

Positioning Myanmar as an attractive new investment destination in Southeast Asia

8th Meeting of the Asia-Pacific Foreign Direct Investment (FDI) Network United Nations Conference Centre, Bangkok, Thailand 25-26 September 2018

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- Reform of the Myanmar Investment Law
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Myanmar

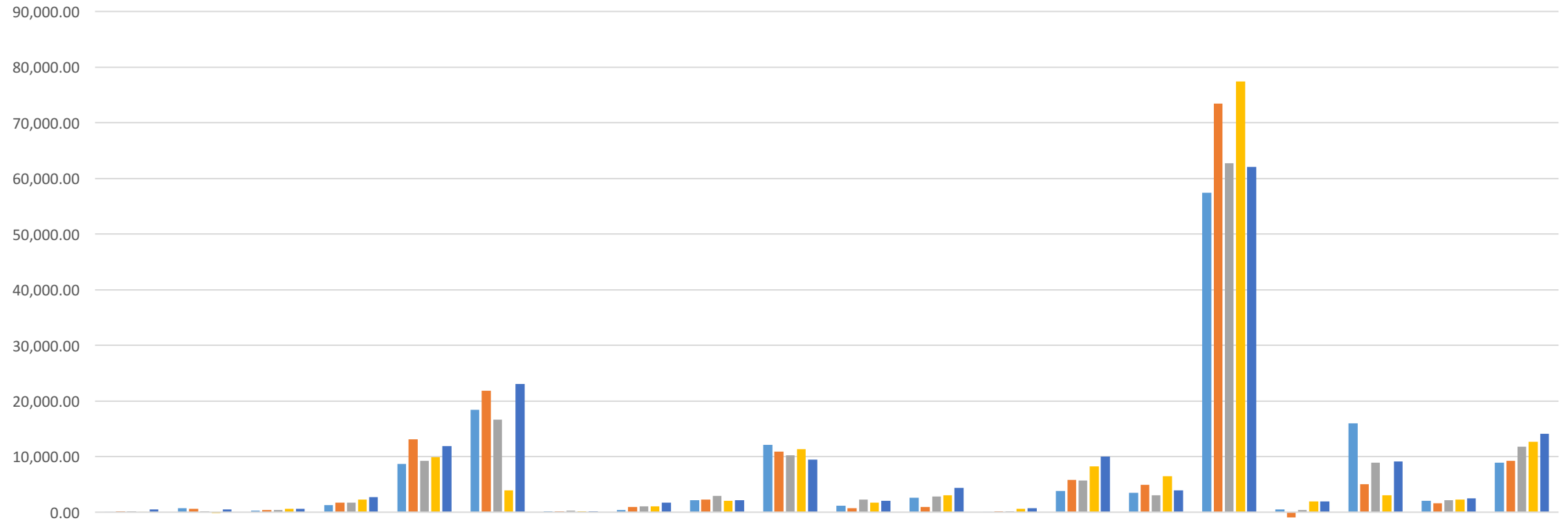


Economist.com

Population	53.90 million	2015
GDP	\$62.60 billion	2015
GDP growth	7.3%	2015
Inflation	10.8%	2015

Measure	Year	Index or Rank	Year	Index or Rank
TI Corruption Perceptions index	2014	156 of 175	2016	136 of 176
World Bank's Doing Business Report "Ease of Doing Business"	2015	177 of 189	2017	170 of 190

