

Investment Process in Myanmar's Ethnic States

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A mapping of the role of State Governments in approval and regulation for investments into Ethnic States

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Executive Summary:

Myanmar's reform period has led to a significant increase and diversification of international investment since 2012. This investment has perhaps been most obvious in the oil and gas and telecommunications sectors, but industries such as consumer goods, textile manufacturing, and others are rapidly growing and evolving.

However, the process of investing in Myanmar remains extremely challenging for many international organisations. Opaque procedures and uncertain legislative and regulatory frameworks continue to limit investor interest while Myanmar remains near the bottom of international rankings. For example, Myanmar's place on Transparency International's corruption perception index is 156 of 175 while on the World Bank's Ease of Doing Business table it sits at 167 of 189, despite improving 10 places in 2015. While it is expected that the new NLD administration will continue to work towards increased transparency, improved regulation, and standardized bureaucratic processes, many challenges remain.

Myanmar's ethnic states, and some more remote parts of the Regions, have generally experienced fewer economic benefits of reform. This is, in large part, due to the complexity of investing in these environments, where risks associated with the lack of infrastructure, challenging political and security contexts, and opaque registration and regulation have kept most investors away. However, these contexts are changing and the ethnic states will likely see increased investment in the near future—what remains unclear is whether, and how, such investment will be used to benefit the local communities.

In the context of the ongoing political dialogue, gaining a better understanding the process of investment has become vital, especially for those groups and individuals engaged in these negotiations. This analysis presents the context and processes of investment in Myanmar by examining the institutions, rules, and key issues with the system as defined by law. Where relevant, the analysis indicates differences between investment processes in the country's ethnic states as compared to the central regions. The information is based on interviews conducted in Yangon and publicly available information, with a focus on understanding specific provisions of the 2008 Myanmar Constitution, relevant legislation passed in the reform period, and key regulations promulgated by the various ministries.

Chapter one provides an overview of government ministries likely to be involved in the investment process. Given Myanmar's resource-rich context, this section focuses on the roles played by the Ministries of Mines, Planning and Economic Development, Energy, Environment Conservation & Forestry, and Electric Power (responsible for hydropower). Specifically, it outlines the Ministries' components, including relevant State Owned Enterprises, at both Union and State Level, and roles in investment procedures.

The chapter also includes a flow chart outlining a sample investment process. While accurate to the best information available, it should be emphasized that this process remains somewhat opaque and can be more, or less, bureaucratic than the chart outlines, depending on the sector, the investor, and the relevant ministry.

Chapter two focuses on the legal and constitutional playing field for investors in Myanmar. It first outlines the constitutional provisions relating to land and natural resources and describes the designated functions of State governments in enacting laws pertaining to taxation and investment. It then examines the Union-level legal and regulatory framework for investment. Particular attention is paid to the Foreign Investment Law and the sectors that are defined as "restricted or prohibited" and require investors to obtain specific permissions.

The next section deals with Union-level rules and regulation and how they apply to State-level, or below, institutions and organizations. Requirements in the Foreign Investment Law for restricted or prohibited sector investors to gauge and respond to local opinions are examined, as are the rules around local employment and local resource use. The final section of Chapter two deals with legislation currently under discussion in Parliament. The analysis of potential new legislation is based on the most recent draft available rather than news reporting.

Chapter three identifies key issues and challenges facing the investment process, for investors, for government officials, and for the people of Myanmar. It identifies a number of areas needing improvement ranging from the lack of up-to-date laws and regulations to the *ad hoc* nature of some investment processes. It highlights capacity and coordination challenges facing State Governments. Finally, it examines the lack of specific protection of State or Region interests in most Union-level laws, suggesting that legislation should be developed to ensure ethnic nationalities' interests are protected.

The final chapter looks at three international case studies for investment, with a focus on democratic, resource-rich nations. It presents one best-case scenario, one model to be avoided, and one case that Myanmar should, perhaps, attempt to emulate. Western Australia's is used to illustrate international best practice, especially in terms of revenue sharing and regulatory framework. Nigeria is identified as a model to avoid, given the lack of transparency inherent to its oil sector. Finally, Peru is identified as a potential model for Myanmar resource sector development, with strong legislation, including on environmental and social impact assessments, and freedom of information legislation. Peru also has strong revenue sharing methods, with a focus on infrastructure development and providing local government with access to mining royalties.

