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Myanmar Needs Our Investment – Let’s Get It Right

By Jared Genser

Myanmar’s remarkable reform program will benefit from direct foreign investment. Australia ought to be a key player here, but we must act responsibly.

Sydney – Given the remarkable change in the past two years, Myanmar's darkest days have begun to fade into history. Among a series of significant recent developments, Myanmar has held its first election in over 20 years, released hundreds of political prisoners, and relaxed Internet and newspaper publishing restrictions. The positive steps taken by President Thein Sein, however, must be tempered by the reality that Myanmar still has a long way to go.

Having been part of a team that recently completed a major rule of law assessment on Myanmar, I can report that there has been substantial movement forward in many areas, but that the events marking Myanmar's political transition are uneven and not yet permanent and irreversible.

That said, Myanmar's reforms can be substantially advanced through responsible foreign direct investment, an area in which Australian companies should play a significant role. Belying this bullish environment, hundreds of global business leaders, including many from Australia who I met gathered in Myanmar recently for the World Economic Forum for East Asia.

If done properly, Australian investment could have a lasting, positive impact on Myanmar's future. But Australian companies need to consider three things as they evaluate investment opportunities.

First, the ability of Australian companies to compete and profit will be dependent upon on their persuading the Burmese government to raise its human, labor, and environmental rights standards to international best practice. The good news is this message is well understood by the Burmese government – its people are weary of foreign companies, particularly Chinese ones, coming to their country, paying bribes to get contracts, mistreating their workers, and paying little heed to the environmental impact of their operations. The recent protests at the Monywa mine against land seizures without compensation exemplifies the strong movement by the Burmese people against irresponsible investment. And the government’s suspension of the Myitsone dam project in September 2011 demonstrates that it has felt compelled to take notice of its people’s concerns.

Second, given the long history of companies here ignoring their supply-chain impact, Australian companies will need to consult widely with the range of people prospectively impacted by their work to develop serious and substantive plans to manage their operations responsibly.

Finally Australian companies will need to exercise comprehensive due diligence on their prospective investments. Serious challenges remain around widespread corruption, the role of the military and police in Myanmar, active conflicts in some ethnic minority areas, and a lack of transparency in Burmese corporate structures. Australian companies will therefore need to be exceptionally vigilant to avoid making mistakes that damage their global reputation.

Ultimately, however, it is the synergies between Australian companies requiring an attractive investment environment to be able to compete and the government's strong interest in attracting Australian investment that could be transformative. But the Australian private sector needs to be working together to deliver a strong message about the range of laws that need to be improved. And these collective actions need to be supported by the Australian government in its own efforts directed at Naypyitaw.

Currently, reform efforts in Myanmar are occurring at a breathtaking pace and across a wide range of areas with uneven results. Consequently, many foundational areas of law, such as government contracting, government procurement, land law, and intellectual property protections, have yet to be developed or reformed. Australian companies will need to understand the inherent ambiguities of operating in the transforming landscape. And they will need to advocate for the Burmese government to adopt new laws that address these issues in a way that compels other companies operating in the country to meet international standards.

Myanmar is undergoing extraordinary change. Investing here—and doing so in the right way—is a challenging feat given the evolving environment and uncertainty about where things are headed. However, these challenges present exciting opportunities for Myanmar to swiftly improve the way all companies do business in the country and, in so doing, transform and grow its economy. Australian companies have a unique role to play in helping to ensure Myanmar can achieve this goal.

Jared Genser is an international lawyer in Australia this week to testify before the Parliament about developments in Myanmar. He served as Aung San Suu Kyi's pro bono counsel during the latter four years she was under house arrest.