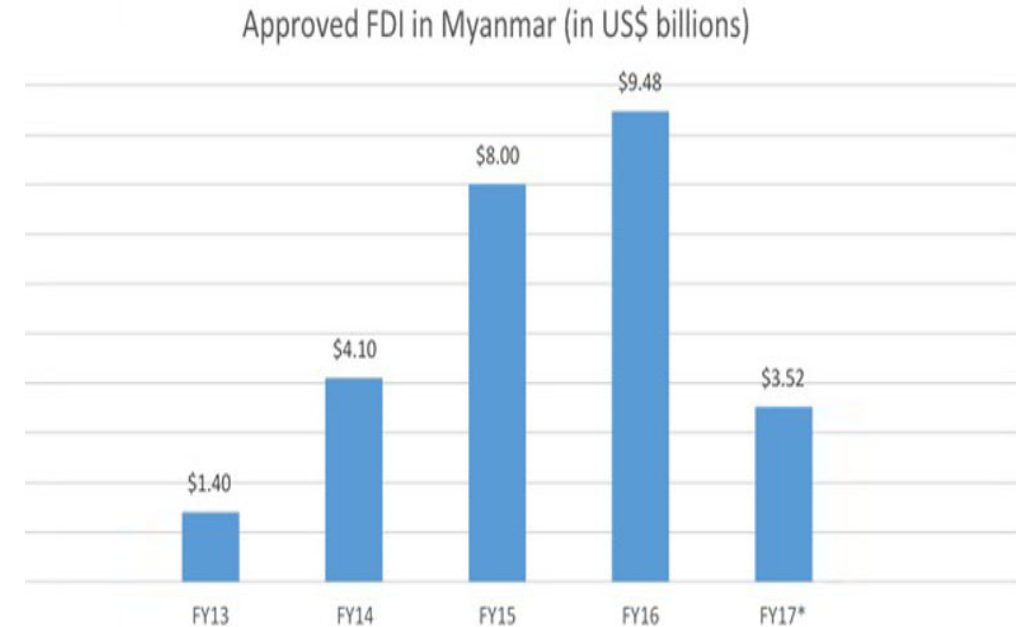
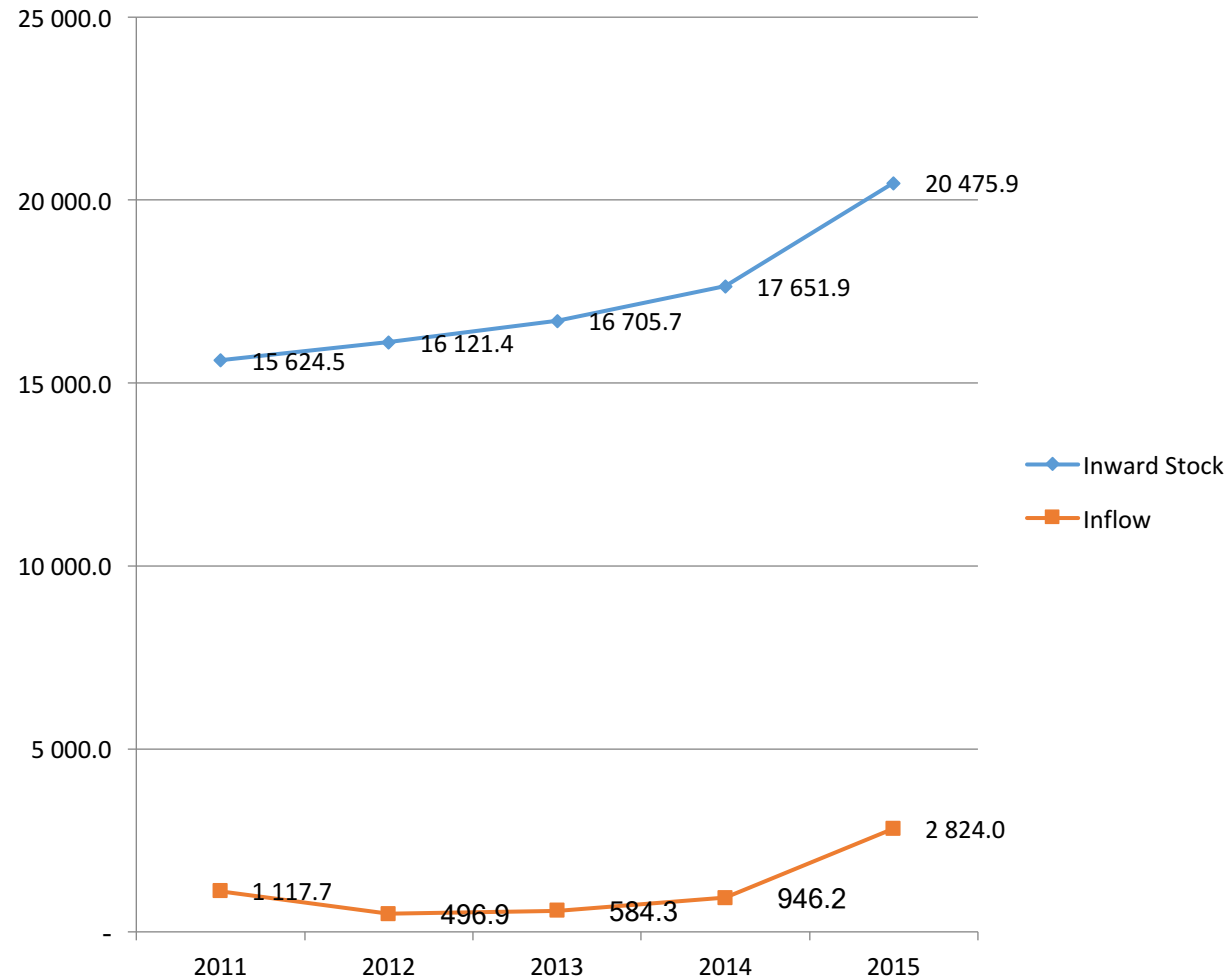
ASEAN FDI INFLOW 2013-2017



