AUSTRALIA-MYANMAR
CHAMBER OF COMMERCE

Responsible Investment Working Group

Position Paper: Incentivising Shared Value

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Australia-Myanmar Chamber of Commerce

The Chamber seeks to:

- Support Australian businesses seeking to enter and explore opportunities in Myanmar;
- Promote responsible investment in Myanmar by sharing Australian best practice; and
- Assist in capacity building in the private and public sectors in Myanmar.

Since 2013, the Chamber's key initiatives have included:

- Leading business delegations and hosting visits between Myanmar and Australian private sector and industry bodies;
- Capacity building seminars and networking events with the Myanmar business community;
- Hosting the President of Myanmar with the Australian business community at a dinner in Brisbane during the G20;
- Facilitating an Australian Government supported funded Skills Swap program that allows Australian companies to host Myanmar nationals in Australia;
- Leading an industry working group and preparing a policy submission to the Myanmar Government on the Mining Law and regulations;
- Organising Good Corporate Governance sector-specific seminars
- Launching the inaugural Women in Business and Leadership Development Gala Dinner and Conference in Myanmar.

To learn more about the Chamber please contact us at info@a-mcc.com

Responsible Investment Working Group

The Responsible Investment Working Group is a initiative led by the Chamber. It seeks to help address how the private sector can work with stakeholders to promote responsible business i.e. business activities that work for the long-term interests of Myanmar and all its people. It is co-chaired by Verity Lomax, (the Chamber) and Vicky Bowman, Director of the Myanmar Centre for Responsible Business (MCRB). Its membership is drawn from leaders from prominent Australian and Myanmar businesses and non-governmental organisations. In addition to Creating Shared Value, the Working Group's agenda covers topics such as Anti-Corruption, Human Rights, Labour Rights and the Environment, which comprise the elements of the UN Global Compact. Its key objectives are:

a) To source best practice case studies;
b) To develop practical and innovative business solutions;
c) To develop relationships between the corporate and NGO sector;
d) To provide guidance on responsible investment to the Myanmar Government and wider business community.

RESPONSIBLE INVESTMENT WORKING GROUP

CORPORATE SECTOR

- Coffey
- Woodside
- Roche
- Cardno
- Valentis
- Montrose
- MPRL E&P
- Diamond Intellegence
- KBZ Group
- AIA [Insurance]

NGOs

- MCRB (Co-Chair)
- CARE
- Save The Children
- Australian Red Cross
- World Vision
- AVI

GOVERNMENT

- Ex-Officio Australian Embassy representative

Figure 1: Responsible Investment Working Group Members

Myanmar Centre for Responsible Business

The Myanmar Centre for Responsible Business (MCRB), a Yangon-based initiative funded by the governments of UK, Denmark, Norway, Switzerland, Netherlands and Ireland, based on a collaboration between The Danish Institute for Human Rights and the UK-based Institute for Human Rights and Business www.mcrb.org.mm.

The Centre was established in 2013 to provide an effective and legitimate platform for the creation of knowledge, capacity and dialogue concerning responsible business in Myanmar, based on local needs and international standards, which results in more responsible business practices. It aims to be a neutral platform for working with businesses, civil society and government.

Message from the Co-Chairs

In August 2015 when floods struck Myanmar, the Australia-Myanmar Chamber of Commerce hosted an event in Yangon with member companies and leading NGOs to discuss how businesses in Myanmar could support flood relief and disaster preparedness. The discussion ranged beyond the immediate need for humanitarian support to a debate about the role of business in sustainable economic development. From this dialogue emerged the Australia-Myanmar Chamber of Commerce Responsible Investment Working Group (the Working Group).

The purpose of the Working Group is to discuss what responsible business means in Myanmar and how companies can work with stakeholders, including the Myanmar government, to promote it. However it reflects more than just a business view - it's a genuine partnership between business and NGOs, which reflects the wider value of collaborating to create shared value.

More and more, governments around the world are encouraging partnership between the private and NGO sectors, which is why we also have representation from the Australian Government. We understand that each sector brings different knowledge, skills and perspectives which ultimately increases our ability to have a positive impact.

This partnership is reflected in our role as Co-Chairs of the Working Group. With a network of almost 100 members, the Chamber can act as a facilitator of best practice standards, and serve as a voice for the business community to share their knowledge for the betterment of the country. The MCRB provides responsible business conduct expertise and an in-depth understanding of the different challenges faced in various industries across Myanmar. This partnership is pivotal to our success, as both organisations believe progress in responsible investment is vital to the future of Myanmar; at this critical juncture in the country's history.

It is our hope that this is the beginning of a conversation not only with government but with other Chambers' of Commerce and industry leaders, with civil society and other stakeholders who are currently or have potential to contribute to Myanmar's development through responsible investment. Our engagement with stakeholders thus far has indicated significant interest and goodwill on the part of business to maximise the positive impact investment can have in Myanmar. This Paper acts as a platform for the Australia-Myanmar Chamber of Commerce to widen the dialogue over the coming months to ensure the diverse but important views across the spectrum are captured and understood.

It has been a privilege working with the members of the Working Group, who together bring a wealth of knowledge and experience that has guided us to arrive at the conclusions in the following report. We thank each member for their dedication and commitment.

V Lomax.

Verity Lomax
CEO
Australia-Myanmar Chamber of Commerce

Vicky Bowman

Vicky Bowman
Director
MCRB

The Responsible Investment Working Group is committed to support the Government in implementing its objectives to promote responsible investment and sustainable economic development.

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Chief Representative
AIA Group

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Coffey

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Recommendations

Drawing on the experience of the Working Group and lessons learned, the Australia-Myanmar Chamber of Commerce Responsible Investment Working Group makes the following recommendations to the Myanmar Government and other interested parties on how to incentivise businesses in Myanmar to invest responsibly and 'Create Shared Value' (CSV).

Recommendations to the Myanmar Government

- Strengthen the implementation and enforcement of environmental, social and governance regulation, since this is both necessary to ensure responsible business conduct, and can support innovation.
- Actively encourage companies – both foreign and Myanmar - to communicate how they invest responsibly, including any company commitments to relevant international standards and initiatives.
- Use the opportunity of the reconstitution of a new Myanmar Investment Commission (MIC) to review how best to encourage companies to invest responsibly and create shared value. Such a review could include:
    - Re-evaluating the previous approach (which was focussed on spending targets)
    - Launching a national debate and consultation within government and with companies, State Owned Enterprises, Parliament and civil society, on how to achieve promote responsible investment and creation of 'shared value'
    - Considering the pros and cons of incentives such as public recognition, awards and rankings; tax measures; grants; disclosure/reporting requirements; and inclusion of social and environmental criteria in government procurement and contracting
- Once the new Myanmar Investment Law is passed, adopt policies and guidance on a new Myanmar strategic approach to encouraging responsible investment.

Recommendation to Businesses

- Create shared value for Myanmar citizens, including through:
    - Drawing on experience from elsewhere and engagement with other stakeholders who are working on relevant social and environmental issues, including NGOs
    - Reconceiving products and markets to address Myanmar's development needs and
    - Building the capacity of, and linkages with, Myanmar Small to Medium Enterprises (SMEs).

Recommendations to NGOs and Civil Society

- Identify and pursue partnerships with business which could address Myanmar's development challenges and create shared value for communities who may be affected by business activities, as well as other vulnerable and under-served groups.

