

STEP BY STEP

MYANMAR GEM SECTOR
EMERGES
FROM ISOLATION
AND U.S. SANCTIONS



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Executive Summary

In light of political and social progress that has been made in Myanmar, and prior to the lifting of U.S. trade sanctions on Myanmar's gem sector, the American Gem Trade Association (AGTA) reached out to key U.S. government stakeholders to discuss the current status of Myanmar's reform efforts. Myanmar has long been isolated and is now looking to re-enter the global market with the prospect of the help of U.S. businesses and government. Gems are synonymous with Myanmar, and the sector is both treasured and fraught; with ongoing reform efforts and a new outlook for the future, now is the most critical time to assist Myanmar's gemstone industry to transform itself and bring one of the country's most valued exports to the U.S.

AGTA proposed going to Myanmar and conducting an assessment of the Myanmar gem sector and the progress made so far by the young democracy, with similar AGTA-led efforts in Tanzania as a model, including the development of the Tanzanite Protocols. As with Tanzania, the delegation spoke with the U.S. State Department beforehand regarding the critical importance and key timing of such a fact-finding mission to the gemstone industries in both Myanmar and the U.S. The fact-finding mission was vital to the gemstone industry in both Myanmar and the U.S., especially in demonstrating the progress that the previous and current Myanmar governments have made, as well as to determine the current situation on the ground and find opportunities to contribute to ongoing reform efforts.

Like its previous assessment trips, AGTA assembled a U.S. delegation representing the full spectrum of the American jewelry industry, including AGTA's President Jeffrey Bilgore and Chief Executive Officer Douglas Hucker, Jewelers of America (JA) Chief Executive Officer and President David Bonaparte, GIA (Gemological Institute of America) Dr. James Shigley, Distinguished Research Fellow and Tim Haake, Managing Director, Haake Fetzer and Legislative Counsel, Jewelers of America.

This Delegation reflects the best American expertise and knowledge necessary to fully conduct a review and responsibly reopen commerce between these two nations. To begin assessing the Myanmar gemstone sector, the AGTA led the Delegation to Myanmar October 3-12, 2016, visiting the cities of Yangon, Nay Pyi Taw, Mandalay, and Mogok. The Delegation met with a cross section of stakeholders, including the Ambassador and officials from the U.S. Embassy, the Ministers and representatives of the Myanmar government, international and local organizations, trade associations, gem dealers and traders, and mine owners. All of the stakeholders were open to sharing their concerns and hopes for the sector and the country. As in many sectors in Myanmar, we were told in many meetings that the gemstone industry suffers from a lack of technical expertise, education, testing and laboratory facilities, equipment, and market access.

The mission also sought to forge new trade ties between the U.S. and Myanmar businesses and to understand how to reconnect following the termination of an eight-year U.S. trade ban, including by working with the small family businesses that were negatively impacted by the sanctions, bringing best practices to the sector as a model for gem traders, dealers, and miners, and improve sector-related education consistent with the *AGTA Code of Ethics and Principles of Fair Business Practice*, JA's *Code of Professional Practices*, and GIA's gemological education standards. The AGTA and JA each require their members to annually sign reaffirmation of their commitment to the associations' respective codes. Both the AGTA and the JA are members of the United States Jewelry Council (USJC), a group of 13 U.S. trade associations consolidated to establish a singular voice of integrity for the U.S. jewelry

industry. All members agree to best business practices and to follow all laws relating to the industry including the USA PATRIOT Act, the Dodd-Frank Act, and its provisions on OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

Since its inception thirty-five years ago, the AGTA has continually extended its efforts beyond the supply chain to acknowledge its role in the global gemstone community and to strive to improve conditions within it. The AGTA led both the colored gemstone industry and the global gem and jewelry trade on ethical business practices by developing the nomenclature and disclosure guidelines for gemstones. The high ethical standards and business principles that AGTA members bring to all their dealings will directly help address the challenges currently facing Myanmar, including the need for responsible and transparent investment and business practices in the gemstones sector. This evolving document, *AGTA Code of Ethics and Principles of Fair Business Practice*, is still utilized and has been adopted by the World Jewellery Confederation (CIBJO) and the International Colored Gemstone Association (ICA), rendering it the international standard for the colored stone trade. Every AGTA member is pledged to:

- Operate in full compliance with all laws, local, state and federal, and to comply with other applicable industry guidelines and standards;
- Operate in full compliance with the laws of the countries from which we import and distribute, including those laws relating to labor and environmental protection;
- Neither support nor participate in any activities that are illegal or in support of terrorism, smuggling, or theft.¹

JA requires its members, including jewelry retailers and suppliers across the jewelry supply chain, to commit annually to professional practices for their day-to-day business operations as a condition of membership. This commitment to high ethical practices ensures that consumers can shop with confidence for jewelry to celebrate life's treasured moments.

The GIA is the world leader in gemological education, research, and testing. Most of the world's gemologists begin their careers with GIA and it is the most important institute dedicated to science of and education about gems with its primary mission to inform and protect both the trade and the consumer.

Myanmar's new government is seeking to transform the investment climate in the country by drafting and implementing laws that push for transparency, ensure environmental and social protections, create jobs, build capacity, and banish corruption, all aspects that are part and parcel of the AGTA, JA, and GIA standards. Aung San Suu Kyi, the prodemocracy icon who led her National League for Democracy (NLD) party to a landslide electoral win in November 2015, is at the policymaking center and directs the trajectory, and oftentimes, the scope and details of legislation. Additionally, several ministries and parliamentary committees retain critical roles in drafting, implementing, and enforcing the legislative and regulatory frameworks for Myanmar gemstones, and also oversee foreign investment in the sector.

¹ <http://www.agtaeprism.com/articles/20150708-coe.pdf>



The key ministry is the newly formed Ministry of Natural Resources and Environmental Conservation (MONREC). The ministry houses the Department of Mines, the Department of Geological Survey and Mineral Exploration, and the Myanmar Gems Enterprise (MGE). MGE is Myanmar's leading regulatory body for gemstones and drafts bills, collects taxes, issues permits and licenses, and organizes the Myanmar Gems Emporium. Other ministries play a secondary role in the sector, with complementary efforts to improve labor conditions and develop export strategies. The ministries and parliament have been tasked by the new government to redraft and amend laws—even laws that were passed only a few years ago. The gemstone sector is currently governed by laws more than a century old while new legislation is anticipated to be passed in the next year; the related regulations are being redrafted to ensure that investors to do not exploit the mining sector or its laborers and take into account Myanmar's stances on the environment and anti-corruption. Many local investors, however, welcome

changes as they hope new laws will make the sector more competitive and offer miners and traders new market opportunities.

The Delegation offered a set of interim recommendations to show the global jewelry industry the intentions of Myanmar's direction. These were potential examples for Myanmar to follow, including to separate the gemstones and jade sector in license, regulations, and practice; make a 10-year plan for rehabilitating old mining areas and include this requirement in new licenses; develop the supply chain based on a tax structure that encourages compliance rather than avoidance; and honor labor laws, including child labor. Additionally, based on conversations, meetings, and an understanding of the

Myanmar gemstones market, the Delegation also recommends governance and institutional reform related to transparency in the supply chain, compliance, and implementation, allow foreign investment and engagement in mining and trading, and expand and encourage multi-stakeholder engagement.

There are a handful of ruby and gemstone producing countries that can offer examples for Myanmar to follow. Sri Lanka, Madagascar, and Mozambique, though not perfect examples, all offer frameworks that could be applicable to Myanmar, as well as cautionary tales as to how even the best intentions resulted in failed policy. Sri Lanka, like Myanmar, is one of the world's leading producers of gemstones, and has large deposits of sapphires and rubies. Sri Lanka's gemstone industry, unlike Myanmar's, has strong governance and has implemented measures to better ensure equitable resource revenue sharing. Madagascar is another example Myanmar could replicate, though it should also be wary of why initiatives failed. Madagascar's gem industry grew substantially in the 1990s, however, weak governance led to smuggling and revenue loss. The Madagascar example demonstrates the need for strong and good governance of mineral resources. Mozambique also offers a more cautionary tale and important lesson to be learned. Ruby deposits were discovered in 2009, prompting hopes of income and jobs. Despite assurance for a responsible supply chain, one of the country's largest ruby joint ventures became the subject of reports of land grab accusations and fueling conflict. Myanmar should heed Mozambique's sector development as it shares similar issues of land grabbing and resource-related conflict.

Myanmar's rubies are the finest in the world and the sector's opening provides new opportunities to sell gems, generate income, create jobs, and show a piece of Myanmar's history to the world. Myanmar is at a crossroads in its development and is looking for ways to ensure that its natural resources can be the country's ticket to emerge from decades of gross economic mismanagement to once again becoming the "gem" of the region.

Purpose

The American Gem Trade Association (AGTA), in conjunction with its industry colleagues at Jewelers of America (JA) and the GIA (Gemological Institute of America), is seeking to reestablish a responsible gemstone trade between the United States and Myanmar. Now is the right time to reestablish gemstone trading between the U.S. States and Myanmar, especially given the political and economic progress Myanmar has made in the past six years. There is a window of opportunity to get the gemstone sector to begin to meet the new international standards that have developed during the period in which the gemstone sector both was isolated and sanctioned. Using such standards as a guideline, for the first time in nearly a decade, Myanmar will reconnect its renowned sourced of colored gemstones, particular rubies, with the world's largest consumer gem market.

Integrity and ethics are foundational values of the AGTA and are codified in the *AGTA Code of Ethics and Principles of Fair Business Practice (AGTA Code of Ethics)*. The *AGTA Code of Ethics* establishes demanding standards for professional conduct, not just in the colored gemstone trade, but in the entire jewelry industry. AGTA member supply chains, from mines to consumers, have the highest ethical commitment in the trade.² To begin this process, the AGTA organized a delegation to travel to Myanmar and conduct an industry assessment. The objective of this mission was to review the conditions in the

² <http://www.agtaeprism.com/articles/20150708-coe.pdf>

ruby mining industry, survey the market chain within Myanmar, and produce this report compiling the findings.



