

THE IMPACT OF LAND ISSUES ON FOREIGN DIRECT INVESTMENTS IN DEVELOPMENT OF MYANMAR AGRICULTURAL SECTOR

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Abstract

Foreign Direct Investments in the agricultural sector are vital in the improvement of productivity and the raising of incomes and food security as well as in ensuring a long-term growth of the agro-business. Foreign Direct Investment (FDI) is central to achieving Sustainable Development Goals especially in reduction of poverty. The development in Myanmar's agricultural sector can be promoted by attracting FDI. FDI may support financial and technological needs in the Myanmar agricultural sector. However, due to the numerous land issues and weak administration in addressing the land issues, foreign investors are concerned about investing in Myanmar even though there have been numerous concessions in inviting the foreign investments. Thus, this paper discusses the role of FDI in the development of Myanmar's agriculture which is the best solution for reduction of poverty in rural areas. This paper also critically analyzes the underlying legal issues related to the conflict of land rights under the Vacant, Fallow and Virgin Lands Management Law, 2012 (VFVML Law) and the Myanmar Investment Law, 2016. It is found out that there is an unclear definition in classifying the various lands under VFVML Law and inconsistent provisions under VFVML Law and Myanmar Investment Law. Therefore, it is necessary to amend the existing land laws to reconcile the land types and classifications in order to Foster, Secure and Well-defined Land Rights.

Keywords: Foreign Direct Investments, Myanmar Agricultural Sector, Land Issues

Methodology

This paper used the descriptive methods by analyzing both primary data from legislations and secondary data from literature, government's websites, official publications, and analytical review on FDI in development of the Myanmar Agriculture sector as well as the impact of land issues on FDI by law firms and mainstream newspapers. Data utilized in this paper are collected from legislations, literature books, research papers, Publications, Journals and relevant websites. First, it studies the situation of the Myanmar Agriculture Sector and inflow of FDI. Second, it studies the land issues based on the Myanmar legislations. Finally, it discusses whether secure land rights are one of the best ways in attracting FDI which may eliminate the rate of poverty in Myanmar.

Introduction

Myanmar is the second largest country in Southeast Asia with a total land mass of 261,228 square miles (676,557 sq. km). The agricultural sector is the backbone of the economic development in Myanmar. Under Myanmar agro-based industrial sector, the main commodity is mainly engaged in the processing of agricultural produce either consumptions such as food crops, oil, seeds, sugarcane, fruits and vegetables, etc. or for consumer goods such as cotton for fabric and clothing, rubber for rubber products, etc. and the inputs for the sector such as fertilizers and farm machineries.¹ After emerging from the isolation period, Myanmar paved a comprehensive path of political and economic reforms by introducing elements of popular representation into the political sphere, in fostering economic growth and inclusive social development, in improving

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¹ San Thein, (2006) "Agro-based Industries in Myanmar: The Long Road to Industrialization" *Japan External Trade Organization*, V.R.F. Series, No.414, p-6.

the business environment, attracting foreign investments and in reducing the rate of poverty.¹ The government has acknowledged agriculture development as a way to achieve a sustainable development goal of reducing poverty and in 2018, the Ministry of Agriculture, Livestock and Irrigation (MOALI) proposed the “5 Years Myanmar Agriculture Development Strategy and Investment Plan” to intervene rural development and increase national economy growth. Moreover, the Myanmar government encourages investment opportunities in every step of the agricultural supply chain and a significant amount of land has been allowed to make investments by the foreign investors.²

On the other hand, because of the insufficient in the financial access to cover up the seasonal crops, many of the farming and rural population depend upon the microfinance institutions (MFI) and the informal sectors such as traders, shopkeepers and money lenders for their credit needs, usually with a high rate of interest.³ Therefore, farmers are not able to increase or improve production standards. Moreover, Myanmar agriculture still needs improvement in quality such as a system of quality control and assurance that will help farmers and enterprises to get higher prices. This system relies upon various measures aiming at developing product standards certifications, quality grading, quality control measures, the application of standard weights and measures, and reliable assessment procedures. Thus, the modernization of the sector is a crucial factor in the economic and social development agenda for the government as increased agricultural production and reduced poverty are noted as the first priorities in the Poverty Alleviation and Rural Development Action Plan.⁴ In the long term, productivity and competitiveness of the agricultural sector relied upon access to and adoption of advanced technology and the effective management of natural resources and other inputs to achieve total factor productivity increase.⁵ Thus, FDI is an important element in poverty alleviation (the first Sustainable Development Goal) as it creates jobs and stimulates technological progress which is an ultimate driving force behind sustained economic growth.

Situation of Myanmar Agricultural Sector

Myanmar's economy largely depends upon agriculture. It has been estimated that there has been a contribution of 30% of Gross Domestic Product (GDP) by the agricultural sector while industry accounts for about 25% and services about 45%. Moreover, the former sector also accounts for about 25% of total exports by value. 2015 and 2016 witnessed \$1,152 million as the largest agricultural export in beans and pulses, with rice, livestock and fisheries, the other main agricultural export items, each generating between \$400-500 million. Between 2016 and 2017, the estimated 28.2 million metric tons of the production of paddy rice is still a dominator of Myanmar's agricultural production, as 45.7% of harvested area and 53.4% of production volume of major crops produced in Myanmar. The other key crops such as beans, pulses, oilseeds,

¹ IFAD, (2014) “Republic of the Union of Myanmar; Country Strategic Opportunities Programme” *Investing in Rural people*, EB 2014/111/R.6, p-1.

