of nous among low to mid-level bureaucrats.

In addition, Myanmar's physical infrastructure is still developing. Traffic jams are now a common feature in Yangon. In many parts of Myanmar, electricity cuts still occur on a regular basis. During the rainy season, floods are commonplace due to a struggling drainage system. Myanmar needs technical assistance and much needed investment in these areas before more foreign companies are prepared to set up or expand their operations in the country.

From a broader political standpoint, it is also no secret that despite the strong mandate given to the NLD, the military still retains considerable power. Besides controlling three key ministries, it has 25 per cent guaranteed seats in Parliament, giving it an effective veto on constitutional amendments. Its influence extends beyond the political realm. Companies controlled by the military operate in a range of different sectors such as alcohol, tobacco, extractive industries and banking.

While seeking to stimulate economic growth, the new government will also need to continue the peace talks that were started by the previous administration. For a country that has been struggling to deal with civil unrest for the better part of the last 60 years, this is no mean feat even with eight armed groups committing to the Nationwide Ceasefire Agreement in late 2015. As Ms Suu Kyi works towards the goal of national reconciliation, it remains to be seen how she can effectively broker a deal between the Tatmadaw and the different ethnic armed groups. Or will this turn out to be an unwanted distraction taking up time, resources and attention from other equally important priorities?

OPPORTUNITIES

Despite the challenges, opportunities still abound. The new government is aware that increasing access to finance, further development of infrastructure – particularly transport, telecommunications and power – as well as improving the business environment are critical for Myanmar to realise its potential. Ministries have recently instituted 100-Day Plans to tackle what are considered the most immediate problems, from the Ministry of Commerce dealing with red tape and reducing items which necessitate export/import permits, to the Ministry of Construction pledging to build low-income housing. There are no shortage of prospects for foreign investors who are prepared to capitalise on the next wave of Myanmar's growth.

Furthermore, labour intensive industries such as manufacturing and agriculture should see greater interest as Myanmar moves into the next phase of its development. With its large low-cost labour pool and a young population, foreign investors may look to capitalise on Myanmar's advantage, given its proximity to markets such as India and China. Businesses new to the country may also wish to consider getting the right local partner on board to help navigate the various hurdles. Thankfully, overseas Burmese are returning. With their experience honed in foreign countries and familiarity with international practices, they have a significant role to play in the country's growth trajectory.

UNCERTAIN BUT PROMISING

All in all, Myanmar's challenges are not insurmountable, and importantly, the new government is demonstrating a genuine desire for reform, with recent efforts to ease immigration and visa requirements. By the end of the year, Singaporeans will no longer require a visa to visit Myanmar, and this should be welcome news for many of our fellow countryman who travel there for work or leisure. Singapore businesses have a part to play in the economy of Myanmar. As one walks around Yangon, one can see a number of familiar Singapore brands. Our companies are generally well-regarded in Myanmar. With the greater emphasis on transparency and rule of law, the business environment is poised to improve. However, it is important for companies to conduct proper due diligence before taking the plunge. It is also vital to select experienced advisers who are familiar with the regulatory environment to guide you on the dos and don'ts. After all, Myanmar is like no other, and companies that go in head-on without sufficient preparation can brace themselves for some hard knocks. ■

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