	Total ASEAN [00]	Total countries [99]	Total ASEAN [00]	Total countries [99]	Total ASEAN [00]	Total countries [99]	Total ASEAN [00]	Total countries [99]	Total ASEAN [00]	Total countries [99]	Total ASEAN [00]	Total countries [99]	Total ASEAN [00]	Total countries [99]	Total ASEAN [00]	Total countries [99]	Total ASEAN [00]	Total countries [99]	Total ASEAN [00]	Total countries [99]
	Brunei Darussalam		Cambodia		Indonesia		Lao PDR		Malaysia		Myanmar		Philippines		Singapore		Thailand		Viet Nam	
■ 2013	-57.98	725.47	298.85	1,274.90	8,721.11	18,443.8	104.61	426.67	2,150.03	12,107.0	1,186.80	2,620.90	-41.71	3,859.79	3,523.00	57,452.4	528.21	15,935.9	2,078.59	8,900.00
■ 2014	141.20	568.18	372.48	1,726.53	13,083.7	21,810.4	137.94	913.24	2,283.98	10,875.3	683.62	946.22	137.10	5,814.57	4,868.50	73,472.4	-940.73	4,975.46	1,547.08	9,200.08
■ 2015	86.65	171.32	425.41	1,700.97	9,228.63	16,642.1	221.83	1,079.15	2,931.35	10,179.9	2,230.65	2,824.48	57.30	5,639.16	3,041.00	62,747.1	433.60	8,927.58	2,153.46	11,800.0
■ 2016	-64.66	-150.44	635.77	2,279.67	9,907.49	3,920.65	196.64	1,075.69	2,098.71	11,290.2	1,682.89	2,989.48	608.26	8,279.55	6,519.40	77,456.2	1,958.84	3,063.24	2,306.61	12,600.0
■ 2017	535.27	460.15	603.49	2,732.15	11,873.4	23,063.6	171.16	1,695.38	2,165.88	9,447.21	2,090.62	4,340.74	718.70	10,049.3	3,957.80	62,016.7	1,913.26	9,100.91	2,531.17	14,099.9

Myanmar FDI in-FLOW AND FDI STOCK

(UNCTAD, 2016)



* Q1-Q3

Source: Myanmar Directorate of Investment and Company Administration

Investment Focus Sectors



Oil and Gas



Manufacturing



Infrastructure



Agriculture



Tourism



Reform of the Myanmar Investment Law

Reform of the Myanmar Investment Law

- Driven by DICA
- Supported by International Finance Corporation/
World Bank Group
- Supported by DFID UK and DFAT Australia and Japan
Government
- The ASEAN Comprehensive Investment Agreement
(ACIA) as the Benchmark

Potential Benefits to Myanmar

Myanmar
Investment Law
Benchmarked with
ACIA standards

Increased
Liberalisation,
Protection and
Facilitation

Increase in
Investors'
Confidence

Transfer of
Knowledge to
Myanmar

Reasons for Reform

Dual Law: Foreign Investment Law 2012 and Citizen Investment Law 2013

To improve on:
Investor Protection
Market Access
Entry Procedures
Investment Incentives

