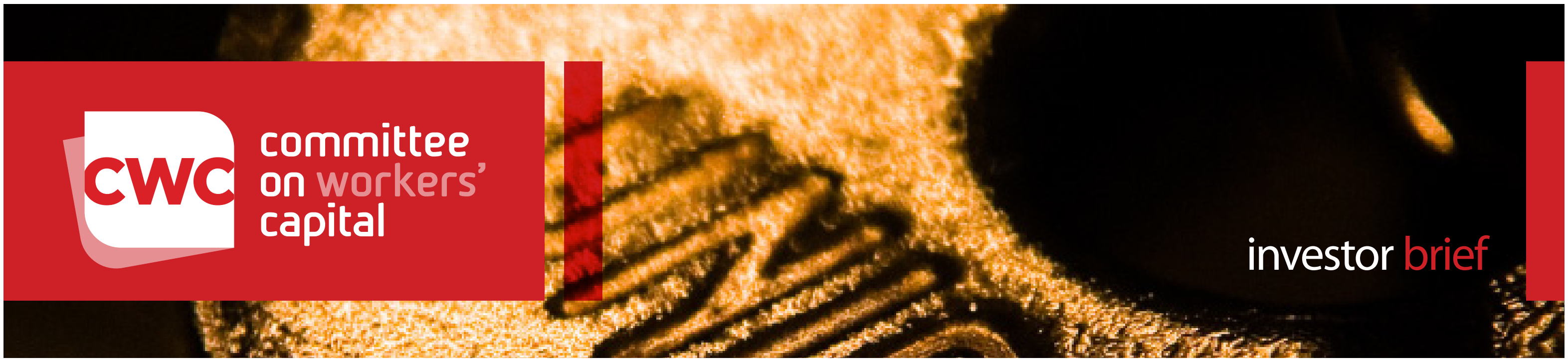

contents

Institutional investors committed to long-term sustainability should be aware that Burma is still an extremely risky place for companies to do business.

Burma: Myths, Facts and Risks for Investors

Introduction

A brutal military dictatorship has ruled Burma for decades, making it an international pariah known for rampant corruption, censorship and imprisonment of dissidents, repression and gross abuse of ethnic minorities in ongoing civil wars in its border regions, employment of forced and child labour on infrastructure and industrial projects, and seizure of land from farmers and indigenous residents.

Consequently, labour and civil society organizations outside Burma have long worked to support democratic and social reform. Since the 1990s, consumer boycotts, corporate campaigns and intense lobbying from Burma advocates led Western governments to impose strict economic sanctions and, over time, convinced most major Western corporations to pull out of the country.

However, recent democratic overtures from the regime have heralded a marked shift in the isolationist stance adopted by the international community towards Burma. Thien Sein assumed the Burmese presidency in late 2010 and surprised the world by undertaking a sweeping reform agenda that has seen the release of political prisoners including internationally-renowned democracy leader Aung San Suu Kyi, the easing of state censorship, the participation of opposition parties in parliamentary elections, and the initiation of cease-fire agreements with ethnic groups. These developments have inspired hope among many Burmese citizens and spurred the easing or suspension of political and economic sanctions.

With reforms taking hold and many sanctions eased, experts are predicting a frenzy of international business investment in Burma. Rich in resources, low-cost labour, and long-deprived consumer markets, Burma looks like a new frontier for multi-national companies from across the globe.[1] Special trade delegations, conferences and networking events are taking place frequently with participation from American, British, Canadian, Singaporean, and Dutch businesses, just to name a few.[2]

But what do these developments mean for investors committed to long-term sustainability? Have political reforms gone far enough to support a safe and responsible investment climate? Motivated by these questions, this investor brief investigates key myths, facts and risks associated with corporate activity in Burma today. In summary, institutional investors committed to long-term sustainability should be aware that Burma is still an extremely risky place for companies to do business. Suu Kyi has pointedly warned Western businesses and governments that they must ensure responsible investment and proceed with great caution into a nation where corruption, legal failures and human right violations are still rife.[3]

A Changing Burma: Myths & Facts

Myth 1: Democracy has been restored in Burma and the political environment is stable.

Fact: The military stills rules Burma and the political environment remains volatile.

Although the regime has made significant changes under President Thien Sein, the military still controls the vast majority of seats in parliament. In fact, the military is guaranteed at least one quarter of seats under the current constitution, which it can revoke at will.[5] Releasing Suu Kyi and many other political prisoners, and allowing the NLD to participate in the 2012 by-elections were major steps towards democracy, but much remains to be done before democratization is on firm footing in Burma. As it stands, the NLD holds only 43 seats in parliament, less than 10%. The true test of free and fair elections will come in 2015.