² May Thet Htar, (2022) *Analysis of Implications of Agricultural Land Tenure System for Productive Use of Lands: Application in Myanmar*. Research Paper Department of Agricultural Economics, Yezin Agricultural University (published).

³ MOALI, (2018) “Myanmar Agriculture Development Strategy and Investment Plan (2018-2019 2022-23)”, p-17.

⁴ Virginia Chimenti, (2016) “Agriculture Value Chain Finance in Myanmar: A Role for UNDP” *United Nations Capital Development Fund Myanmar*, p-3.

⁵ MOALI, (2018) “Myanmar Agriculture Development Strategy and Investment Plan (2018-2019 2022-23)”, p-23.

rubber, sugar, maize, a wide range of fruits and vegetables, palm oil, coffee and tea are also exported.¹

However, the Myanmar agricultural sector has been characterized because of the low productivity, inequality and high volatility.² These are caught in a “low equilibrium trap”. As stated in the FinScope Survey, 2013, 58% of the population is engaged in the sector, particularly in crop production.³ Since such two-thirds of its population is engaged in the sector, this “low equilibrium trap” has contributed to high rates of poverty and food security.⁴ Among the 72% of the population who reside in the rural areas, 85% face poverty and 24% of rural households are considered as vulnerable.⁵ In accordance with Integrated Household Living Conditions Survey (IHLCS), the poverty rate in 2011 was about 25.6%, with about 66.9% of total employees with the wages of \$2 per day. Furthermore, 56% of the employment engaged in the agricultural sector and 54.2% in agriculture, hunting and forestry plunged to the general poverty line. In accordance with per capita income of the United States Dollar (USD) 1,205, Myanmar is ranked 165th out of 180 countries in the world.⁶

Even though Myanmar’s agricultural sector has potential, it has suffered decades of inadequate investment in basic infrastructure as well as the weak knowledge in technological and post harvested systems and the weak financial support service. Specifically, in matter of the rice supply chain, only 25.8% of the total milling capacity is standardized with high-quality. The main deficiency is in cleaning equipment and color sorters to manufacture the qualified rice as well as the need for more rubber roller equipment.⁷ Since rice is the staple food and main exporter, Myanmar still needs to improve in modernization of the plant genetics, seed certification, paddy processing and marketing and logistics systems. The output side includes not only the traditional areas such as storage, processing and marketing but also value-adding in packaging and branding logistics services.⁸ On the input side, it comprises the fertilizers and agro-chemicals, seeds, feed, irrigation equipment, power tillers, tractors, threshers, combine harvesters, and increased access to pluralistic sources of extension and finance.⁹ Among the 11,666 Myanmar’s rice mills, 88% are small mills with low quality and very old machinery. In accordance with the Department of Trade, the rate of milling quality for Head and Broken Rice is about 66%.¹⁰ However, Myanmar Agribusiness Public Company (MAPCO), a joint venture with a Japanese Company made investments in the rice milling industry. Moreover, Wilmar Myanmar (a subsidiary of Singapore Based Wilmar International) commenced a four mill and consumer pack edible oil processing plant in the Thilawa Special Economic Zone in Oct 2019 with the

¹ MOALI, (2018) “Myanmar Agriculture Development Strategy and Investment Plan (2018-2019 2022-23)”, p-3-8.

² Ibid, p-8.

³ Virginia Chimenti, (2016) “Agriculture Value Chain Finance in Myanmar: A Role for UNDP” *United Nations Capital Development Fund Myanmar*, p-3.

⁴ David A. Raitzer, Larry C. Y. Wong, & Jindra Nuella G. Samson, (2015) “Myanmar’s Agricultural Sector: Unlocking the Potential for Inclusive Growth” *ADB Economic Working Paper Series*, No. 470, p-4.

⁵ MOALI, (2018) “Myanmar Agriculture Development Strategy and Investment Plan (2018-2019 2022-23)”, p-7.

⁶ Ibid.

⁷ San Thein, (2006) “Agro-based Industries in Myanmar: The Long Road to Industrialization” *Japan External Trade Organization*, V.R.F. Series, No.414, p-10.

⁸ MOALI, (2018) “Myanmar Agriculture Development Strategy and Investment Plan (2018-2019 2022-23)”, p-13.

⁹ Ibid.

