Land Governance and Legal System Realities in the Myanmar Context

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Responsible Land Based Investments in the Agriculture Sector; Due Diligence in the Myanmar Context

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Background Introduction

• Currently: USAID Land Tenure Project;

• 2012: Analysis of the new Farmland and Vacant, Fallow, Virgin Land Law;

• Also looked at broader legal framework, and actual land governance issues on the ground;

• Similar issues to other countries in region, but much more complicated in many ways.

• Land Governance Issues = Risk (how to minimize)
Legal and Regulatory Framework

- Poorly harmonized and often antiquated;

- i.e. Land Acquisition Act of 1894;

- Difficult to determine what laws or specific provisions are still in effect and valid;

- Farmland Law & Vacant, Fallow & Virgin Land Laws (2012) establish private immovable property rights. Controversy on content and with implementation;

- Need for a National Land Law.
Registration of Land Tenure

- Deed registration system established under British colonial rule, with links to Burmese traditional land registration systems;
- In most cases, not properly maintained or updated since the 1960s;
- Where land administration systems exist, often bypassed to to costs involved ($ and time);
- Informal land market, particularly in “hot” areas;
- Often difficult to determine who has legitimate land tenure claims;
- Cannot trust existing land records, must take time to ground truth to reduce risk.
Customary or Informal Tenure Arrangements

• In many areas there are no land administration systems in place for recognition, protection and registration of land tenure rights.
• Leaves communities, households and individuals with wide variety of informal or customary tenure arrangements (geographic and culturally specific);
• Highly vulnerable to loss of land tenure rights important for local livelihoods.
• Presents potential social, political and investment risks.
• Important for the ongoing peace process.
• Again, very important to ground truth, conduct land tenure assessments.
Public Access to Accurate Land Information

- Governance architecture is fractured, often not clear, with overlaps of authority.
- Creates issues with who to approach for information on land.
- Various ministries and departments are often reluctant to share information freely.
- Information is often not in an easily accessible format, usually paper based.
- Accuracy is issue.
- Makes informed decision making processes difficult, can lead to land conflicts and increases investment risks.
Land Dispute Resolution Realities

• Combination of both long standing historic and more recent land disputes;

• No effective mechanisms in place to resolve disputes, often handled in an ad hoc manner;

• Administrative decisions relating to land often cannot be appealed to the judiciary, and unlikely judiciary would have capacity to address the current backload;

• Need for investors to consider putting in place alternative land dispute resolution mechanisms.
Public Participation in Decision Making Process

• Limited, if any opportunity for public participation in administrative decisions relating to land.

• Decisions can often have a direct impact on local livelihoods, but no opportunity to be heard or consulted.

• Investors should create opportunities for meaningful inclusive public participation that is gender and culturally sensitive, which will help to reduce likelihood of conflict associated with an investment.
Difficult Situation, Not Impossible

- Current land governance realities presents unique risks for investors and local populations.

- Due diligence mechanisms need to be tailored to the unique set of circumstances in Myanmar; work with local civil society.

- Changes are being made; under construction.

- Government is committed to addressing issues: National Land Use Policy; EIA rules; investment laws; etc.

- Private sector has an important role to play in improving land governance in the country, and improving lives of local communities.
THANK YOU