Chapter 1: Mechanics of Investment in Myanmar's States and Regions:

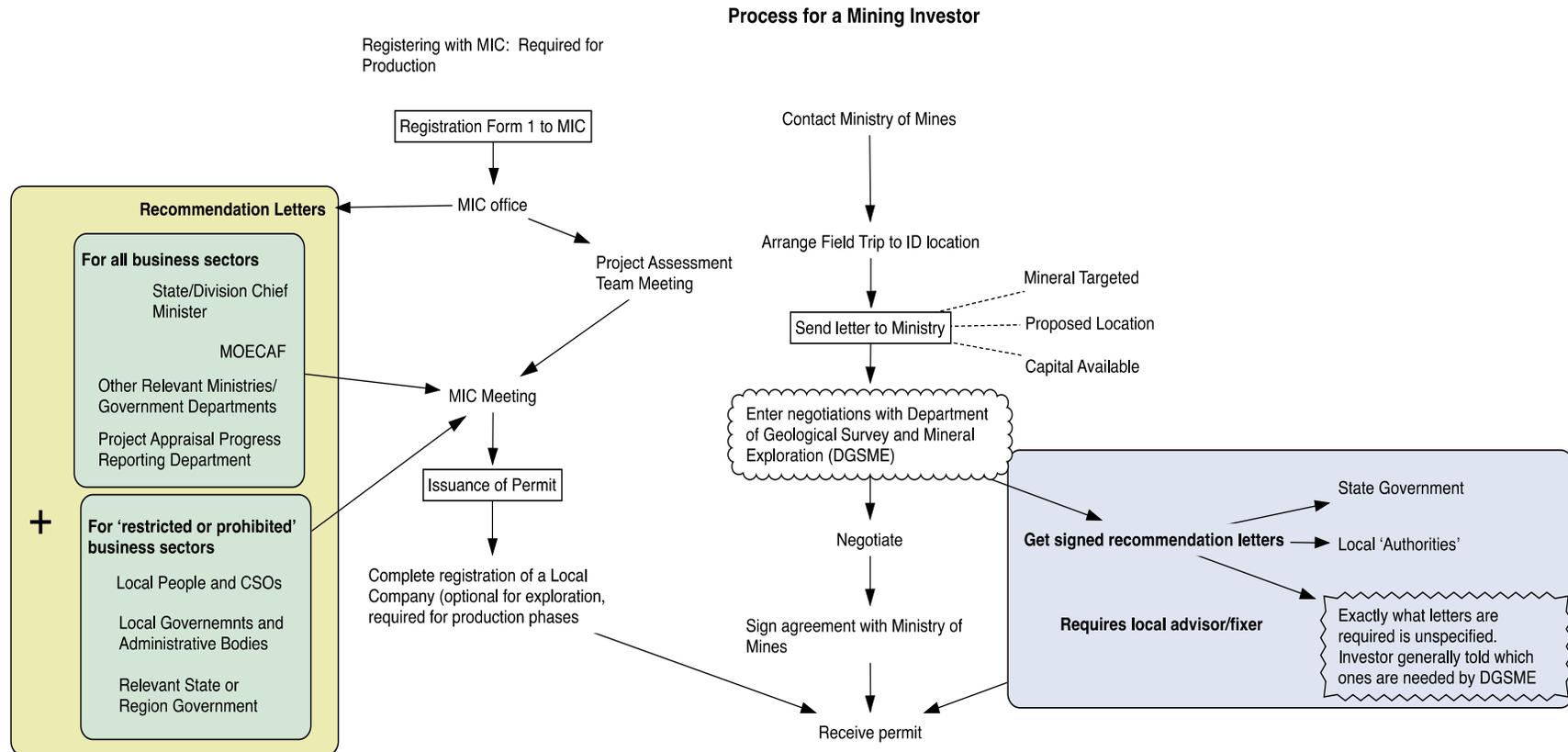
Government Ministries involved in foreign investment

Name	Relevant Departments	State-Owned Enterprises (SOE)	Relevant Laws and Rules	State-Level Representation	Notes on role in investment procedures
Ministry of National Planning and Economic Development	<ul style="list-style-type: none"> Myanmar Investment Commission (MIC) Directorate for Investment and Company Administration 	<ul style="list-style-type: none"> NONE 	<ul style="list-style-type: none"> Foreign Investment Law (2012) Foreign Investment Rules (2013) 	<ul style="list-style-type: none"> State Ministry of Planning and Economics 	<ul style="list-style-type: none"> MNEP oversees investment into Myanmar generally. MIC responsible body for process of investment approval.ⁱ DICA responsible for business registration and monitoring implementation.ⁱⁱ
Ministry of Finance	<ul style="list-style-type: none"> Budget Department Internal Revenue Department Customs Department 	<ul style="list-style-type: none"> NONE 	<ul style="list-style-type: none"> Union Taxation Law (2014) 	<ul style="list-style-type: none"> State Ministry of Finance and Revenue 	<ul style="list-style-type: none"> Companies pay corporate income tax (25%) based on location of HQ, not on concession location.ⁱⁱⁱ Tax holidays for new projects, 5 years^{iv}
Ministry of Mines	<ul style="list-style-type: none"> Department of Mines Department of Geological Survey and 	<ul style="list-style-type: none"> Mining Enterprises #1, #2, #3 Myanmar 	<ul style="list-style-type: none"> Myanmar Mines Law (1994) Myanmar Mines Rules 	<ul style="list-style-type: none"> State Minister for Forestry and Mines States/Regions have control over 	<ul style="list-style-type: none"> Department of Mines provides regulatory approval and oversight for all mining projects. Also responsible for environmental affairs. Large-scale mines governed by JV or