Mogok – Famed City of Gems

A major aspect of the original mission was assessing the scope and impact of sanctions on the gem sector. However, while the Delegation was in Myanmar, President Obama on October 7, 2016, signed an Executive Order terminating the remaining U.S. sanctions against Myanmar. Both President Obama and Myanmar State Counselor Aung San Suu Kyi agree that the country is ready to stand on its own without U.S. sanctions. The primary focus is to create the legal and regulatory framework for its own development. A vital part of building a strong foundation is a recognition of the importance of increased commerce to boost its economy and development prospects. As a result of the new Executive Order, the economic and financial sanctions administered by the U.S. Treasury Department are no longer in effect, and the ban on the importation into the U.S. of Myanmar-origin jadeite and rubies, and any jewelry containing them, has been revoked.

These steps are intended to support efforts by the government and people of Myanmar to continue their political reform process and encourage further trade and economic growth between the countries.³ President Obama specifically noted Myanmar’s substantial advances to promote democracy, including the historic November 2015 election that resulted in the former opposition party led by Aung San Suu Kyi, the National League for Democracy (NLD), winning the majority of seats in parliament and forming a civilian-led government. Since the initial sanctions easing in July 2012, the U.S. government supported the participation of U.S. businesses in the Myanmar economy to set a model for responsible

³ <https://www.treasury.gov/press-center/press-releases/Pages/jl0569.aspx>

investment and business operations as well as encourage further change, promote economic development, and contribute to the welfare of the Myanmar people.⁴ In announcing the intention to lift sanctions against Myanmar, the U.S. government reiterated that it will continue to support the people of Myanmar and work closely with their government to develop new policies to address challenges, including the need for responsible and transparent investment and business practices, in particular in the jadeite and gemstones sectors.⁵

In order to study and analyze how the gemstone sector and supply chain operates, the Delegation reached out both before and during the October 2016 mission to appropriate stakeholders throughout Myanmar, including industry representatives in Yangon and Mandalay with the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI), Myanmar Gem and Jewellery Entrepreneurs Association (MGJEA), and Mandalay Federation of Mining; government ministers and officials and parliamentarians in Myanmar's administrative capital of Nay Pyi Taw from the Ministry of Natural Resources and Environmental Conservation (MONREC), Ministry of Labor, Immigration, and Population, Judicial and Legal Affairs Committee, and Mineral, Natural Resources and Environmental Conservation Committee; and gem miners and traders in Mogok; as well as civil society and local associations and offices, including the Myanmar Extractives Industry Transparency Initiative (MEITI) and the Myanmar Centre for Responsible Business (MCRB). The Delegation made site visits to two privately owned ruby mines, a sapphire mine, and a peridot mine. The Delegation also consulted other parties with interest, including the U.S. government, both in Washington, D.C. and at the embassy in Yangon, congressional offices, and international organizations including Global Witness and the Organization for Economic Co-operation and Development (OECD).

U.S. Delegation Visits Myanmar

The AGTA-led Delegation traveled to Myanmar October 3 -12, visiting the cities of Yangon, Nay Pyi Taw, Mandalay, and Mogok. Top leadership from the AGTA, JA, and the GIA joined the trip and met with a cross section of stakeholders including the Ambassador and officials from the U.S. Embassy, the Myanmar government, international and local organizations, trade associations, gem dealers and traders, and mine owners. A frequent theme in meetings revolved around capacity issues. As in many sectors in Myanmar, the gemstones industry suffers from a lack of technical expertise, education, testing and laboratory facilities, equipment, and market access.

⁴ <http://www.state.gov/r/pa/prs/ps/2012/07/194868.htm>

⁵ <https://www.state.gov/r/pa/prs/ps/2016/09/261917.htm>



U.S. Delegation arrives at Mogok

There are thousands of gemstone mining operations in Mogok in both the informal and formal markets that include artisanal miners, cooperatives, independent miners, semi-mechanized operations, and large-scale mining companies that use excavation equipment. According to the Gemstone Sector Review prepared for the Myanmar Extractives Industry Transparency Initiative by the World Bank, MGE tallied 21,392 active gem production permits as at March 2016. Of these, 98% were privately held and 2% were JVs with MGE, meaning that the 2% technically were the only permits under government oversight.⁶ The main types of mining include tunnels or deep shafts that utilize explosives, alluvial mining with open pits of varying sizes, and handpicking/subsistence mining whereby local miners or mine workers can sort through piles of rock for overlooked gemstones. The Delegation saw many villagers on the sides of roads or in villages sorting through piles of rocks and selling stones in the market or along the road.⁷

The Delegation visited three ruby and sapphire mines and one peridot mine in Mogok, and also spoke with several small and artisanal miners. The largest ruby mine the Delegation saw extracted an estimated 20 tons of rock per day, with a yield of roughly 20 carats. The mine went as deep as 600 feet and employed 350 people. The mine operates 24 hours a day with two to three shifts. The mine itself was quite large, and trucks transported rocks pulled from the shafts by a rope and pulley system out of the mine for crushing and separating.

The second ruby mine is one of the most successful mines in Mogok. The ruby deposits form a “curtain,” or wall, requiring shaft mining. The shafts are 1300 feet long and there were 75 people working down in the mines the day the Delegation went to inspect the mine. The workers get to the site

⁶ Myanmar Extractive Industries Transparency Initiative, Gemstone Sector Review, July 2016, Emma Irwin

⁷ <http://voices.nationalgeographic.com/2016/10/29/gem-mines-of-mogok-myanmar-burma/>

via ladder, and shifts are 24 hours due to the length of time to descend to the worksite and return; however, laborers typically work eight to ten hours a day once at the site. According to other gem traders who have visited the mine, during the dry season, there can be upwards of 1000 workers at the site, which resembles a “small city.” The rocks from the mine are brought to the surface by ropes and pulleys. At both ruby mines, there were at least three levels of quality control in the crushing and separating operations to ensure the highest quality gems were separated. The lower quality rocks were left for local villagers and miners to sort through in the off chance a high quality stone slipped through; villagers were allowed to sell and keep the profits of their discoveries. The mine has been in production since 1991 and costs an estimated US \$3 million a year to operate.

The Delegation also visited a sapphire open pit and shaft mine. The 4 x 4 foot shaft had a depth of 150-200 feet. The mine has been operating for 25 years, and 80 people work there during the rainy season with 160 during the dry season. The mine had backhoes and some smaller equipment. One of the mine owners noted that what this mine has accomplished over 25 years, jade mines in Hpakant in Kachin State can do in one day, demonstrating the differences in mining techniques and scale between jade and gemstones.

The Delegation also visited a peridot mine. The mine has been operating for 20 years and primarily uses shaft mining. The tunnels are nearly vertical and go to a depth of about 200 feet. The workers used a rope and pulley system to move rocks though there were old mine cart tracks no longer in use.

Nearly all of the mines in the area, including all of the mines the Delegation visited, operated at reduced capacity during the rainy season. Open pit mining is confined to the topmost layer and shaft mining is limited throughout the rainy season. The high production season runs from November/December through April. Many mine operators and workers, as well as MGJEA members, lamented that the weather severely impacted their ability to continuously work (particularly those with one or three-year permits) and be competitive, but it was out of their control.

The mines and miners the Delegation visited had little in the way of security. By law, miners must work within their designated borders, even in shaft mining. If companies suspect other miners have infringed on their borders, they will call government inspectors to check. Local stakeholders stated they did not encounter many security issues, like trespassing or stealing, and put in place measures to incentivize workers to be honest, such as fair treatment, medical benefits, giving back to the community, and decent salaries. Small-scale and artisanal miners said they rarely encountered security issues, and if they do, they confront the individual and negotiate a sharing agreement or other solution to the problem.

Environmental concerns have dominated the mining sector and influenced recent government regulation in Myanmar. Unlike other types of mining in Myanmar, such as gold, chemicals are not used to extract gems; however, gem excavation and production is highly water intensive. Many of the rivers and waterways in Mogok are muddy with silt and waste dumped from the mines. At the first ruby mine visited however, the water used in the crushing and separating operation is recycled; the mine has a filtration system in one of the pools that allows the water to be used again. Some mines self-regulate on water usage, but it is not clear how many mines have effective water management systems, including recycling and filtering wastewater.

Occupational health and safety has also been a top concern of international governments and businesses. Safety measures were mixed at the mines the Delegation visited. At the first ruby mine and at the sapphire mine, workers had access to hard hats and rain boots. The ruby mine had signage in Myanmar language, but the Delegation did not see posted signage on safety standards elsewhere. The mines appeared to be well lit, and the sapphire and ruby mine shafts appeared to be structurally sound. The peridot mine shaft walls had to be supported by wooden beams; these beams have to be replaced every three to five years due to deterioration. The mine also uses homemade explosives and the Delegation observed workers assembling dynamite sticks at one location. Explosives are only officially sold by the government and are otherwise illegal. Miners and laborers report that government explosives are too strong to effectively control the impact area for the blast. Due to this, there is a black market for explosives and related materials. Traditional explosives are used, made of sulfur mixed with charcoal, as well as explosives imported from other countries, particularly China.



Hard Rock Ruby Mine in Mogok

Education and market access were also top concerns of local miners and traders. The Delegation met with several dozen traders and dealers during a visit to the Mogok market. All were enthusiastic about the lifting of sanctions and the prospects of reengaging with Americans. They want to find access to U.S. markets but also recognize that to be competitive and attractive to western investors, they need access to educational opportunities and technology to improve their capacity, understand the quality and value of gems mined in the area, and learn methods to sustainably and effectively extract gemstones. All groups and associations, as well as members of the government, expressed interest in practical

gemological education by GIA, particularly for the identification of rough ruby, sapphire and spinel. For example, this would help them distinguish natural from synthetic gem fragments. Training could be provided in English by a GIA instructor with the assistance of a local translator familiar with gemological terminology in a major city, perhaps Bangkok or somewhere in proximity to Myanmar that would include gem-testing equipment and a small supply of gem material for teaching purposes.



