

Republic of the Union of Myanmar

National Unity Government

Ministry of Planning, Finance, and Investment
Three-Pillar Framework Guiding Responsible
Investment and Continued Operations

July 21, 2021

1. Introduction

The unlawful seizure of state institutions by the illegitimate military council on 1 February 2021 brought a sudden halt to a series of democratic and development-oriented reforms introduced over the previous five years. The military council's reckless actions and economic incompetence reversed significant gains made by Myanmar, which was previously one of the fastest growing and most promising economies in the region. More than five months after the events of 1 February 2021, the military council continues to take steps to return the country to its dark and dysfunctional past of state control mixed with crony capitalism.

The people of Myanmar reject the military council. In November 2020, the people cast their votes freely and willingly during nationwide general elections. The military has since shown their contempt and blatant disregard for this expression of popular will, attempting to suppress opposition with characteristic brutality. The military council has nevertheless been unable to subdue the will and resolve of the people. Despite facing yet another period of fear under totalitarian rule, the people of Myanmar continue to reject the military council with fervour and courage.

Under the military junta, Myanmar presents a uniquely hazardous environment for investment, and investors' continued operations in-country, including:

Moral Dilemmas: The military council is accused of crimes against humanity and possibly genocide.¹ This makes any investment that benefits the military both unethical and indefensible. Responsible investors in Myanmar now face significant challenges due to irrational and illegal orders issued by the military council.

Operational Difficulties: The military council does not adhere to the rule of law. Indeed, its track record has demonstrated that transgressions are the rule, and that adherence is the exception. Agreements freely entered and assets lawfully held by investors prior to the attempted coup cannot expect to enjoy the protection of the law under the military council.

Control Challenges: The military council does not have effective control over the country. The population continues to demonstrate its resistance to military rule daily through the Civil Disobedience Movement, strikes, boycotts, and protests. The scale and scope of the military's control continues to be severely constrained by the rejection of the people.

The National Unity Government (NUG) represents the legitimate and democratically elected Government of Myanmar. The NUG seeks to overcome longstanding divisions and distrust among communities, which have been sown by a long history of military brutality. This is the necessary basis for a fairer economic future for all of Myanmar's people.

The NUG's economic policy aims to re-establish legitimate, legally elected government in Myanmar, and to renew the possibility of this brighter future, via two primary objectives:

1. to cripple the military council by limiting its access to all financial flows, including tax revenues, contractual payments, debt, and any type of financial aid, so as to degrade and destroy their machinery of oppression and control; and
2. to support the Myanmar people amid their continued resistance to the military council, and the deepening economic and humanitarian crises precipitated by its action.

¹ According to Tom Andrews, UN Special Rapporteur on the situation of human rights in Myanmar.

The Ministry of Planning, Finance, and Investment ('the Ministry') has issued this guidance, in accordance with the NUG's aforementioned objectives, to provide clarity for investors who have:

1. in the past, made investments in good faith and in compliance with a legal framework overseen by a legally elected government, and who now seek guidance that will inform future investment decisions; and/or
2. in objection to the military council's unjust rule, temporarily ceased operations and/or decided to withdraw from Myanmar—actions which may lead to significant job losses and contribute to adverse socio-economic impacts.

2. Existing and Future Investments

The Ministry values democracy, prioritises the rule of law and encourages responsible investment and business conduct. The Ministry recognises that responsible investors continue to demonstrate good Environmental, Social, and Governance (ESG) practices. Such partnerships are necessary to overcome the pernicious legacy of military rule, to create a fairer economy, and to achieve sustainable economic development.

Existing Investments: The Ministry recognises the contribution made by investors to the development of Myanmar. The Ministry will protect their interests in accordance with the rule of law. The Ministry has stated that any agreements and investment approvals that were in place before 1 February 2021 will be duly honoured.² The NUG, as such, expects that such investors will comply with the legal framework enacted by the representatives of the legally elected and legitimate government.

Future Investments: The military council has sought to usurp authority from the legitimate and democratically elected Government of Myanmar by way of an illegal attempted coup and hence, is not a legitimate body. Thus, no public body appointed by the military council has lawful authority to grant approvals or enter into agreements regarding future investments.

Accordingly, the Ministry has clarified that the Myanmar Investment Commission (MIC) operating under the illegitimate military council has no lawful authority to approve any investment project in Myanmar.

Furthermore, new investment under military rule may provide a means of support and finance to the military that could be used to perpetuate their illegal yet tenuous grip on state power, at the expense of Myanmar's people and disregarding the best interest of the State.

As such, the Ministry shall neither recognise nor honour new investment proposals, agreements or approvals concluded on or after 1 February 2021 with either the military-controlled 'Ministry of Planning and Finance' or any other military-controlled entity, including the MIC.³

In specific sectors, including but not limited to natural resources, investment decisions shall be deferred until a lawfully constituted body within a future Federal Democratic Union, fully competent to consider and respect the rights and interests of States when making such decisions, is formed.

² Announcement 3/2021, Ministry of Planning, Finance and Investment, National Unity Government.

³ *Ibid.*

Existing Investments with Plans for Further Investment beyond 1 February 2021: Many investors had made investment commitments in good faith prior to the attempted coup. The Ministry recognises that a change of circumstances, including an illegal attempt to seize state power, should not stop these investment commitments. However, care must be taken to ensure that further investments neither lend legitimacy to the military junta nor fuel their ability to oppress the people of Myanmar.

3. Guidance for Ongoing Business Operations

Any investor that continues to operate in Myanmar must consider whether its continued operations threaten to do more harm than good. Investors must weigh any benefits they bring to their local employees, suppliers, business partners, and the broader population against the harms that they may cause by either supporting or financing the military council in both direct and indirect ways.