	Mineral Exploration	Gems Enterprise • Myanmar Pearl Enterprise	(1996) • Myanmar Gemstone Law (1995)	Myanmar Salt and Marine Chemical Enterprise (MSMCE)	PSC between relevant mining SOE and private company. Details vary. ^v • MSMCE recorded a loss in 7/8 States/Regions where it exists. ^{vi} • No State Ministry of Mines.
Ministry of Environmental Conservation and Forestry (MOECAAF)	<ul style="list-style-type: none"> • Department of Forestry • Survey Department • Department of Environmental Conservation 	• Myanmar Timber Enterprise (MTE)	<ul style="list-style-type: none"> • Environmental Conservation Law (9/2012) • Forest Law (1992) • Forest Rules (1993) 	<ul style="list-style-type: none"> • State Minister for Forestry and Mines • State Forestry Departments (accountable to Union Ministry) • State Environmental Conservation departments-all to be opened by end 2016. 	<ul style="list-style-type: none"> • MTE has sole extraction rights for teak, though private sector can run teak plantations. MTE does subcontract.^{vii} • Community forests introduced in 1995; no commercial extraction to date.^{viii} • Township Environmental Conservation offices are planned from 2016.
Ministry of Energy and Power		<ul style="list-style-type: none"> • Myanmar Oil and Gas Enterprise • Myanmar Petrochemical Enterprise • Myanmar Petroleum Products Enterprise 		• None	<ul style="list-style-type: none"> • All oil and gas companies operating in Myanmar are in partnership with the SOE Myanmar Oil and Gas Enterprise (MOGE). Contracts vary, but state holding 15%-20%.^{ix} • There is no State Ministry of Energy
Ministry of Electric Power	• Department of Electric Power	• Hydropower Generation	• Electricity Law (2014)		

	<ul style="list-style-type: none">• Department of Hydropower Planning• Department of Hydropower Implementation	<p>Enterprise</p> <ul style="list-style-type: none">• Myanmar Electric Power Enterprise• Electricity Supply Enterprise			
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A sample process for investment in Myanmar's States and Regions¹



¹ As understood based on research and interviews in Yangon. This diagram does not account for all permutations of what is often an informal and bureaucratic process.

Chapter 2: Legal and Constitutional Environment for Investment in Myanmar’s States and Regions

Note on sourcing: Except where indicated, all sources in this section are the relevant Constitution provision, Union Law or Union Rule.

Constitutional Provisions

Constitutional Articles and Schedules ^x	Text (edited for clarity. Link to Constitution here)	Explanation
Article 37	<p>1. The Union Government is provided with owner of all land and all natural resources above and below all land and water.</p> <p>2. The Union shall make necessary laws to supervise the extraction and use of state-owned resources.</p>	Neither the State nor any private individual/organization may own resources and legislative governance of natural resources lies solely at the Union level.
Article 164d	State Hluttaws have the ability to invite State-level ministers to attend the Hluttaw and provide testimony or expert advice on matters relating to the governance of the State.	State Hluttaws can receive information from Union Ministry officials
Article 188	The State Hluttaw may enact laws for the State pertaining to the matters outlined in “Schedule Two of the Region or State Hluttaw Legislative List”.	The State Hluttaw can only pass laws on subjects listed in Schedule Two, meaning its power is tightly limited. ^{xi}
Article 256	“The State Government shall carry out its functions in accordance with the provisions of the Constitution and existing laws.”	The State Government must ensure that all it’s laws, regulations and actions are in agreement with the Union Constitution and Union laws.
Schedule Two	<p>State and Region governments may enact laws related to the following subjects:</p> <ul style="list-style-type: none"> • Finance and Planning Sector: The Region or State budget; The Region or State fund; Land revenue; excise duty (not inc. drugs); municipal taxes; 	Schedule Two of the Myanmar Constitution provides a guide for the sectors where State and Region may enact laws, and resulting regulations.