1. The Current Context

"As sanctions are lifted, investment should be responsible and help the process of democratisation." - Daw Aung San Suu Kyi, Leader of the National League for Democracy

The focus of the Responsible Investment Working Group in the first half of 2016 has been on incentivising 'Shared Value' and developing relationships between the corporate and NGO sector that could lead to long-term partnerships. The Group has sourced and discussed Australian and Myanmar case studies on these issues that can provide inspiration for businesses in Myanmar, some of which are included in this report. The Group has also shared experience on business integrity/combating corruption, and will be focussing next on business and human rights.

The new government is committed to encouraging responsible investment and will want to see the private sector play its role in assisting Myanmar in addressing poverty and other investment challenges. Now is therefore an opportunity to review how the Myanmar Government, and in particular the new Myanmar Investment Commission, can incentivise the wider business community to invest responsibly and 'Create Shared Value'.

A new Myanmar Investment Law is planned in which responsible investment is prominent. Chapter 2, Article 3[1] sets out the draft Law's objectives:

a) To promote environmentally and socially sustainable economic growth in the interests of the Union and its citizens
b) To ensure Investors and their investments are protected
c) To promote responsible business
d) To create employment opportunities for the citizens of the Union
e) To develop human resources
f) To promote advancement of the industry and technology sectors
g) To promote development of the whole country in various ways including improvement of basic infrastructure
h) To encourage the emergence of business and investments which meet international standards

Furthermore, Chapter 6, Section 20 gives the Myanmar Investment Commission the responsibility 'To advise Union Ministries, State and Regional Governments on policies concerning encouragement of responsible investment, and investment which enables the realization of economic development plans' and 'To issue policy guidance or recommendations to officers of the Commission'.

The Australian-Myanmar Chamber of Commerce has developed this paper to support the new Myanmar Investment Commission in taking its responsible investment mandate forward.

2. Corporate Social Responsibility (CSR)

What is CSR?

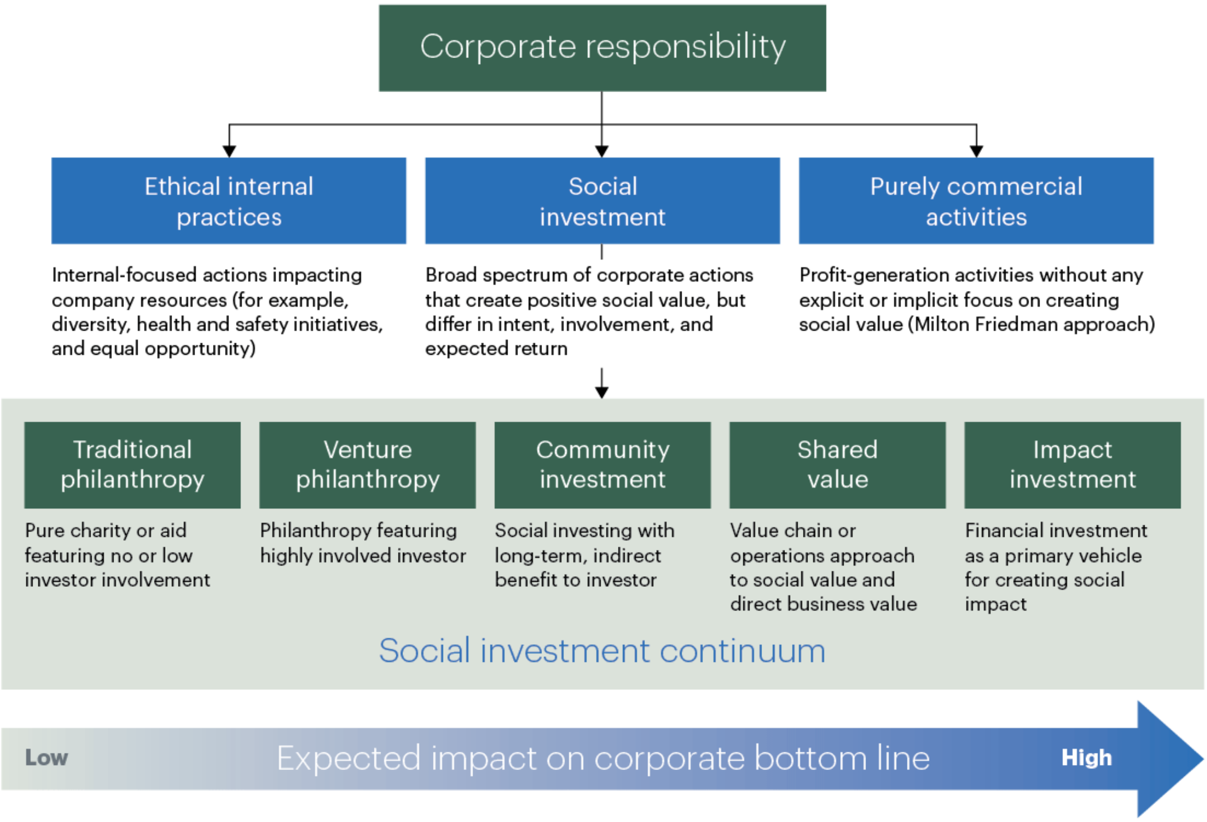
The definition and understanding of Corporate Social Responsibility (CSR) is evolving globally. There is an active debate about what CSR is, and its role in enhancing reputation, reducing stakeholder risk, and contributing to earning a social licence to operate. There is also a discussion about whether and how CSR creates value for shareholders and other stakeholders.

Some (particularly in Asia, including Myanmar companies) approach CSR as corporate philanthropy, often unconnected to the core business. This can include the business establishing a grant-giving Foundation, or employee volunteering. Some now characterise this as "CSR 1.0", which has been described as "a vehicle for companies to establish relationships with communities, channel philanthropic contributions and manage their image". [2]

The CSR concept has evolved in the last decade into what is sometimes referred to as "CSR 2.0". The EU in 2011 defined corporate social responsibility as "the responsibility of enterprises for their impacts on society".[3] This positions it as a strategy integrated into all functions of the company, which can create and protect value for both the company and society. Under this wider approach, CSR can incorporate responsible business conduct (RBC), including legal compliance, as well as internal policies and codes of conduct which go beyond the law. This can include the development of business strategies and investments that contribute to 'the bottom line' and respond to social needs (i.e. 'Create Shared Value' - see below).

Because of the confusion surrounding the definition of CSR, many major companies now avoid it. Instead they use terms such as 'responsible business conduct', 'social performance', 'community investment' 'corporate citizenship', 'sustainability' or 'Creating Shared Value'. As Thomas Thomas, CEO of the ASEAN-CSR Network, recently commented, "*there are some adulterations to the word CSR so we try to use 'responsible business conduct'. Because businesses don't mind if they're not called responsible, but nobody wants to be called irresponsible*".[4]

Corporate responsibility framework



Source: A.T. Kearney analysis

Michael Shafer, Director of the Warm Heart Foundation, has sought to define CSR as something hard and core to company operations:

"CSR needs to move from corporate philanthropy and governance and all of the soft, peripheral parts of the company to the heart of the company - business development.

What do forward-looking companies focus on? Supply (how much, efficiency of access, future security); cost reduction (production, distribution, waste disposal, human capital, access to trained manpower); demand (opening new markets); and customers (brand image, loyalty, good will). And here is where forward-looking companies invest, because investments here are investments in future profitability.