¹⁰ Swe Mon Aung, (2019) “Burma- Union of Grain and Feed Annual Report” *USDA Foreign Agricultural Service*, BM 9002.

purpose of selling and distributing rice and rice related products.¹ U Ye Min Aung, the Managing Director of MAPCO said, “The establishment of the high-end rice mills from the foreign investors and government initiatives will boost both the local and export market. Because of such establishments, Myanmar is seeing action in poverty reduction by focusing efforts in improving the agriculture industry.”²

Furthermore, in order to cope with the seasonal expenses and to modernize the farming practice, farmers need to have financial access. A large infusion of funds is necessary in order to generate revenues for farmers and the country. The main sources of financing in the sector are the Myanmar Agriculture and Development Bank (MADB) which grant subsidized credits to farmers by two types; seasonal crop production loans that meet about 50% of production costs and term loans and its sisterhood organization, the Myanma Livestock and Fisheries Development Bank (MLFDB).³ But, the loans offered by the MADB are poorly structured and do not match the crop cycles. Because of these pressures, farmers need to sell the crop quickly in order to pay the debt even though the crops are not fully processed. Moreover, the other private banks grant loans to small businesses and traders, who in turn might lend to farmers with higher interest.⁴ This adversely affects the quality of the product and farmers can only access the lower prices and thus lead to an endless cycle of debt and poor farmers sink into poverty. As a result, this can hinder the development of Myanmar’s agricultural sector with a serious disincentive to productive industry.

Therefore, because of the limited access of farmers to timely and quality inputs, including seeds, fertilizers, pesticides, post-harvest infrastructures and animal health drugs and services, the limited access of smallholder farmers to financial services, the limited quality and safety of agricultural products and low value added produced by agroindustry, the sector remains behind compare to the other countries.⁵ Therefore, in case of the reduction of poverty in the countryside and access to finance, the affiliation between agriculture and other economic sectors play an important role since the growth of the economy depends upon the development of agro activities.

Foreign Direct Investments in Myanmar Agricultural Sector

With the experience from the Asian economies, one of the successful ways to stimulate development in agriculture is by generating an enabling investment climate for agricultural entrepreneurs and by creating increased access to the critical knowledge and inputs needed to implement the high levels of productivity.⁶ FDI is vital in the contribution of value-addition and increasing profitability for agricultural industries in case of selling the finished, processed goods. Moreover, these industries will also give opportunities for employment and skill development in the workplace as well as improve the standard of living.⁷

¹ Logistic Cluster, “Myanmar Milling Assessment”, <https://dlca.logcluster.org/myanmar>.

² Aye Chan, (2017) “The Relevance of Foreign Direct Investments in Myanmar’s Agricultural Sector” <https://borgenproject.org/the-agriculture-sector-for-the-poor-in-myanmar/>.

³ Virginia Chimenti, (2016) “Agriculture Value Chain Finance in Myanmar: A Role for UNDP” *United Nations Capital Development Fund Myanmar*, p- 4-5.

⁴ MOALI, (2018) “Myanmar Agriculture Development Strategy and Investment Plan (2018-2019 2022-23)”, p-17-18.

⁵ Ibid, p-9.

⁶ Ibid, p-35.

⁷ Ibid, p-25.

Since 2012, there has been a significant increase in FDI levels. During the 1988-1989 FY, among the total foreign investment of more than \$77.7 billion, \$395 million has reached to the agricultural sector which was only 0.51%. There is no FDI in the sector between 2011-2012 FY. In 2012-2013 FY, over \$9.6 million, over \$20.2 million in 2013-2014 FY, in 2014-2015 over \$39.66 million. In 2015-2016 FY, the rate of FDI in the agricultural sector was over \$7.1 million. Even though there was no FDI in such sector in the 2016-2017, the rate reached \$134.485 million. However, only \$10.650 million accounts in the initial months of 2018.¹ As of the end of February 2022, Myanmar attracted a total of \$530.775 million in foreign direct investment and the agricultural sector received at slightly more than \$5.043 million.² According to the Directorate of Investment and Company Administration (DICA), there was the amount of more than \$446 million of the foreign investment in the agricultural sector which is 0.49% of total foreign investments of the country during the 2022-2023 FY.³ China, Hong Kong, Singapore, Japan, South Korea, Vietnam and Thailand are the main investors in the sector. Most of the large investors are engaged in the rubber and palm oil plantation while small and medium scale investments are investing in the sugarcane, corn, bio fuels, fruit and vegetable plantation.⁴

In the sector, currently, the government and private investors make investments particularly in the fields of growing fertilizer. From the International Finance Corporation, Myanmar Awba Group received a \$10 million loan for the construction of a chemical plant to produce fertilizer. In August 2018, Hmawbi Agricultural Input Complex was launched in order to meet the 50% of the demand of the fertilizer. Moreover, in the Thilawa Special Economic Zones, the Japanese conglomerate Marubeni Corporation made a financial investment of about \$18.5 million in the fertilizer facility.⁵ Since Myanmar is facing low infrastructure, productivity and poor seed quality, in January 2019, CITIC Corporation functioned jointly with Myanmar Agribusiness Public Corporation (MAPCO) by investing \$500 million into the construction of high-end rice mills and agribusiness service centers across Myanmar.⁶ Moreover, a number of companies have also invested in the seed industry, particularly for vegetables. In 2013, the Charoen Pokphand Group (CP Group) from Thailand had made a large contribution to the agricultural sector with a poultry supply chain relating to the maize seed industry.⁷ In the financial supporting sector, the China EXIM Bank grants a loan of \$400 million nation-wide for rural development and poverty reduction and a \$100 million for hire purchase for mechanization. Moreover, there have been lending Organizations for agricultural projects such as the World

¹ "Agriculture sector receives US\$ 3.5 m of foreign investment within eight months of 2022-2023 FY" December 28, 2022, Eleven, <https://elevenmyanmar.com/news/agriculture-sector-receives-us-35-m-of-foreign-investment-within-eight-months-of-2022-2023-fy>.