To reduce complex and lengthy entry process, to increase transparency

Reform the Incentive Scheme from Blanket approval to targeted incentive

Table of Comparisons of Position Before Reform

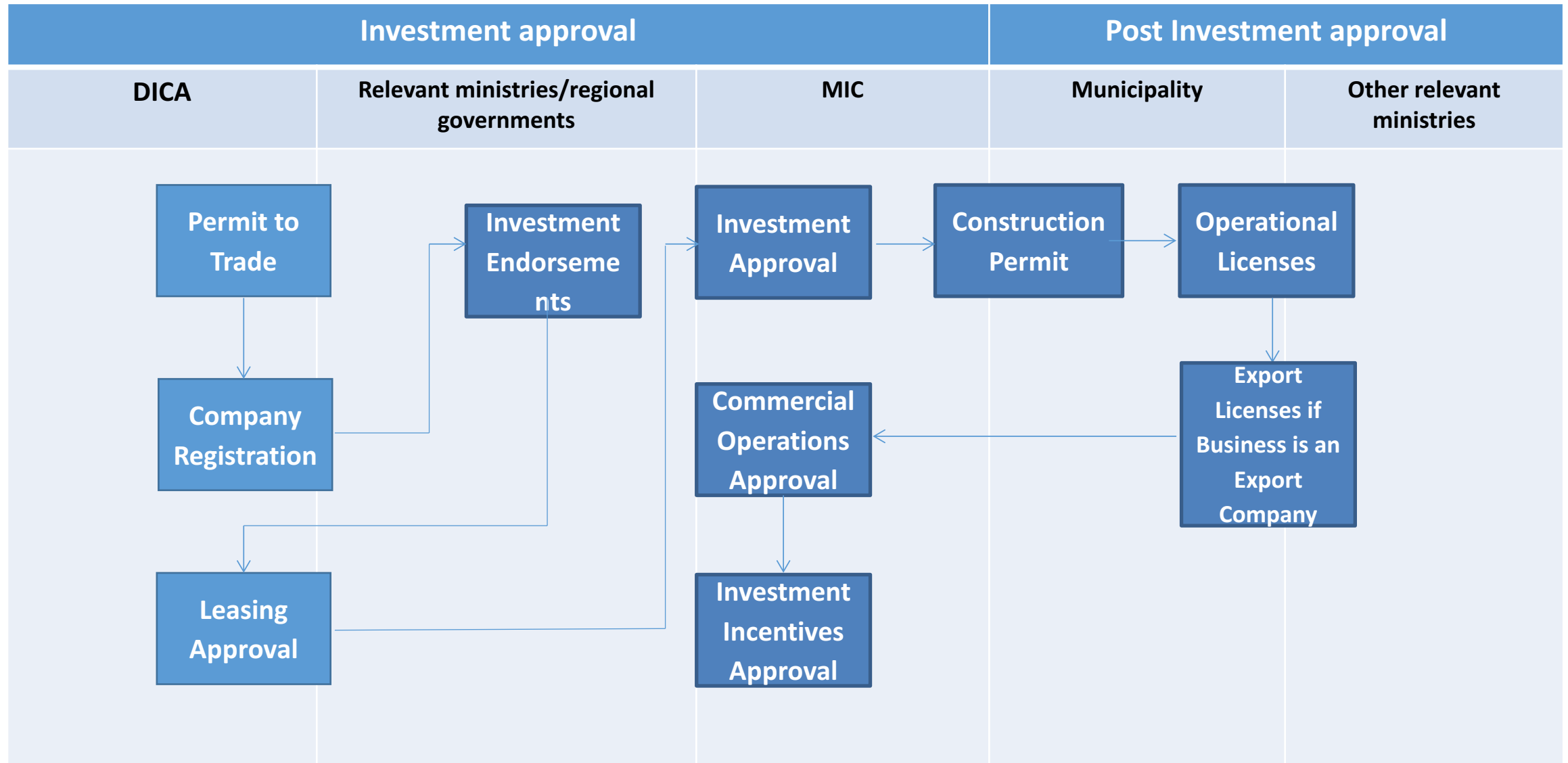
Core Investor Protection Guarantee	Myanmar FIL	Myanmar-China Investment Treaty	Myanmar – India Investment Treaty	Myanmar – Philippines Investment Treaty	ACIA
National Treatment	No express provision	Yes	Yes	Yes	Yes
Most Favored Nation	No express provision	Yes	Yes	Yes	Yes
Fair and Equitable Treatment (FET)	No express provision	Yes	Yes	Yes	Yes
Protection against Expropriation	Yes, but inadequate.	Yes	Yes	Yes	Yes
Currency convertibility and transfer	Yes , but inadequate.	Yes	Yes	Yes	Yes
Dispute Settlement Provision	Yes, but inadequate	Yes	Yes	Yes	Yes

Market Access prior to Reform

- OECD IPR: Myanmar ranks very poorly in terms of market access essentially because the **Negative List is very long**.
- The consolidation of the FIL and CIL into one single law on investment offers the opportunity to review the Negative List and remove some of the restrictions.
- Best international practice is to have a **short, clear, transparent Negative List** that states without ambiguity what are the various restrictions. Usually **3 types of restrictions**:
 1. **Prohibitions to invest**: sectors where domestic and/or foreign investors can not invest. Ideal is to have the same for both domestic and foreign.
 2. **Foreign Investment Ceilings**: sectors where foreign participation is limited to a certain percentage of ownership. Ideal is to have no or very few sectors with foreign investment ceilings (in effect a mandatory joint venture)
 3. **Performance requirements or special approval processes** for foreign investors. Ideal is to have as few such restrictions as possible.

Best practice is to establish a **periodic review** of the Negative List.

Prior to Reform: Myanmar Sets Out More Steps for Investment Approval Than Neighboring Countries.