This is also where companies should be conducting CSR, CSR that is investment in their own futures and in the futures of communities."[5]

In the same vein, in 2011, Professors Mark Kramer and Michael Porter of Harvard University proposed a version of this approach which they called "Creating Shared Value"[6]. This focuses on social and community investment that generates value for both the company and the community. In this management strategy, companies identify and address societal problems that intersect with their business. This creates measurable business value and goodwill with local governments, organisations, and people. This allows companies to address societal issues in a more sustainable way, since – as demonstrated in the Unilever case study below - such programmes also create value for the company and are not seen as separate philanthropic funds which need replenishment and may be cut when money is tight.

Unilever's Sustainability Living Plan – Soap for Everyone

In 2002, to help address health problems caused by poor hygiene in poor rural areas of India, Unilever introduced an 18-gram bar of Lifebuoy soap—enough for one person to wash their hands once a day for 10 weeks—for a price of two rupees (about USD 0.03). This affordable price point was combined with a public education and outreach campaign targeted within the eight Indian states where deaths from diarrhoea-related diseases were highest and soap sales were lowest.

Only two years after the project was started, Lifebuoy sales had grown by 20 percent in India. Ten years later, Unilever introduced the Lifebuoy + hygiene campaign in 16 countries across Asia, Africa and Latin America, including in Myanmar. This has allowed Unilever to reap double-digit sales growth year over year, while also improving the hygiene of one billion consumers by promoting the benefits of hand washing with soap.

Social Enterprise

Social Enterprises may be considered an extreme example of the "Creating Shared Value" approach. In a social enterprise, a business is established to address a social need, and profits are reinvested into the business (see Proximity Designs case study below).

Such investments may be funded or kickstarted by 'Venture Philanthropy' or Social Impact Funds, or by mainstream businesses looking to create shared value through such investments.

Many such funds are showing interest in Myanmar, including members of Asian Venture Philanthropy Network.[7] Initiatives such as Social Impact Myanmar,[8] and the British Council,[9] are working to training social entrepreneurs to develop their business models and access those funds.

Proximity Designs – Real Impact with Real Proximity to Customers

Proximity Designs is an award-winning Myanmar social enterprise designing products and services that help Myanmar rural families achieve their goals. One of its main products are portable and affordable irrigation tools such as the simple foot pump which replaced the back-breaking and time-consuming work of hauling water from the well to the field with heavy sprinkler cans.

Proximity's mantra is to be in the field, get close to the people for whom they are designing, use ethnography to locate "unmet needs", and improve implementation through ongoing product testing. They have a vast country-wide network of field staff that are often working one-on-one with farmers or villages, helping them implement the products they've developed, and all the while sending a constant stream of feedback to the home office in Yangon. Proximity Designs measures its return by using metrics such as income before and after intervention, impact per donor dollar, and even the average time it takes to retrieve water.

Since its inception in 2004, Proximity's sales have increased year on year and, through the sales of products and the provisions of services, Proximity have helped over 486,500 people increase their household incomes and improve their quality of life.

CSR in Myanmar

Myanmar has a strong tradition of philanthropy, driven at least in part by the dominant Buddhist faith. This has led it to the Charities Aid Foundation identifying Myanmar as the most generous country in the world.[10] This generosity includes significant corporate philanthropy by generations of Myanmar businesses, i.e. "CSR 1.0".

There are no clear Myanmar legal provisions or policy guidance on 'CSR', or wider general obligations concerning sustainability and responsible business conduct. Some members of the previous Myanmar Investment Commission called for 'CSR 2.0' to be a part of the business strategy for all those seeking MIC permits, with a particular emphasis on foreign investors. To incentivise this, the former Commission focussed particularly on encouraging companies to set spending targets of '1 to 5 percent of pre-tax profits on CSR'.[11] Companies were also encouraged to sign up to the UN Global Compact.

This spending-driven approach was debated privately both inside and outside the Commission. It has been variably interpreted in practice. Foreign investors with established global approaches – including commitments to international initiatives such as the Global Compact - generally informed the Commission that they would apply them to their Myanmar investments. However many were reluctant to set a Myanmar-specific spending target. Smaller companies made commitments in response to MIC pressure to do so, but most have not developed these in practice, not least as few are at a stage of making profits.

3. How Can Businesses Create Shared Value?

"Most companies remain stuck in a 'social responsibility' mind-set in which societal issues are at the periphery, not the core…Shared value is not social responsibility, philanthropy or even sustainability, but a new way to achieve economic success" – Professors Michael Porter and Mark Kramer

The Shared Value framework goes beyond compliance, and beyond traditional philanthropic and spending-based models of CSR. Creating Shared Value (CSV) helps the company to gain and retain its 'social licence to operate' with stakeholders. This is important as a recent interview by McKinsey & Company estimated that up to 30 percent of the value of any company is related to the goodwill the company has with governments and the public.[12]

Figure 2: CSR vs CSV (source: Harvard Business School)

Rather than only focusing on mitigating harm within existing company operations, "Shared Value" strategies:

- engage the scale and innovation of companies; and
- foster relationships between businesses, development organisations, philanthropists and governments to address societal problems.

Companies can create shared value by creating societal value. There are at least three ways to do this: redefining productivity in the value chain; reconceiving products and markets; and local cluster development. These are explored in more detail below.

1. Redefining Productivity in the Value Chain

Businesses can create shared value by increasing the productivity of the company or its suppliers while addressing the social and environmental constraints in the value chain.

One of the most important ways large businesses can do this is to develop local Small and Medium-Sized Enterprises (SMEs) as suppliers, sometimes called 'developing business linkages'[13]. This serves to keep jobs and investment and business relationships local to the community, and benefit those who may otherwise feel only the negative impacts of investment, particularly in the extractives sector.

There is ample scope for this in Myanmar, as SMEs contribute to approximately 90 percent of total enterprises. Further, an estimated 70 percent of the total workforce is employed by SMEs.

In Practice: Building Markets Connects SMEs to Heineken

To promote responsible business practice, Heineken has partnered with Building Markets since June 2015 to procure services from local SME contractors in Myanmar. This is part of Heineken's commitment to engage with local stakeholders, create jobs, and maximise the positive impact for communities living around the brewery.

The project aims to build local capacity and establish best practices in the marketplace by exposing local contractors to higher standards of procurement, and helping SMEs produce competitive bids that fully integrate social commitments and quality key performance indicators (KPIs).

Building Markets led the search for SMEs that met Heineken's needs and shared the company's goal of developing the local community. This involved a rigorous, transparent and fair tendering process where the technical and social aspects of each bid proposal, such as the SME's level of local recruitment and integration of corporate social responsibility policies, were highly valued.

Building Markets works closely with the selected contractors to ensure they meet their contractual commitments. These include compliance with labour laws, localisation of recruitment and remuneration, and respect for Occupational Health and Safety (OHS) policies. They help train the contractors , funded by Heineken. This approach bolsters the technical and managerial skills of the SME contractors to ensure they meet Heineken's needs through a stronger workforce and achieves sustainable growth.

2. Reconceiving Products and Markets

Businesses can create shared value by redefining markets in terms of unmet needs or social problems and developing profitable products or services that remedy these conditions.

In practice: KBZ Bank's SME Loan - Reaching a New Market

According to a Myanmar Business Survey conducted by the OECD and UNESCAP, access to finance from formal financial institutions remains one of the major challenges for SMEs in Myanmar. To solve this problem and to tap into the SME sector (which reportedly makes up 90 percent of total enterprises in Myanmar), KBZ Bank created the SME loan with greater flexibility to suit the SME market.

