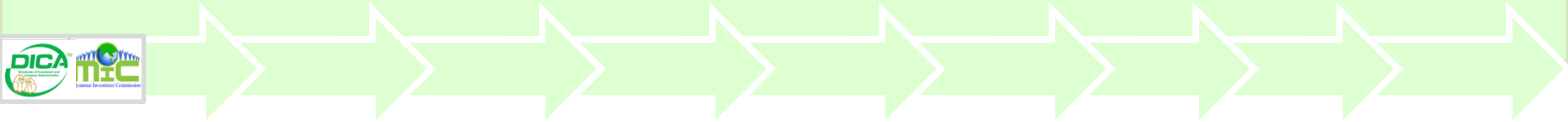


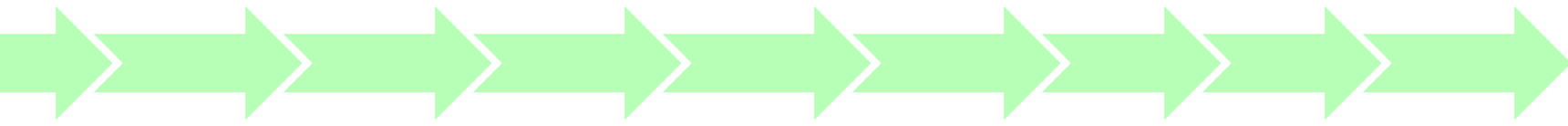
Evolving Legal Framework in Myanmar & Implications for FDI



Aung Naing Oo

Director General
Directorate of Investment and Company Administration (DICA)
Ministry of Planning and Finance
Secretary of Myanmar Investment Commission (MIC)

Outlines



➡ Myanmar Until 2011

➡ Investment Related Reforms

- ➡ Policy Change
- ➡ Legal Framework (MIL & MCL)
- ➡ Regulatory Framework
- ➡ Institutional Framework

➡ Capacity Building Programs

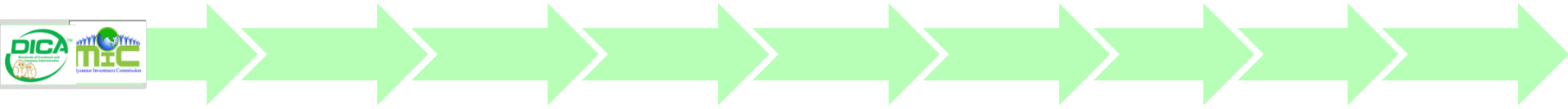


➡ Reform Outcome

➡ Achievement

➡ What Next?

