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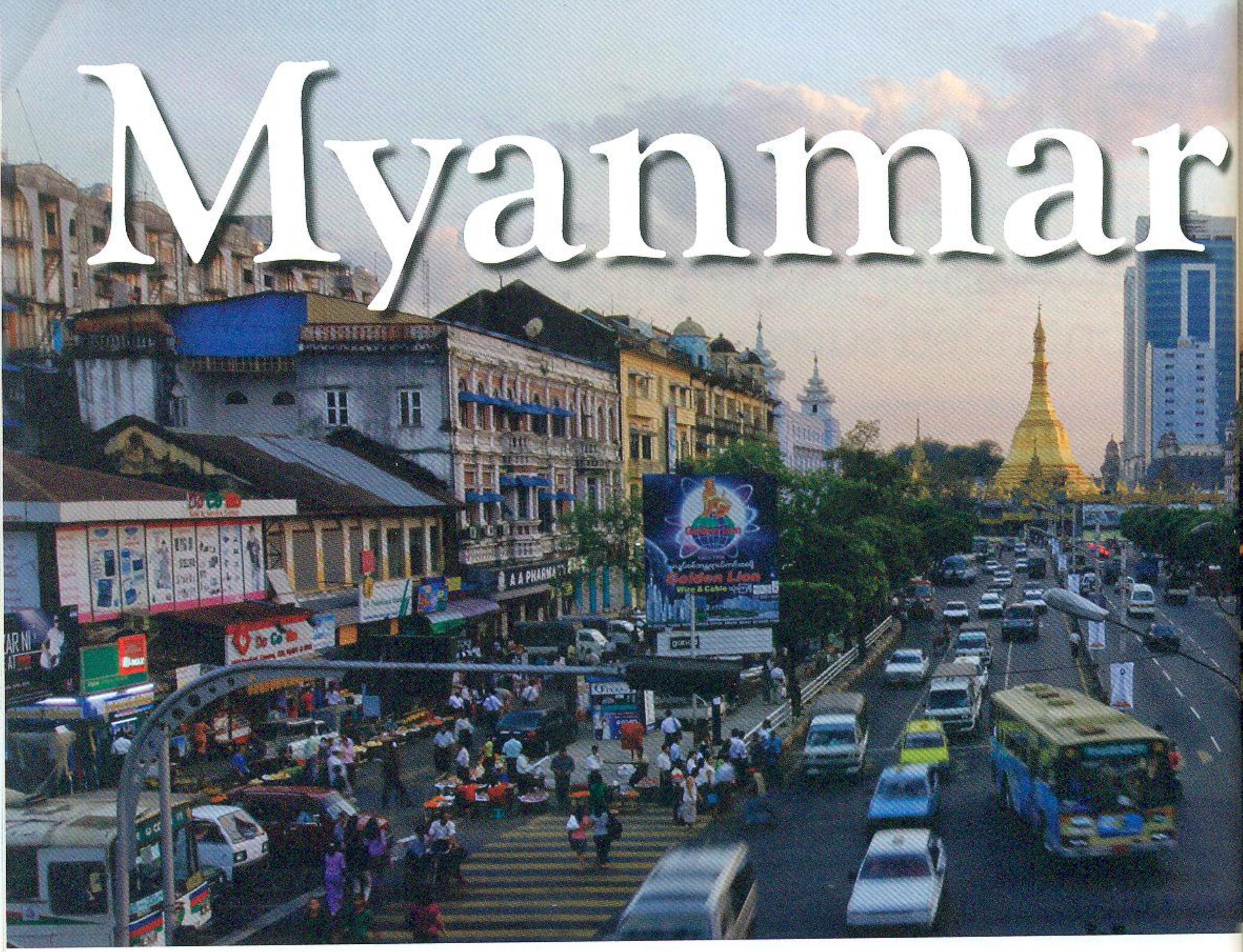
Myanmar