One of its SME customers, Coffee Genius, a specialty coffee producer with 30 staff members, is a social enterprise that contributes to support local education, healthcare and forestry efforts. Coffee Genius noted that it accepted this loan because they were able to lend over a three-year period rather than the usual one-year period, and at a lower interest rate of 13 percent.

The added working capital from the KBZ loan had positive flow-on effects for Coffee Genius where they were able to purchase new machinery for processing their coffee and had increased funds to approach new farmers during harvest time. This ensured that Coffee Genius had a healthy sales income to repay the loan.

In practice: AIA Vitality Program – Making Society Healthier

AIA, a life insurance group, noticed an increased number of claims made because of chronic diseases that affect a person's ability to work, causing financial strain and impacting on their quality of life. To help address this issue, AIA launched the world's largest health and wellness program – Vitality- designed by academics and health practitioners to encourage people to take up healthy living.

Eligible people who purchase AIA's life insurance policy can join the AIA Vitality program, where they complete health and fitness assessments and earn points for undertaking healthy activities such as going to the gym. In return, the members receive lower premiums on their life insurance, and rewards from partner organisations such as discounts on shopping and travel.

Over 5 million people across five countries – South Africa, UK, USA, China and Singapore – are being motivated every day to lead healthier lives through Vitality. This has led to improved clinical outcomes, reduced healthcare costs, lower hospital admissions, increased productivity at work and improved mortality rates. This benefits AIA through increased profit margins by lower claim rates and increased customer retention rates. Moreover, society wins because there is a healthy society with increased productivity, and there is less of a healthcare burden on the government.

At the time of writing this report, AIA confirmed they are currently revising this program to improve its effectiveness and scalability.

3. Local Cluster Development

Clusters are agglomerations of companies and other organisations engaged in the production of a set of related goods and services – e.g. the firms that design shoes, produce the rubber sole, develop the machinery needed to assemble the shoes, and the training institutions that prepared skilled workers. The businesses and organisations that form clusters interact and engage in cooperative initiatives, which allow them to become more competitive than they would have been if they operated individually. By working together, sharing some of their resources, and interacting with different types of public and private sector organisations, even very small enterprises can become globally competitive.

Unlike 'redefining productivity' and 'reconceiving products and markets' which are usually both led by businesses, cluster development can benefit from active government encouragement and policies.

The Myanmar garment industry offers potential for local cluster development. In their 10 year strategic plan, the Myanmar Garment Manufacturers Association (MGMA) recommended that to improve the competitive advantage of the Myanmar garments industry, a local supply chain should be developed where local suppliers are encouraged to design their products specifically to meet the needs of the industry.[14]

In practice: Taiwan and India – ICT Clusters Creating Success

The Taiwanese Information and Communications Technologies (ICT) electronic manufacturing cluster emerged due to the first wave of outsourcing by American producers during the 1980s. Moreover, the Indian ICT cluster developed when Silicon Valley firms began outsourcing programming and other services to reduce their costs during the 1990s. Both of these events allowed the clusters to attract capital and skills, support innovation and to facilitate and coordinate economies, which helped businesses overcome financial constraints.

As of 2012, several of the global companies that dominate the ICT industry originated in emerging market clusters: the Taiwanese firm Foxconn, which produces the likes of the Apple iPhone and iPad, is one of the largest players in the industry, employing an estimated 800,000 people in 2010; the Indian firms Tata Consulting Services, Wipro and Infosys, have become some of the top providers of outsourced information technology services in the world.

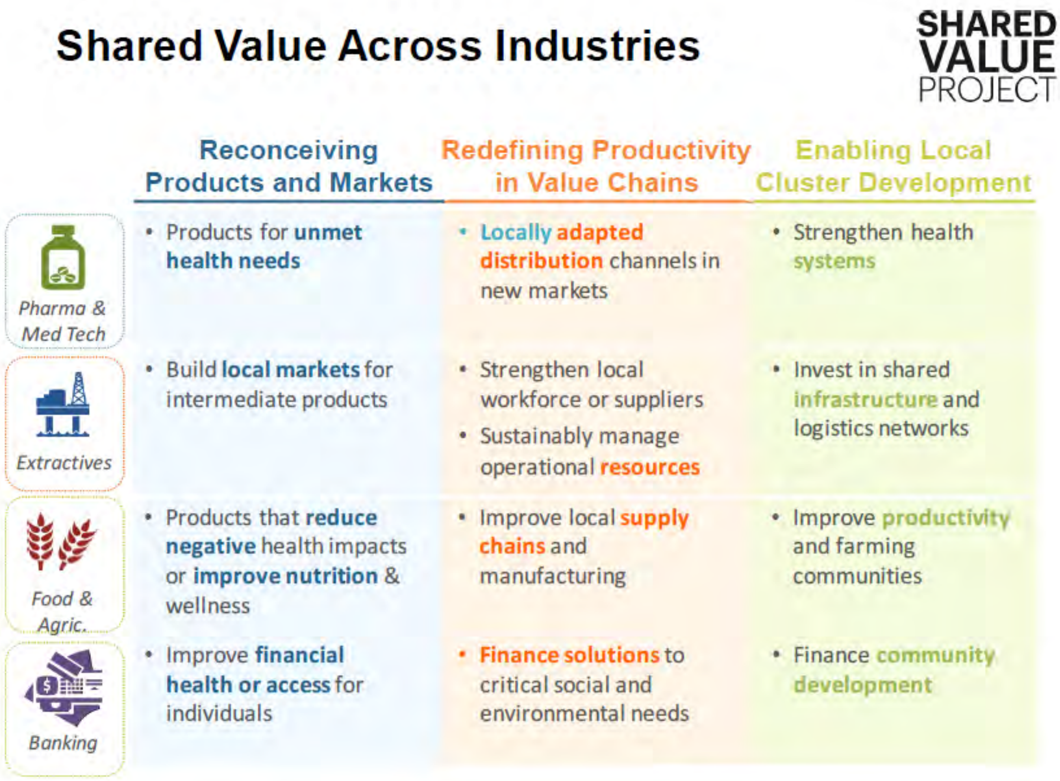


Figure 3: Creating Shared Value Across Industries (Source: Shared Value Project)

Active strategies to create shared value may not always make sense for a company. The business, regulatory, political or institutional context may not be favourable. There may not be an active civil society/NGO sector, free media, democratic institutions and an appropriate legal framework, all of which can support business engagement with other stakeholders to create shared value.

Smaller businesses without departments dedicated to community engagement or innovation may not have the resources and knowledge to engage and adapt business practices. They may find it easier just to 'write a cheque to charity' as one member of the Working Group observed. However where companies do lack internal human resources – or even where they don't - partnerships with NGOs may offer both new ideas, and additional implementation resources.

Another challenge is measuring how and for whom shared value was created. Companies may not have the resources or business interest to track progress on social indicators, or be able to link increased social performance to increased economic value for the business. Social impacts may be too long-term for a company to track, for example the health impacts of a food product with reduced sugar and saturated fat. However consulting companies, such as FSG,[15] have developed measuring tools related specifically to "Shared Value".

4. The Role of Government in Encouraging Responsible Investment, CSR and CSV

The core role of government is to regulate for environmental and social protection, enforce those laws, and to support an enabling investment climate, including combating corruption. For Myanmar, this should remain the top priority.

Example: Myanmar's Garment Industry – Supporting a Better Legislative Environment

According to the International Labour Organisation (ILO), Myanmar's monthly minimum wage in the garment industry was USD 84.50 in 2014. This means Myanmar offers some of the cheapest labour costs in the world combined with easy access to Asian markets; both of which are attractive features for corporations looking to source low-cost, ready-made garments for export.