	<p>services of the State or Region; sale or lease of Region or state land; disbursement of loans from the Region or State; Investment from Region or State Funds; Local planning;</p> <ul style="list-style-type: none"> • Economics Sector: Region/State economic, commercial or co-operative matters undertaken, in accord with Union law • Agriculture and Livestock Breeding Sector: Agriculture; protection and control of plants, crops etc; systematic use of fertilizers, chemical and natural; agricultural loans and savings; dams, embankments, lakes that are managed by the State or Region; fresh water fisheries; and livestock breeding in accordance with Union Law. • Energy, Electricity, Mining and Forestry Sector: medium and small-scale electric power production that are not linked with the national power grid; salt and salt products; cutting and polishing of gemstones within the Region or State; village firewood plantations; recreation centers, zoological gardens etc. • Industrial Sector: Industries other than those prescribed to be undertaken by the Union government; cottage industries. • Transport, Communication, and Construction Sector: Transportation infrastructure that is managed by the State or Region, including ports and jetties, roads and bridges; the systematic running of private vehicles within the State or Region. • Social Sector: Matters on traditional medicine not contrary to Union Law; Social welfare within the State or Region; Preventative and precautionary measures against fire and natural disasters; Stevedoring; Preservation of heritage; Theatres, exhibitions, etc. • Management Sector: Development matters; town and housing development; honorary certificates and awards. 	<p>The State and Region Governments therefore have their powers specifically restricted to certain sectors, with all others reserved for the Union Government. ^{xii}</p>
Schedule Five	<p>Taxes that may be collected by the State or Region government</p> <ol style="list-style-type: none"> 1. Land revenue. 2. Excise revenue. 3. Water tax and embankment tax based on dams and reservoirs managed by the Region or State and tax on use of electricity generated by such 	<p>Schedule Five outlines potential sources of tax revenue for State and Region Governments. Note that it specifically does not include revenue from natural resources, beyond fisheries, timber, and salt.</p>

- facilities managed by the Region or State.
4. Toll fees from roads/bridges managed by the Region or State.
 5. (a) Royalty collected on fresh water fisheries. (b) Royalty collected on marine fisheries within the permitted range of territorial water.
 6. Taxes collected on vehicles on road transport and vessels on inland waterway transport, in accord with law, in a Region or a State.
 7. Proceeds, rent fees and from properties owned by a State/Region.
 8. Fees, taxes and other revenues collected on services enterprises by a Region or a State.
 9. Fines imposed by judicial courts in a Region or a State including Region Taya Hluttaw or State Taya Hluttaw and taxes collected on service provision and other revenues.
 10. Interests from disbursed by a Region or State.
 11. Profits returned from investment of a Region or State.
 12. Taxes collected on extraction of the following items from the forests in a Region or a State:
 - . (a) Taxes collected on all other woods except teak and other restricted hard woods;
 - . (b) Taxes collected on firewood, charcoal, rattan, bamboo, birdnests, catch, thanetkha, turpentine, eaglewood and honey-based products.
 13. Registration fees.
 14. Taxes on entrainments.
 15. Salt tax.
 16. Revenue received from the Union Fund Account.
 17. Contributions by development affairs orgs in State/Region.
 18. Unclaimed cash and property and treasure trove

Union Laws

Union Law	Relevant Provisions	Description	Explanation (where needed)
State & Region Government Law	Article 38	The State or Region Government may a) collect taxes and revenues listed in the Constitution Schedule 5 for the State fund	The State or Region Government's powers of tax collection are limited to the areas listed in the Constitution's Schedule Five (detailed above).
	Article 40	The State Government may, with Union Government approval, carry out Union Government responsibilities jointly with the Union government, or in accordance with terms and conditions set by the Union Government.	With specific Union Government approval and detailed terms and conditions, the State or Union Government may carry out responsibilities that are normally the purview of the Union Government.
Foreign Investment Law (21/2012)	Article 4	<p>Certain investments are defined as "restricted or prohibited" and require special permissions. These include (but not limited to)</p> <ul style="list-style-type: none"> • Businesses that affect traditional culture and customs of the national races; • Business that affect public health; • Business that can damage the environment; • Business that produce hazardous wastes; • Production or use of chemicals; • "Manufacturing business and services which can be carried out by the citizens by issuing rules;" • "Business which can bring the technologies, medicines, instruments which is testing in abroad or not obtaining the approval to use;" • Agricultural businesses; 	<p>Certain business areas are listed as restricted or prohibited to foreign investors and require special permissions from the Union Government.</p> <p>As described in Article 4, a wide number of businesses are included in the "restricted or prohibited" category, including most natural resource-type business, most manufacturing or industrial business, and all agricultural business.</p> <p>As a result, a higher level of engagement with the State Government is required in most cases.</p> <p>How these 'special permissions' are obtained is described in additional detail in the Myanmar Foreign Investment Rules, covered below.</p>
	Article 5	The Commission may allow by the approval of the Union Government, the restricted or	Approval of business operating in areas defined in Article 4 will depend on whether the business proposal is in "the