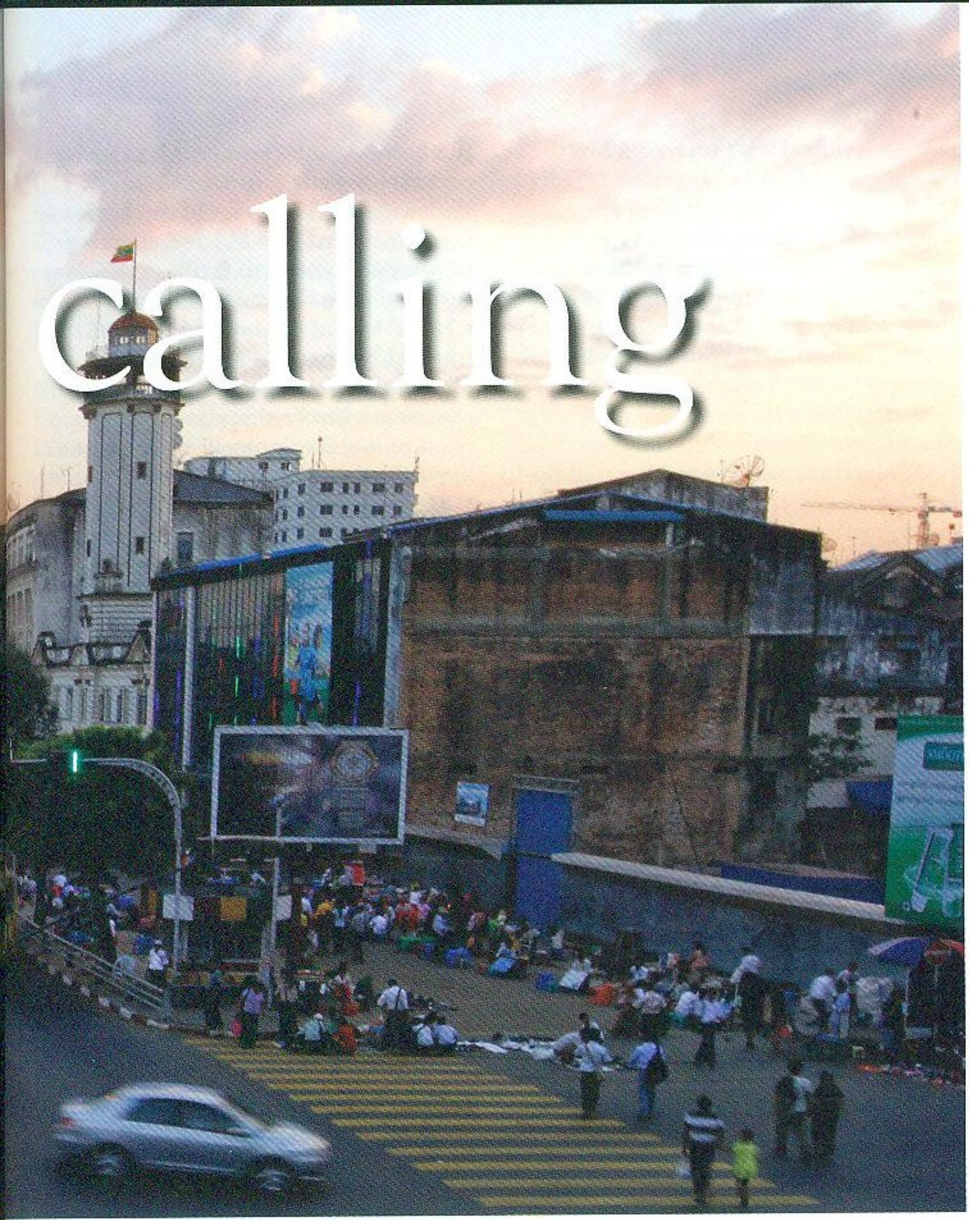
A looming currency crisis, biting economic sanctions, and years of Western cajoling have combined to bring resource-rich, geographically blessed Myanmar in from the cold. Investment prospects now seem set to lure in foreign companies, especially in areas such as mining and manufacturing, and law firms might soon follow suit, finds **Ranajit Dam**

It might be difficult to imagine this at present, but there was a time, not more than a few decades ago, that Myanmar was one of the wealthiest countries in Southeast Asia. Apart from being the largest rice exporter in the world, the country, which was under British occupation between 1885 and 1948, also supplied oil through the Burmah Oil Company. Myanmar had a wealth of natural and labour resources – producing 75 percent of the world's teak at one point – and looked set to become one of the dominant economies of the Asian continent, if not the world, in the second half of the 20th century.

What followed was just the opposite. Independence in 1948 brought with it attempts to turn Myanmar into a welfare state, including an ill-fated stab at central planning. Rice exports plummeted, mineral exports went down to almost nil, and inflation skyrocketed. The much-documented military coup of 1962 led to the nationalisation of all industries barring agriculture. The current regime, which has been in power since then, attempted a change of tack in 1988 with the easing of some restrictions on the private sector. However, companies remained in direct or indirect control of the government. Corruption was rife, and inflation at times topped 30 percent. Matters were not helped by investment and trade sanctions being imposed by many nations, including Canada, the European Union, and particularly the United States which banned all imports from Myanmar. All this resulted in Myanmar becoming one of the world's most impoverished countries. Currently, its GDP stands at $76.4 billion, and it has the lowest rate of economic growth in the Greater Mekong Subregion.