Myanmar until 2011

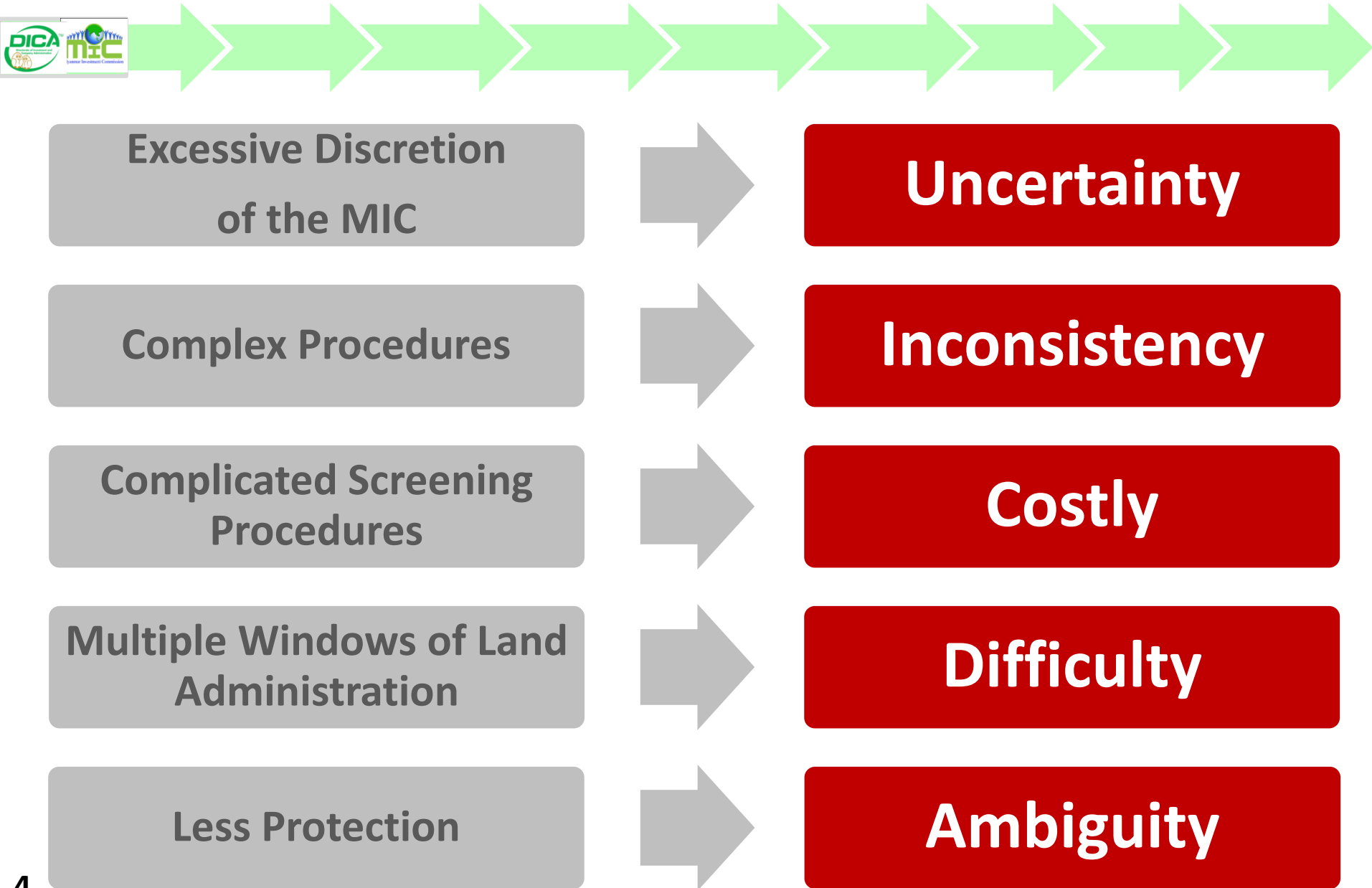


US Sanction

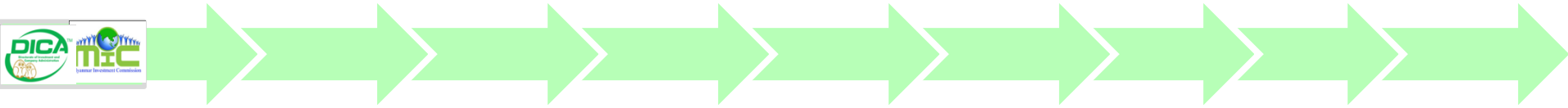
Self-imposed Sanctions

- ❖ Inward Looking Strategy
- ❖ Outdated Laws
- ❖ Complicated Regulations and Procedures
- ❖ Stringent Control on Business
- ❖ Uncertain Policies
- ❖ Burdensome Restrictions

Myanmar Until 2011: What Went Wrong?