		prohibited investments under section 4 for the interest of the Union and citizens especially people of national races.	interest of the Union and citizens especially people of national races” The Myanmar Foreign Investment Rules describes the process of approval for “restricted or prohibited “investments.
	Article 12g	The MIC shall “co-ordinat[e] with the relevant Region or State Government in respect of foreign investments which are entitled to carry out for economic development of the Regions or State with the approval of the Union Government”	<ul style="list-style-type: none"> • The Myanmar Investment Commission is required to coordinate with State Government regarding foreign investments that are allowed to carry out economic development in the State with the approval of the Union.
Myanmar Mines Law (1994)		N/A	<ul style="list-style-type: none"> • The Myanmar Mines Law sets out the mineral resources policy of the Union government. There are no clear references to State-level involvement within the text.
Special Economic Zones (SEZ) Law (2014)		<ul style="list-style-type: none"> • Article 9a: The Management Committee of any SEZ shall include personnel from ‘relevant government” departments. • Article 9b: The Management Committee of any SEZ shall include one representative of the relevant State or Region Government. • Article 33b: The Union or the State or the Region Government shall, in transparent procedures, establish the special economic zone, manage and maintain it either itself or entrust other organizations with it. 	<ul style="list-style-type: none"> • Article 9b specifies that at least one State or Region Government representative must be included in any SEZ management committee. • Article 9a leaves open the possibility for additional representation from the State or Region Government depending on the context of the SEZ. • Article 33b suggests that the State or Region Government shall manage any SEZ in a transparent way itself, or entrust the management to a third party.
Myanmar Tax Law (2014)		<ul style="list-style-type: none"> • Article 10 dates that the Union Government will request the assistance of State and Region Governments to “obtain data and support” for tax assessment. 	<ul style="list-style-type: none"> • The law does not provide specific tax collection authorization for State and Region Governments beyond what is included in Schedule Five of the Myanmar Constitution.
State Owned Enterprises		Gave ‘sole right’ to the government for:	<ul style="list-style-type: none"> • The State-Owned Enterprises Law includes no specific

Law (1989)		<ul style="list-style-type: none"> • Exploration, extraction, production and sale of petroleum and natural gas • Exploration, extraction, and export of pearl, jade, and precious stones • Exploration and export of metals 	<p>references to State or Region Government involvement in the SOEs.</p>
Myanmar Electricity Law (2014)		<ul style="list-style-type: none"> • Article 3c states among the Law’s goals is the encouragement of mid- and small-scale electricity generation in States and Regions, not connected to national grid • Article 5d allows for the creation of State and Region sub-commissions to regulate electricity generation. • Article 7 confers on State and Regions the authority to carry out ‘electricity-related work’. • Article 9b allows State and Region Governments to issue and revoke licenses for mid and small size electricity generation projects after consultation with the relevant ministry. • Article 10 allows the State and Region government to acquire land and develop infrastructure to support mid and small-scale generation projects. • Article 33 allows the State or Region Government, after consultation with the Union, to set electricity rates for electrical grids under their management. 	<ul style="list-style-type: none"> • The Myanmar Electricity Law provides perhaps the greatest level of authority to State and Region Governments of any recent Union-level law. • While the Union Government retains complete control over projects affecting the national electricity grid, State and Region governments have the authority to approve, regulate, and set rates for non-national grid projects. • Given the large percentage of Myanmar’s population who do not have access to the country’s national electricity grid, this is significant.
Foreign Exchange Law		N/A	N/A
Environmental Conservation Law (2012)		N/A	<ul style="list-style-type: none"> • The Environmental Conservation law provides no reference to specific roles for State or Region

			Governments or ministries.
Myanmar Gemstone Law (1995)		<ul style="list-style-type: none"> Article 24a states that the Ministry of Mines shall form Valuation Bodies as needed of experts at various regions. Article 53a states that the Union Government may allow a company or society to undertake gemstone exploration and production 'within a region' under prescribed conditions. 	<ul style="list-style-type: none"> The Myanmar Gemstone Law includes no role for State and Region Governments. However, Article 24 does provide for the possibility of some devolution of regulation via "Valuation Bodies" under the Union Government's Ministry of Mines.
Myanmar Pearl Law (1995)		N/A	N/A
Myanmar Forest Law (1992)		N/A	N/A

Union Rules & Regulations

Name	Explanation of Relevant Rules	Relevant Bodies	State Involvement,
Foreign Investment Rules (11/2013): Article 14	<p>If and when an investment proposal is made deals with an sector that is either restricted or prohibited for foreign investors, the MIC can and will consider it on the basis that it might be beneficial to the Union and its citizens.</p> <p>However, to approve such a proposal, the MIC is mandated to ask for and receive:</p> <ol style="list-style-type: none"> 1. Comments from local people or and CSOs in the area. 2. Comments from local government and administrative bodies. 3. Comments from the relevant State or Region Government. 	Myanmar Investment Commission.	Chief Ministers office
Foreign Investment Rules (11/2013):	For all investment proposals in unrestricted sectors, the MIC shall request recommendations from the State Government.	Myanmar Investment Commission. (MIC)	Chief Minister