In the last few years, top Western clothing retailers such as Gap, H&M, Marks and Spencer Group PLC and Primark Stores Ltd. started to integrate Myanmar into their supply network. However, many of the Western organisations were acutely aware of their reputation risks in the high-profile garment industry. In a voluntary submission to the US State Department in 2014, Gap noted Myanmar's "limited rule of law and underdeveloped regulatory regime" created "potential human-rights and business risks".

As a result, such organisations, particularly Gap and H&M, have voiced their support for improved working conditions, expressing concerns over issues such as forced labour, unfair overtime demands and unpermitted subcontracting, while backing the idea of a national minimum wage. In 2015, Myanmar set a minimum wage of 3,600 kyat (roughly USD 3) per day for an eight-hour work day.

'Beyond compliance', there is no consensus internationally about the role which governments should play in promoting responsible business conduct and encouraging business to create shared value. This debate is closely tied to the question of whether such activities should be compulsory – through regulation - or voluntary. Any company-determined policies that go beyond the law are voluntary. However, where they form public commitments, they are morally binding.

Companies generally argue that the compulsory nature of their contribution to social development comes in the form of the taxes they pay which can be used by government to invest in social services such as education and health.

Governments can also consider how – through regulation, guidance or other initiatives and incentives - they can encourage and enable companies to go further. This section examines the experience and practices of different governments within the Asian region which the Myanmar Government could reflect on when considering how best to encourage businesses to go 'beyond compliance' and contribute more actively to Myanmar's economic and social development.

4.1. Australia's Aid Policy Position

Governments who are active development partners have the opportunity to encourage the creation of shared value through their development aid budgets.

For the first time, the Australian Government's development policies have clearly identified the private sector as an essential partner to achieving sustainable development outcomes. This reflects the growing consensus – reiterated by the Australian Minister for Foreign Affairs Julie Bishop in her "Ministerial Statement on Engaging the Private Sector in Aid and Development"[16] - that a more engaged private sector is essential to driving sustainable economic growth and reducing poverty in developing countries. The concept of "Shared Value" underpins this approach.

The Australian aid program recognises that the private sector has the means and the motivation to contribute to development outcomes as part of their core business. Likewise, the Australian Government is able to draw on its deep knowledge of the developing country context and emerging market opportunities to support businesses realise the considerable shared value to be gained for all stakeholders from actively pursuing a social impact agenda.

In Myanmar, the Australian Government is currently collaborating and partnering with the private sector and NGOs to implement sustainable aid solutions that tackle development challenges while delivering commercial returns. In doing so, the Australian Government aims to create commercially sustainable solutions to poverty, which are essential to the creation of lasting prosperity for Myanmar. Further information about the Australian Government's aid programmes can be found in Section 4.6.

4.2. Mandatory 'CSR'

Some governments such as Japan and Australia have opted for light-touch legislation relating to responsible business conduct. For example, Australia has enacted legislation requiring companies to recognise the interests of stakeholders as well as shareholders. These include laws covering minimum rates of pay, anti-discrimination, equal opportunity, anti-competition, and misleading and deceptive conduct.

However some Asian countries have either implemented or considered general legislation that requires companies to implement "CSR". India's approach is detailed below. Indonesia has legislated that natural-resource based firms must allocate a CSR budget, while the Philippines' *Corporate Social Responsibility Bill* encourages companies to "observe CSR in the operation of their business in the country" (this Bill has not yet passed into law).[17] In countries where broad CSR legislation has been implemented, businesses have called for greater clarity concerning compliance, particularly when it concerns spending.[18]

India's Mandatory CSR Spending

After a long public debate lasting many years, India has recently pioneered mandatory CSR spending legislation. India's *Companies Act 2013* (the Act) makes it mandatory for certain companies to spend 2 percent of their average net profit from the past 3 years on 'CSR activities', which are defined by the Act. The Act applies to both Indian companies and foreign companies with a branch or office in India, where the company has a net worth of at least INR 500 crore; turnover of at least INR 1000 crore; or net profits of at least INR 5 crore.

The Federation of Indian Chambers and Commerce Industries (FICCI) together with Accenture, a consulting firm, released a report predicting that many businesses will gradually embrace the broader opportunities offered by the mandatory CSR spending legislation. These opportunities include mobilising substantial funds for social causes in neglected areas of national interest, building industry friendly talent pools, and encouraging game-changing innovation.

However, the legislation has also led to some problems:

- By specifying the types of activities that qualify as 'CSR' and by stipulating that any activities that benefit only the employees of a company are not to be considered CSR activities, the Act makes it difficult for companies to invest in more innovative "Shared Value" projects. By definition, "Shared Value" activities are closely related to core business activity and therefore not easily identified as standalone spending.
- 'CSR activities' are restrictively defined around problems (e.g. eradicating hunger, combating HIV etc) rather than linked to the potential positive or negative social impact of the business.
- The focus on CSR spending can encourage 'green-washing', tokenism or tick-box behaviour in which the company continues to create negative social impacts but highlights impressive spending totals; spending can also be wasteful on poorly designed projects intended to get the cash out the door.
- A focus on CSR spending can also create governance problems, including the potential for corruption where funds are directed towards influencing or assisting political decision-makers; financial data may also be manipulated to meet the spending target.

Linking the mandatory CSR spending to profits may discourage companies from contributing to community development at an early investment stage when it is making no profits. Some activities, such as in the extractives industry, may never lead to the development of profitable projects until well into the future.

A fuller analysis of the Indian experience is included in **Appendix I**, including the September 2015 recommendations of the Ministry of Corporate Affairs' High Level Committee suggesting a number of measures to improve the implementation of the Act.

4.3 Tax Incentives

At face value, tax incentives appear to go against the fundamental definition of Shared Value, which includes activities that are financially attractive for the business involved. However, these examples demonstrate that governments can use their tax policy to 'nudge' companies. Tax incentives/reductions for energy efficiency, such as replacing older equipment with more efficient equipment and technology, can be considered a form of incentive for responsible business conduct.

Tax incentives can also target and increase the developmental impact of private sector investment and operations without adding to businesses' tax burden. This is particularly important for new development areas or entrepreneurial organisations where the risk of initial investment is high. The extent to which these incentives have made a difference in the behaviour of companies varies greatly according to the "culture of responsibility" within each country as well as the value of the actual financial incentive. Furthermore, each idea needs careful consideration of what potential market distortions the tax incentive could introduce. It also needs careful policing to ensure that tax deductions are not abused, for example through 'charitable donations' which are genuine charities.

Japan

In Japan, businesses can receive a tax exemption equivalent to 7 percent of the acquisition costs of energy efficient equipment.

Papua New Guinea

Tax credits and exemptions can also be applied to support enterprise. In Papua New Guinea where, as of 2002, the government had a tax-credit policy that allowed companies and local governments to undertake local infrastructure and capital projects worth up to 35 percent of a company's tax bill.[19] The local government would set the priorities, including identifying and prioritising the projects and setting local procurement requirements.

Australia

In Australia, the Forrest Review (a review intended to help end the disparity between Indigenous Australians and non-Indigenous Australians) recommended that tax-free status be provided to new and innovative Indigenous commercial enterprises that provide training grounds and created real jobs for the most disadvantaged Indigenous job seekers. This recommendation was based on the idea that tax breaks will assist entrepreneurial organisations in their ability to take risks, together with their long-term planning and investments. The Australian Government has only begun implementing the recommendations of the Forrest Review and it remains too early to see real results.