But in 2011, almost half a century after the 1962 coup, Myanmar looked like it was finally ready to turn the

calling



tide, with the government starting to speed up a series of political and economic reforms related to; among other things; anti-corruption, currency exchange rate, foreign investment laws, and taxation. The reasons, reported Reuters, were varied: A local currency crisis was forcing the government to seek urgent help from multilateral institutions, and economic sanctions had begun to bite hard. Additionally, the regime had begun to covet U.S. and European investments as a counterweight to billions of dollars of Chinese money flowing into its energy industry from natural gas to hydro-power and pipeline projects that cater almost exclusively to energy-thirsty China. The effects of the reforms were visible fairly early: Foreign investments increased from $300 million in 2009-10 to approximately $20 billion in 2010-11, a 667 percent jump. The Myanmar currency, the kyat, has increased in value by about 25 percent during that time as the government sought to relax import restrictions and abolish export taxes.

The visit of Hillary Clinton in late 2011, the first by a U.S. Secretary of State in more than 50 years, provided concrete evidence of Myanmar's willingness to end its decades of stagnation, mismanagement, and isolation. It also indirectly put the focus on the vast economic potential of the country. Despite its currency problems, the country's economy was expected to grow by about 8.8 percent in 2011. Its unique geographical location between the two monster economies of India and China means that it is expected be the hub of trade connecting Southeast Asia and the South China Sea via the Andaman Sea to the Indian Ocean receiving goods from countries in the Middle East, Europe and Africa, and spurring growth in the ASEAN region. It has an area similar to that of France and Britain

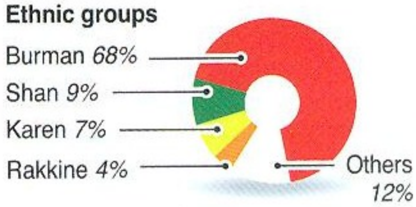
MYANMAR

COUNTRY PROFILE

Area	676.578 sq km
Population	53.4 mln *(July '11)*
GDP	$76.4 bln* (PPP)
GDP (per capita)	$1,400* (PPP)
Inflation	7.7%*
External Debt	$7.9 bln*

Industries: Agricultural processing, wood and wood products, copper, tin, tungsten, iron, cement, construction materials, garments, jade and gems

Ethnic groups



** 2010 estimate. PPP: Purchasing Power Parity*

Source: Reuters REUTERS

combined, and a population similar to that of South Korea with a high rate of literacy to boot; not to mention its immense resources. "Myanmar is a country rich in natural resources with a large supply of manpower, but in dire need of infrastructure development," says Kelvin Chia, managing partner of Singapore's Kelvin Chia Partnership, which has had an office in Yangon since 1995. "The sanctions on Myanmar have cut the country off from foreign investors who are subjected to the sanctions. This has left it with an abundance of untouched and underdeveloped regions, and a severe shortage of modern amenities. As a result, there is a huge untapped domestic demand." It is no wonder that foreign companies are gearing up to enter Myanmar, and law firms are expected to follow suit.

Winds of change

At present, foreign investment in Myanmar comes primarily from China, Singapore, South Korea, India, and Thailand. James Finch, regional partner at DFDL Mekong, another foreign law firm with a presence in the country, says that as Myanmar rapidly awakens to the possibilities of emerging from being the poorest country in Southeast Asia, the opportunities are set to increase manifold. "The country is in the process of changing its government from that of a command economy to one run by a parliament in accordance with the terms of a constitution," he says. "In the last twelve months, which encompassed the first legislative session, there have been major legal and policy changes in how the country is run. Perhaps because of the fundamental nature of the discourse on governance that has taken place, changes in the basic business laws have been limited. All the changes that have been made to business law and regulation have, however, been to make Myanmar more friendly to foreign businesses."

Chia agrees and points out that the past months have seen "vast changes" happening on the ground in Myanmar. "The changes signal a positive outlook for investors," he says. "These changes include streamlining of the licensing approval process, easing certain previously restrictive practices, reviewing the adequacy of the foreign investment framework, and enacting new laws intended to facilitate foreign investment and commercial business."