Processing of rough at ruby mine in Mogok

Another concern for international investors, is the question of ownership, particularly for investors and customers concerned about reputational risks and/or remaining sanctions violations. There is a recognition that the problems in the jade industry are overshadowing the gemstone industry, especially as it pertains to military and armed ethnic group ownership interests. The October 2015 Global Witness report, “Jade: Myanmar’s Big State Secret,” raised concerns regarding military and armed ethnic group ownership in jade mines, indicating that revenues and ownership had fueled conflict and human rights abuses. Mogok’s gemstones sector is quite different from jade, including its location away from active conflict zones, but could still complicate due diligence and supply chain issues.⁸ Constitutionally (in both the current and past versions of the constitution), the state owns all of the country’s land, including any product extracted from mines. Previously, the military ruled the state, and thus it owned all the land, including mining plots. Many mines were joint ventures with the government, either through MGE or the two military holding companies, Myanma Economic Corporation (MEC) and Union of Myanmar

⁸ Global Witness, October 2015, “Jade: Myanmar’s Big State Secret”

Economic Holding Limited (UMEHL). MEC and UMEHL continue to own or control wide swathes of the economy, including interests in mining, consumer goods, transportation, energy, and infrastructure, though their full scope of ownership is unknown as both holding companies are notoriously opaque. Until 2010, UMEHL held its own gems emporium in addition to the MGE-led emporium; currently, there is only the MGE emporium, which is held two to three times a year and is Myanmar's main trading platform. Both MEC and UMEHL were formerly sanctioned by the United States, but were removed with the lifting of the national emergency on October 7.

UMEHL companies have significant roles in extractives industries, and its subsidiaries include Myanmar Imperial Jade Company and Myanmar Ruby Enterprise, which operates mines at Mogok, Mongshu, Hpakant, Nayar, Mawchi, and Thabeikkyin. Some of these operations are subcontracted to other domestic companies. The number of military-owned mines in Mogok is unclear; while some mines are clearly owned by UMEHL or MEC, others do not have signs indicating their ownership. It is difficult to trace military-sourced stones as some companies are known to sell through retired military officers who do not use their titles or affiliations at the sale.⁹¹⁰



Separating heavies using reclaimed water in Mogok

Additionally, during the late 1980s and early 1990s, the military gave mining concessions in exchange for ceasefire agreements to Myanmar's largest ethnic groups, including the United Wa State Army

⁹ https://eiti.org/sites/default/files/migrated_files/meiti_reconciliation_report_2013-2014_final_version.pdf

¹⁰ https://eiti.org/sites/default/files/migrated_files/meiti_reconciliation_report_2013-2014_final_version.pdf

(UWSA). The UWSA, numbering an estimated 20 – 40,000 troops, were awarded ruby mines in Mogok. It is unclear how active the UWSA is in the day-to-day operation of the mines, if it still maintains control, or acts as a beneficial owner of the mines. The Delegation did not visit mines associated with the military, UWSA, or armed ethnic groups and cannot attest to the conditions at the mines or ownership. The UWSA and its leadership remain sanctioned by the United States for narcotics trafficking, and any companies or mines they own or control would also be subject to sanctions.

Taxes were also a top discussion topic with local stakeholders in Mogok. All of the miners and traders supported paying taxes but noted that they were too high, too complex, and did not benefit the communities from which the related gems were extracted. Industry stakeholders want to be honest taxpayers, but demand that the Myanmar government create a system to allow for a feasible tax rate. They agreed that the tax system in its current state encouraged evasion, as miners would rather sell directly to a client than pay a set of fees and royalties through the formal system or declare their supply. Taxes also suppress Myanmar's competitive edge as its rate is higher than neighboring countries like Thailand and Sri Lanka. Similar to the Mandalay MONREC, local miners and traders wanted to ensure that at least some tax revenue generated from their gemstones went back into the local community and supported infrastructure development and education there. Miners typically put their own money into Mogok, including building or improving roads, schools, and hospitals and providing electricity to local villagers, and wanted tax revenue to do the same. One miner obtained a permit from the former Ministry of Forestry to plant fruit trees to provide food to villagers; the ministry eventually awarded him a permit to maintain the land and crops to expand food production and feed Mogok. Corporate social responsibility is a major aspect of Myanmar business and has deep roots in Theravada Buddhism. Countries where Theravada Buddhism is the dominant religion score highly in the World Giving Index for donating money to charity (including Sri Lanka and Thailand) as it places a heavy emphasis on a community of ordained monks and nuns, with lay devotees supporting them through charitable giving. Myanmar consistently ranks at the top of charitable giving lists and the Delegation witnessed such charity firsthand.¹¹¹²

Finally, gem miners were concerned about permits and licenses. Though nearly everyone supported a suspension of gem mines, they were concerned that new licensing procedures would allow permits and licenses to go to the highest bidder, rather than the most qualified. Most licenses will expire next year, and the local mine owners were worried that “one wealthy jade owner could buy all of Mogok.” They also wanted clearer procedures and greater awarding of permits and licenses for smaller-scale miners so that Mogok's family-owned feel and unique mining landscape could be preserved. Miners and traders want other mine owners to be from Mogok or at least be someone who respects and understands a community that has been mining there for nearly 1,000 years.

Supply Chain

Myanmar is globally renowned for its high quality gemstones, particularly rubies, sapphires, and jadeite. Other varieties of gems found in Myanmar include spinel, diamonds, tourmaline, peridot, topaz, garnet, moonstone, lapis lazuli, chrysoberyl, amber, and quartz among others.¹³

¹¹ <http://www.forbes.com/sites/netapp/2016/03/16/will-companies-born-in-the-cloud-become-trapped-there/#17158b451d0c>

¹² <https://www.devex.com/news/how-myanmar-became-the-world-s-most-generous-nation-84966>

¹³ Myanmar Extractive Industries Transparency Initiative, Gemstone Sector Review, July 2016, Emma Irwin.

The recent Gemstone Sector Review prepared for the MEITI by the World Bank outlines the following principal supply chain stages applicable to the gemstone sector in Myanmar.

1. Awarding Permits and Licenses: Myanmar Gems Enterprise (MGE) is the main regulatory body overseeing the gem sector and is responsible for issuing mining and trading permits and licenses. Foreigners are legally prohibited from extracting Myanmar’s gemstones, including through joint venture with Myanmar partners. Only Myanmar citizens may be awarded mining permits.



Open pit sapphire mine in Mogok

2. Mining and Production: Mining operations in Myanmar range from small-scale and artisanal to intensive mechanized extraction present in the country’s major gem producing areas. Most machinery and equipment is relatively simple by international standards, but there are increasingly sophisticated operations especially in jade mining regions.¹⁴

3. Traders and Brokers: Traders and brokers are intermediaries who often trade gems numerous times across the stages of the supply chain. As in other gem producing countries, the Myanmar gemstone trade is known for opacity and informality, and transactions are typically conducted between parties that know and trust each other.¹⁵

¹⁴ Ibid.

¹⁵ Ibid.

4. Cutting, Polishing, and Finishing: Rough gemstones are finished to bring out their best aesthetic qualities. Cutting, polishing, and finishing present opportunities to add significant value to gemstones within the supply chain, potentially increasing value by 100%-1000%.¹⁶



Uncut rough gemstones sorted for size

5. Local Retail Market: A permit or license is also required to formally sell gemstones or open a gem shop in Myanmar, and license holders can sell gems at government approved shops, markets, or at the annual Gems Emporium in Nay Pyi Taw. Foreign buyers can purchase gems for personal use at the Gems Emporiums, as well as in government-licensed shops and markets throughout the country.¹⁷

The Myanmar gemstone supply chain from mine-to-market shares the global challenges present in other gem producing markets. The sector is opaque and there are intermediary transactions and dealing throughout the supply chain stages. The high profit potential for many gemstones can prompt under-reporting and fraudulent practices to avoid taxes and fees, and a significant component of overall production may not be declared. Such problems are not unique to Myanmar.¹⁸

Myanmar is also less competitive than other gem producing countries in terms of adding value to gems before sale or export. Throughout our meetings across the country, interlocutors from government,

¹⁶ Ibid.

¹⁷ Myanmar Extractive Industries Transparency Initiative, Gemstone Sector Review, July 2016, Emma Irwin.

¹⁸ Ibid.

industry, and outside organizations uniformly noted the lack of sufficient capacity, skills, and technology in Myanmar for gemstone cutting, polishing, finishing and lab testing and certification. It was noted that Myanmar needs to improve its supply chain and legal framework in order to create jobs and add value to gems before export. Parliamentary committee members believe the country needs to focus on development of small local companies to ensure a greater level of participation in the supply chain. The prospects for such value added propositions were seen as the most significant challenge for Myanmar in catching up to other gem producing countries—there are not even export procedures for value added products, and the country’s regulatory framework will need to be updated to address such issues. Some suggested the further steps of allowing foreigners to be licensed and to bid on tenders, set up advanced factories and hire local employees, and ultimately export the value added products to the benefit of all involved.

Compliance Mechanisms

As outlined in this paper, there are several U.S., international, and local compliance mechanisms required or recommended to follow when engaging in the Myanmar gemstones sector, including to meet AGTA and JA standards. While the Myanmar-specific sanctions have been removed, there remain individuals and entities in Myanmar that are sanctioned pursuant to other U.S. sanctions authorities, such as those targeting narcotics traffickers or North Korea. All U.S. individuals and entities must comply with those rules and regulations, and non-U.S. parties that fail to adhere risk losing access to the U.S. financial system and U.S. dollar transactions. Except as licensed or otherwise authorized, U.S. parties generally are prohibited from dealing with sanctions-listed individuals and entities, as well as any entities owned 50 percent or more in the aggregate by one or more listed individuals or entities. Entities that directly or indirectly owned 50 percent or more in the aggregate by one or more sanctioned individuals or entities are themselves automatically sanctioned. Therefore, care and diligence must continue to be exercised to make sure that no directly or indirectly sanctioned individuals or entities are involved—this is especially true in opaque sectors, such as gemstones, where ownership interests and involved parties may be hidden.

Although not directly applicable to gemstones, the Dodd-Frank Wall Street Reform and Consumer Protection Act includes provisions that target conflict minerals, including gold. Section 1502 of the law requires publicly traded U.S. companies to apply due diligence processes and disclose the locations from which any conflict minerals in their supply chains, including gold, have been sourced.¹⁹ Additionally, pursuant to the USA PATRIOT Act, dealers in precious metals, stones, or jewels are required to establish an Anti-Money Laundering compliance program. Dealers are defined to include any individual or entity who annually purchases or sells more than US \$50,000 in jewels, precious metals, precious stones, or jewelry composed thereof.²⁰

The obligations under the *AGTA Code of Ethics* apply not only to its terms, but also the relevant U.S. and Myanmar laws and regulations outlined here and below. This positions AGTA members to model responsible investment and business operations in the gemstone sector through their *Code of Ethics*, and by maintaining the highest possible ethical standards and principles, as well as a strong commitment to

¹⁹ Myanmar Extractive Industries Transparency Initiative, Gemstone Sector Review, July 2016, Emma Irwin.