² "Myanmar attracted most of its FDI in service sector for the first five months of the current fiscal year, followed by manufacturing sector and construction sector" April 22, 2022, THAI BIZ (Thailand), <http://www.thaibizmyanmar.com/en/news/detail.php?ID=3728>.

³ "Agricultural sector receives over \$446 million in foreign Investment" May 31, 2022, Global New Light of Myanmar, <https://www.gnlm.com.mm/agricultural-sector-receives-over-446-million-in-foreign-investment/#:~:text=The%20foreign%20investment%20amount%20in,Investment%20and%20Company%20Administration%20DICA>.

⁴ Aye Chan, (2017) "The Relevance of Foreign Direct Investments in Myanmar's Agricultural Sector" <https://borgenproject.org/the-agriculture-sector-for-the-poor-in-myanmar/>.

⁵ Ibid.

⁶ Aye Chan, (2017) "The Relevance of Foreign Direct Investments in Myanmar's Agricultural Sector" <https://borgenproject.org/the-agriculture-sector-for-the-poor-in-myanmar/>.

⁷ Livelihood and Food Security Trust Funds, "Study on Agricultural Investments Final Report" p-14.

Bank, Japan International Cooperation Agency (JICA), etc.¹ Even though the smallholder production is efficient and competitive, financial and economically viable are the urgent need to undertake rural poverty and raise the rural incomes that makes the improvement of smallholder agriculture a high priority. The development of a well-functioning financial system will be able to provide the appropriate support services such as access to improved related technology. Thus, the following will discuss the dependence of agricultural growth upon FDI including the rate of poverty in Myanmar.