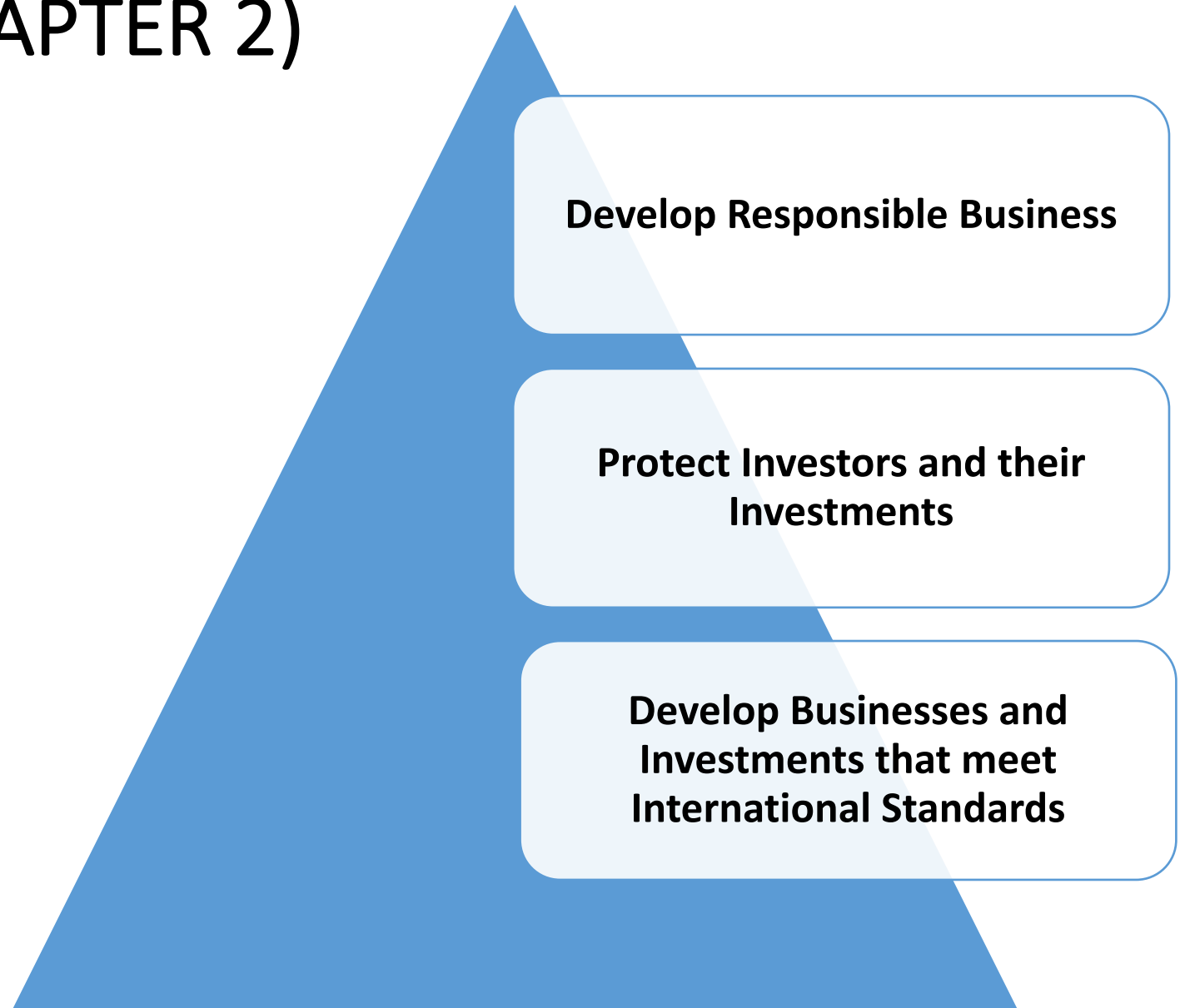


The Myanmar Investment Law 2016, October 2016



OBJECTIVES (CHAPTER 2)

- Applies to both Domestic and Foreign Investors



KEY DEFINITIONS AND SCOPE

- "Enterprise":
 - (1) any legal entity constituted or established in accordance with the applicable laws including company, trust, partnership, sole proprietorship, joint venture, business association or similar organisations
 - (2) a branch office of such legal entity established in accordance with the applicable laws.
- "Direct Investment":
 - An investment where the investors have the right to control or influence or manage of such assets which are invested by the investors within the Union in accordance with the law.

Key definitions and scope (cont'd)

- “Investment” (S.4) Investment includes:
 - a) an Enterprise;
 - b) movable and immovable property and related property rights etc;
 - c) shares, stocks, bonds and debentures;
 - d) Intellectual property rights etc;
 - e) claims to money and to any performance under contract having a financial value;
 - f) rights under contracts etc; and
 - g) Assignable rights granted by the relevant laws or contract including the rights of exploration, prospecting and extraction of natural resources.