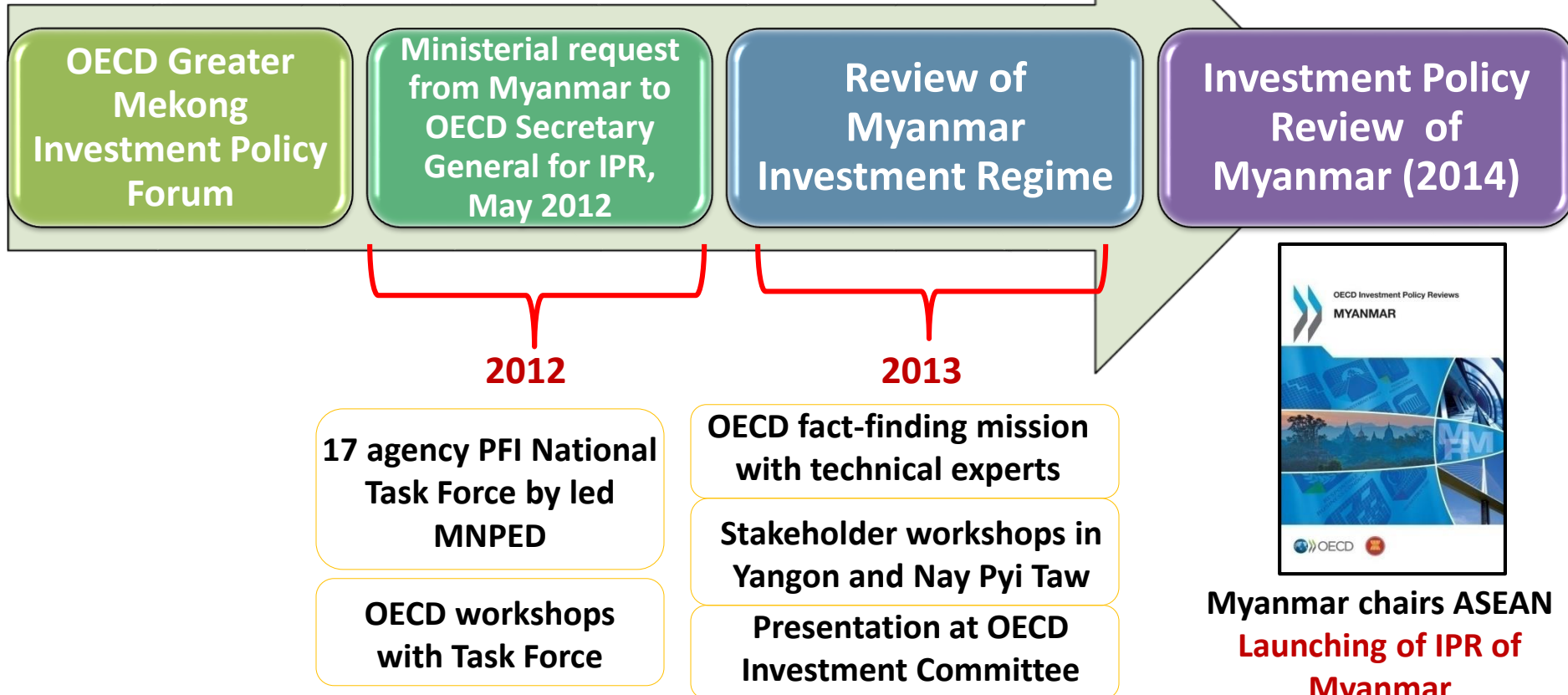
Reforms



OECD Investment Policy Review of Myanmar

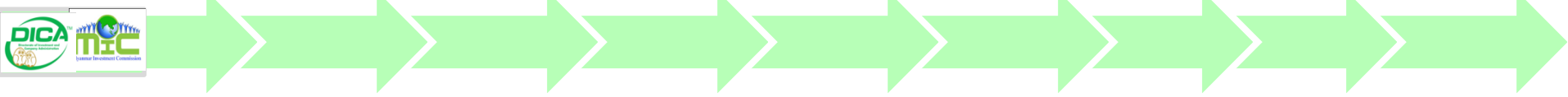


28-29 March 2012



Funding under AANZFTA supporting program & collaboration with ASEAN Secretariat

Reforms

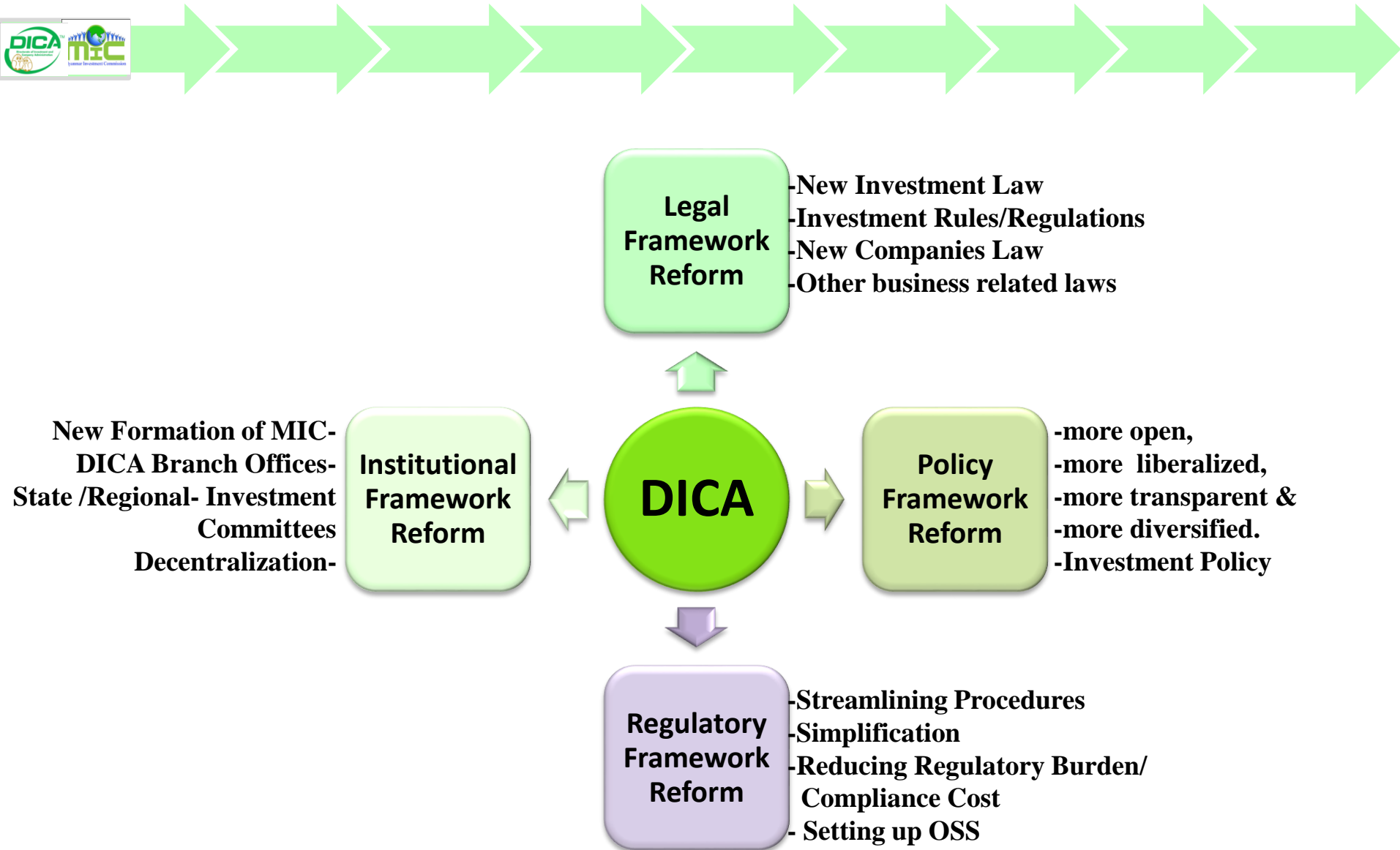


OECD Investment Policy Review of Myanmar

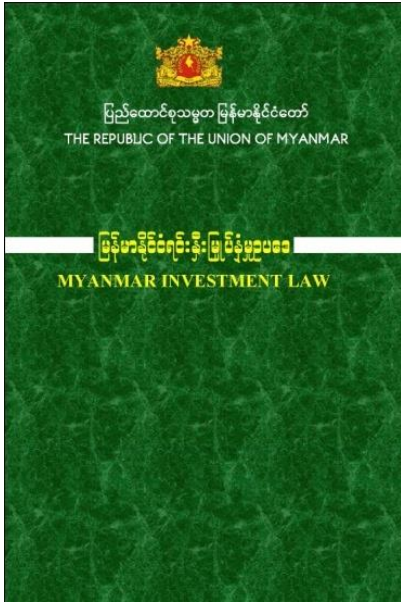
11 areas of Policy Framework for Investment (PFI) :

- ✓ Investment policy
- ✓ Investment promotion and facilitation
- ✓ Trade policy
- ✓ Competition policy
- ✓ Tax policy
- ✓ Corporate governance
- ✓ Policies for promoting responsible business conduct
- ✓ Human resource development
- ✓ Infrastructure and financial sector development
- ✓ Public governance
- ✓ Investment for Green Growth (Environmental Sustainability)
- ✓ **Agriculture** (additional area)

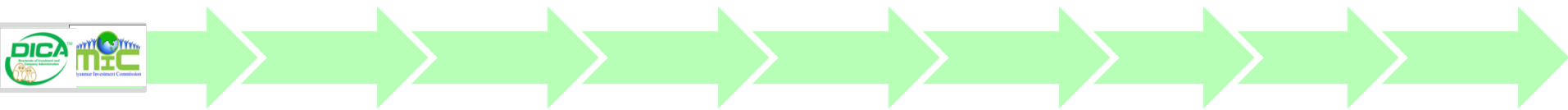
Reform Process



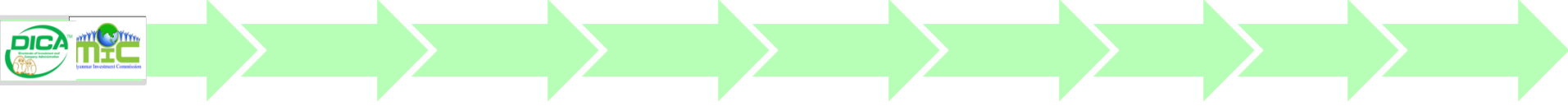
18th Oct 2016



Myanmar Investment Law (New MIL)



Why New Investment Law?



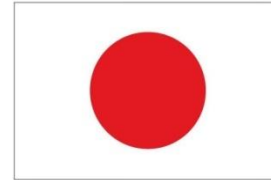
1

OECD – IPR of Myanmar

- Admission and regulation of Investment
- Screening
- Sectoral Restrictions
- Protection of Investment and International Investment Agreements
- Investment Promotion and Protection

2

Comprehensive Investment Agreement



3

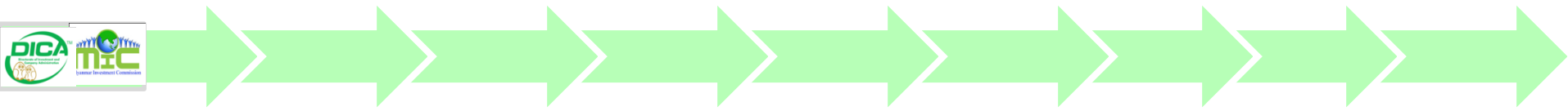
Upgrading

- Better Protection
- Enhance Transparency, Predictability and Practicality
- Easier Access

4

Own Mistakes

How the New Law (MIL) Designed?