²⁰ <http://www.jewelers.org/ja/advocacy/guidance/regulations>

marketplace due diligence, throughout their business dealings and transactions in Myanmar. Access to the American and world markets via AGTA, JA, USJC supply chain members and best practices is the clearest way to advance the reintroduction of Myanmar to the world's supply chain requirements.

Recommendations

Myanmar is at a crossroads for creation of the foundation for its further development. In nearly every meeting with interlocutors in both the public and private sectors, the Delegation heard consistent requests for technical assistance, capacity building, and examples and models which Myanmar could potentially look toward. Myanmar will have to take a step-by-step approach to undo decades of economic mismanagement and corruption and reform the gemstones sector to bring it up to international standards. The task can seem overwhelming, but a phased approach with consistent and transparent communication with relevant stakeholders and experts can contribute to this transformation. AGTA offers the following recommendations to the government, local industries, and international businesses and organization engaged in the gem sector.

In our meetings, the Delegation offered interim commitments for the Myanmar government and private sector to consider. These steps can foster confidence from the U.S. and world markets while Myanmar works to achieve long-term goals and change in the gemstones industry—they include:

Separating the gemstones and jade sectors in licenses, regulations, and practice. Jade and gemstones in Myanmar are entirely different sectors, but the vast challenges and issues associated with jade have too easily been conflated with the ruby and colored gemstones industry. This recommendation is supported by our Myanmar government interlocutors in both the executive and legislative branches, as well as MGJEA and UMFCCI members. Many MGJEA members felt that jade always overshadowed their industry, and jade has also been the major focus at the gems emporium, far outstripping gemstone sales. For example, at the 2015 gems emporium, there were 6,000 jade lots and 126 gemstones lots. Our interlocutors believed that if there was a focus on gems, there would be a greater likelihood to prevent or remedy issues that have plagued the jade sector.

Though gemstones are not immune to corruption, human rights abuses, and opacity, the problems in the jade industry are on an entirely different level, and this case is made especially clear in the Global Witness report and protests launched by local traders and miners. Additionally, jade deposits are located in active conflict areas; most of Myanmar's rubies are in conflict-free zones with the exception of small deposits in Mongshu in Shan State. Thus, the safety of workers, mine operators, and prospectors, as well as the likelihood of indirectly funding armed conflict, is less.²¹²²

Make a 10-year plan for rehabilitating old mining areas and include this requirement in new licenses. Rehabilitating old or unused mining sites can help mitigate the adverse environmental effects of mining. Open pits or deep shafts can be filled with soil or concrete (for shafts), potentially providing new land for regrowth of plants and trees.

²¹ <http://www.irrawaddy.com/news/police-investigate-explosion-at-hpakant-jade-mining-company.html>

²² <http://www.ibtimes.com.au/myanmar-miners-uneath-175-tonne-jade-stone-worth-170-million-1531241>



Many closed or abandoned mine sites would benefit from dedicated reclamation efforts.

Develop the gem supply chain based on a tax structure that encourages compliance rather than avoidance. Payment and collection of taxes are chronic issues in Myanmar, but the government must fill its coffers with tax revenues if it is to deliver on critical services for its electorate. The government needs to create a fair and rational tax system that encourages and incentivizes payment as well as a system to systematically collect taxes and penalize those that evade them.

Create an apportioned tax structure. A vital part of the new tax structure is an apportioned one where a percentage of the regional taxes are returned to the community for specific projects. For example, a certain percentage of the tax revenue generated from gems in the Mogok region can be returned to Mogok to develop a gemological education facility and a gemological testing center, as well as infrastructure to benefit the broader community. These reinvestments will help the community to prepare a next generation for stable, rewarding, and lucrative career path in the gemstone industry. Identifying job opportunities and creating a cadre of educated and informed gemologists in Myanmar is a priority for both the local and national-level governments; many points to providing these opportunities for Myanmar youth would help alleviate “brain drain” and support for their social, economic, and political future. The Delegation understands that resource sharing conversations, as well as tax revenue, are an ongoing and critical part of the national reconciliation dialogue. Some States and

Divisions are awash in natural resources while others lack any real marketable items. However, such tax revenue in places like Mogok can certainly contribute to the community in a positive way and diminish fuel for conflict or abuses.

Honor labor laws, especially child labor restrictions. The Myanmar government must protect children and those at risk of exploitation who work in mines. The Delegation did not witness any child labor, and our interlocutors confirmed that the scale of the problem is not close to that in other industries; however, the Myanmar government must enforce these laws and businesses must honor them. Additionally, labor laws granting freedom of assembly, a minimum wage, and occupational health and safety standards must be drafted, made uniform, easily accessible and understood, and implemented and honored. For example, the Myanmar government should reconsider supply and management for explosives in order to be able to provide quality dynamite in smaller quantities to miners. Mine owners should not be forced to turn to the black market and put workers' safety in jeopardy with homemade explosives.

Additionally, and based on conversations, meetings, and an understanding of the Myanmar gemstones market, the Delegation also offers the following recommendation:

Allow current mine owners the ability to renew licenses instead of redistributing them by auction. At this stage, the government is considering auctioning licenses without consideration of current license holders and their business practices. Renewals should be made on the condition that mine owners and operators are paying all taxes and meeting legal and regulatory requirements, including for the sale and export of materials and all laws regarding labor and environment. Though there is a recognition that some mine owners earned licenses through opaque concessions or have operated in a detrimental manner, a criteria-based renewal promotes best business practices, rewards those that already conduct themselves in a transparent and legal way and that contribute positively to the mine operation and to the community, and puts on notice those that undermine reforms in the sector.

Undertake practical and institutional reform related to transparency in the supply chain, compliance, and adoption of global international standards. Global consumer preferences now demand greater transparency, responsibility, and ethical corporate behavior for most purchased goods. Though Myanmar has a long way to go in remedying all its issues, the desire to enter the global marketplace more prominently presents an opportunity and incentive to transform the gemstone industry. There must be a framework in place to provide for the hiring and training of inspectors, capacity building for lawmakers and bureaucrats drafting and implementing laws that will ensure proper permit, contracts, and licensing reviews, accountability, ownership declaration and incentives to move informal market actors into the formal market, and a paper trail for gemstones from mine to sale. The government must establish a mechanism or database that is publicly available for permits and licenses, as well as requirements for invoicing and paperwork recording gemstones' origins and sales to properly account for and verify the source and note tax payments. This will provide necessary transparency in the industry, particularly on beneficial ownership, and allow for a more systemized way of tax collection, and comfort for consumers purchasing Myanmar stones.

Adopt and apply the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*. Both the AGTA and JA, together with 13 other U.S.-based Trade Associations of the USJC apply the *OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*

(<http://www.oecd.org/corporate/mne/mining.htm>) wherever applicable and possible. To this end, the Delegation distributed outlines of the OECD Guidance to MONREC, including MGE, during the course of the Delegation's visit. Additionally, the Delegation conducted a second presentation on the subject before more than two dozen additional ministerial administrators and lawmakers.

The Myanmar government also can build upon MGE's M14 form, which is completed following the daily production at a mine and registers the value and volume of each gemstone produced. MGE records the data, thus keeping track of gemstone production. This is the first step toward transparency in the sector and producing a supply chain paper trail.

Additionally, the government must build its capacity to strengthen the implementation and review of environmental and social impact assessments (ESIAs). These reports should take account of the size of the company involved (SMEs face financial barriers to undertaking a formal ESIA), reflect international standards but also account for unique circumstances in Myanmar, and be reviewed by capable officials to ensure that standards are met and penalties meted out for noncompliance. Relevant government institutions, particularly MGE, must embrace transparency and best practices that will ultimately benefit the industry, the Myanmar people, and their government.

The AGTA, OECD, and the Extractive Industries Transparency Initiative (EITI) (Myanmar is a candidate country for the EITI), all have frameworks on public disclosures and are positioned to guide Myanmar's government and industries in understanding and implementing these standards.

Allow foreign investment and engagement in mining and trading. Foreign investors can bring much needed jobs, add value, build capacity, demonstrate international standards, and provide direct access to their home markets, all items supported by local traders, miners, and the Myanmar government. Foreign businesses can also employ programs to work with small-scale mines that want to raise standards and become more competitive, but do not have the financial ability to do so. A business can offer to buy stones from a particular mine provided that the mine incorporates international best practices and abides by local law. Additionally, allowing foreign engagement will result in greater transparency, particularly on beneficial ownership. It is clear that some companies have foreign interests, and that gems are being traded by foreigners, most notably in markets in Thailand and Hong Kong.

Expand and encourage multi-stakeholder engagement. EITI works through a multi-stakeholder group, however, this mechanism needs more authority, as well as support from the national government, and must be inclusive. Trade associations like MGJEA can play a stronger role in this process, as well as those impacted by mining, particularly those in ethnic nationality areas.

Examples

There are a handful of ruby and gemstone-producing countries that can offer examples for the Myanmar market to follow. Sri Lanka, Madagascar, and Mozambique, though not perfect examples, all offer frameworks that could be applicable to Myanmar, as well as cautionary tales as to how even the best intentions can result in failed policy.

Sri Lanka is the best model and the most similar to Myanmar, but it does not have the same extent of large-scale mechanized mining that Myanmar does. Sri Lanka, like Myanmar, is one of the world's leading producers of gemstones, and has large deposits of sapphires and rubies. Sri Lanka's gemstone industry, unlike Myanmar's, has strong governance and has implemented measures to better ensure equitable resource revenue sharing. Additionally, Sri Lanka's gemstone industry consists primarily of small artisanal mines, and foreign ownership of large-scale mechanized mining of gems is prohibited. Most mines are open pit and in 2013, 6,000 of the roughly 6,500 mining licenses issued were for pit mines.