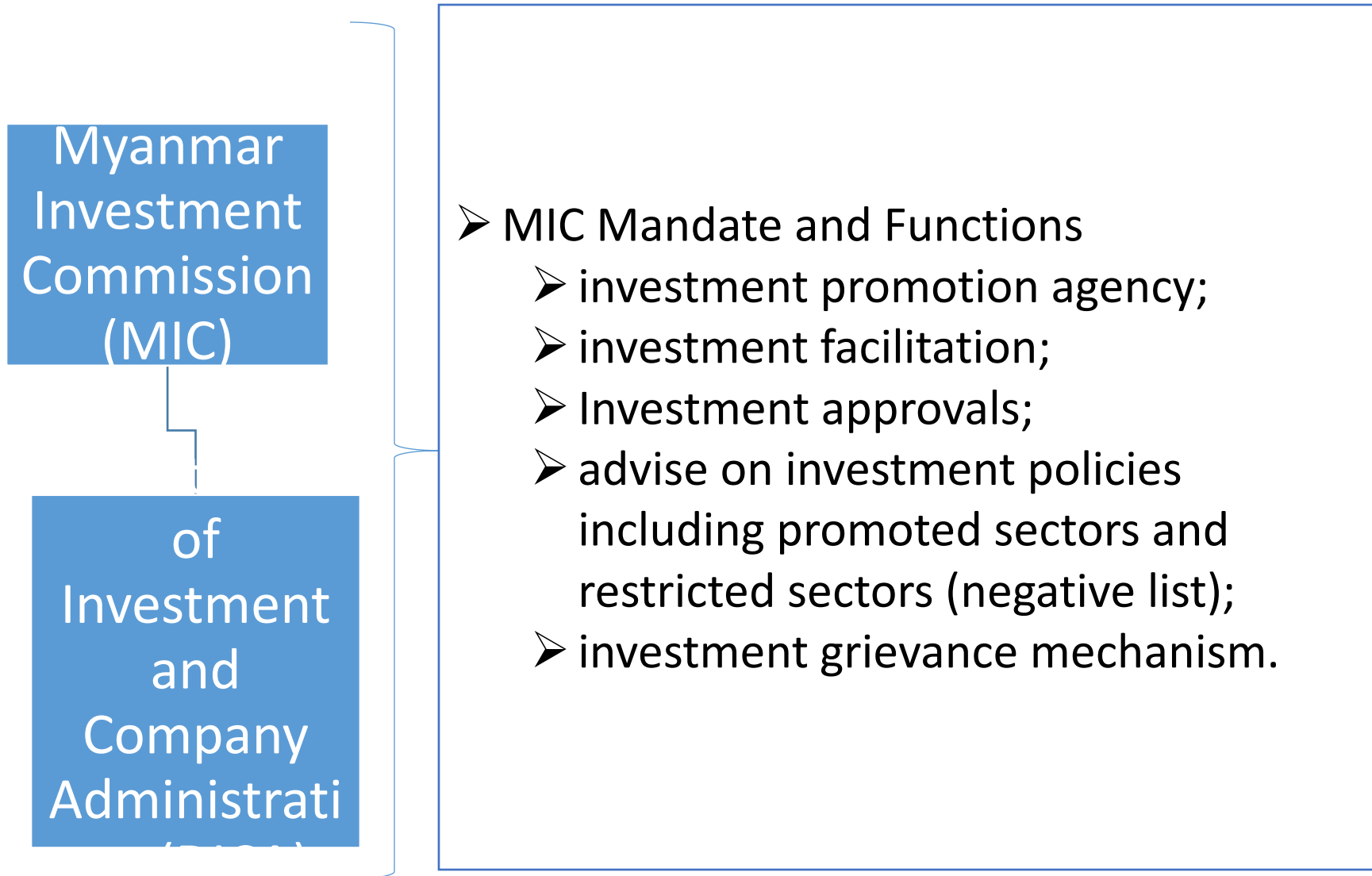
SCOPE OF THE LAW (CH. 3)