Article 43	The MIC will also request recommendations on environmental and social impact from MOECAF	Ministry of Environmental Conservation and Forestry (MOEFAC)	
Foreign Investment Rules (11/2013): Article 44	Recommendations from the Chief Minister on a given investment project must be received by the MIC within seven days of him/her being notified of the request.	Myanmar Investment Commission. (MIC)	Chief Minister
Foreign Investment Rules (11/2013): Article 130	For foreign investment projects that involve “urbanization, hotels, schools, hospitals, construction of residential buildings, factories, roads, bridges, communications, infrastructure”, they must be in accordance with the development plans of the relevant State Government.	Myanmar Investment Commission. (MIC)	Chief Minister State Development Committee
Myanmar Mines Rules (1996) Articles 28 & 24d	The Ministry of Mines will approve large scale mineral exploration/production with foreign investment if proposed production includes: a) programs for use of resources in an “effective and beneficial way”; b) programs for “safety and environmental protection”; and c) “adequate provisions” for employment of Myanmar citizens Provision for purchasing goods and services in Myanmar must also be included in the proposal.	Myanmar Ministry of Mines	None specified within the regulations; in practice engagement often required at State, Township and local levels. But informal, differs region to region.
Myanmar Forest Policy (1995)	Provides a basic structure for the development and use of forest resources in Myanmar. Significantly out of date.	Ministry of Forestry, now Ministry of Environmental Conservation and Forestry	None specified; in practice much of Myanmar’s timber industry is either illegal or in a gray area of law. See new EIA report. ^{xiii}
Framework for Economic and Social Reforms (2012)	The Union government committed to undertaking “transparent, competitive, and non-discretionary procedures” for awarding “exploration, development and production rights” over natural resources. Ensuring concessions have “high social and environmental standards” and are “transparent” and provide “equitable sharing of		No detail provided.

financial benefits.

Potential Changes to Rules and Regulations: Near-to-Medium Term

New Law/ Regulation name	Replaces	Status	Notes
Myanmar Investment Law	<ul style="list-style-type: none"> Foreign Investment Law Citizens Investment Law 	<ul style="list-style-type: none"> 3rd draft available (Myanmar language), 2nd draft (English) Not expected to pass before elections. 	<ul style="list-style-type: none"> Some changes expected with regard to land leasing procedures being devolved to the State or Region Ministry level.^{xiv} Other relevant, potential changes include around small-scale mining activities, but these remain unclear.
Myanmar Mines Law	<ul style="list-style-type: none"> Myanmar Mines Law (1994) 	<ul style="list-style-type: none"> Draft was submitted to Parliament in October 2013 Draft has not been released to public. Not expected to pass before elections 	<ul style="list-style-type: none"> Key issues believed to be addressed by the new Mines Law include the dynamics of production sharing contracts between the Union Government and mining companies. The permitting system (current law requires new permits for each stage) and clearer land acquisition rules are also key areas to the new law to address.^{xv}
Environmental Conservation Rules	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> Believed to be in draft form 	<ul style="list-style-type: none"> Lack of Environmental Conservation rules means the Environmental Impact Assessment process in Myanmar lacks official guidelines and requirements.^{xvi} Draft EIA rules are available here: Draft EIA Rules,
Forest Law	<ul style="list-style-type: none"> Myanmar Forest Law 1992 	<ul style="list-style-type: none"> Unclear, there have been few updates on the development of this law. 	<ul style="list-style-type: none"> Will provide a environment governing forests (including community forests), timber, and forest-based livelihoods in the country, Expected to use the current forest law and policy as a continued benchmark.^{xvii}

Chapter 3: Key Issues

Key Issues	Explanation
Ad hoc or informal processes	<p>The processes for investment in Myanmar remain largely informal and are not governed by specific rules and regulations. As written, current investment laws are extremely vague about the role of state and region governments in the investment process—and in some cases do not mention them at all.</p> <p>However, through interviews and discussions with stakeholders it has become clear that relatively extensive local and state-level engagement is required of most investors. The shape and extent of this engagement varies with location, sector, and investor-ministry relations. Therefore, one of the main issues with the current process is the lack of a standardized process for investors.</p>
Lack of updated laws	<p>Myanmar’s Mining Law is of particular note here, but there are other laws which were passed in the early 1990s, or earlier, that are outdated, referring in some cases to governance structures that no longer exist.</p>
Lack of updated regulations	<p>Similar to the issue of old legislation, outdated regulatory frameworks are common. In many cases, these regulations do not refer to the present system of State and Region Governments at all.</p>
State Government Capacity gaps	<p>State and Region Governments across Myanmar lack the capacity to regulate investment projects—even in sectors where they have the authority to do so. While the State and Region Law does allow the formation of State and Region civil servants corps, to date there have been few efforts to develop State and Region bureaucracies.</p> <p>Capacity gaps also exist at the Union Ministry level where significant challenges to standardizing ministry processes continue to exist. Many Ministry processes continue to have informal structures. Interviews with stakeholders identified the Ministry of Mines as an example of a Ministry where personal relationships are key to engagement rather than formalized processes.</p>
Coordination/Reporting challenges at the State Level	<p>State Ministers often do not have State Ministries to lead. For example, while there is a State Minister of Mines and Forestry, State-level personnel from the Ministry of Mines and the Ministry of Forestry have reporting requirements to their Union offices, not the</p>