4.4 Reporting Requirements

Reporting requirements may be included in company legislation, stock exchange listing requirements or take the form of voluntary initiatives.

Many Companies Acts require disclosure of risk or sustainability issues. The draft Myanmar Companies Act, awaiting discussion by Parliament, will require an annual Directors' report (Article 261) which 'must include a fair review of the company's business, including a description of the company's primary business, an analysis of the company's performance during the year, a description of risks and uncertainties facing the company and any other matters which may be prescribed'. This offers Myanmar an opportunity to encourage companies to disclose more information about their business conduct.

In China, India, Malaysia, Singapore and Thailand, the stock exchange has led the charge in directing listed companies toward responsible behaviour via measures such as:

- Voluntary disclosure of CSR performance,
- Sustainability reporting, and
- Establishment of CSR institutions, such as the CSR Institute by the Stock Exchange of Thailand.

Similar initiatives have not yet been included in the recently launched Yangon Stock Exchange.

Australia

Under the *Corporations Act 2001*, Australia requires sustainability reporting, which involves corporations disclosing the extent to which they take account of environmental, social, labour and ethical decisions in their investment decisions; and to report on breaches of environmental laws and licenses. However, in 2006, the Australian Parliamentary Joint Committee on Corporations and Financial Services issued a report which highlighted, among other things, that mandatory legislation regulating company director duties and sustainability reporting are not appropriate as mandatory regimes are likely to promote form over substance.

This legislative environment is supplemented by 'soft law' initiatives (i.e. rules that are not legally enforceable) such as the Australian Stock Exchange (ASX) Principles on Corporate Governance and Best Practice Recommendations, released by the ASX in 2003 and last updated in 2014.[20] These guidelines are intended to guide publicly listed companies in their corporate governance practices. While they are voluntary, companies are required to explain to ASX and investors if and why they have opted not to follow the guidelines. This 'comply or explain' approach is also used in other countries on corporate governance issues.

The Extractives Industries Transparency Initiative

The Extractive Industries Transparency Initiative (EITI) is a global standard for transparency and accountability in the oil, gas and mining industries. Countries implementing the EITI Standard publish EITI Reports that disclose the revenues and other information from extraction of the country's natural resources. This aims to improve openness and accountable management of revenues from natural resources, which then leads to growth and socio-economic development for a country and its citizens.

The 2013 EITI Standard replaced a previous narrower version and made EITI a platform for reform, not just revenue transparency. Requirement 4.1(e) of the 2013 EITI Standard requires the EITI Report to disclose any material social expenditure made by extractive companies that are mandated by law or by contract.

The disclosure of social expenditure potentially provides insight into a company's contribution to good governance and its social impact on the local population. However, Myanmar's first EITI Report, released in December 2015 noted that, "in Myanmar there are no social payments mandated by law or by contracts signed with the extractive companies".[21] Rather, social expenditures are made in a voluntary way through programmes which are implemented in accordance to company policies – none of which are *required* to be disclosed under the EITI standard; the EITI standard merely encourages the development of a reporting process for voluntary social contributions.[22]

UN Global Compact

The UN Global Compact (UNGC) is a call to companies around the world to align their strategies and operations with ten universal principles in the areas of human rights, labour, environment, and anti-corruption, and to take action in support of broader UN goals. It is open to all businesses, civil society organisations, business associations, labour organisations, academic institutions and cities. To become a member, the organisation's leadership must make a commitment to meet the fundamental responsibilities in responsible business conduct. Moreover, all UNGC participants must produce an annual Communication on Progress that publicly outlines their efforts to operate responsibly and support society.

The UNGC is the world's largest voluntary corporate sustainability initiative. Myanmar currently has over 300 UNGC members, the highest in ASEAN. It calls on businesses to play a bigger role in addressing societal issues. Additionally, by providing access to a wide network of potential partners, best practice guides and other tools and resources, the UNGC can be a platform for innovation and collection action. For more information about the UNGC, including on how to sign up, please see https://www.unglobalcompact.org.

Example: Shwe Taung Group – Communicating Shared Value

The Shwe Taung Group, one of the leading corporations in Myanmar, has been a UNGC member since May 2013 and has since reported annually. It has released two Communications on Progress (CoP) reaffirming their support to the Ten Principles of the UNGC.

The CoPs demonstrate that sustainability and responsible investment has continued to be at the core of the Shwe Taung Group activities, guiding their long-term strategies and daily operations.

Examples of initiatives implemented by the Shwe Taung Group which have been highlighted in the CoPs and which could be considered to create shared value include:

- **Health Policy:** Shwe Taung Group ensures their employees work in safe and healthy conditions. Healthy employees benefit the business by lowering absenteeism and increasing staff retention rates. Free medical checkups are proposed in all their sites. They offer the installation of Myanmar's Red Cross first aid mobile apps for all our employees having smartphones.
- **Environmental Awareness:** Junction City, Shwe Taung's newest mixed development currently under construction is an environmentally conscious and socially responsible project, incorporating sustainable design approaches to reduce environment impact and energy conservation, such as solar hot water panels for natural heating, high thermal efficiency materials, LED lighting and waste water recycling. This not only benefits the environment but also maximizes profits as it decreases the future running costs for Junction City.

4.5 Government Procurement and Contracting

Government contracting processes can also provide an opportunity to encourage responsible business conduct and/or creation of shared value. Governments are large purchasers of services; by building the concept into procurement requirements, they can lead by example and encourage businesses to move in this way.

The recent reforms in the telecommunications sector in Myanmar are a good example of using bidding and contracting to incentivise shared value. The stated goals of the reforms include increasing access and affordability of communications services, as well as "facilitating inclusive growth and poverty reduction". In addition, Corporate Social Responsibility was one of the eight categories by which the Telecommunications Operator Tender Evaluation and Selection Committee in Nay Pyi Taw assessed the applicants' technical submissions, including commitments to inclusive development plans and infrastructure development.

4.6 Government Grants

Government grants can encourage "Shared Value" and/or achieve development objectives. They can leverage the assets, connections, creativity and expertise of both the private sector and government sector to assist with nation-building while also supporting the generation of business returns.

Australia's Business Partnerships Platform

As highlighted in Section 4.1, the Australian Government recently re-shaped their aid program to support private sector development and strengthen human development. One element of this is the Business Partnerships Platform.[23] This enables businesses to partner with the Australian Government on investments that deliver a combined social and financial return on investment according to "Shared Value" principles.

The Platform provides private sector partners with access to the Australian Government's developmental and business expertise accompanied by a matched grant of AUD 100,000 to AUD 500,000 leading to joint investments of AUD 200,000 to AUD 1 million. Partnerships target the goal of creating "scalable Shared Value partnerships that advance economic and social conditions in developing countries" based around 3 principles:

1) Achieving Australia's development objectives;
2) Increasing the number of businesses partnering with the aid program; and
3) Advancing the commercial interests and social impact of private sector partners.

4.7 Recognition, Prizes and Awards

There are numerous CSR, sustainability or corporate citizenship awards from government, non-government and business organisations. Such awards can share good practice and incentivise companies to adopt it and innovate.

Australia's Prime Minister's Business Community Partnership

In 1998, the Australian Government set up the Business Community Partnership, chaired by the Prime Minister, with the Minister for Social Services as Deputy Chair. This brings together leaders from the community and business sectors who are assigned with the task of fostering community business partnerships, acting as a think-tank on philanthropic issues, and promoting corporate giving and investment in Australia. It has given awards for excellence in community business partnerships. Such awards raise awareness of how businesses contribute to the social and economic well-being of the communities in which they operate. The awards also recognise joint contributions of business and community projects which addressed issues of concern to the community.