- ✓ **Reduce MIC Discretion**
- ✓ **Delegation of the MIC's Authority**
- ✓ **Streamlined Procedures**
- ✓ **More and Better Protection and Investors' Rights**
- ✓ **Grievance Mechanism**
- ✓ **Effective Use of Tax Incentives**
- ✓ **Ensure Promotion of Responsible Investment**

Myanmar Investment Law (New MIL)

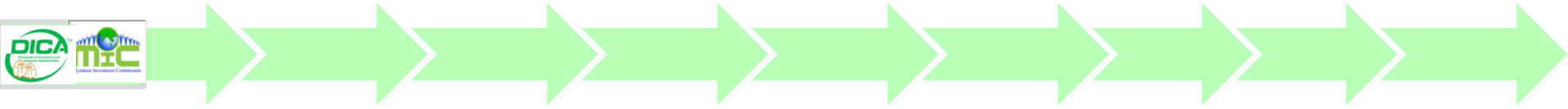


Develop Responsible Business

**Protect Investors and their
Investments**

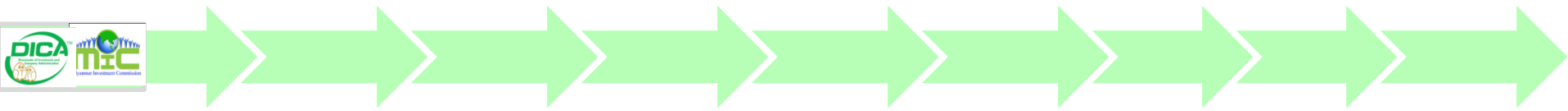
**Develop Businesses and
Investments that meet
International Standards**

MIL: Investments Requiring MIC Permit (S. 36)



- (a) Businesses/investment activities that are **strategic** for the Union;
- (b) Large **capital intensive** investment projects;
- (c) Projects which have large potential **impact on the environment and the local community**;
- (d) Businesses/ investment activities which **used state-owned land and building**;
and
- (e) Businesses/ investment activities which are **designated by the Government** to require the submission of a proposal to the Commission.

MIL: Restricted Sectors (Negative List)



Prohibited Sectors (S. 41)

- Hazardous/ poisonous
- Untested technologies unless R&D business
- Damage to environment
- Affect Public Health
- Prohibited under other laws

Restricted (S.42)

- Limited to Government (e.g. power transmission)
- Restricted to Foreign Investors
- JV between foreign and citizen investors
- Notification by MIC (e.g. Notification 26), subject to review if need to liberalise, amend or remove

Special (s.46)

- Significant impact on security, economic condition, the environment and national interest
- Approval from Parliament

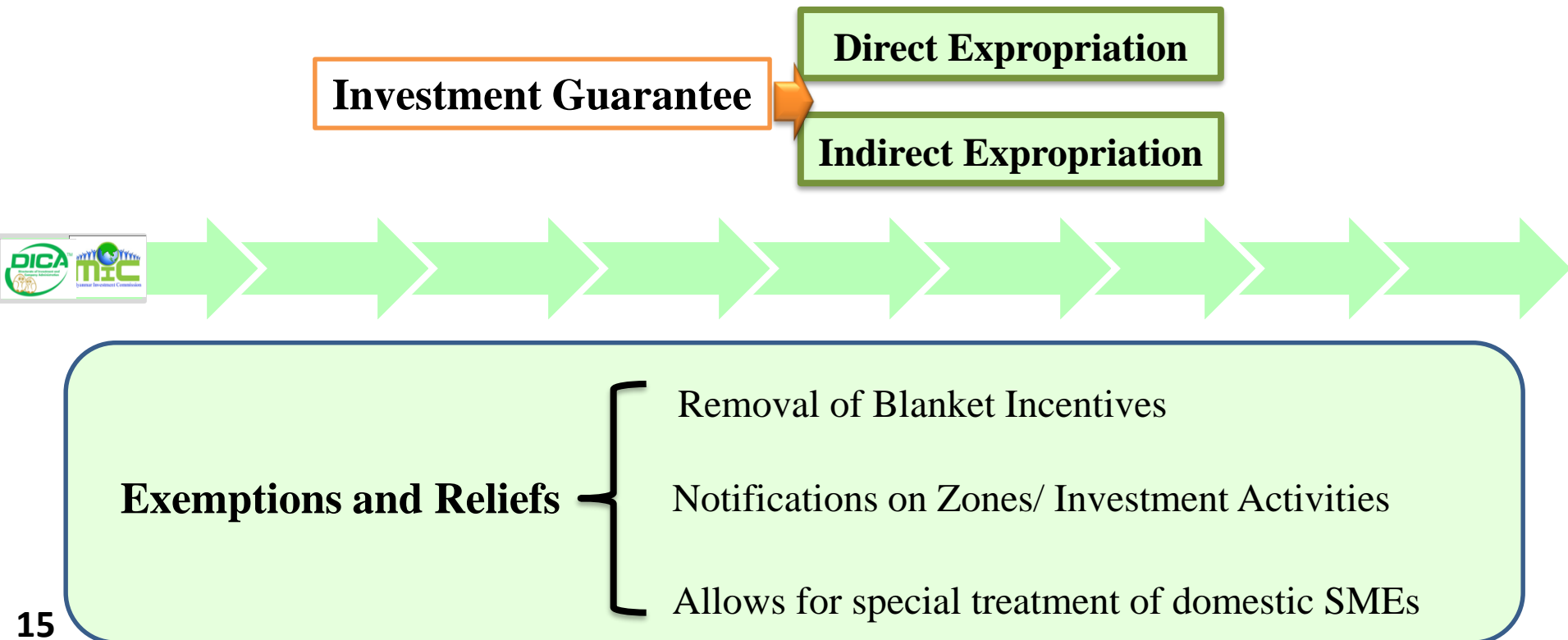
MIL: Investors' Rights and Protections



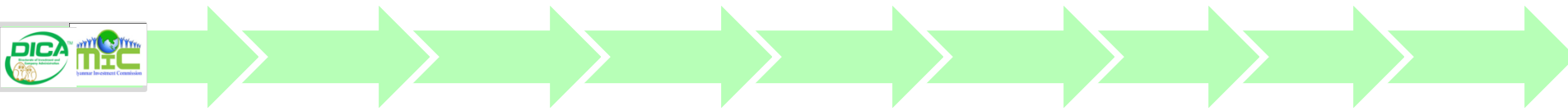
MIL: Investment Guarantee

Conditions for an expropriation (S.52):

- (a) for public purposes;
- (b) in a non-discriminatory manner;
- (c) The investors are to be provided with prompt, adequate and effective compensation; and
- (d) In accordance with due process of law.