Any Existing or new Direct Investment

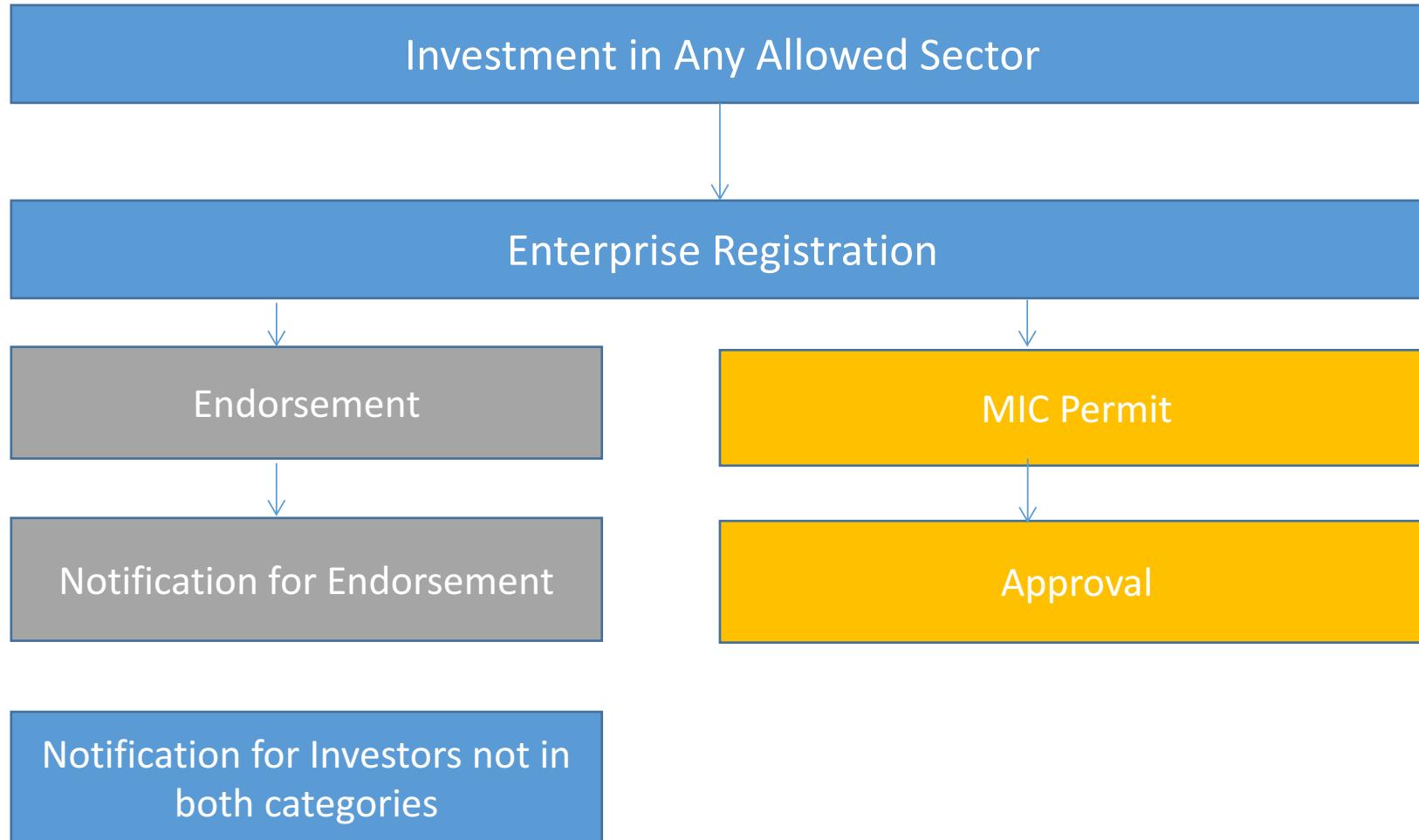
Not applicable to any pending dispute or any situation that ended before the date of the Law

Any measure adopted or maintained by the Union Government and Government organisations except measures under Ch. 21 (General exceptions) and Ch. 22 (Security Exceptions).

Role of the Myanmar Investment Commission



Admission of Investment



INVESTMENTS REQUIRING MIC PERMITS (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.

Restricted sectors (Negative list)

Prohibited Sectors (S. 41)	Restricted (S.42)	Special (s.46)
<ul style="list-style-type: none">• Hazardous/ poisonous• Untested technologies unless R&D business• Damage to environment• Affect Public Health• Prohibited under other laws	<ul style="list-style-type: none">• 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	<ul style="list-style-type: none">• Significant impact on security, economic condition, the environment and national interest• Approval from Parliament

Investor Rights and Protections

**National
Treatment
(s. 47 (a)
and Most
Favored
Nation
Treatment
(s. 47(b))**

**Fair &
Equitable
Treatment
(s.48)**

**Right to
Use Land
(s. 50)**

**Right to
Employ
Expatriates
(s.51)**

**Investment
Guarantee
(s.52)**

**Transfer of
Funds
(s.56)**

INVESTMENT GUARANTEE (CH. 14)

- Conditions for an expropriation (S.52):
- for public purposes;
- in a non-discriminatory manner;
- The investors are to be provided with prompt, adequate and effective compensation; and
- In accordance with due process of law.

Direct Expropriation	Indirect Expropriation
<ul style="list-style-type: none">• Formal transfer of legal title• Outright seizure of the investment of the foreign investors	<ul style="list-style-type: none">• A measure or series of measures that has similar effect to direct expropriation even without formal transfer or outright seizure of the legal title over the investment.• This is decided on a case-by-case basis.