	<p>State Minister. Reporting to the State-level, or even coordination, is based on interpersonal relationships rather than established structures. This is an illustration of how Myanmar’s devolution has been an exercise in ‘deconcentration’ rather than true ‘decentralization’.</p>
<p>Lack of State and Region Laws</p>	<p>State Hluttaw’s have passed very few laws of any sort, and virtually none that deal with areas that could receive foreign investment. A lone exception is the Rakhine State Fisheries Law. While State Hluttaw’s are certainly restricted by the Constitution’s Schedules Two and Five in terms of what areas they can legislate, they have certainly not taken advantage of key sectors such as electrical power or non-teak timber extraction.</p> <p>In addition, State or Region Hluttaw’s are permitted to pass legislation that ‘is in accordance with Union Law’. There are no examples that we are aware of where State or Region Hluttaw’s have attempted to build on existing Union Laws and make them more relevant to their State or Region’s context.</p>
<p>Lack of specific protection of State or Region interests</p>	<p>The lack of clarity within Union-level laws and regulations and the lack of any legal structure at the State and Region level mean there is no existing process for the protection of State or Region interests. There is, therefore, certainly no existing process for protecting ethnic nationalities’ interests in the States.</p> <p>The process of investment does, in theory, require the consultation of local populations and their State or Region level representatives, but the lack of detail for these processes means there is a limited amount of interest protection, or advocacy available. Until further regulatory capacity at both the Union and State or Region levels is developed, State or Region interests will remain subordinate to the development goals of Myanmar as a whole—to the extent that they are often ignored.</p>

Chapter 4: International Case Studies^{xviii}

A full assessment of the investment procedures, legal environment, and tax and revenue structures of international case studies is beyond the scope of this analysis. Presented below is an outline of the natural resource investment environment in several countries that can be seen as achievable, avoidable, and best case examples for Myanmar.

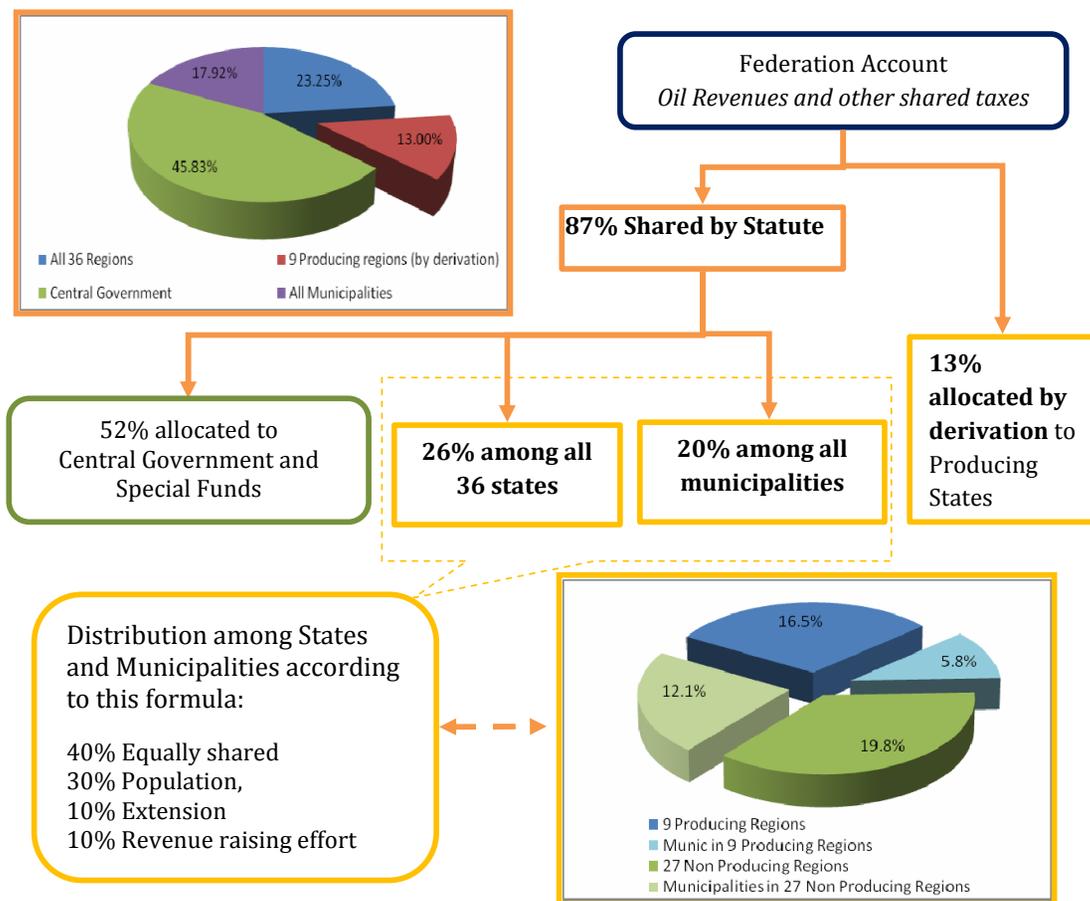
	Peru	Nigeria	Western Australia
Example	Achievable	Avoidable	Best Case
Government System	Representative Democratic Republic, with some decentralized powers to the Regions	Federal Republic	Federal Republic
Legal and Regulatory Processes for Natural Resources Investment.	<p>The Instituto Geológico Minero y Metalúrgico (INGEMMET) grants mining concessions through an administrative process that verifies land has not been previously claimed. It is open to all companies. There are no contract negotiations, but companies can sign voluntary investment contracts in exchange for tax breaks.</p> <p>The Organismo Supervisor de la Inversión en Energía y Minería (OSINERGMIN) regulates the industry. Companies pay the government taxes, royalties, and fees at rates fixed by legislation.</p> <p>The Superintendencia Nacional de Administración Tributaria, the national tax agency, collects mining royalties and taxes, and places them in the treasury;</p>	<p>The minister of petroleum resources grants licenses for oil exploration, while the Department of Petroleum Resources, under the minister, oversees the licensing process and regulates the sector.</p> <p>Nigeria's tax agency receives taxes on petroleum profits and other hydrocarbon-related levies, while the Department of Petroleum Resources collects rents, royalties, license fees, bonuses, and other payments.</p> <p>Some revenues bypass the treasury and are not reported to the legislature. Nigeria adopted a Freedom of Information Act in 2011.</p> <p>The Petroleum Resources Ministry</p>	<p>In Australia, state and national authorities share the responsibility of governing the extractive industries. States regulate mining operations and collect royalties and other fees; only the federal government has the power to tax company profits.</p> <p>Australia's Freedom of Information Act requires disclosure of information on the mineral sector, and environmental and social impact assessments are mandatory before mineral rights can be awarded.</p> <p>In 2011 the government</p>