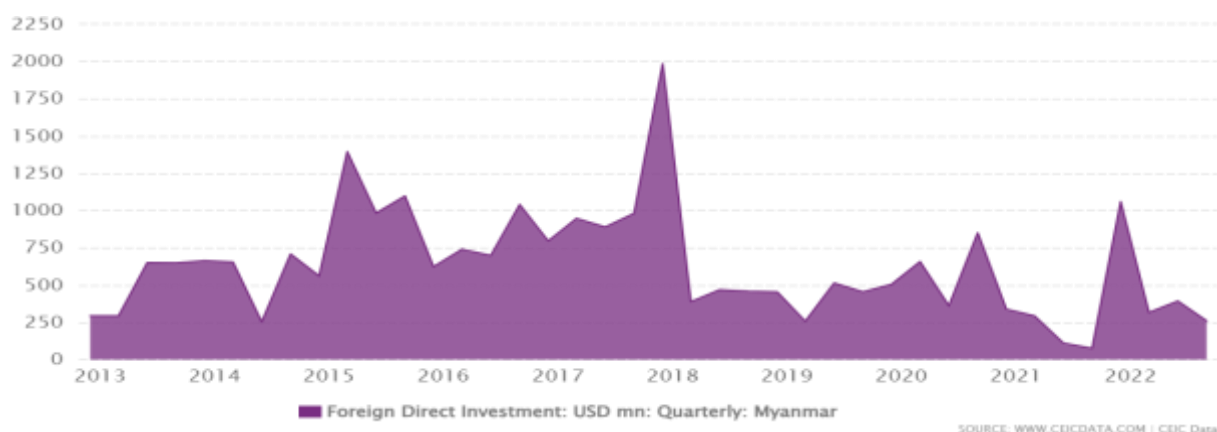


Table 1: Foreign Direct Investment in Myanmar from 2013-2022

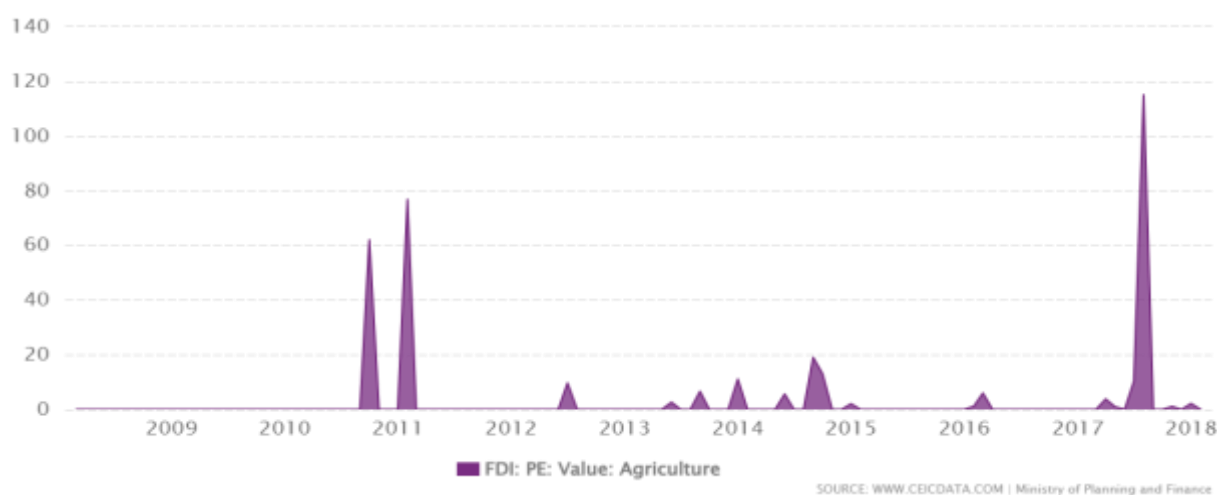


Table 2: Foreign Direct Investment in Myanmar's Agricultural sector from 2010-2018

¹ MOALI, (2018) "Myanmar Agriculture Development Strategy and Investment Plan (2018-2019 2022-23)", p-31.

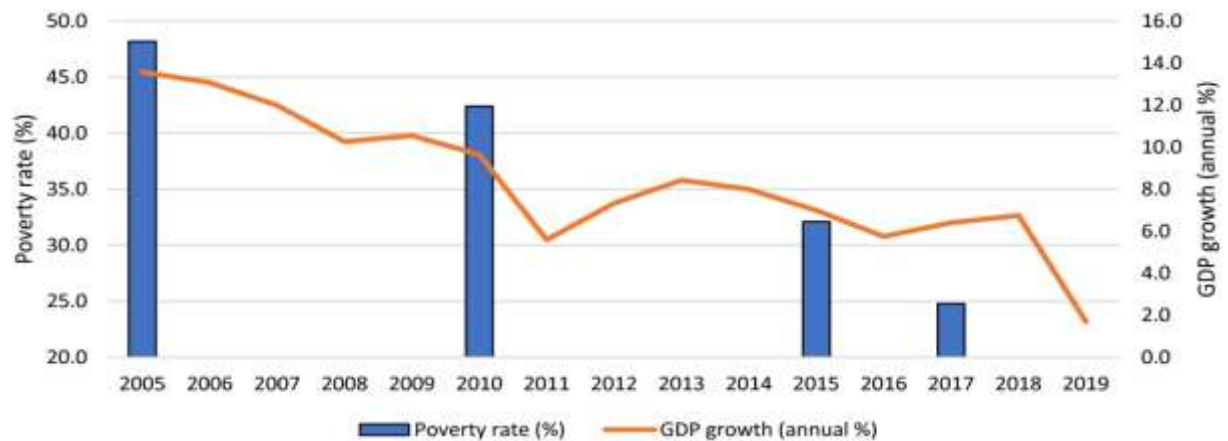


Table 3: The Rate of Poverty in Myanmar from 2005-2017

Source: <https://onlinelibrary.wiley.com/doi/full/10.1111/rode.12836>

In Table 1, the rate of FDI in all sectors in Myanmar from 2013 to 2022 is described. Table 2 shows the rate of FDI in the Myanmar agriculture sector from 2010 to 2018. In Table 3, the rate of poverty in Myanmar from 2005 to 2019 is described. Based on the data from table 2 and 3, between 2017 and 2018, the rate of FDI in agricultural sectors reached a peak. Together with many FDI, the rate of poverty in 2017 reduced to 24.80% from 32.10% in 2015. By comparing these tables, it can be denoted that the rate of poverty in Myanmar depends upon the flow of foreign direct investments which is one of the main actors for agricultural development.

Investment Promotion in Agricultural Sector

In order to promote and facilitate both foreign and domestic investments, the Myanmar Government introduced a new Myanmar Investments Law (MIL) in 2016. MIL opened the door for more FDI by reducing the number of prohibited sectors and simplifying the legal procedure for investors to make their business in Myanmar. Furthermore, it regulates equal treatment for both foreign and domestic investors. Thus, under MIL, the investors may enjoy the National Treatment and Most Favored Nation Treatment, Fair and Equitable Treatment, right to use land, Investment Guarantee, etc. Myanmar Investment Commission (MIC) also prioritizes agriculture and its related services, value-added production of agricultural products and livestock production, breeding and production of fishery products when the investors submit their proposals. Since 2016, 80% of investment in the agricultural sector has been opened for the foreign investors after withdrawing the previous restriction of 40% investment in accordance with the MIC.¹ In accordance with Sec-36 of MIL, in the agricultural sector, only investments requiring more than 1,000 acres are required to request permission from MIC.² Besides, the Myanmar Companies Law allows non-Myanmar investors to own 35% of stake in a local business before reaching under the category of foreign company in order to seek overseas expertise and capital from joint-ventures.³ In accordance with Myanmar Investment Rule 22 and Notification No. 15/2017 (c), the ratio for joint-venture must be 80% for foreigners and 20% for citizens.

¹ Thiha, (2018) "Myanmar allows up to 80% of Foreign Investment in Agriculture sector" <https://www.consult-myanmar.com/2018/08/06/myanmar-allows-up-to-80-of-foreign-investment-in-agriculture-sector/>.