Previous winners include Plunge Diving with National Parks Association of New South Wales (NSW), which won the 2007 NSW Small Business Award for the program "HarbourKeepers". This program created ongoing opportunities for community groups to protect, restore and explore Sydney Harbour, its foreshores and islands.

Nestlé Creating Shared Value Prize

Nestle, a world's leading nutrition, health and wellness company, created the Nestlé Prize in Creating Shared Value, which rewards innovative, commercially viable, and high impact schemes related to nutrition, water or rural development. The Prize is open to individuals, not-for-profit organisations, governmental organisations, private and social enterprises, and academic institutions. Nestle invests financial and technical resources in the winning initiatives, with the objective of helping them be brought to scale and to achieve financial sustainability. The winners share a total of CHF 500,000 in prize money (approx. USD 540,000).

In 2014, the Creating Shared Value prize was awarded to Honey Care Africa, a fair trade honey company, whose objective is to provide opportunities for rural, smallholder households to generate significant additional income through honey production. There were two runner-up organisations from East Africa: MSABI, not-for-profit organisation that runs rural water, sanitation and hygiene (WASH) programmes in Tanzania; and Sanergy, a social enterprise that manufactures and franchises small-scale high-quality sanitation facilities to local micro-entrepreneurs, collects and removes human waste from the community and converts it into high-value by-products such as fertilizer and energy.

Myanmar's Internal Revenue Department's Top Tax Payers List

Public recognition, stemming from media coverage or awards, can also play an important role in promoting greater public awareness of good corporate citizenship. In recent years KBZ Bank has received awards for good corporate citizenship, such as the Highest Income Tax Payer Award; in 2014-15, KBZ Bank paid more than 17 billion Myanmar Kyats (roughly 14 million USD) in income tax.

Singapore Exchange and Accounting and Corporate Regulatory Authority's Best Managed Board Award

The Best Managed Board Award (BMBA) is an annual award supported by the Singapore Exchange and the Accounting and Corporate Regulatory Authority. It acknowledges the Board with the best overall quality of corporate governance practices among Singapore-listed companies. Yoma Strategic Holdings Ltd won Silver for BMBA in 2015.[24]

Asian CSR Awards

The Asian CSR Awards program recognises organisations for embodying the principles of corporate responsibility in their business philosophy and operations. Awards are given for programs that achieve excellence in terms of services to stakeholders and innovative sustainable solutions to pressing social challenges.

Awardees should demonstrate the company's leadership, sincerity and ongoing commitment to incorporating ethical values, compliance with legal requirements, respect for individuals, involvement in communities and protection of the environment into the way they do business. The Awards categories are as follows:

- Environmental Excellence
- Education Improvement
- Poverty Alleviation
- Health Enhancement

In 2015, the winners included Lighting a Million Lives, a project initiated by the Buksh Foundation in India which aims to enable energy impoverished communities across the country to access clean and reliable sources of lighting through solar technologies to improve their quality of life.

In addition, the Awards Committee may choose to recognise a particular program with a CSR Impact Award. The CSR Impact Award honours a program that has an on-going track record of significant sustainable impact and is innovative and replicable. In 2015, the winner of the CSR Impact Award was Singapore's Sealed Air Soap for Hope program, which operates in 10 countries and teaches at-risk communities to salvage soap slivers and turn them into new soap bars.

Intel-AIM Corporate Responsibility Award

The Intel-Asian Institute of Management Corporate Responsibility Award (IACRA) continues to recognise companies that have embedded CSR into its operations and integrated CSR into its business. These companies should demonstrate that they are actively promoting CSR to both their internal and external stakeholders.

The main criterion is that the organisation has made CSR an integral part of the way they do business and has implemented CSR projects or programs that have a significant impact and are sustainable in all appropriate areas of operations. Furthermore, these companies should represent role models and exert positive influences on their stakeholders, their peers and their communities.

In 2015, the winner was Chiva-Som International Health Resort. This award recognised the organisation's strong commitment to sustainability where its Chiva-Som Responsibility program is based on generating revenue through responsible and ethical business practices while meeting stakeholder expectations.

4.8 Rankings

Effective rankings based on strong and transparent criteria, and administered by quality judges have proven to be powerful tools to incentivise and support changes in businesses practice. Rankings can have the effect of generating healthy competition by encouraging businesses to become better businesses, professionals wanting to work for or with such businesses, or people wanting to consume or engage with the businesses' products and services. Therefore, rankings can be an effective way to incentivise responsible investment by businesses in Myanmar.

Fortune's Change the World List

Launched in 2015, Fortune's "Change the World" List spotlights the top 50 companies who address major social problems as a core part of their business strategy and innovation. This is the first list of its kind that attempts to rank businesses that have successfully created shared value i.e. businesses are recognised and competitive ranked on business innovations that positively impact pressing social and environmental issues.

To ensure the credibility, Fortune worked with experts from the Shared Value Initiative, a non-profit think tank led by Professor Mark Kramer and guided by Professor Michael Porter, to research and create the list. In 2015, the top 3 ranking companies were Vodafone and Safaricom, Google and Toyota. At the time of drafting this position paper, the Shared Value Initiative was seeking company nominations for the Change the World List 2016.

MCRB's Pwint Thit Sa/TiME Report

In Myanmar, the MCRB's Pwint Thit Sa Report/TiME Report aims to increase transparency among Myanmar businesses. It achieves this by comparing the websites of 100 of the largest Myanmar companies and uses 35 questions to score them on what they reveal about their corporate governance and business practices, particularly concerning anti-corruption, organisational transparency, human rights, and health, safety and the environment.

The first report was released in 2014. By the second report in 2015 there was a noticeable increase in transparency by the leading companies. In 2015, the most transparent large Myanmar company was Serge Pun and Associates (SPA) (9th in 2014), followed very closely by Max Myanmar (3rd in 2014), with KBZ (1st in 2014) coming in third place.

Conclusion

This paper is the result of research, collaboration and discussion among the members of the Australia-Myanmar Chamber of Commerce Responsible Investment Working Group. The Working Group has sought to explore what the relatively new concept of 'Creating Shared Value' could mean for Myanmar and how it could contribute to sustainable development.

The Shared Value concept is not without its critics. It is not a panacea or meaningful in all business situations. However, it has the potential to make good economic sense. It engages the scale and innovation of companies to advance social progress on a sustainable basis. For this reason, the Working Group encourages and offers support to the Myanmar Government, businesses, NGOs and civil society to consider the recommendations set out in this paper on how to incentivise businesses in Myanmar to invest responsibly and create shared value (see Recommendations on page 12).

The Working Group are also publishing and circulating this Position Paper to seek feedback from the wider business community, as well as others. The Working Group hopes that public discussion will lead to the formulation of Government policies that encourage responsible investment. The Working Group looks forward to working closely with the Government and other interested parties to show how Myanmar can harness that investment to achieve sustainable economic growth and provide an example for other countries.

Appendix I: India’s CSR Legislation

What is India’s Mandatory CSR Legislation?