Aside from the electoral process, Burma's overall socio-political environment is still quite volatile. Many political prisoners remain in jail, and human rights abuses, including forced labour at the hands of the military, continue, particularly in Burma's ethnic regions such as Kachin, Karen and Shan states.[6] The civil war and state repression of ethnic minorities is ongoing despite initial ceasefire agreements signed in recent months. Most recently the military has been complicit in communal violence against the Rohingya Muslim population on Burma's border with Bangladesh, and continues its offensives against ethnic rebels in Kachin.[7] These conflict zones are also home to much of Burma's resource wealth—oil and gas, gems, minerals and metals, and timber—where the military continues to control extraction, development and profit. In fact, the military regime and its cronies still control much of the Burmese economy.

Myth 2: Labour rights have been restored for workers in Burma.

Fact: Workers and unions are organizing in an uncertain and unregulated environment, and forced labour persists.

Burma restored the right to organize and the right of unions to exist with the passage of a basic labour law in 2011, and a labour disputes settlement act in March 2012. However, it is completely unclear how these rights will be ensured and regulated. Workers are organizing, and even striking, and dozens of unions have registered under the new labour law, but few have received official recognition.[8] The bureaucracy tasked with setting up this new system has little or no experience with basic labour relations, let alone compliance with international law. For example, the government has sporadically set up labour tribunals, as called for under the new law, to resolve disputes. In a first test of the system, an appeal to the Union Industrial Tribunal upheld the firing of two union leaders at a clothing factory, directly contravening the new labour law which prohibits companies from firing employees for organizing activities.[9]

The International Labour Organization (ILO) made the major move of suspending its prohibition on Burma's participation in its governing body in June 2012 after a high-profile visit from Suu Kyi. The organization has promised to upgrade its official support to the existing office in Yangon in order to help the government meet its goal of eliminating forced labour by 2015. Nonetheless human rights reports continue to confirm that forced labour practices persist in many areas of the country. The ILO will review Burma's progress after a year (in June 2013), and the suspension could be revoked if the government fails to follow up on its promises.[10] For its part, the International Trade Union Confederation (ITUC) will establish an office in Burma, and together with ITUC affiliates and Global Union Federations, will support the efforts of the Free Trade Union of Burma (FTUB) in organizing workers within the country at this crucial time.

"Whatever the role that we will have, we will conduct affairs regarding forming workers unions, relations between employers and employees or international [foreign] investments in Burma, in order that the country can benefit."

- Maung Maung, President, Federation of Trade Unions of Burma (FTUB) [4]

"The very fragile framework of industrial relations in Burma creates a heightened risk of enterprises being directly associated with or contributing to abuses"
- ITUC, Business and Human Rights in Burma [11]

Myth 3: The Burmese government is restoring the rule of law

Fact: Legal reform is partial, incomplete and uncertain.

The sheer pace and scale of legislative reform has left the government struggling to smoothly implement changes. Leadership and the bureaucracy lack capacity in many areas. As in the case of labour reform, many bylaws specifying how legislation will be administered and enforced are still under development. Moreover, old laws—including those used to persecute democracy and labour activists under the military junta—remain on the books, leaving lingering fears that the government could revert to their enforcement at any time.[12]

Legislative reform alone cannot fix an intensely corrupt system with little functioning business, financial and regulatory infrastructure. In its latest index of perceived corruption, Transparency International ranked Burma 180th out of 183 countries ahead of only North Korea and Somalia.[13] Most existing businesses and financial institutions still have direct ties to the military, making corruption very difficult to avoid in business partnerships and supply chains.

Indeed, joint ventures with Burmese companies will still be the norm even under a new foreign investment law that the president was expected to sign in September 2012.[14] Foreign interests have eagerly awaited the law for months. Debate between forces wanting to liberalize and attract foreign investors with generous terms, and those wishing to slow reforms and protect the stakes of Burmese businesses, slowed the process considerably. While some are celebrating a provision that will allow foreign companies to own up to 50% stakes in joint ventures, others were hoping for more, particularly given the still risky political and legal framework in the country.[15]

Companies also face evolving regulatory environments in their home countries. Labour and human rights groups in the U.S., the EU and Australia are pressing governments to ensure that companies doing business in Burma adhere to strict human rights reporting and performance standards.[16] Already, the U.S. State Department has imposed reporting requirements on some American businesses, and both the U.S. and Canadian governments still prohibit companies from doing business with specially designated entities, including businesses and financial institutions with ties to the military.[17] Paired with the lack of basic infrastructure in the country, these prohibitions make basic transactions and necessary local business relationships extremely difficult.[18]

