

MYANMAR MUST CLARIFY THE LEGAL FRAMEWORK FOR ITS STATE-OWNED ECONOMIC ENTERPRISES

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State-owned Economic Enterprises (SEEs) dominate Myanmar's economy. They are reportedly responsible for 7% of GDP,¹ and generate at least one-fifth of government revenue from extractive sectors alone.² Yet, they operate “simultaneously within a sparse legal framework and a vast bureaucracy ... lack[ing] supervision,” and the institutions meant to provide oversight “are largely unable to provide substantive accountability.”³

This brief encourages the Union Government of Myanmar (UGoM) to continue with SEE reform, with a focus on legal clarity and budget transparency within a reformed financial regulatory system. Given their importance, SEEs share in the responsibility to help the National League for Democracy (NLD) government “work to ensure a fair distribution across the country of the profits from natural resource extraction in accordance with the principle of a federal union.”⁴

The importance of SEEs in the natural resource sector

Myanmar's State-owned Economic Enterprises Law⁵ of 1989 grants SEEs the sole right to carry out activities in 12 different sectors. This right generates massive wealth: of Myanmar's c.\$12 billion in exports in 2016, three SEEs — the Myanmar Oil and Gas Enterprise, the Myanmar Gems Enterprise, and the Myanmar Timber Enterprise (MTE) — contribute more than one-third, although this does not reflect unreported, illicit trade, which is likely substantial.⁶

Fiscal management of SEEs

Prior to 2012, SEEs paid 70% of profits to a Union Fund Account (UFA) in the form of a “state contribution” (dividend) and 30% in corporate income tax. In 2012, the corporate income tax rate was reduced to 25% and the “state contribution” was apparently reduced to 20%. Since then, more than half (55%) of SEE profits were kept in the SEEs' own “other accounts” (OAs) at Myanmar Economic Bank (MEB), rather than the central budget.

The Myanmar Renaissance Institute (RI) and the Natural Resource Governance Institute (NRGI)² refer to a July 2012 directive (also known as a Ba Kha) issued by the Ministry of



¹ <https://openknowledge.worldbank.org/bitstream/handle/10986/28392/119855-PER-P159067-PUBLIC-v2-main-report-PERSeptcleanwithnewcover.pdf?sequence=1&isAllowed=y>.

² myanmareiti.org/sites/myanmareiti.org/files/publication_docs/4th_meiti_report_30_march_2019_1.pdf.

³ resourcegovernance.org/analysis-tools/publications/state-owned-economic-enterprise-reform-myanmar-case-natural-resource.

⁴ NLD Post Election manifesto 2015.

⁵ burmalibrary.org/docs15/1989-SLORC_Law1989-09-State-Owned_Enterprise_Act-en.pdf

⁶ In 2013-2015, for example, the UGoM reported less than \$29 million in exports of timber products to China, whereas the Chinese government reported more than \$500 million in imports from Myanmar.

Planning and Finance (MOPF) as the legal basis for this change. However, the instruction has not been made public.⁷ In contrast, the legal framework for the change in corporate income tax is clear; it was codified in the 2014 Tax of the Union Law (No.20/2014; §28).

An unclear legal framework

The UGoM's attempts at reform have been haphazard “rather than through a clear statutory or policy framework”. “[C]larification of responsibilities or mechanisms for governance of SEEs is not provided in the law ... but rather by a series of internal ministry directives and notices that tend to be reactive rather than clarifying of policy goals.”³ It is not clear whether reforms comply with Myanmar law.

However, in February 2019 the MoPF issued a new notification for SEEs' financial management (SaBa/Finance-4/1/1(550/2019)) stating that all OAs will be closed as of September 2019, and must be transferred to UFA-SEE accounts after being audited and approved by the Office of the Auditor General.⁸

Recommended Reform

SEE reform has been recommended as a major policy goal of the NLD government, to “bring statutory clarity to SEE management and make policymaking more consistent.”⁹ Specifically, past reports advocate for: improving SEEs' overall legal framework, in particular changing the revenue retention rule; requiring strategic objectives and performance targets for individual SEEs; strengthening oversight; and requiring high transparency standards. We also advocate for particular focus on fiscal reform.

While closing SEE OAs is a positive step towards greater accountability, the UGoM is apparently considering requiring the MOPF to replace the money removed from the OAs. This seems unnecessary, as the MOPF has always had the legal right (with cabinet approval) to use the OA money for purposes other than SEE-related spending. It is likely that OA balances do not accurately reflect what SEEs should have retained. The MOPF risks returning money to the SEEs that was legally meant for the Treasury in income tax and state contribution. Moreover, due to lack of transparency regarding OA money, it may not be the Treasury that received it in the first place.

Overall, the legal framework for SEEs in Myanmar remains unclear and fragmented, nor is it clear what happened to SEEs' profits. Reporting is weak and “due to poor enforcement ... payments rarely reflected SEE profits.” We recommend that the UGoM clarify the legal framework governing SEEs. Where there is uncertainty, especially regarding public financial management, legislative reform may be necessary. Likewise, where the allocation of revenue is unclear, greater transparency is required, allowing appropriate oversight by MOPF and parliament at the very least, if not by the public more broadly. At stake is not just billions of dollars in government revenue, but a major component of the Myanmar economy.

⁷ Forest Trends obtained the Ba Kha in Feb 2019, in a presentation by the MOPF for workshop on SEE reform. The text of Ba Kha-3/20(547/2012) appears to permit the MOPF to issue directives to carry out the 1989 SEE law. But it is not clear if the MOPF can use such a Ba Kha to change existing laws without parliamentary approval, especially laws that make such drastic change to public financial management.

⁸ MOPF letter to prepare and submit the 2019-2020 budgets of the union-level departments and bodies, 28 February 2019.

⁹ https://resourcegovernance.org/sites/default/files/documents/state-owned-economic-enterprise-reform-in-myanmar_0.pdf; Myanmar public expenditure report 2017.



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