The Ministry has developed this Three-Pillar Framework Guiding Responsible Investment and Continued Operations in Myanmar to inform and support investors that wish to remain in Myanmar during the present crisis.

The Ministry encourages investors to take all possible steps to ensure that their investments remain viable and sustainable in line with the Three Pillar Framework set out below. The actions elaborated under each pillar are intended to be demonstrative and instructive but not exhaustive.

Pillar 1: Take every possible step to promote human rights.

- a. Uphold the rights of workers, customers, and all people, as elaborated in both the Universal Declaration of Human Rights and the International Labour Organization's Declaration of Fundamental Principles and Rights at Work.
- b. Understand and practise responsible business conduct, as elaborated in the United Nations' Guiding Principles on Business and Human Rights.
- c. Understand and conduct human rights due diligence, integrating any findings back into the plans and operations of the business.
- d. Protect sensitive information and data belonging to clients, consumers, and the public from malicious use by the military, or by any officials who are operating at the direction or under the control of the military.
- e. Develop and implement clear policies regarding human rights that are made available to all employees (and to the public, if it is deemed safe for the business).
- f. Ensure that respect for the rights of workers—and of everyone involved in the operations of a business—is non-negotiable and that they are respected regardless of constraints imposed by the military.
- g. Ensure open communications between management and workers regarding changes affecting the business, and make good faith attempts to find mutually agreed resolutions to labour disputes.

Pillar 2: Eliminate business interactions that support and sustain the military junta.

- a. Avoid entering into any form of business partnership or conducting any business with 'Restricted Entities'.⁴

⁴ **Restricted Entity** means any entity, company, enterprise, department, agency, ministry, or a person under direct or indirect control or ownership of the illegal military council. The definition of a restricted entity was provided in the Law Amending the Public Debt Management Law (Third Amendment), the Pyidaungsu Hluttaw Law No 4, 2021) and until or unless amended, this definition shall remain consistent in policies, guidance and regulations issued by the Ministry.

- b. Refrain from use, rental, or lease of buildings, land, equipment, other infrastructure, and goods and services owned or operated by such entities.
- c. Discharge all contractual obligations to the Government of Myanmar—including but not limited to dividends, fees, rent, royalties, production shares, and any other obligations—by making payments to an escrow account until the lawful and legitimate government is restored.
- d. Withhold payment of all taxes and other fiscal obligations to military-controlled authorities and instead discharge such payments to an escrow account until the lawful and legitimate government is restored.

Pillar 3: Promote employee welfare and safety.

- a. Prioritise the physical, psychological, and emotional welfare of employees.
- b. Take all possible precautions to reduce risks to employees.
- c. Do not disclose information on specific employees to the military or officials directed by or under the control of the military; withhold regular administrative submissions containing details on the workforce as a whole.
- d. Take reasonable steps to avoid disclosing sensitive employee information if and when the military, or officials directed by or under the control of the military, demand these details; where this information is forcibly extracted, take steps to warn workers whose information was disclosed and who may be in potential danger.
- e. Never voluntarily contact the military or officials directed by or under the control of the military regarding any dispute; refrain from voluntarily involving them in all workplace matters.
- f. Take all possible steps to preserve employment, including but not limited to moving work schedules that reduce working time and pay, or using furlough schemes to avoid redundancies.

4. Self-Assessments

The Ministry calls for all investors to assess their ongoing operations as per the guidance above. The Ministry also acknowledges that some of the actions above may conflict with those of other Pillars. In case of doubt, Pillar 3 shall prevail.

Any investor which cannot operate in accordance with this Framework must consider whether their ongoing operations risk harming the people of Myanmar (directly or indirectly), including via tacit cooperation with the military council; and/or whether good ESG practices remain practicable under the current circumstances.

Furthermore, investors must make their own judgement regarding business continuity. In doing so, investors must strike a balance between the potential benefit to the people of Myanmar gained by continuing operations in the present circumstances, with potential collateral damage that may be caused by their exit from Myanmar, or their tacit cooperation with the military council.

The Ministry instructs investors to pause or even cease operations in the unfortunate event that an assessment conducted per the above guidance fails to deliver a satisfactory outcome. Although this is a self-assessment, the actions of those investors who support a return to democracy in Myanmar will be honoured and appreciated by future democratic governments, including the NUG.

Failure to act responsibly, or actions taken that prioritise short-term profit over the inalienable rights of Myanmar's people, risk jeopardising the investor's reputation and may threaten the longer-term viability of their investment in Myanmar.

The Ministry also wishes to reaffirm its announcement dated 26 May 2021 regarding new investments approved by the military council after 1 February 2021.

5. Implementation Guidance

The Ministry acknowledges that the context in which each firm is operating differs. The key guiding principle must always be doing that which achieves the greatest good for and least harm to the Myanmar people. The Ministry is available to provide further advice and guidance upon request to those investors wishing to clarify the suitability of their continued operations in Myanmar.

Interested parties are encouraged to write to mopfi@nugmyanmar.org for further clarification.

6. Appendix A: Indicative List of Restricted Entities⁵

1. Myanmar Economic Holdings Limited (MEHL) and its subsidiaries/affiliated businesses.
2. Myanma Economic Corporation (MEC) and its subsidiaries/affiliated businesses.
3. SAC controlled SOEs, including but not limited to Myanma Timber Enterprise, Myanma Pearl Enterprise, Myanma Gems Enterprise, Myanma Oil and Gas Enterprise, and Myanma Mining Enterprise 1 and 2.
4. Private enterprises who are engaged in a joint venture, co-investment, land lease, production sharing or natural resource project with the above listed restricted entities.
5. New foreign investments approved by the SAC-controlled MOPFI or by MIC following 1 February 2021.

⁵ The list is non-exhaustive. The Ministry will provide continuing updates and further guidance in due course.