Many regulatory and trading bodies in Sri Lanka oppose large-scale gemstone mining and favor small-scale instead as they consider the latter less harmful to the environment and a more stable source of employment. However, large-scale mechanized mining permits can be issued if the concentration of gemstones is not high enough for pit mining or there is a serious threat of illicit mining. The National Gem Jewellery Authority (NGJA) plays a large part in Sri Lanka's gemstone industry as the regulatory body that issues mining licenses. When approving mining licenses, the NGJA collects a cash deposit. If the mine owner fails to rehabilitate the land upon completion of mining in the licensed area, the NGJA uses the cash deposit for that purpose. For small-scale and large-scale mining, miners themselves must provide a cash deposit used to rehabilitate the land if the mine owners do not do so. The NGJA further encourages small-scale mining "by holding auctions for gem-bearing sites identified by government geologists on crown land or in water bodies." Through these measures, Sri Lanka boasts that 80% of mines are accounted for in the formal market.

In response to Thailand overtaking Sri Lanka as the major colored gemstone trader in the 1970s and 80s, Sri Lanka modified its business strategy and import/export regulations to become more competitive. Sri Lanka simplified the import/export process and removed prohibitive duties allowing Sri Lankan dealers to import rough sapphires from around the world. Sri Lankans were able to use imported gemstones to expand trade. Additionally, the trading policies attracted foreign investors.

Sri Lanka's aversion to foreign investment in gemstone mining, however, is not encouraged for Myanmar. Sri Lanka prohibits foreign investment and has recently taken further steps to prevent foreign engagement in gemstone mining. Sri Lankan President Maithripala Sirisena in September took measures to protect the Sri Lankan gem industry from foreign gem mining companies and directed the NGJA to keep foreign companies out of joint venture partnerships or ownership in local companies. This directive was sparked by information that foreign companies were buying up lands through local companies in the Ratnapura district for potential gem mining. These protectionist policies occurred in the previous government as well when it cancelled 16 mining licenses issued during the former Mahinda Rajapaksa government to a foreign firm producing rough emeralds.²³²⁴²⁵²⁶ That said, Sri Lanka does have mechanisms to assist foreign investment through its Board of Investments, akin to the Myanmar Investment Commission. Given the difficulty in investing in frontier and emerging markets, these organizations are critical in ensuring foreign investors can engage and engage smoothly.²⁷

²³http://www.gemstone.org/index.php?option=com_content&view=article&id=659&Itemid=1

²⁴ <http://www.sundaytimes.lk/160904/news/keep-foreign-companies-out-of-the-local-gem-mining-industry-president-207639.html>

²⁵ <http://www.state.gov/e/eb/rls/othr/ics/2016/sca/254491.htm>

²⁶ https://books.google.com/books?id=6sYSzR0MC_oC&pg=PA26&lpg=PA26&dq=sri+lanka+mining+reforms&source=bl&ots=snTJa-IGW2&sig=KbosuulYh_hpGrD-BN0sgDvYSKI&hl=en&sa=X&ved=0ahUKEwjh2J2i0oHQAhWp24MKHVxeAd8Q6AEINjAE#v=onepage&q=governance&f=false

²⁷ http://www.investsrilanka.com/services/investment_facilitation

AGTA highly recommends that Myanmar look to Sri Lanka's regulatory regime as a model, particularly as it has an autonomous governing body to award licenses, provides more transparency in the supply chain, and encourages companies to participate in the formal market. However, Myanmar should very carefully address or avoid anti-foreign investment policies that would undermine efforts to build capacity, job growth, and a strong regulatory regime. Concerns about exploitation are valid (especially given Myanmar's experience with foreign ownership in the extractive industries), but the resulting strong protectionist streaks have a history of leading to nationalized market sectors, preventing foreigners from entering the market, and passing protectionist legislation that impedes local investment.

Madagascar is another example Myanmar **could** review, though it should also be wary of why initiatives failed. Madagascar's gem industry grew substantially in the 1990s; however, weak governance led to smuggling and revenue loss. The World Bank in 1999 estimated that US \$100 million in gemstones were smuggled out of Madagascar illegally, and the value of illegally trafficked gemstones throughout the 1990s was estimated to be US \$200-500 million, or 10% of the country's GDP. The World Bank provided Madagascar a US \$32 million loan for a "Mineral Resources Governance Project" "to assist the Government of Madagascar in implementing its strategy to accelerate sustainable development and reduce poverty in Madagascar through the strengthening of governance and transparency in the management of mineral resources, with special emphasis on small-scale and artisanal mining." The project sought to educate and empower key stakeholders in the industry, including relevant government agencies, public mining companies and associations, private foreign and domestic mining investors, gemstones cutters and polishers, gemstones buyers and exporters, artisanal miners, local mining communities, and Madagascar citizens through bringing governance transparency and institutional reforms.

Despite initial success, a political crisis starting in 2009 threatened to undermine the project. Nearly 95% of the project funds were delivered before the coup, thus having minimal impact on the project. However, the crisis created doubt that reforms would continue. Implementers as well as the government of Madagascar were generally satisfied with the project, with the two key takeaways being that high-level scientific oversight is key to ensuring the success of a complex geology program, and that a multi-stakeholder approach is critical to promoting good governance of mineral resources.²⁸

Mozambique offers a more cautionary tale and important lesson to be learned. Ruby deposits were discovered in 2009, prompting hopes of income and jobs. The same year, Mozambique joined EITI. The British company Gemfields entered into an agreement with Mwiriti Limitada, a private Mozambican company, in June 2011 to acquire a 75% controlling interest in a new joint venture company, Montepuez Ruby Mining Limitada (MRM). Gemfields prides itself on providing responsibly sourced, consistently graded, and reliably supplied rubies and in setting "new benchmarks for environmental, social and safety practices in the colored gemstone sector." MRM received a 25-year mining and exploration license from the Mozambique Government in February 2012. Gemfields' first Mozambique ruby auction took place in Singapore in June 2014, generating US \$33.5 million. Montepuez rubies sold for up to US \$689 per carat, more than 10 times the price of Gemfields's emeralds, which in 16 auctions earned \$276 million, and the rubies have generated US \$122.2 million since the 2014 inaugural auction. Mozambique has benefited from tax significant revenue.

²⁸ World Bank. 2012. *Madagascar - Mineral Resources Governance Project*. Washington, DC: World Bank. <http://documents.worldbank.org/curated/en/792871468271812450/Madagascar-Mineral-Resources-Governance-Project>

Despite assurance of a responsible supply chain, MRM in 2015 was the subject of reports of land grab accusations and fueling conflict. Speculators traveled to Montepuez in search of wealth and have attacked small scale miners. 100Reporters, an investigative news agency, undertook a three-year investigation, traveling to mine sites and interviewing government officials, miners, and impacted communities, and it discovered land grab and conflict-related human rights abuses associated with the MRM operation.

Mozambique watchers believe the violence is mostly due to the influx of artisanal miners, unlicensed buyers, and smugglers clashing with security organizations hired by the government and MRM internal security staff, both of which work closely together. Government forces have a specific mandate to safeguard the ruby deposits for Mozambique on and off its concession, however, MRM does not have any control over their operations.²⁹³⁰³¹³²

Myanmar has had its own issues with security forces protecting extractive industry-related projects, and land grabs have become a major concern among Myanmar's civil society and human rights organizations. Clear guidelines and laws as well as a comprehensive outreach strategy must be put in place to protect investment but also local communities present on the land.

Opportunities for a New Relationship

Myanmar's rubies are the finest in the world and, following the lifting of sanctions, the U.S. can now legally purchase these high quality colored gemstones. For Myanmar, the U.S. market presents renewed opportunities to sell gems, generate income, create jobs, and show a piece of Myanmar's history to the world.

There is a lot of work to be done to give American consumers confidence that the gemstones they have purchased are ethically and sustainably mined and have contributed lasting benefits to Myanmar. In these challenges lie opportunity. The government, traders, miners, and multilateral organizations are all working toward reforming the gem industry. All of the stakeholders the Delegation met were fully committed to meeting these goals to restore commerce with the U.S. and the world.

U.S. businesses and organizations like the AGTA, JA, and GIA can help shape this process and offer key stakeholders guidance to ensure Myanmar's gemstone sector develops in a way that matches AGTA's *Code of Ethics*, JA's *Code of Professional Practices*, and other international guiding principles. These issues are not insurmountable, and the capabilities, expertise, and experience can certainly contribute to transforming and stabilizing Myanmar's gemstones market in a way that benefits both the local people and global consumer.

²⁹ <http://foreignpolicy.com/2016/05/03/the-blood-rubies-of-montepuez-mozambique-gemfields-illegal-mining/>

³⁰ <http://www.aljazeera.com/programmes/africainvestigates/2015/12/mozambique-gem-wars-151210075320384.html>

³¹ <http://corporate.gemfields.co.uk/assets/montepuez-ruby-mine-mozambique>

³² <https://100r.org>



U.S. Delegation in a meeting of gemstone miners representing the Mogok chapter of the Myanmar Jewellery and Gemstone Entrepreneurs Association (MGJEA).

In order to accomplish and address the needs and desires from both Myanmar and the U.S., there is a significant need for a better understanding on both sides: the need for the Myanmar gem industry to understand how to operate in the international gem market, and a similar need for the international market to understand this historic gem-producing country. Few Western gem dealers have ever been to the country, much less to Mogok or other gem producing areas. Though challenges can be navigated and overcome, there is a lot of upfront work to be done to avoid misunderstandings and mistakes.



U.S. Delegation Members meet with Myanmar Gem & Jewellery Entrepreneurs Association in Yangon.

Myanmar is at a crossroads in its development and is looking for ways to ensure that its natural resources can help the country emerge from decades of gross economic mismanagement to once again become the “gem” of the region. Myanmar has been isolated for so long and is now looking to re-enter the global market. Myanmar is looking to the U.S. to help it on this path, particularly when it comes to their natural resources. Gems are synonymous with Myanmar and governance and improvement of this treasured sector will be a major factor in the continuing reform efforts. There is a positive future outlook and now is the most critical time to help Myanmar’s gemstone industry progress and bring once of its most valued exports to the U.S.