MIL: Settlement of Disputes



GRIEVANCE MECHANISM (S. 82)

MIC to establish and manage a grievance mechanism to inquire and resolve issues before they become legal disputes and to prevent the occurrence of disputes.

Dispute Between Investor and State
(Claims for Breach of the Investment Law)
(To show loss or damage)

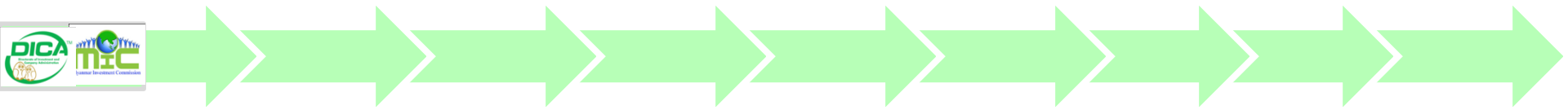
Amicable Settlement

Unable to reach a settlement

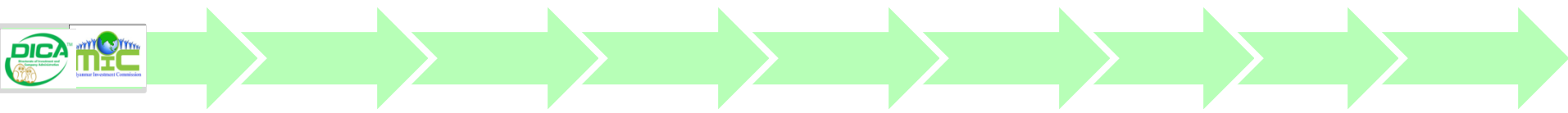
Domestic Court/ Tribunal in
accordance with the law

Other forms if stipulated in
an agreement (international
arbitration)

Myanmar Companies Law (MCL)



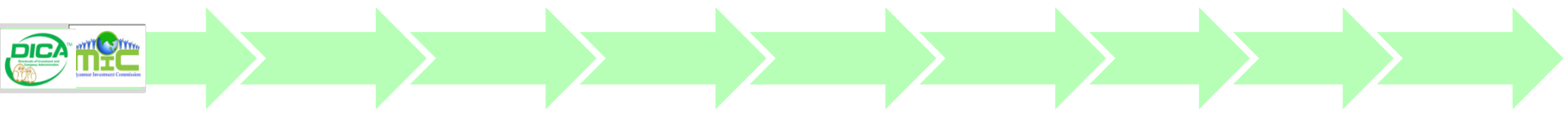
Myanmar Companies Law (MCL)



Aims and objectives of reform

1. Modernise the law to align with international practices and legal developments
2. Create a clear, transparent and stable regulatory framework for companies
3. Clarify the law and simplify procedures to provide certainty for companies and DICA
4. Improve corporate governance of companies
5. Improve transparency and accountability through an electronic companies registry
6. Assist SMEs by lowering compliance burden and increasing flexibility for managing companies

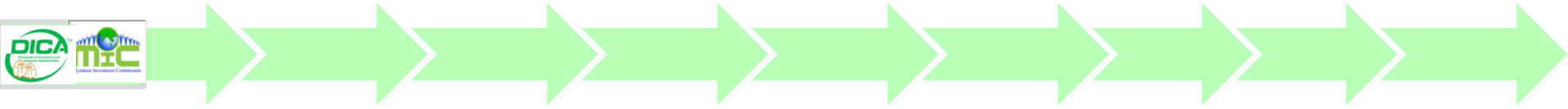
Strengths of the Companies Act



Strong foundations of company law

- Based on same foundations and legal principles as other common law countries (Singapore, Malaysia, Hong Kong, Australia, New Zealand, India and UK)
- Existing legal principles are very familiar to local companies and foreign companies from around the world
- New Companies Law builds on this foundation and incorporate modern company law concepts and technological developments

MCL: Reducing burden on small companies



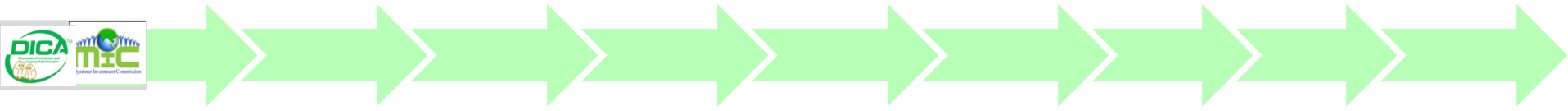
• Weaknesses of Companies Act 1914

- All companies have to comply with same regulations regardless of their size and resources (impose high compliance costs and burden on SMEs)
- Difficult company registration process and filing requirements deter small businesses from forming companies (and paying taxes)

• Reforms in the Myanmar Companies Law

- Clearly sets out requirements for company registration
- Memorandum and Articles of Association now replaced by company constitution- streamlined company rules
- Small companies do not have to hold annual general meetings or prepare audited financial statements (must still keep financial records and accounts)
- BUT small companies must prepare audited financial statements if requested by Registrar (DICA) or shareholders
- Small companies can make decisions more flexibly (by written resolution) to reduce cost and time of holding meetings
- “Small company” under the new law has:
 - less than 30 employees (or other prescribed amount)
 - annual revenue of less than 50,000,000 Kyat in aggregate (or other prescribed amount)

