Myanmar recently enacted the following new laws that will be of interest to foreign investors:

1. The Securities Exchange Law (“SEL”) was enacted on 31 July 2013, and provides the framework for the establishment of a stock exchange. While Myanmar has a small operating stock exchange with two listed securities, the lack of a comprehensive regulatory framework has prevented its development.

   The new law:
   - establishes the securities and exchange commission, the main regulatory body to supervise the securities market;
   - sets out licenses available for securities businesses (dealing; brokerage; underwriting; investment advisory and company’s representative);
   - sets out the framework for establishing the stock exchange;
   - provides for the establishment of an over the counter market;
   - sets out the prohibited acts relating to securities trading (e.g. insider trading) and the penalties; and
   - provides for the establishment of a securities depository and clearing business.

   The associated rules, which will provide the details of the SEL, are expected to be issued within 90 days. Reports indicate that the opening of the stock exchange is planned for 2015.

   While this is encouraging, implementing regulations are also required, as are an update of the Myanmar company law and a robust regulatory and reporting framework which will withstand the scrutiny of domestic and international investors.

2. On 12 July 2013, Myanmar’s President approved the New Central Bank Law (“NCBL”). The main feature is that the Central Bank of Myanmar will be an autonomous body, acting more independently from the Ministry of Finance. This relaxation in regulation and control seems to indicate the opening up of the banking industry to more international participation.

   The NCBL repeals the Central Bank of Myanmar Law of 1990. However, the rules, regulations, bye-laws, orders and directives issued under the repealed Central Bank of Myanmar Law remain in force, in so far as they are not inconsistent with the provisions of the NCBL, or are not repealed or superseded.

   Associated rules and regulations will have to be adopted within three months (i.e. 12 October 2013) in order for the law to come into effect. Bank officials have indicated that this timeline will be met, and that the rules and regulations may permit foreign banks to participate in Myanmar’s banking industry, perhaps through joint venture joint ventures with majority-owned joint ventures with local banks. These joint ventures would eventually be followed by wholly owned subsidiaries and full branches. However, the regulatory and licensing structure for foreign banks remains unclear. Currently foreign banks are restricted to setting-up representative offices only.

3. On July 15, Myanmar became the 149th contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“NY Convention”). Under the NY Convention, Myanmar courts are obliged to give effect to foreign arbitration clauses and to enforce arbitral awards made in other member states of the NY Convention. Foreign investors will be able to choose a neutral offshore forum of the resolution for their disputes, insofar as the parties have agreed to arbitration. It is still necessary to adopt domestic legislation to implement the NY Convention in Myanmar.

The draft implementing legislation...
NEWS BY DFDL

is in circulation and is said to pass by the parliament by the end of 2013.

In addition:

(a) the UN Secretary-General has yet to issue a formal depositary notification, publishing the terms of Myanmar’s accession to the NY Convention.
(b) It is still uncertain whether Myanmar has made any reservations regarding its accession to the NY Convention (e.g. to reciprocity which may limit the number of reciprocal countries for the enforcement of the arbitral awards).
(c) Observers have said that there is a lack of local judiciary capacity and experience to ensure that the NY Convention and the implementing legislation are applied as per international practice.
(d) Foreign investors wanting to include an arbitration clause in an agreement will have to look to the Arbitration Act of 1944 and the Arbitration (Protocol and Convention) Act of 1939.

The Arbitration Act of 1939 provides for the enforcement of foreign awards in Myanmar, but there are only few examples of enforcement by the Myanmar courts. To date Myanmar has had a general policy of requiring the Arbitration Act of 1944 to be applied in contracts between domestic and foreign parties, such that the arbitration forum should be Myanmar but a foreign (e.g. Singaporean) qualified arbitrator may be appointed by the contracting parties to conduct the proceedings in Myanmar.

Although the NY Convention is still to be implemented through domestic legislation, Myanmar’s accession to the NY Convention is a step in creating a more comprehensive and foreign investor friendly legal environment.

4. The New Citizens Investment Law (“NCIL”) was enacted on 31 July 2013, repealing the Myanmar Citizens Investment Law of 1994. This law applies to Myanmar investors wishing to establish a Myanmar Citizen Company with the Myanmar Investment Commission (“MIC”). The purpose of this law is to align it with the Foreign Investment Law of 2 November 2012, foreseeing similar benefits for the foreign and Myanmar investor incorporating companies with the MIC.

The law does not apply to foreign or joint ventures companies (as a company with even one foreign shareholder holding even one share is a “foreign company”). However, this law has an indirect impact on foreign investors as it seems to be the case that shares of a Myanmar company may now be transferred or sold to a foreigner.

Angus Mitchell, Managing Director, DFDL Thailand
angus.mitchell@dfdl.com

William D. Greenlee, Jr., Deputy Managing Director, DFDL Myanmar
william.greenlee@dfdl.com

Angus Mitchell, Managing Director, DFDL Thailand
angus.mitchell@dfdl.com

William D. Greenlee, Jr., Deputy Managing Director, DFDL Myanmar
william.greenlee@dfdl.com

Angus Mitchell, Managing Director, DFDL Thailand
angus.mitchell@dfdl.com

William D. Greenlee, Jr., Deputy Managing Director, DFDL Myanmar
william.greenlee@dfdl.com