² Section 36, Myanmar Investment Law, 2016, Berwin Leighton Paisner, "Guide to the Myanmar Investment Law" p-3.

³ DICA, "Investment in Myanmar" https://www.dica.gov.mm/sites/default/files/news-files/pamphlet_-_invest_in_myanmar.pdf.

In order to remove tax burden and to be a proportionate development of Regions and States, MIL offers exemptions and reliefs for income tax, customs and other kinds of tax. Income tax exemptions shall only be granted to the promoted sectors which are specified by MIC. With respect to the income tax exemption, the Commission may, with the approval of the Government, grant income tax exemptions to investment business in Zone-1 (less developed regions) for a period of 7 consecutive year including the year of commencement of commercial and investment operation, in Zone-2 (moderate developed regions) for a period of 5 consecutive years including the above-mentioned year, in Zone-3 (adequate developed regions) for a period of 3 consecutive years including the commencement year.¹ In the designated 162 areas of the less developed regions², most areas from three main agro ecological zones: Delta, Central Dry Zone (CDZ) and the Hilly zone are included. In the Delta zone, about 22 million of the population occupy in rice production, in the CDZ, about 19 million and in the Hilly zone, about 6.5 million and most of them are from Shan States.³ Moreover, many of the agricultural activities are classified as the promoted sectors under the categories of agriculture and its related services and manufacturing which can access the income tax exemptions.⁴ Foreign investors may invest 100% without any local partners in the promoted sectors.⁵ Furthermore, the law also grants such tax exemptions in case of the reinvestment activities if such reinvestment is functioning with the profits obtained from the investment in the same or similar types within one year. It also grants the right to deduction, depreciation regarding this kind of tax.⁶ In order to elevate the profitability of the newly established or expansion of the existing business which will contribute to the country's economy, the law also offers relief from customs duties on imports of equipment and other construction materials. MIC may grant exemptions and reliefs from customs duty and other internal duties and taxes or both of machineries, equipment, instruments, machinery components, spare parts, construction materials unavailable locally and the other rights to access to reimbursement such duties and taxes.⁷

In accordance with the data collected by DICA, during the 2020-2021 financial year, a total of 48 FDI projects have been applied for investment promotion under the MIL. Among them, 22 projects were granted a permission while 26 projects received endorsements, bringing the capital inflow of \$3,791.398 million into the country. Myanmar Investment Commission permitted 22 FDI projects and endorsed 4 investment project proposals. Meanwhile, other States/Regions Investment Committees across the country approved 22 investment projects which helped in creation of 23,956 job opportunities for local workers.

Therefore, the Myanmar Government offers tax holidays, investment allowances, or accelerated depreciation on the basis of the location of the investment, including the less-developed areas and also to ascertain the economic activities such as skills development, Research and Development (R&D), and environmental protection.

¹ Section 75(a), Myanmar Investment Law, 2016.

² Myanmar Investment Commission, Designation of Development Zone (No. 10/2017, 22 February 2017).

³ MOALI, (2018) "Myanmar Agriculture Development Strategy and Investment Plan (2018-2019 2022-23)", p-7.

⁴ Myanmar Investment Commission, Classification of Promoted Sector (No. 13/2017, 1 April 2017).

⁵ DICA, "Investment" <https://www.dica.gov.mm/en/Investment>.

⁶ Section 78, Myanmar Investment Law, 2016.

⁷ Section 77, Myanmar Investment Law, 2016.

Land Issues and Foreign Direct Investments

Land usage in Myanmar is regulated by the various laws on the basics of the different lands such as urban area land, forest land, farmland and fallow land, etc. Private individuals may hold land by applying the right to use land with applicable forms of grants from the government. Most land authorities grant a land lease for up to 30, 60, or 90 years. The length of time should be sufficiently long enough so that the landholders have the ability and confidence to recover the income system generated by the investment.

In accordance with the commentary from Myanmar Investment Promotion Plan (MIPP), the cooperative function between Directorate of Investment and Company Administration (DICA) and Japan International Cooperation Agency (JICA), the reasons for being limited in the inflow of FDI including the agriculture sector and the other land based FDI, even though there is the concession and amendment upon the MIL and Myanmar Investment Rules, is, because of the unsecure possession of land rights. Because of no openness upon the management and weak administration in land issues, most of the FDIs hesitate to invest in such sectors. This could lead to the adverse impact upon the development of Myanmar Agriculture because of the less FDI.¹ Furthermore, due to the weak understanding with respect to the socio-legal environment concerned with the land resources in Myanmar, foreign investors consider investing in places where there is no mapped territory which can lead to conflicts relating to land.²

Among the main barriers in attracting foreign investments, in Myanmar, it is important to address the weak security of land tenure because of the unclear definition upon the various lands, weak administration in the allowance of land use. Moreover, there are some contradictions regarding to the period of land lease between MIL (initial 50 years plus 10 years with 2 times extension) and the VFVLM Law (initial allowance 30 years and frequent allowance without exceeding 30 years)³ even though it is required to get approval from MIC.⁴ To be more secure in tenure which is the major incentive for FDI, the government should enact strong laws and legislations to regulate property rights and to identify the need for additional subject matters. The enactment of new Land Rights Law is required to identify the nature of rights over the land and uniform land lease term based on the land types.⁵ The current VFVLM law also needs to make clear definitions in categorizing the various VFV lands or by adding the specific length of time in defining the vacant and fallow lands. Moreover, the law also needs to cover the true tests for addressing the issues of land acquisition for public purpose and private investments. It also needs to address the issues of customary land rights and to implement a rigid and strong administration for the recognition, documentation and registration of customary land for the success in agricultural development. Thus, the legal certainty for FDI would be guaranteed which is one of the best ways in eliminating poverty in Myanmar.