During the time it will take time to draft, pass, and implement new laws, the U.S. jewelry industry has the opportunity to play a vital role to bring Myanmar’s mines and supply chain up to international standards. Critically important, is that throughout the trip, the Delegation noted widespread and overwhelming willing enthusiasm to take these necessary steps to do so. To do that, Myanmar gem miners, and dealers seek the assistance that the international community, especially the AGTA, JA, and GIA can bring to bear. Myanmar is looking to the United States to help guide it on reforming and fully reestablishing healthy and strong bilateral trade relations. Increased commerce during this development process will prompt further improvements and foster incremental success in meeting international

standards. This is the best way the U.S. can help Myanmar’s emerging democracy grow and succeed. It is a work in progress, one cannot wait for perfection to engage. Myanmar has taken a very large step and is holding its hand out to America.

BACKGROUND AND SUPPORTING INFORMATION

Key Stakeholders

National and Local Governments

Following a landslide win in the November 2015 election, the NLD party officially took power in March 2016 and started to chart its governance path. The new government’s main focus has been on national reconciliation with the country’s dozens of armed ethnic groups, a defining issue that is both directly and indirectly linked to the gemstone sector, particularly in resource sharing, and bringing transparency to the economy to help ensure sustainable development. The government has also emphasized environmental protection, stakeholder engagement, and top corporate standards to create jobs, provide a stable tax base, and grow Myanmar’s economy. Currently, the governing style is top-down, with the bulk of the decision-making authority resting with State Counsellor Aung San Suu Kyi; however, key ministries and parliamentary committees are critical to drafting and implementing regulations and legislation, as well as supporting and directing foreign investment.

Since 1962, military rule, armed ethnic and antigovernment conflict, human rights abuses, and gross economic mismanagement largely defined Myanmar. Following a massive popular uprising in 1988 that brought the NLD and its leader, prodemocracy icon Aung San Suu Kyi, into prominence, the military held a multi-party election in 1990. The NLD won an overwhelming victory, but the military regime then refused to recognize the results and transfer power to the NLD. The next election was not held until 2010, and it ushered in the Union Solidarity and Development Party (USDP), led and populated by retired junta generals and military officers. The USDP government defied expectations, and its executive and legislative branches both embarked on a series of political and economic reforms, including releasing hundreds of political prisoners, allowing greater freedoms of speech, assembly, and labor, requiring transparency on major infrastructure and telecommunications tenders, allowing the NLD to participate in the 2012 by-elections, and starting a structured peace process with the country’s armed ethnic groups. In response to those reform efforts, in 2012 the European Union lifted all of its economic sanctions and the U.S. began to ease its most restrictive sanctions. Following the peaceful transfer of power from the USDP to the NLD in 2016, the U.S. took further measures, ultimately lifting all of its Myanmar-specific economic sanctions in an effort to ensure the U.S. fully supported Myanmar’s economic development and that the NLD would have full authority to direct policy on political and economic reform.

The NLD has streamlined the bureaucracy through combining ministries and creating and staffing parliamentary committees tasked to oversee the drafting and implementation of laws establishing a new framework for international investment. The NLD combined the Ministry of Mines and the Ministry of Environmental Conservation and Forestry to create the MONREC. This ministry is the key executive body overseeing gemstones, and includes the Department of Mines, the Department of Geological Survey and Mineral Exploration, and the MGE. The Department of Mines primarily focuses on minerals, while the Department of Geological Survey and Mineral Exploration covers geological mapping, prospecting, and exploration. MGE is responsible for most administrative, policy, and regulatory matters for the gemstone sector. MGE is also responsible for issuing mining and trading

permits and licenses, collecting taxes and paperwork related to sales and trade (including invoices, receipts, and tax forms and payments), and organizing the Myanmar Gems Emporium.³³

MGE is the primary policymaking body for gemstones and will be the author for the new gemstones law and by-laws which will govern the sector. MGE has traditionally predominantly focused on jade due to its larger scale in trade. Our interlocutors note that there are high-level officers in MGE looking to bring the gemstones sector in line with international standards and are open to meeting with international organizations and governments to implement such standards. For example, our meeting with MONREC, which included representatives from the Department of Mines and MGE, resulted in a follow-on session to exchange views on best practices and adherence to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

The Ministry of Labor, Immigration, and Population, which governs laws on worker safety, labor rights, and supply chain issues, is also involved in the gemstone sector. The ministry has been working closely with the International Labor Organization (ILO) and the Ministry of Education to eradicate child and forced labor issues. The U.S. Department of Labor in 2014 identified Myanmar's jade and ruby industries as sources of forced and child labor; the U.S. government, and Congress in particular, is focused on pushing the NLD government to expediently address those issues and will almost certainly caution investors to monitor for violations through due diligence and auditing processes.³⁴³⁵³⁶ The ministry is also focused on safety and occupational standards, and though it lacks experts and technocrats to implement ILO standards and draft comprehensive laws, it is seeking technical assistance and capacity building measures.

The Ministry of Commerce's Myanmar Trade Promotion Authority is focused on building Myanmar's exports markets and increasing access to the country's products overseas. The Trade Promotion Authority wants to work with foreign traders and government offices to find ways to expand export opportunities and ensure the right legal framework exists to do so.

Finally, the Myanmar Investment Commission (MIC), which approves business permits and registrations for foreign and local investors, consults with gemstone-related ministries to approve investment in the sector and is typically the first stop for investors in general.

Parliament also plays a significant role in the gemstone sector, debating, passing, or rejecting draft laws originating from the ministries. The Mineral, Natural Resources and Environmental Conservation Committee oversees MONREC and is the most critical committee related to gemstones and mining. A committee member told the Delegation that the new NLD government is trying to bring transparency to mining and make the sector more sustainable. He noted that the gems and jade mining industries still abide by old laws, and that the government is working to rewrite them including by revising the gemstones law. His committee is seeking to organize stakeholders to obtain all relevant views and inform the legislative drafting and implementation processes.

³³ <http://www.mining.gov.mm/MGE/1.MGE/details.asp?submenuID=17&sid=48>

³⁴ https://www.dol.gov/ilab/reports/pdf/tppra_report2014.pdf

³⁵ The ILO, following complaints in 1996 against Myanmar for violating the Forced Labor Convention, was tasked to work in Myanmar under an appointed Commission of Inquiry. Several global sanctions regimes were put in place following Myanmar's refusal to comply; the ILO made several breakthroughs in 2010 and sanctions were subsequently removed.

³⁶ Child labor in Myanmar is currently defined as children between the ages of 14-17. This age groups can work 4 hours a day, during daytime hours, and only light labor. Children must also receive a note from a doctor approving of their ability to work.

The Judicial and Legal Affairs Committee, which oversees rule of law and broad legal framework issues (including outreach for technical assistance in drafting laws or finding exemplars), is also a key committee for gemstones. The committee is staffed by current NLD lawmakers, businesspersons in the gemstones and jewelry industries, and officials from the former USDP government. The committee wants to mobilize the Myanmar economy to be natural resources-based, but with a transparent and participatory supply chain and legal framework to create jobs and value added products for export. Our committee interlocutors also noted that parliament is focused on child labor, stating that the government and the private sector have to do more due diligence to improve the country's reputation on this issue, particularly in the extractive sectors.

Policymaking is typically conducted in Nay Pyi Taw, Myanmar's administrative capital; however, local governments are also constitutionally obligated to effectuate laws regulating investment in their specific States or Divisions. The majority of Myanmar's gemstones and jade deposits are located in Shan and Kachin States and Sagaing and Mandalay Division. Mogok, home of Myanmar's highest quality rubies, is located in Mandalay Division and is thus governed by national-level laws and local division government regulation. The role of the division-level government is more supervisory, ensuring that national laws are being followed. The national-level Union Minister has the real power and authority, and taxes from gem sales and mining go into the national budget and not necessarily to the state or division. Additionally, the local government acts as a sounding board for local communities and mining constituencies, conveying concerns and needs to the Union-level government. The Mandalay Division-level MONREC minister wants Mandalay to receive more direct benefits from the taxes generated in his division.

The role of the State and Division parliaments will likely change over the NLD's five-year term. Myanmar's constitution allocates some decision-making authority to local governments, including on budgeting and economic issues. However, the national government can override local laws. Myanmar's States are home to its various ethnic nationalities, and local parliamentary power will likely grow as the national reconciliation and peace talks address resource sharing and rights to govern. For example, the Kachin State government on October 30, 2016, announced that the state parliament would enact regional laws to control the mining industry. Kachin State has some of Myanmar's largest jade deposits.³⁷ Other States and Divisions are likely to follow suit, particularly as governmental power decentralizes and the peace and national reconciliation process, of which resource sharing is a major focus, matures.

Non-governmental Actors

Trade associations have been actively representing the concerns and demands of gemstone miners, traders, and laborers. The main relevant associations are the MGJEA, the Myanmar Federation of Mining Associations, and the UMFCCI. The MGJEA has an estimated 10,000 members and has branch offices in the cities of Yangon, Myitkyina, Mandalay, Mogok, Sagaing, and Hpakant. The association helps organize the gems emporium and also works to develop the sector, find access to international markets, and communicate the concerns of the industry. MGJEA has traditionally been dominated by jade interests, but gemstone memberships are increasing. MGJEA currently is seeking to focus the Myanmar government on passing and implementing legislation that helps make the Myanmar market competitive, including by lowering taxes and import duties and promoting value added processes. MGJEA has also requested that an independent regulatory body be formed to provide objective and

³⁷ "Mining Will Be Regulated: Kachin State MP," Eleven News Media, October 31, 2016 <http://www.elevenmyanmar.com/local/6388>

clear guidance on the gemstone sector. The organization has put together a master plan addressing these ideas for the new government to consider.

The Myanmar Federation of Mining Associations represents Myanmar miners and retailers of mineral commodities, and has branches in several States and Divisions including Mandalay. Most members are metal and mineral miners, but the federation does include members from the gemstone sector. The federation has frequently met with the Union-level and Division-level governments to express the concerns of members, particularly on licensing and permits.