On 1 April 2014, the relevant sections of India’s *Companies Act 2013* (the Act) came into effect making it mandatory for certain companies to spend 2 percent of their average net profit for the past three years on CSR activities. The Act applies to both Indian companies and foreign companies (with a branch or project office in India) where the company has either a net worth of at least INR 500 crore (roughly USD 73.2 million); turnover of at least INR 1000 crore (USD 146.5 million); or net profits of at least INR 5 crore (USD 7.3 million). According to the Indian Institute of Corporate Affairs (IICA), about INR 200 billion (USD 2.97 billion) could be unlocked from a pool of around 16,000 companies for CSR spending during 2014-15.

The Act defines CSR as projects or programmes relating to a number of specified activities, including themes such as eradicating hunger, promoting gender equality, combating HIV, ensuring environmental sustainability, enhancing vocational skills and contributing to the Prime Minister's National Relief Fund. Any activities that benefit only the employees of a company (and their families) are not to be considered CSR activities.

Companies can implement CSR activities on its own, through its non-profit foundation or through independently registered NGOs with an established track record of at least 3 financial years. The CSR activities must be undertaken in India, and the company must establish a CSR committee (which includes independent directors) to provide advice and monitor the CSR activities. The Board of Directors are required to produce an annual CSR report disclosing, among other things, details of the company’s CSR policy. Such information must also be placed on the company’s website. If the company fails to spend the legally required 2 per cent on CSR activities, the Board must specify reasons for not spending.

If the CSR report fails to provide the relevant information on the company’s CSR policy, the company may be punished with a fine (not less than INR 50,000; roughly USD 732). Every company officer who is in default is also punishable with a term of imprisonment of up to 3 years and/or with a fine that is not less than INR 50,000. There is no specific punishment for ‘not spending’ in itself. However, the Act includes a ‘catch-all’ provision which provides that where no specific penalty is provided for contravening a provision of the Act, then the company and/or officers in default are punishable with a fine that may extend to INR 10,000 (USD 147).

Criticisms

The passing of the Act raised a number of concerns from both the NGO and businesses communities. The key criticisms are summarised below:

- The Global Reporting Initiative (GRI) stated that mandatory CSR spending could lead to forced philanthropy, 'tick box' behaviour, tokenism or even corruption, and masking of data to avoid having to comply.[25] Further, the Act is an enforcement nightmare exacerbating an already bad situation where many laws are poorly enforced in India and further undermining respect for law.
- In commenting on the draft bill, the National Foundation for India highlighted that the restrictive scope of the CSR activities in the Act focused on causes rather than on social impacts.[26] Some prescribed CSR activities, such as contributions to the Prime Minister's National Relief Fund, are purely philanthropic and the funds raised are not accountable. As such, the Act also appears to endorse 'greenwashing' – for example, a Tobacco company can easily allot 2 percent of its profits to 'education' while continuing to produce cigarettes.
- The CEO of Value CSR, a CSR consultancy, noted that the list of CSR activities makes it difficult for companies to invest in "Shared Value" projects.[27] Businesses would need to somehow quantify and measure the value creation and demonstrate that the "Shared Value" activities did not form part of their normal course of business.
- Linking the compulsory spending to profits discourages companies from contributing to community development at an early stage when it is making no profits (and some activities – such as in the extractives – may never lead to development of profitable projects).
- Mandatory CSR spending leads to companies being drawn into roles such as the provision of health and education services. These services are the role of the government. If communities become dependent on companies for such services then serious risks are raised, especially where the company does not make a profit or closes down.

Opportunities

In 2014, the Federation of Indian Chambers and Commerce Industries (FICCI) and Accenture released a report acknowledging that in the short run most businesses in India will merely focus on building their CSR capabilities.[28] However, the report predicted that many businesses will gradually embrace the broader opportunities offered by the mandatory CSR spending. These include:

- **Using CSR initiatives to build industry-friendly talent pools:** The mandatory CSR spending allows companies to contribute CSR funds to activities aimed at strengthening vocational skills that will make workers employable. With around 290 million additional workers needing to be trained by 2022 to achieve India's national skills-development targets, businesses making the most of this opportunity can help create talent pools for the future.
- **Transforming CSR collaborations into cost-efficient yet game-changing innovation:** Just as political democracy can lift nations by building on the combined ideas of their citizens, "democratized" innovation can lift countries' economic systems and spur sustained, profitable growth for companies. Businesses can capitalise on this opportunity by, for example, dedicating their CSR funds to technology incubators in academic institutions approved by the central government
- **Turning CSR initiatives into open learning centres for leaders:** CSR initiatives can serve as an immersive platform for top management teams to test and grow managers' leadership skills in a multicultural environment.
- **Making CSR a driver of capital formation in neglected areas of national interest:** The mandatory CSR spending provides an opportunity for corporations to work with public agencies and help the nation achieve the desired Sustainable Development Goals such as improving maternal health and combating HIV, malaria and other diseases.

What Happened in Reality?

The 2014-15 financial year was the first year that the Act took effect. Apart from studies that show the stock market did not respond negatively to the mandatory CSR legislation,[29] the overwhelming public view is that it will take a few years to see real results.

In December 2015, KPMG released a report analysing the top 100 companies (based on market capital) and their compliance with the Act.[30] All 100 companies fell within the ambit of the Act and 87 of these companies fell under the purview of the mandatory 2 percent CSR spending.

The below table highlights some of its key findings:

KPMG Finding	Figure
Complied with the need to have a publicly available CSR Policy and annual CSR report	95 companies
Spent less than the prescribed 2% CSR spending	52 companies (of 87 companies)
Failed to give reasons for not spending	1 company
Committed to carry forward unspent CSR amount to next year (this goes beyond legislation requirements)	13 companies
Percentage of CSR spending towards health, sanitation and education	More than 50% **Note 1**: Majority of the companies were already working in these sectors before the Act took effect. **Note 2:** Not many companies invested in government priorities such as contributing to the Prime Minister's National Relief Fund.
Percentage of companies implemented CSR project via:	
– Themselves	14%
– Company's foundation	7%
– External implementing agency (e.g. NGOs)	15%
– Combination of the above	64%
Percentage of companies who voluntarily spent towards CSR (i.e. had no legal obligation to do so)	3%

Going Forward?

In September 2015, the Ministry of Corporate Affairs' High Level Committee released a report suggesting a number of measures to improve the implementation of the Act.[31] Key findings include:

- Many companies felt the complex reporting procedures under the Act, in addition to the compliance requirements under other laws, diminished the ease of doing business. The Committee reemphasised that the underlying rationale for the Act is not the monitoring or surveillance of companies, but the facilitation of CSR activities through self-regulation. With this, the Committee recommended that companies should be provided with a grace period of 2-3 years allowing them to develop a culture of compliance, while relaxing some of the requirements for smaller companies. Many stakeholders raised the option of imposing a penalty for non-spending (as opposed to non-disclosure), but the Committee recommend against this noting that the general principles of "comply or explain" are sufficient.
- The Committee considered the list of prescribed CSR activities in the Act is too limited. It recommended an omnibus clause to cover activities that are left out but benefit the larger public good / serve a public purpose / promotes the wellbeing of people. Moreover, the Committee felt that contributions to the Prime Minister's National Relief Fund do not keep to the spirit of the Act.
- The Committee also recommended that the Government correct the varying tax treatment of different CSR activities. For example, any company undertaking skills development, research and educational activities may receive tax rebates from the respective ministries regardless of whether such activities are considered as CSR activities.
- Some stakeholders felt that the Act should not be applied to foreign companies, particularly where CSR is not mandated by their home country laws and the Board of Directors are not located in India (thus making it a serious challenge in implementing the CSR activities). The Committee noted that it will consider this issue further.

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