EXEMPTIONS AND RELIEF

Removal of Blanket Incentives

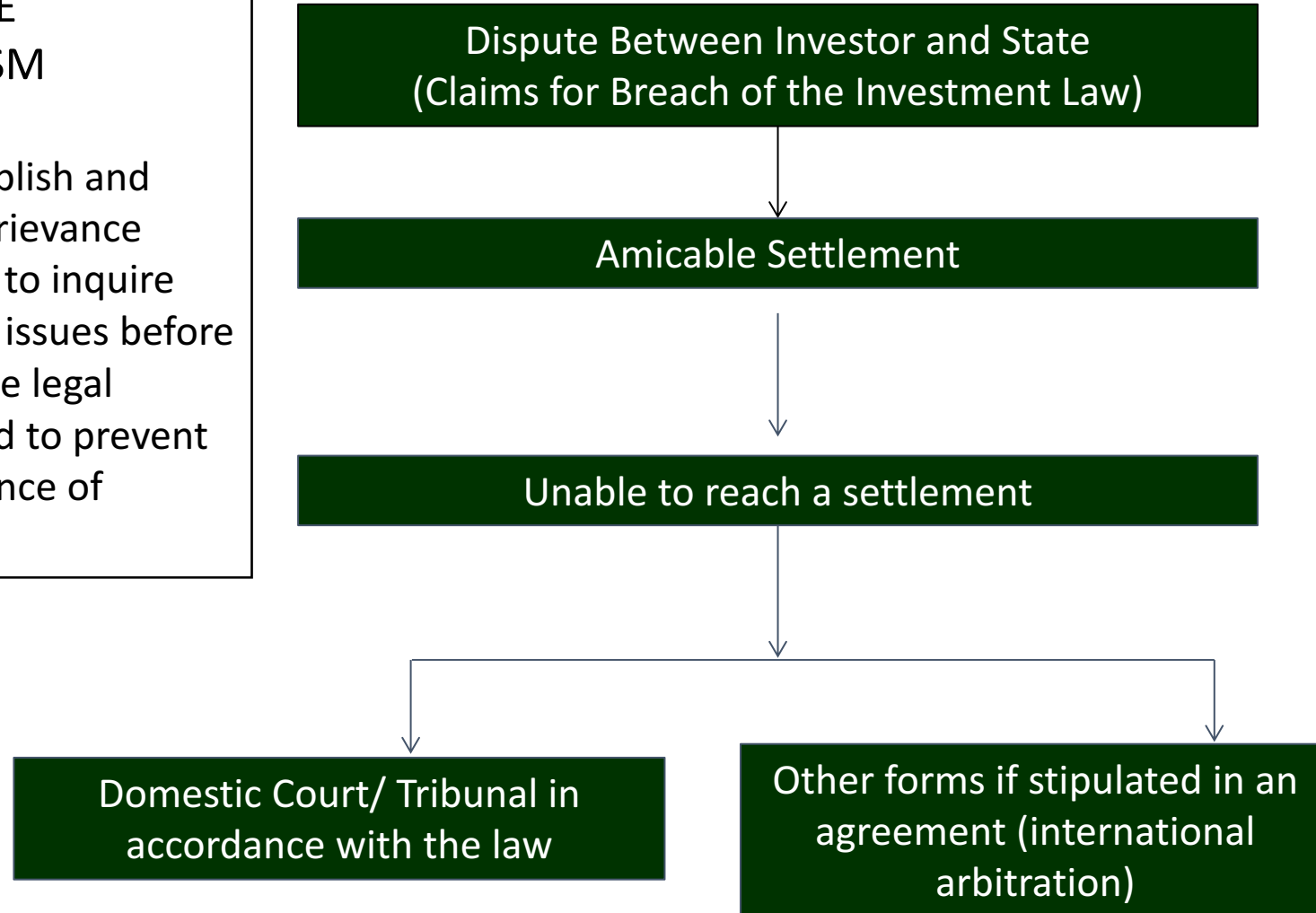
Notifications on Zones/ Investment Activities

Allows for special treatment of domestic SMEs

SETTLEMENT OF DISPUTES (CH. 19)

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.



Challenges to Position Myanmar as an Attractive Investment Destination

Advantages of Myanmar

In the Middle of India and China, Bangladesh. ASEAN and 40% of world population

Neighbours economies worth USD 15 trillion or 20% of world's GDP

Big Domestic Market

Rich in Natural Resources, fertile land

Dynamic and enthusiastic Population

Inclusive Reform Process – Increased transparency and public participation



Key Challenges to Myanmar

Legacy Issues:
Investments approved
before the 2016 Law

Regional development
in view of new approach
for Federalism

Human Capacity,
Expertise to implement
the Law and to provide
support to Investors

Creating Focus Sectors:
Physical infrastructure,
export oriented,
responsible business,
jobs

Bringing informal
activities into formal
sector (e.g. agriculture,
border trade)

Access to Land

Over dependence on
resource sector (80%);
telecom and
manufacturing only 7%