The UMFCCI is a trade federation that includes more than 10,000 businesses and nearly 50 affiliated associations as members, including the MGJEA, the Myanmar Gold Entrepreneurs Association, and the Myanmar Federation of Mining Associations. The UMFCCI acts as a bridge between the government and private sector, and works to develop Myanmar's economy, create new investment opportunities, bring together potential foreign and local joint venture partnerships, and provide consulting services on local economic, industrial, legal, and environmental issues, as well as participate in trade fairs and exhibitions.³⁸ The UMFCCI has strong relationships with foreign chambers of commerce and associations, including those from the United States, and is actively seeking to promote increased bilateral trade and investment ties.

Shifting Regulatory Framework

The NLD government, similar to its USDP predecessor, is drafting and amending a myriad of laws, in part to update outdated legislation and regulations, and in part to distance itself from previous military regimes. This has resulted in a constantly shifting policymaking process that is slow and oftentimes opaque. When the Delegation would ask for specific guidance on laws related to foreign engagement in the gemstones sector, the answer typically suggested that “a law is being drafted that will cover that issue.”

³⁸ <http://www.umfcci.com.mm/about-umfcci/>



Parliament building in Nay Pyi Taw, Myanmar

Although the legislative environment can be vague and complex, the following key laws impact gemstones and foreign investment:

Myanmar Investment Law 2016 and MIC Notification No. 49/2014 (14 August 2014): The new Myanmar Investment Law was passed in October 2016 with the law expected to take effect in April 2017.³⁹ The law outlines the duties of the Myanmar Investment Commission, tax break categories, and types of investment that are allowed or prohibited.⁴⁰ The MIC Notification further explains that foreigners are prohibited from mining in the jade and gemstones sector, as well as from having any ownership in joint venture partnerships related to such mining. Foreign trade outside of the gems emporium is also impermissible (all gemstones must be purchased for personal use, including those stones purchased at the emporium). This prohibition has been included in every law governing the gemstone sector since 1989, including the State Owned Economic Enterprises Law 1989, the Foreign Investment Law of 2012, and its amendments passed in January and November of 2013, as well as in the latest iteration of the Investment Law passed in late 2016. However, the MIC may in its discretion permit foreign investment where the investment is in the interests of the state and Myanmar's citizens, particularly Myanmar's ethnic groups. The MIC notes that a company or individual can submit a proposal to the MIC to see if such investment can be approved.⁴²

³⁹ <https://consult-myanmar.com/2016/10/31/myanmars-new-investment-law-regulations-to-take-effect-next-april/>

⁴⁰ <http://www.mizzima.com/business-domestic/myanmar-investment-law-approved>

⁴¹ http://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/myanmar_investment_law_draft_as_of_060716_translated_by_kcy_14_july_2016.pdf

⁴² <http://www.allenoverly.com/SiteCollectionDocuments/Myanmar%20->

The Myanmar Companies Act (1914): The Myanmar Companies Act (formerly the Burma Companies Act) was enacted in 1914 and serves as the legal foundation for businesses incorporated in Myanmar. The act defines foreign and local companies and is the legal framework for the incorporation and registration of a company, corporate management, fiscal and audit requirements, capital raising, and other procedures. The act is currently being redrafted and is expected to be passed either this year or in early 2017.⁴³⁴⁴

Myanmar Mines Law (2015): The Myanmar Mines Law excluded separated the legislation on gemstones, including from other minerals and metals includes covers jade, rubies, sapphires, diamonds, and other colored gemstones, from legislation covering other minerals and metals. Gemstones and jade are not separated in the legislation, and the laws were are drafted and are implemented by MGE.⁴⁵

Myanmar Gemstone Law (1995): The main objectives of the Myanmar Gemstone Law were to establish and maintain a market within the country for gemstones produced in Myanmar and eradicate illegal production, export, or sale of Myanmar gemstones.⁴⁶ The Myanmar Gemstone Rules (Ministry of Mines Notification No.70/95) of December 1996 supported the Gemstone Law and provided more detailed technical guidance for interpreting it. The 1996 Rules are available in Myanmar language but not in English. The first amendments to the Gemstone Law were made in 2003 and were minimal. The second amendments to the Myanmar Gemstone Law (23/2016) were passed by parliament in January 2016 to change and update approximately 75% of the 1995 Law. The by-laws have not been implemented. As of April 2016, new rules and regulations were in the process of being drafted and were made available for public comment in mid-2016. Key changes will address categorization of gemstones products, production and exploration permits, land use, government oversight and an increased role for MGJEA, royalties, penalties for non-compliance, environmental and social impact considerations, and required corporate social responsibility profit sharing.⁴⁷

The third amendments to the Gemstone Law continue to prohibit foreign investors from extracting gemstones, applying for permits, and entering into joint venture partnerships with local companies. However, the proposed third amendment includes a new clause that replaces sub-section C of Section 17 of the 1995 Law, allowing foreign gemstone traders to be invited and potentially given the right to sell in accordance with the law and with the agreement of MONREC. The current Gemstone Law states that only “a company formed as a Myanmar company under the Myanmar Companies Act or a company formed solely with Myanmar citizens under the Special Company Act, 1950” may be awarded a gemstone production permit. The law further stipulates that permit holders may “not sub-lease or in any way transfer the permit obtained.” The Myanmar Companies Act (1914) requires that companies be wholly owned and controlled by Myanmar citizens; even 1% of shares owned by a foreigner would transform the company into a foreign-owned entity. Despite this clause, foreign ownership does exist in the gemstones sector, but is often hidden under opaque layers that obscure beneficial ownership.⁴⁸⁴⁹

%20Myanmar%20revises%20scope%20of%20prohibited%20and%20restricted%20activities%20for%20foreign%20investment.pdf

⁴³ http://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/myanamr_companies_act_1914.pdf

⁴⁴ http://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/mcl_english_version_june_2016.pdf

⁴⁵ <http://www.mmtimes.com/index.php/business/18223-parliament-set-to-adopt-mining-law.html>

⁴⁶ <http://mm.myanmars.net/laws/1988-2011/684-1995-08-the-myanmar-gemstone-law>

⁴⁷ Myanmar Extractive Industries Transparency Initiative, Gemstone Sector Review, July 2016, Emma Irwin p. 20

⁴⁸ Myanmar Extractive Industries Transparency Initiative, Gemstone Sector Review, July 2016, Emma Irwin p. 20, 26

⁴⁹ <http://www.resourcegovernance.org/sites/default/files/documents/guidance-bod-myanmar.pdf>

Gems traders support some of the amendment of the Gemstone Law, particularly as it relates to jade, though there are concerns about permits and licenses for small and medium sized gemstones mining operations. The new law allows State and Division-level governments authority to issue mining permits for small and medium-sized enterprises, with the expected outcome that this will provide smaller companies new opportunities to mine. Gems traders want laws to go further, and at an October 29 protest in Mandalay they demanded the government enforce a temporary suspension of jade mining, prevent illegal exports, and seek ways to better account for traders' needs and support the local market. Local traders said they were being pushed out of the market by large mining companies that do not pay taxes, extract large quantities of jade, and export it directly to China or other foreign markets. The previous Gemstones Law allowed for large companies to legally export raw jade directly to foreign markets if taxes were paid. Additionally, the protesters called for the replacement of several senior figures within the MONREC and MGE. The government in July 2016 had announced that mining permits would not be renewed upon expiration and that no new permits would be issued until by-laws to the Gemstones Law were adopted. More than 300 jade licenses then expired in September 2016, however, 19,000 permits remain valid through 2021. According parliament, the by-laws could take up to two years to be passed. Though many welcome the suspension of the jade permits and attempts to prevent large companies from overrunning the industry, there is growing concern among small and medium sized mining operations that the by-laws and relevant regulations will create an unfair licensing and permitting process, allowing large companies to outbid and buy up permits and “take over Mogok.” For the current miners, there is little transparency in the bidding process, and it appears to them that any new permits or licenses would be issued to the highest bidder, not the most qualified.⁵⁰⁵¹⁵²

2012 Environmental Conservation Law: The 2012 Environmental Conservation Law requires an Economic Impact Assessment (EIA)—according to the December 2015 EIA Procedure, all projects undertaken in Myanmar by any ministry, government department, organization, corporation, board, development committee, local government or authority, company, cooperative, institution, enterprise, firm, partnership or individual that can cause significant adverse environmental, social, or occupational health or safety impacts will be required to undertake an Initial Environmental Examination (IEE) or EIA and to obtain an Environmental Compliance Certificate. The Procedure also applies to existing projects, requiring companies to retroactively determine if an undertaking needs an EIA.⁵³⁵⁴ MGE is requiring mining companies under its purview to conduct an EIA, but similarly to other sectors, it is unclear how this will be enforced or how such EIAs will be reviewed. While EIAs are a welcome procedure in Myanmar, particularly given focus on the environmental impacts of jade mining and mega infrastructure projects, small-scale miners have difficulty undertaking such surveys as they are expensive and require consultants and lawyers that they lack access to.

1989 State-Owned Enterprises Law: This law remains in effect and grants the Myanmar government the 'sole right' to carry out business in certain sectors, including all exploration, extraction, and export of

⁵⁰ <http://www.mmmtimes.com/index.php/business/22251-over-300-jade-mining-permits-to-expire-this-month.html>

⁵¹ <http://www.mmmtimes.com/index.php/national-news/mandalay-upper-myanmar/23383-gems-traders-call-for-measures-to-protect-local-market.html>

⁵² <http://www.mmmtimes.com/index.php/business/19030-local-mining-applications-delayed-by-new-gemstones-law.html>

⁵³ Myanmar Centre for Responsible Business, “DRAFT: Myanmar Mining Sector Wide Impact Assessment on Limestone, Gold and Tin” p. 45

⁵⁴ ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE, Ministry of Environmental Conservation and Forestry Notification No. 616 / 2015

minerals, metals, pearl, jade, and gemstones.⁵⁵⁵⁶

Tax structure: MGE taxes jade, rubies, sapphires, and diamonds at 20% and all other colored stones, including spinel, at a 10% tax rate. Taxes are levied on mines and traders with permits, meaning that large swathes of the gem trade which operate informally go untaxed. There are also several other fees or royalties that impact gemstones. A 1% Emporium fee is levied by MGE on the actual sale value of lots that are sold at the emporiums and then paid in full to the Myanmar Gems Emporium Central Committee fund. The fund is meant to support the emporium and development of the gemstone sector. This fund was subject to an embezzlement scandal that erupted in June 2016. The MGJEA filed a complaint that nearly US \$100 million went missing from the account, with some allegations that former President Thein Sein and Minister Soe Thane pocketed millions.⁵⁷⁵⁸ Joint venture companies are also subject to a 1% supervision fee for foreign currency sales. Companies incorporated in Myanmar under the Myanmar Companies Act or the Foreign Investment Law (and likely the new Investment Law as well) must pay a 25% corporate income tax rate on profit to the Internal Revenue Department. There is no Value Added Tax (VAT) in Myanmar, but there is a Commercial Tax for gems and jewelry; this rate is expected to change on an annual basis.⁵⁹

Taxes have been a chronic issue in Myanmar with little in the way of collection or transparent budget allocation. Both the new and previous government have frequently published lists of the top taxpayers in Myanmar, and Aung San Suu Kyi has publicly asserted the need for tax revenue, especially from foreign investors. At a U.S. Chamber of Commerce and U.S.-ASEAN Business Council dinner in her honor in Washington, D.C., Aung San Suu Kyi explicitly stated her desire for American companies to come to Myanmar because “they pay taxes.”