MCL: Improving corporate governance



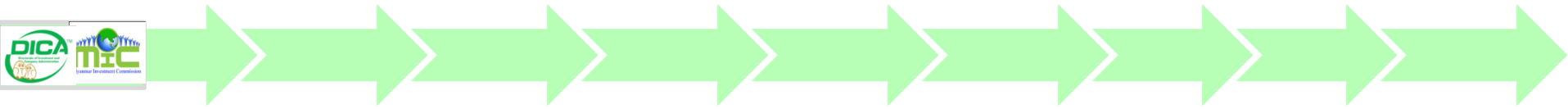
- **Weaknesses of Companies Act 1914**

- Does not contain legal standards for directors to act properly and transparently towards the companies they manage
- Poor corporate governance standards → No protection for investors (shareholders and creditors) in companies → Lack of market confidence in Myanmar companies

- **Reforms in the Myanmar Companies Law**

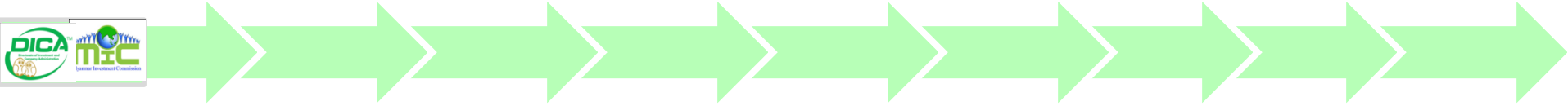
- Directors' duties to companies are now included in the law, to protect shareholders and creditors of companies
- Law prohibits directors from receiving unfair preferences from companies they manage or receive company property
- Strict approval requirements for directors to enter into transactions with companies they manage (e.g. borrowing from companies, taking company property)
- Penalties for directors who breach their duties under the law (fines, disqualification, compensation orders, imprisonment)

MCL: Better regulation of companies



- **Weaknesses of Companies Act 1914**
 - Outdated penalty provisions for offences
 - Limited powers and enforcement mechanisms for Registrar to deal with offences under Companies Law (must take action in court for minor offences)
- **Reforms in the Myanmar Companies Law**
 - Registrar has more administrative powers to enforce compliance with Companies Law and ensure accuracy of information submitted by companies:
 - Can inspect and investigate companies
 - Can issue fines for late lodgement of documents, issue penalty notices for failure to comply
 - Can suspend registration of companies which submit false information or documents or fail to lodge annual returns
 - Can take legal action against offenders

MCL: Legal and technological developments



- **Weaknesses of Companies Act 1914**

- Outdated legal concepts such as 2 shareholder companies, business objectives for companies (which require court approval to change), authorised share capital, fix value of shares
- Does not keep pace with technological advances – does not allow electronic transmission of information between company, shareholders and Registrar

- **Reforms in the Myanmar Companies Law**

- Single shareholder and single director companies now allowed
- Requirement for companies to state business objectives now abolished
- Concepts of authorised share capital and fix value of shares now abolished
- Electronic submission of documents and electronic communication permitted
- Shareholder and directors can hold meetings by electronic means if required

Capacity Building Programs

Workshops on Investment Promotion and Facilitation to the State and Regional Governments