¹ မောင်ဦးကာ၊ (၂၀၂၁) “နိုင်ငံခြားရင်းနှီးမြှုပ်နှံမှုနှင့် မြေအခက်အခဲ” *MIFER BULLETIN*, p-2.

² Alvin Hoi-Chun Hung, (2023), <https://blogs.lse.ac.uk/seac/2023/05/04/myanmars-land-laws-and-foreign-direct-investment-why-investors-need-to-consider-smallholder-farmers-rightstext=However%2C%20lack%20of%20understanding%20regarding,rights%2C%20of%20the%20local%20population>.

³ မောင်ဦးကာ၊ (၂၀၂၁) “နိုင်ငံခြားရင်းနှီးမြှုပ်နှံမှုနှင့် မြေအခက်အခဲ” *MIFER BULLETIN*, p-2.

⁴ Rule 16(c), The Vacant, Fallow and Virgin Lands Management Rules, 2012.

⁵ MOALI, (2018) “Myanmar Agriculture Development Strategy and Investment Plan (2018-2019 2022-23)”, p-17.

Discussion

There are numerous factors which may cause land issues such as the inconsistency between legislations, no specific definition in classification of the land types, weak administration over land allowance and weak knowledge upon the provisions by the farmers. According to Chapter II of the National Land Use Policy, it is mentioned that based on the general land types such as agricultural land, forest land and the other land, various land classifications may be determined. In other land, urban land, village land, religious land, public land, government administrated vacant, fallow, virgin land and wasteland, etc are included. To determine appropriate land types and land classifications, the relevant government departments and organizations shall transparently review and amend the existing land types and classifications in accordance with the rule of law, national land use policy and national land law. Therefore, it may be denoted that the various land types are determined in accordance with the relevant law.¹ Firstly, with respect to Sec 2(e) of the Vacant, Fallow and Virgin Lands Management Law (VFVLM Law), Vacant Land and Fallow Land mean “the land on which agriculture or livestock breeding business can be carried out and which was tenanted in the past and abandoned for various reasons and without any tenant cultivating on it and the lands which are specifically reserved by the state”.² Under the phrase “which was tenanted in the past and abandoned for various reasons”, it may be misunderstood with the farmland because only under the Farmland Law, person who has the right to use farmland shall have the right to sell, mortgage, lease, exchange and gift on the whole or part of the right to use the farmland in accord with the stipulated terms and conditions.³ Moreover, in accordance with Sec 11 of the Land and Revenue Act, 1879, “Any landholder who, except as provided in section 12, voluntarily relinquishes the possession of any land shall at once forfeit his status of a landholder in respect of such land”.⁴ Moreover, since there is no specific timeframe for the term “abandoned”, it may be assumed that the abandoned land may be under the applicants for use of vacant and fallow land even if it was originally cultivated as farmland or other types of land, but it has been abandoned for various reasons such as due to the war security or family livelihood.⁵ Such unclear definitions and perceptions of these lands, no specific classifications, provisions in case of the location of such lands and outdated mapping lead to the alienation of land from customary landowners who do not qualify to secure and failure to register their land under the Farmland Law.⁶ Many reporters pointed out that various classifications of land in Myanmar are poorly defined in the legislative framework that can lead to land issues as well as unsustainable management of land classification and management of land resources in the future.⁷ Therefore, in Myanmar, there is no harmonization between the actual land use on the ground and rural land classifications.⁸ Thus, many reports on land confiscation have arisen. Due to the confusion and insecure land tenure in Myanmar, the Former Secretary-General of the Thai-Myanmar Economic Council, Thanit Sorat, said that “the uncertainty over land ownership would definitely constrain investments by Thais in

¹ Chapter II, National Land Use Policy, 2016.

² Section 2(e), The Vacant, Fallow and Virgin Lands Management Law, 2012.

³ Section 9 (c), The Farmland Law, 2012.

⁴ Section 11, The Land and Revenue Act, 1879.

⁵ ဦးမောင်မောင်ညွန့်၊ (၂၀၁၈) “မြေသိမ်းသည် ဆိုလေတိုင်းနှင့် မြေယာရေးရာ လက်တွေ့အသုံးချစာတမ်းများ” *Wisdom House*, p-26-27.

⁶ MOALI, (2018) “Myanmar Agriculture Development Strategy and Investment Plan (2018-2019 2022-23)”, p-17.

⁷ L Gum Ja Htung, (2018), “Land Grabbing as a Process of State-Building in Kachin Areas, North Shan State, Myanmar” *Chiang Mai University Press*, p-51-52.