Stakeholders complained that gemstone taxes and import duties were too high, causing miners and traders to avoid paying them and lessening Myanmar’s competitive market advantage. Some mine owners stated that they put money into the Mogok community itself, directly funding roads, schools, hospitals, and agricultural products and preferred this to paying taxes to the government.

International Regulatory and Best Practices Frameworks

The AGTA, JA, and GIA offer a set of standards and educational assistance that will be important resources for Myanmar to consider. Additionally, there are several international organizations operating in Myanmar that also set out guiding principles which the country has been encouraged to follow. These organizations not only are a source of information on sectors that are notoriously opaque, but also are working with the current government to reshape the gemstones industry.

AGTA: The American Gem Trade Association, Inc. ("AGTA") is an organization of members, from the United States and Canada, dedicated to promoting, educating and maintaining fair business practices in buying, selling and trading natural colored gemstones, pearls, natural colored diamonds and colored

⁵⁵ <http://www.dica.gov.mm/en/state-owned-enterprises>

⁵⁶ <http://www.vdb-loi.com/wp-content/uploads/2014/03/Myanmar-State-owned-Economic-Enterprises-Law.pdf>

⁵⁷ <http://www.mmtimes.com/index.php/national-news/20618-tribunal-to-investigate-gem-association-embezzlement-claims.html>

⁵⁸ <http://www.irrawaddy.com/business/new-commission-formed-to-investigate-alleged-gems-association-embezzlement.html>

⁵⁹ Myanmar Extractive Industries Transparency Initiative, Gemstone Sector Review, July 2016, Emma Irwin p. 65-68

gemstone manufactured jewelry (the "colored gemstone industry"). The *AGTA Code of Ethics* reflects recognition that the success of the colored gemstone industry is dependent on the respect, trust, and confidence of the public and the jewelry industry. To ensure that these values are upheld and promoted, every AGTA member is obliged to maintain the highest possible ethical standards and principles. All AGTA members acknowledge that their compliance with the *Code of Ethics* at the highest level is necessary for the success of the colored gemstone industry and AGTA.⁶⁰

AGTA members are at all times required to comply with all applicable local, state, and Federal laws. Each AGTA member must exercise reasonable due diligence and acquaint itself with such applicable laws, including any law, rule, or regulation or any order, writ, injunction, or decree of any governmental agency or authority with appropriate jurisdiction. If an AGTA member engages in international trade or commerce, that member is at all times required to comply with any applicable foreign laws. Importantly, AGTA members acknowledge that while it is not always possible to establish and verify every step from mining a gemstone to its cutting and through the many steps to the marketplace, each AGTA member nonetheless should attempt to maintain the highest possible ethical standards and principles in its business transactions throughout that process.⁶¹ In February 2016, the AGTA announced amendments updating its *Code of Ethics* to strengthen commitment to marketplace due diligence and reinforce the AGTA's leadership in global efforts toward supply chain integrity and transparency. The new requirements oblige each AGTA member to conduct reasonable and customary due diligence when purchasing, selling, exchanging, representing, marketing, and disclosing gemstones and jewelry. AGTA members also must, to the best of their abilities, determine that the gems they source and sell are mined responsibly with a concern for protecting and restoring the environment, are not sourced or processed using child labor or in violation of local laws or any applicable U.S. laws, and are processed with efforts to protect the health of all workers, including miners, cutters, and jewelers, and legally obtained, not in association with smuggling or supporting illegal activities.⁶²

JA: JA requires its members – jewelry retailers and suppliers across the jewelry supply chain – to commit annually to professional practices for their day-to-day business operations as a condition of membership. This commitment to high ethical practices ensures that consumers can shop with confidence for jewelry to celebrate life's treasured moments. This Code is consistent with the principles of the Responsible Jewellery Council, which Jewelers of America cofounded in 2005 and can be found at www.jewelers.org/about/code. Both the AGTA and JA, together with all other members of the USJC, have also agreed to apply to *OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (<http://www.oecd.org/corporate/mne/mining.htm>).

GIA: Established in 1931, GIA is the world's foremost authority on diamonds, colored stones, and pearls. The GIA is the world leader in gemological education, gemological research, and testing. It is where the world's gemologists begin their careers and is the most important institute dedicated to the science and education on gems to both inform and protect the trade and consumer. GIA strives to provide education to future gemologists, conduct research to understand and deepen knowledge of the world's gemstones, and protect the gem and jewelry buying public by setting global quality standards.

⁶⁰ <http://www.agta.org/about/ethics.html>

⁶¹ <http://www.agta.org/about/ethics.html>

⁶² <http://agta.org/pressroom/20160215-agta-news.pdf>

Myanmar Extractives Industry Transparency Initiative: The Extractive Industries Transparency Initiative (EITI) is a global standard for transparency and accountability in the oil, gas, and mining industries. There are more than 50 countries currently participating in the EITI globally, including Myanmar. EITI works to improve openness and accountable management of revenues from natural resources to foster more effective governance of the extractives industries and improve the livelihoods of citizens. EITI aims to provide a framework for resource management and transparency, including the gemstones sector.

Myanmar was awarded candidate country status by the EITI Board in July 2014, and produced its first EITI Report in 2016. To attain ‘EITI Compliant’ status, Myanmar has until January 2017 to meet all seven EITI Requirements:

- Effective oversight by a multi-stakeholder group that involves the government, companies and the full, independent, active and effective participation of civil society;
- Timely publication of EITI Reports;
- EITI Reports that include contextual information about the extractive industries;
- EITI Reports that include full government disclosure of extractive industry revenues, and disclosure of all material payments to government by oil, gas and mining companies;
- A credible assurance process applying international standards;
- EITI Reports that are comprehensible, actively promoted, publicly accessible, and contribute to public debate;
- The multi-stakeholder group must take steps to act on lessons learned and review the outcomes and impact of EITI implementation.⁶³

Organization for Economic Cooperation and Development: The Organization for Economic Cooperation and Development (OECD) Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas is one of the leading industry standards for companies in the mining industry. The voluntary guidance aims to help companies respect human rights, avoid contributing to conflict, and build transparent and verifiable mineral supply chains. The guidance can be applied to large scale mining as well as artisanal and small-scale mining. The guidance includes five general steps that can be shaped to the situation on the ground in Myanmar including:

- Building strong company management systems, include adoption of supply chain policies and training employees and management on such policies;
- Identifying and assessing risks in the supply chain;
- Managing identified risks;
- Auditing due diligence practices;
- Disclosing public reports on due diligence.⁶⁴⁶⁵⁶⁶

The U.S., E.U., and international organizations are encouraging Myanmar to adhere to OECD guidelines, and this framework will likely be incorporated by the NLD government.

⁶³ Myanmar Extractive Industry Transparency Initiative (MEITI) EITI Report for the Period April 2013- March 2014 Oil, gas, and mining sectors, December 2015

⁶⁴ http://mneguidelines.oecd.org/Brochure_OECD-Responsible-Mineral-Supply-Chains.pdf

⁶⁵ <http://www.oecd.org/corporate/mne/mining.htm>

⁶⁶ http://mneguidelines.oecd.org/5%20Step%20Framework_A3.pdf

International Labor Organization: The International Labor Organization (ILO) has been present in Myanmar since the 1990s, having first been assigned to undertake a UN-led Commission of Inquiry into labor issues, including forced and child labor. The Commission of Inquiry and related restrictions were lifted in 2012 following the initial reform efforts taken by the administration of former President Thein Sein. The ILO is committed to the promotion of full respect for and application of Fundamental Principles and Rights at Work in Myanmar. The ILO's main objectives include:

- Promotion of fundamental principles and rights at work with focus on elimination of the systemic use of forced labor, sustained and deepened progress on freedom of association, and improved policies and frameworks for reduction of child labor, particularly its worst forms;
- Contribution to enhanced employment opportunities and social protection through strengthened labor market information systems, skills development system, entrepreneurship development, and extending social protection;
- Strengthening the capacity of representative employers' and workers' organizations to influence economic, social, and governance policies.⁶⁷

United Nations: The UN Guiding Principles on Business and Human Rights (UNGPR), endorsed in 2011, serve as a framework for international standards related to preventing and remedying human rights abuses. They are not binding nor a substitute for existing regulations. The UNGPR have 10 principles for sustainable business practices, including:

- Support and respect the protection of internationally proclaimed human rights;
- Verify non-complicity in human rights abuses;
- Uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Eliminate all forms of forced and compulsory labor;
- Abolish child labor;
- Eliminate discrimination in respect of employment and occupation;
- Support a precautionary approach to environmental challenges;
- Undertake initiatives to promote greater environmental responsibility;
- Encourage the development and diffusion of environmentally friendly technologies;
- Work against corruption in all its forms, including extortion and bribery.

The UNGC has more than 8,000 business-related and 4,000 non-business participants, including NGOs, labor unions, academic institutions, and cities. Several Myanmar companies have signed onto the UNGC.⁶⁸

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⁶⁷ <http://www.ilo.org/yanmar/lang--en/index.htm>

⁶⁸ <https://www.unglobalcompact.org/what-is-gc/mission/principles>

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American Gem Trade Association



GIA



Indian Diamond & Colorstone Association



Jewelers of America



Thai Gem and Jewelry Traders Association

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