Hpa-An, Kayin State

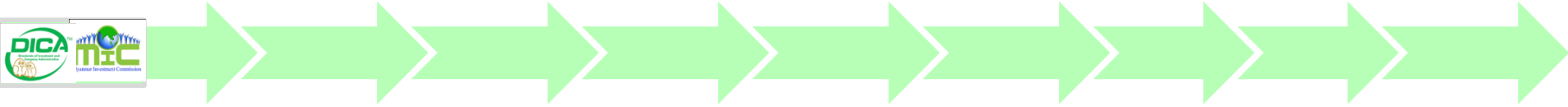


Monywa, Sagaing Region

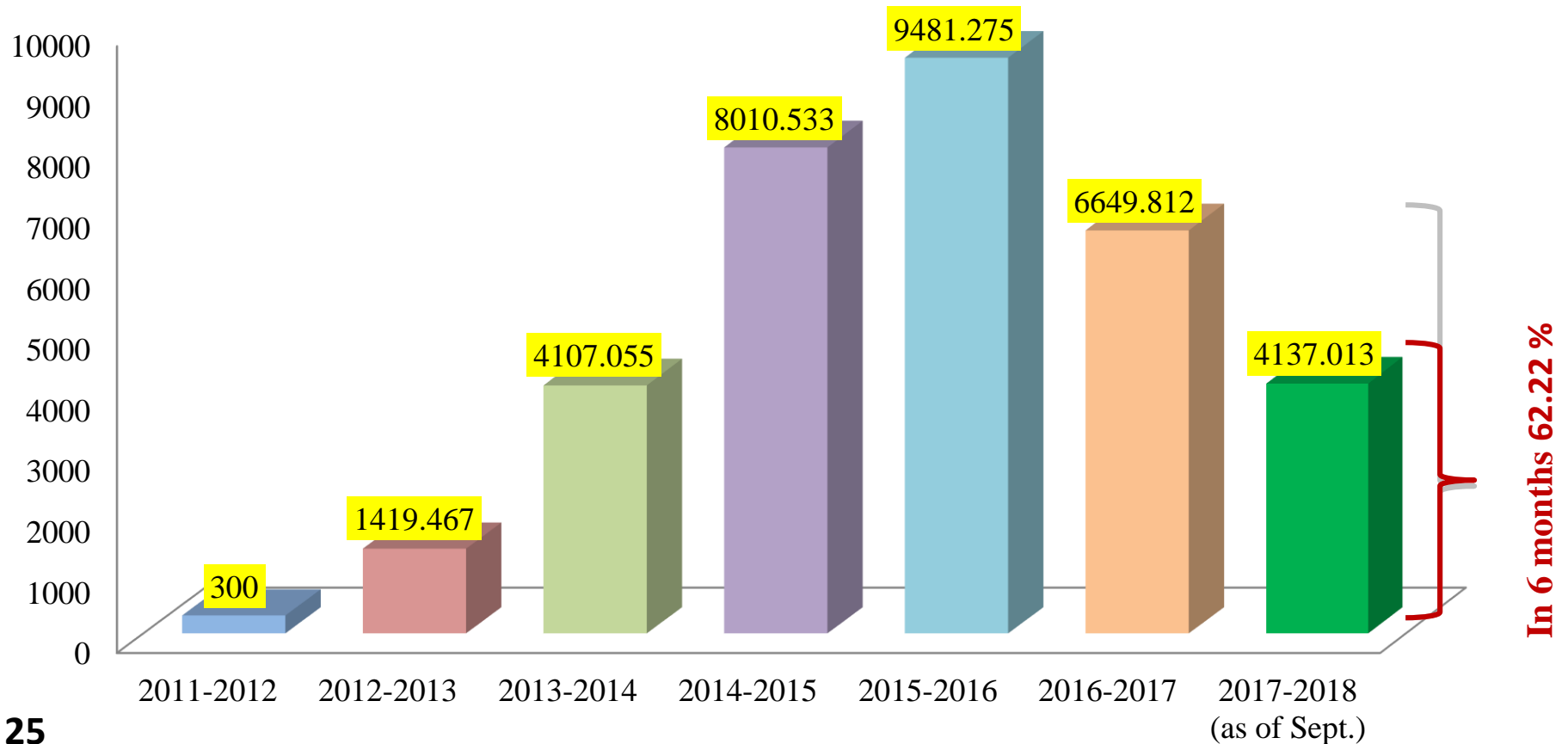


DaNa Facility
Empowering Enterprise

Reform Outcome



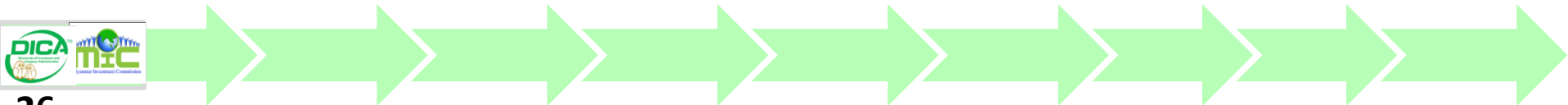
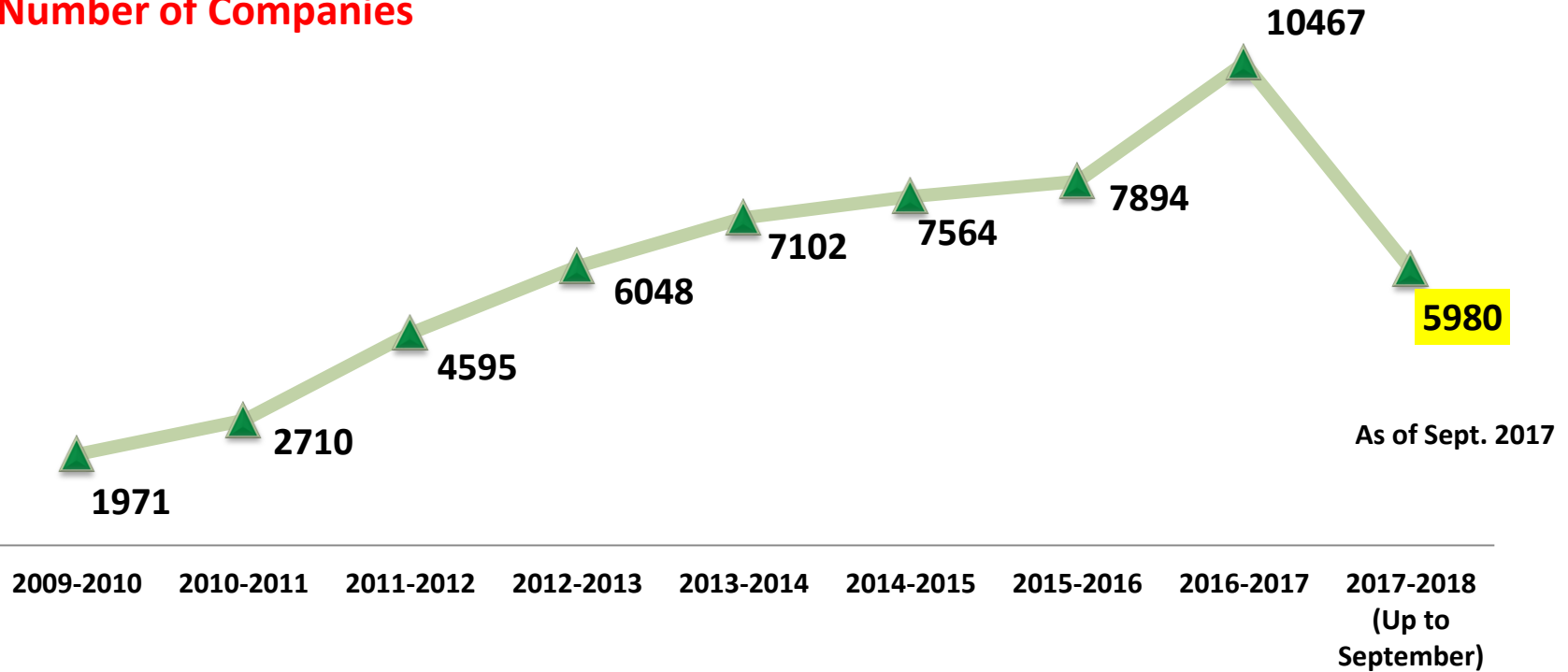
Yearly Approved Amount of FDI (From 2011-2012 to 2017-2018 (Up to September))



Incorporation of Companies (Yearly)

(From 2009-2010 to 2017-2018 (Up to September))

Total Number of Companies



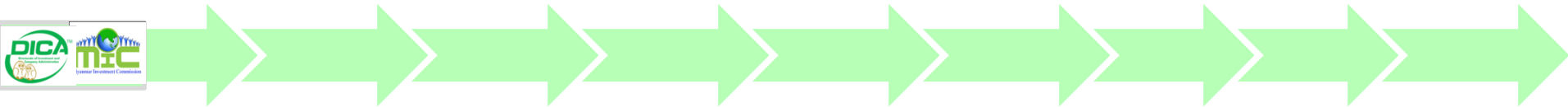
Achievement

Myanmar President's Excellent Performance Award (2016)