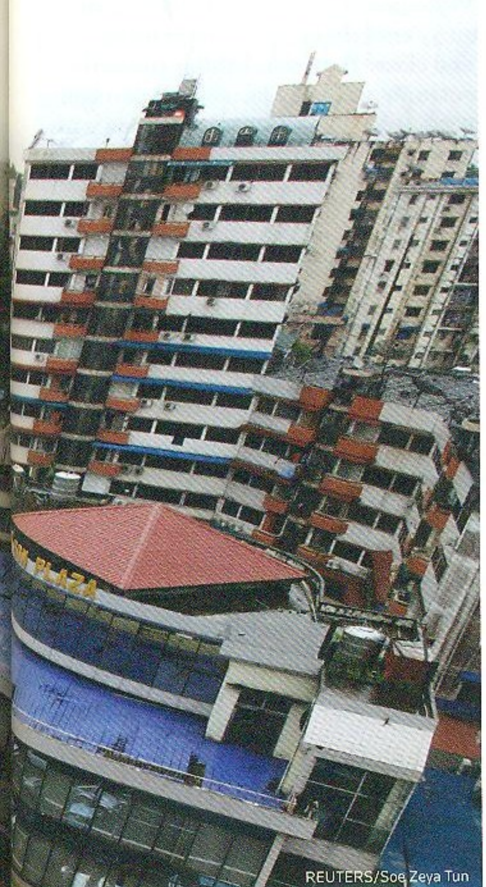
He adds that the initial visible interest has been in Myanmar's abundant resources. "Many of our clients are involved in the natural resources sector, namely oil and gas, agriculture and mining," says Chia. "Due to the relatively low cost of labour, manufacturing is another area that is now under consideration by investors. We also see an increasing number of investors in the infrastructure and real estate sector, and also in the services sector generally. Notwithstanding the challenges, there are also businesses which appear keen to enter various sectors reserved for state-owned organizations, given the changes in prevailing policies."

Finch adds that other than natural resources, major interest is being witnessed in consumer fields such as telecommunications and healthcare. "Basic consumer products and

services such as those related to telecommunications and information technology are growing," he says. "Everything related to infrastructure, especially construction and building materials, is experiencing great interest from foreign businesses."

No easy road

Despite the government's eagerness to engage with foreign investors, companies looking to make a beeline into Myanmar would do well to be cautious. For starters, there is a lack of an educated workforce skilled in modern technology. More importantly, the state of the country's infrastructure is nothing short of woeful: Roads are dilapidated, the railways have scarcely been repaired since the British era, and power shortages can bring production to its knees. And then there is all the red tape to get through. "Some of the major challenges include the length of time required in setting up a business entity in Myanmar, the lack of supporting infrastructure, and a relatively unskilled workforce," says Chia. "With regard to the length of time required in setting up a business entity, historically it was not uncommon for the entire process to take over a year to complete." Another stumbling block, he adds, involves the repatriation of funds into and out of Myanmar, owing in part to the sanctions and foreign exchange regulations. "Further, the country has had a problem with its foreign exchange rates with large gaps in its official and unofficial rates," he says. However, he expects these problems to be dealt with soon following the opening up of the country, the anticipated lifting of the sanctions, and assistance from the international community.



REUTERS/Soe Zeya Tun

Finch notes that several sectors of the economy, such as oil and gas, mining, broadcasting, telecommunications and defence have, pursuant to law, been restricted to develop by the Myanmar government, joint ventures with the government, or state-sanctioned foreign-owned operations. "As a practical matter, this has limited foreign businesses in these fields to joint ventures with state ministries and enterprises," he says. However, he notes that things are changing, with the procedure for a foreign company to engage in these joint ventures having recently been streamlined. "The Myanmar Investment Commission or MIC, the body responsible for scrutinising and approving proposed projects for which incentives are sought under the 1988 Myanmar Foreign Investment Law, has recently changed its procedures," he says. "Previously, the approval process took about eighteen months, and there was not enough give-and-take with investors in it. The MIC has recently formed a sub-body called the Investment Promotion and Collection Team, or IPCT which meets potential investors at relatively short notice. The MIC has announced that the whole approval process can now be accomplished on a 'one-stop' basis in two months." Chia, however, says that the effects of these changes are "yet to be tested."

Meanwhile, Reuters quoted a foreign lawyer working in Yangon as saying that the list of challenges for foreign businesses contained a number of additional potential deal breakers. Among them are land rights rules that permit only short lease terms; the inability to transfer shares of Myanmar companies directly to foreigners;

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DFDL Mekong

and the fact that Myanmar is not a signatory to a 1958 U.N. convention on arbitration that helps companies receive impartial rulings in disputes and avoid local court systems. The lawyer was quoted as saying that change would come, but he expects "a complicated and drawn out process."