	<p>INGEMMET collects fees.</p> <p>Peru requires environmental impact assessments, including a social impact component, and makes the results public.</p> <p>Mining legislation is published, and Peru recently passed a freedom of information law to promote transparency in all public institutions.</p> <p>In 2012 it became the first Latin American country to achieve Extractive Industries Transparency Initiative (EITI) compliant status.</p>	<p>publishes little information on the upstream licensing process, fiscal and production arrangements, contracts, environmental impact assessments, or operational data. It publishes no reports on revenues.</p> <p>In contrast, the Finance Ministry publishes information on production volumes, prices, the value of resource exports, estimates of investment in exploration and development, production costs, costs of subsidies, production stream values</p> <p>Nigeria has been an EITI member since 2011.</p>	<p>announced that Australia would join the Extractive Industries Transparency Initiative, beginning with a pilot project in July 2012.</p> <p>Western Australia’s Department of Mining and Petroleum (DMP) publishes information on the licensing process, contracts, and environmental and social impact assessments. It produces audited annual financial reports and maintains an online searchable database with information on reserves, prices, the value of exports, estimates of investment in exploration and development, production by company/block, production stream values, royalties, license fees, and lease income.</p>
<p>Subnational Revenue Sharing</p>	<p>Peru has several mechanisms for transferring funds to local governments.</p> <ul style="list-style-type: none"> • Half of mining companies' income taxes are distributed as "mining canon" payments to fund infrastructure development projects. • Mining royalties also are transferred from the treasury to municipal and 	<p>Nigeria has several mechanisms for sharing resource wealth; some are more successful and transparent than others.</p> <ul style="list-style-type: none"> • Oil-producing states receive 13 percent of revenues from the oil produced in their state, in addition to standard revenue allocations. More detail in Annex 1. 	<p>Western Australia has established a “Royalties for Regions” program that allocates 25 percent of state mineral royalties for local development.</p> <p>Both the state and local governments publish information on these transfers, which are typically used to</p>

	<p>regional governments in mineral-producing areas, with a small percentage going to national universities; fees are divided among local governments, INGEMMET, and the Energy and Mines Ministry.</p> <ul style="list-style-type: none"> • The rules for revenue sharing are defined by legislation and published, and the Economy and Finance Ministry and local governments disclose the amounts of the transfers. • Mining companies also contribute directly to local development projects through social funds and voluntary contributions to the Programa Minero de Solidaridad con el Pueblo. 	<ul style="list-style-type: none"> • The Finance Ministry publishes regular reports on the transfers. The government appears to follow the rules for resource revenue sharing established by legislation. • Nigeria created a Sovereign Wealth Fund in May 2011. It received \$1 billion in seed. The Excess Crude Oil Account currently receives revenues directly from oil extraction. • Structurally, the central bank and the Finance Ministry oversee the account; in practice, the president has substantial control over deposits and withdrawals. There are no published rules about the account's operations, and information on its assets and transactions is not available. 	<p>maintain community infrastructure.</p> <p>In May 2012, Western Australia became the first state to announce plans to establish a Future Fund to be managed by the state treasurer. According to proposed legislation, the fund would receive at least 1 percent of the state's annual royalty revenue. Interest would be reinvested and spending prohibited for a period of 20 years.</p>
NRGI Rank:	11/58	40/58	4/58

Annex 1: Nigeria Revenue Sharing Diagram^{xix}

Figure 11: Nigeria Revenue Sharing



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