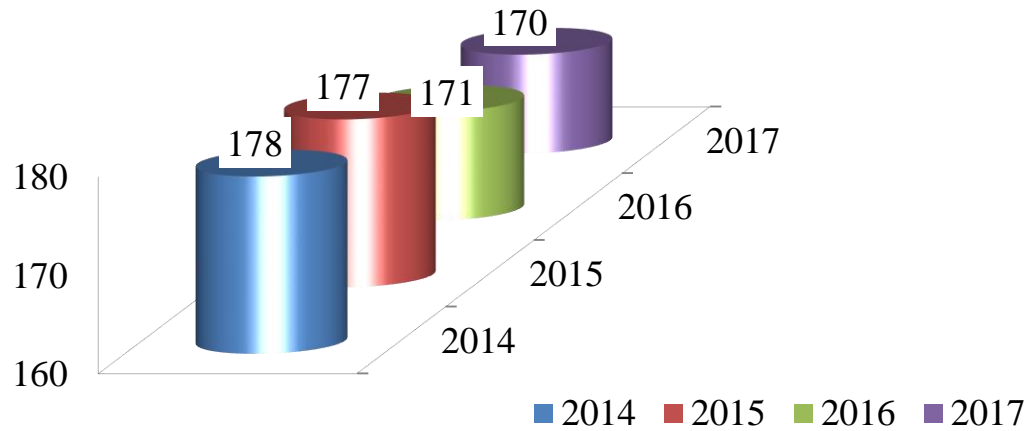
World Bank's Star Reformer Award (2017)

Achievement



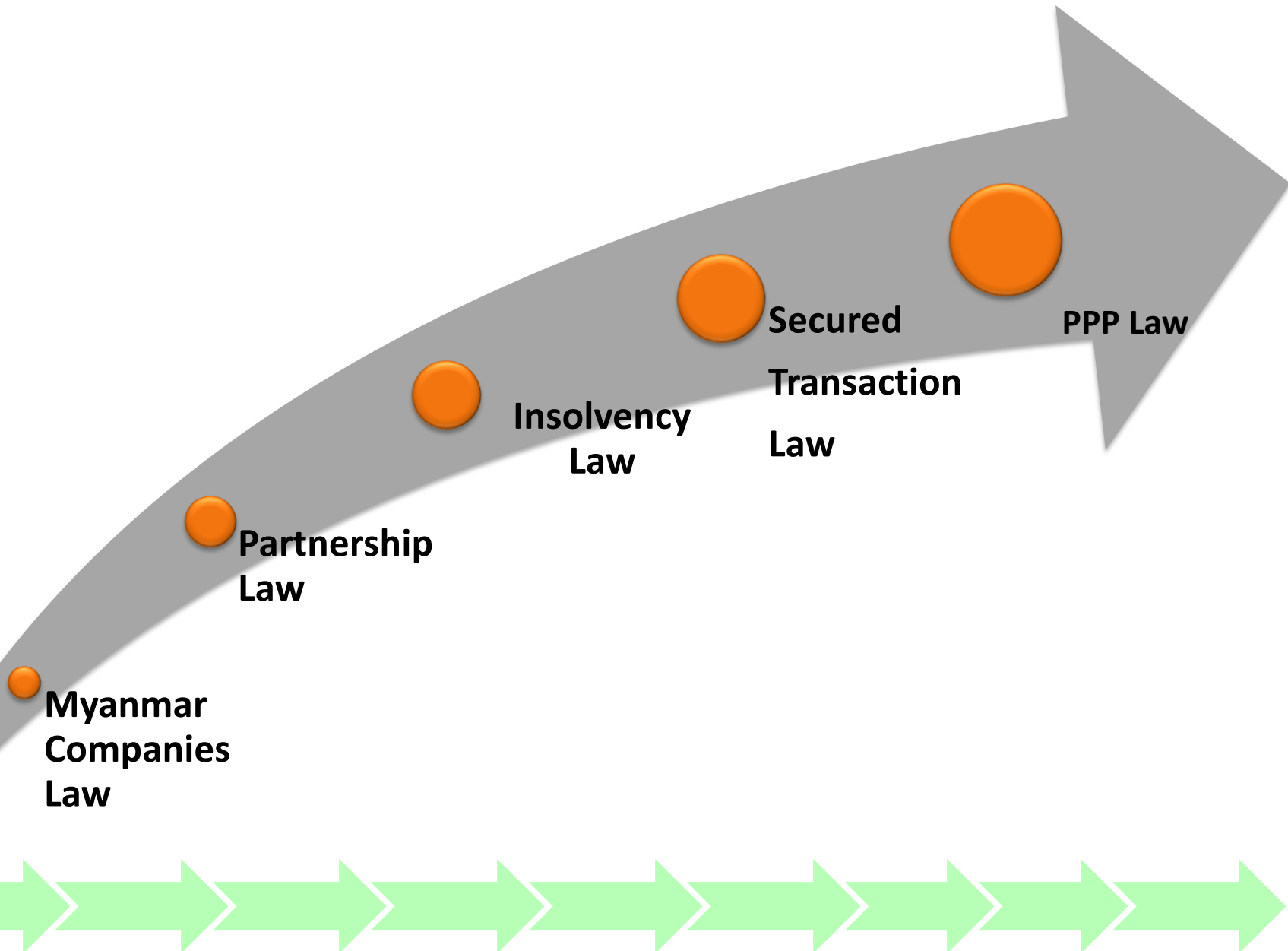
THE WORLD BANK
IBRD • IDA | WORLD BANK GROUP

Ranking on the Doing Business Reports

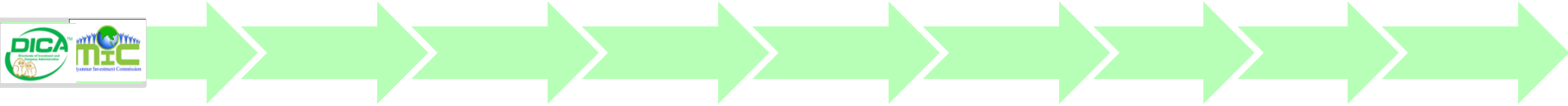


Starting Business 2014	Starting Business 2015	Starting Business 2016	Starting Business 2017	Change in Rank (2016 & 2017)
189	189	170	146	24 

What Next?



THANK YOU!



Cooperator of Business Community,

Developer of National Economy

DICA

www.dica.gov.mm
majanoo@gmail.com