A familiar legal system

Chia, whose firm claims to be the oldest foreign law firm in Myanmar, says that the impetus to move into Myanmar started with the firm's Vietnamese and Cambodian practice and its expansion in the region. Myanmar seemed to be a natural addition to its regional expertise. He describes the experience as "enriching, in that in order to be effective legal advisors, we are required not only to understand the laws, but also acquire an understanding of the administrative implementation of those laws."

As Myanmar opens up further, it is not inconceivable that other foreign law firms will also follow Kelvin Chia Partnership's example and enter the country. But unlike foreign businesses, law firms might not find the terrain as unfamiliar. For starters, Myanmar follows the common law system, a legacy of its decades spent under British colonial rule. Finch of DFDL Mekong says the last half-century has not changed much. "Until independence

U.S. Secretary of State Hillary Clinton (L) and pro-democracy opposition leader Aung San Suu Kyi smile during a meeting at Suu Kyi's residence in Yangon December 2, 2011. Clinton was due for a final meeting with Suu Kyi on Friday as she wrapped up a landmark visit to Myanmar which saw the new civilian government pledge to forge ahead with political reforms and re-engage with the world community. REUTERS/Saul Loeb/Pool

after World War II, Burma was part of the British empire," he adds. "As such, the legal system is that of the common law; very similar to that of the UK, the U.S., Australia and other countries that share the British legal tradition. Although since independence, the Burmese language has been largely substituted for English in the legal system, much of the legal system uses English because much of the basic law school curriculum is still conducted in English, and is based on the common law system. Lawyers we have encountered in Myanmar are, therefore, used to dealing with a complex commercial legal system similar to those of the countries from which the investors come. Also, those over forty are adept at speaking English."

Chia notes that while Myanmar has common law roots, governmental policies play an overriding role in the implementation of those laws, and this is just one of a number of challenges foreign lawyers face there. "First, the jurisprudence in Myanmar is relatively opaque and while there have been laws promulgated, those laws are not as comprehensive as may be desired," he says. "Furthermore, many laws and reported court cases have not been translated into English, and can be difficult to access. Policies too are changing rapidly, which makes it vital to establish channels of communications with government agencies and local businesses to fully understand the impact of these changes."

Finch points out that an additional challenge foreign law firms can expect to face is that of culture. "They should understand that Myanmar is still, more than anything else, a traditional Asian society," he adds. "Deals in Myanmar cannot be done quickly with adeptly drafted contracts. Instead, they depend on the development of personal relationships over long periods of time."

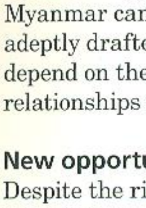
New opportunities

Despite the risks posed by a tattered infrastructure, stifling bureaucracy, and weak laws, foreign businesses have begun putting plans in motion. **[See "Asian companies in pole as Mynamar beckons" on page 34].** Reuters reported that during the period of Clinton's visit, a delegation of nearly 30 German businesses toured Yangon and Myanmar's capital of Naypyidaw to size up the country's prospects. They represented clients such as Commerzbank AG, Germany's second-biggest bank, and DEG, otherwise known as the German Investment Corporation. Additionally, India, Vietnam and the Chinese province of Guangdong have all had trade shows in Yangon in the last two months of 2011. The Industrial and Commercial Bank of China (ICBC), the world's biggest bank by market value, opened a branch in the country in the last week of November, Reuters added.

Driving all this interest is the potential of the company. Take, for example, oil: State-owned Myanma Oil and Gas Enterprise data recently showed that the country has 115 million barrels of onshore, and 100 million barrels of offshore proven oil reserves. The proven onshore gas reserves are 400 billion cubic feet, while the offshore ones are 16 trillion cubic feet.

It is no surprise that lawyers such as Finch are excited about the prospects offered by the country. "I expect to see marked growth in Myanmar in all forms of investment, particularly when the sanctions are lifted," he says. "I also expect a number of foreign law firms to open offices in Yangon. There will be bumps on the road, and as we saw in Vietnam when it opened, a few of these early entrants will get discouraged and close. However, I think the early entrants who stay focused on developing good, workable personal relations with their Myanmar counterparts will have a substantial advantage in the long term over later arrivals."

Chia is equally bullish. "The next few years will definitely be exciting ones, and we anticipate that foreign investment in Myanmar will increase exponentially," he adds. "We expect to see more legal firms and consultancy firms coming into the market, and also the development of a more sophisticated framework of laws." **ALB**



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