⁸ Ibid.

Myanmar”. Moreover, he also mentioned that due to the lack of an effective IT system for checking the land areas, the title of the deeds may overlap in case of renting in the rural areas.¹ Therefore, land issues are one of the barriers that foreign investors are concerned about making investments in Myanmar because of the reputational risk of their business from the land grabbing.²

Secondly, according to the MIL, foreign investors may lease land from the government or governmental organizations or from the private landowners up to an initial period of 50 years with an extension of 10 consecutive years and a further 10 consecutive years.³ Separate Land-Rights Authorization shall not be required, if the investor proposes to sub-lease immovable property from another investor, who has received a Land-Rights Authorization from the MIC.⁴ Moreover, the Special Economic Zones Law (SEZ Law) permits foreign investors to lease land for long-term within the SEZ for a period of up to 50 years with a further period of 25 years after the expiration of initial years.⁵ However, the land lease still needs to be consistent with the other land laws. Under the Vacant, Fallow and Virgin Lands Management Law, the foreign investors who obtained the permission to carry out the businesses may enjoy the right to cultivate or utilize vacant, fallow and virgin land after applying to the Central Committee for the management of Vacant, fallow and Virgin Lands.⁶ Such functions must be carried out with the approval of the MIC.⁷ With respect to the period, the Central Committee may, in the agricultural business, for perennial plant and orchard, permit not exceeding 30 years commencing from the year of permission; for seasonal crops, permit so long as there is no breach of the stipulated terms and conditions and for the breeding business not exceeding 30 years commencing from the year of permission. Moreover, such period can extend not exceeding 30 years after expiration.⁸ Therefore, such two laws are not consistent with each other and it may face difficulty in making investments.

Finally, in MIL, since there are no provisions regarding to acquiring land areas by MIC, the foreign investors face difficulty in finding the appropriate land. Furthermore, rather than allowing the land to be used, MIC may only assess the proposals from the investors. Since foreign investors face difficulty in communication with the Ministry in lending the land from the Government Ministry as well as in lending the private lands, as private landowners desire to lend short-term with high rental rates rather than long-term leasing and due to the limitation upon long-term leasing in some areas, less guarantee relating to carrying out the business may be caused. The allowance land areas have overlapping due to the decisions from different organizations. Besides, when the investors question about the conditions and land rent rate, the MIC may not give the accurate answers.⁹ With respect to these matters, the foreign investors hesitate to make investments in the country. Thus, it is important to amend the laws as a response

¹ The Nation, (2023), “Investors warned on Myanmar Land” <https://www.nationthailand.com/business/30200556>.

² Alvin Hoi-Chun Hung, (2022) “Land Laws and Foreign Direct Investment in Myanmar: Why American Investors Need to Reconsider the Customary Rights of Smallholder Farmers” *Journal of Law and Commerce*, Vol-40, No.2, p-223.

³ Rule 135, The Myanmar Investment Rules, 2017.

⁴ Section 50(b)(c), Myanmar Investment Law, 2016.

⁵ Section 79, Special Economic Zones Law, 2014.

⁶ Section 4,5, The Vacant, Fallow and Virgin Lands Management Law, 2012.

⁷ Rule 16(c), The Vacant, Fallow and Virgin Lands Management Rules, 2012.

⁸ Section 11, The Vacant, Fallow and Virgin Lands Management Law, 2012.

⁹ မောင်ဦးကာ၊ (၂၀၂၁) “နိုင်ငံခြားရင်းနှီးမြှုပ်နှံမှုနှင့် မြေအခက်အခဲ” *MIFER BULLETIN*, p-3-7.

to the large concerns upon these land issues which have a negative impact on the development in Myanmar in order to Foster, Secure and Well-defined Land Rights.

Conclusion

Foreign Direct Investments is an important contribution to the development of Myanmar's agricultural sector. It is a critical source in filling the needs in improving seed quality, better agronomic practices, optimizing inputs and the integration of past management which are crucial for agricultural productivity. Thus, FDI is a crucial determinant of agricultural production from technology transfer and skills that benefit Myanmar's farmers. Moreover, such investments in agriculture have become increasing scope and scale in the aspects of reducing hunger and promoting food security. Together with population growth, rising incomes and urbanization increase the demand for food, investment in agriculture is essential and critical. Better governance on land tenure is also positively associated in the productive use of land. However, in Myanmar, because of the numerous land issues and the weak administration in land registration and allowing to cultivate and utilize the various lands, it can lead to the deterrence of foreign investors to make investments. Restructuring in the land policies in matters of the land lease such as rental rate, land lease term for private lands, in overlapping land areas for land use allowance and effective mapping system are necessary. Moreover, provisions relating to specific definitions for Vacant and Fallow lands, consistent land lease terms between Myanmar Investment Law and the Vacant, Fallow and Virgin Lands Management Law are the urgent need in the sector. By providing secure land rights, FDI in the agricultural sector will be enhanced which has medium-to long-term positive effects on Myanmar agriculture and also in achieving sustainable growth and significant reduction in poverty.

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