Although recent statements from Suu Kyi, and moves at the EU to ease restrictions on Burmese exports[19] indicate that sanction relief is likely to continue, it is important to remember that most governments have not permanently abolished sanctions. Like the ILO, the EU suspended its sanctions for a year. Similarly, the U.S. and Canada only eased their sanctions regimes.[20] Australia actually lifted sanctions, but specifically reserved the legal right to reinstate them if necessary.[21]

Investor Risks

Investors have a responsibility to ensure that companies they own abide by ILO core standards and guidelines such as the UN Guiding Principles on Business and Human Rights (also known as the "Ruggie Principles") and the OECD Guidelines for Multinational Enterprises regardless of the legal capacity in the country of operation. Even if companies adhere to these guidelines, mitigating the risk of labour and human rights violations in Burma will be difficult in its current political, social and legal environment. In particular, companies seeking to do business in the oil and gas, mining, timber and construction sectors will face heightened risks because the military has a long history of using forced labour on infrastructure, energy and extractive projects.

Reputational risks for companies entering Burma are particularly high given the country's history. Companies will be in a "reputational fish bowl"[22] as governments, civil society, and the labour movement closely scrutinize and publicize business practices to prevent "one misery simply being replaced by another." Investment in Burma should "support the long-term economic and social development of the nation."[23]

In fact, many companies and investors are taking a wait-and-see approach to Burma because they fear rushing in too soon could put company assets at risk. Companies could incur financial losses if the political situation deteriorates, if military hardliners regain control of government, if legal reform stalls or legislation is poorly implemented, or if sanctions are re-imposed.

"An investment rush into Burma is inevitable, but further gross violations of fundamental human rights are not. Investors must make sure companies respect global standards for human rights and decent work, so that future investment does not spell ruin for the people of Burma."
- Ken Georgetti, CWC Chair, President of Canadian Labour Congress

Investor Action on Burma

Responsible investment groups and funds have a long track record of engaging companies in their portfolios regarding operations in Burma. For example, in 2001, a group of funds including Cooperative Insurance Society (CIS), Friends Ivory & Sime, Henderson Global Investors, Jupiter, Morley Fund Management, the Universities Superannuation Scheme, Ethos and PGGM launched a high-profile campaign to engage Western companies still operating in Burma.[24] Trade union and other concerned shareholders also have a history of engaging U.S. oil company Chevron, and its predecessor Unocal, about forced labour and human rights abuses associated with its stake in Total's Yadana natural gas pipeline. [25]

Shareholder groups will continue to put pressure on Chevron, and, along with many others, will be closely scrutinizing resource and energy companies such as Royal Dutch Shell and ConocoPhillips, who will be seeking business opportunities in Burma.[26] In the U.S., labour, civil society, and responsible investor groups are establishing a set of guidelines for corporate accountability and responsible investment in Burma.

A 3-D Approach: What Should Investors Expect from Companies Operating in Burma?

Based on prevailing best practices and globally accepted standards of corporate conduct in weak governance zones, investors can reasonably expect companies that choose to do business in Burma will at minimum:

- Formally commit to undertaking human rights due diligence;

- Publicly disclose company policies, practices and actions to protect and promote human rights on a regular basis

- Support the creation of effective complaints and dispute-settlement instruments. These requirements should draw on globally-recognized instruments such as ILO Core Labour Standards, the UN's Guiding Principles on Business

An emphasis on corporate due-diligence, disclosure and dispute resolution – a 3-D approach – can underpin investor action to ensure the impending investment rush into Burma minimizes further negative impacts for the Burmese people.

Recommendations for Pension Fund Trustees

The CWC suggests that Trustees consider the following strategies to guard against the risks posed by investment in Burma.

- Engage your service provider. Ask your investment or fund manager whether companies in your portfolio are doing business in or considering operating in Burma, and how the fund assesses the reputational, financial, legal and political risks that these activities may pose to your investments? What is your investment manager's strategy for addressing these risks? What is the provider's position on establishing human rights and environmental performance and reporting requirements for companies operating in Burma?

- Publicize your concerns. Inform your pension fund members about these discussions and what your fund intends to do regarding companies operating in Burma. Ask members to communicate their support for these efforts to the fund manager.

- Engage companies directly. The labour movement has a long history of directly engaging companies operating in Burma. If your fund holds shares major companies operating in Burma, consider contacting the company directly to express your concerns and/or joining existing shareholder campaigns.

- Share information and network. The CWC's network of labour centres and union pension fund trustees is a powerful tool for sharing resources, information and strategies, and for tapping into ongoing shareholder activism initiatives. Stay in touch and report on your own efforts via the CWC website: www.workerscapital.org.

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CWC committee on workers' capital

The CWC is an international trade union network for the responsible investment of workers' capital. It is a joint initiative of the International Trade Union Confederation, Trade Union Advisory Committee to the OECD and Global Unions Federation.

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