



# **Gemstone Sector Review**

**In support of Myanmar EITI**

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## **Acknowledgements**

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## Acronyms

ARM	Alliance for Responsible Mining
ASM	Artisanal and Small Scale Mining
CAGR	Compound Annual Growth Rate
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
DG	Director General
DGSME	Department of Geological Survey and Mineral Exploration
EAG	Ethnic Armed Group
ECD	Environmental Conservation Department
EITI	Extractive Industries Transparency Initiative
EUR	Euro
IRMA	Initiative for Responsible Mining Assurance
KIO	Kachin Independence Organisation
MATA	Myanmar Alliance for Transparency and Accountability
MEB	Myanmar Economic Bank
MDRI-CESD	Myanmar Development Resource Institute – Centre for Economic and Social Development
MGE	Myanmar Gems Enterprise
MGJEA	Myanmar Gems and Jewellery Entrepreneurs Association
MMK	Myanmar Kyat
MOECF	Ministry of Environmental Conservation and Forestry
MOM	Ministry of Mines
MONREC	Ministry of Natural Resources and Environmental Conservation
MSG	Multi-Stakeholder Group
NLD	National League for Democracy
NRGI	Natural Resource Governance Institute
OECD	Organisation for Economic Cooperation and Development
SEE	State Economic Enterprise
SOE	State Owned Enterprise
USD	US Dollars
WB	World Bank

## Executive Summary

### Context

Myanmar is blessed with an abundance of world-renowned precious gemstones, including rubies, sapphires and jadeite. There is no doubt that these finite, non-renewable precious resources are extremely valuable, but the ways in which they are extracted, traded and make their journey from mine to market remain opaque, fuelling stories of corruption, smuggling and abuse.

For decades, under tight military rule, little information regarding Myanmar's natural resource management was available. However, Myanmar is now at a turning point. From 2011, a quasi-civilian government began a slow process of gradual reforms, including joining the Extractive Industries Transparency Initiative (EITI) in the interest of introducing greater transparency in revenue management and the strengthening of natural resource governance. The EITI is a global standard (being implemented by 51 countries) to promote the open and accountable management of natural resources. An election in late 2015, which was contested by all political parties brought to power a new civilian government led by the National League for Democracy, heralding a new era of opportunity for greater reform and socio-economic development across many critical areas.

It is widely known that natural resources hold an important key to development for any country. If managed well, their exploitation can lead to social and economic development, but if not managed well, can lead to conflict, corruption and greater economic disparity. The EITI provides a framework through which countries can enhance transparency and accountability of their extractive industries in order to promote more effective governance of sector operations and revenue management.

This report is prepared in support of EITI. It is also intended to foster improved understanding of how the gemstone sector works in Myanmar and highlight areas for future strengthening of gems sector management. It has the following objectives:

- To provide a baseline assessment, including identification of the main challenges and opportunities along the gems and jewellery value chain
- To understand how Myanmar can expand EITI coverage of the sector
- To explore the potential for increased value addition in Myanmar
- To identify gaps and opportunities for government revenue management

The report identifies the key institutions, actors, policies, regulations and procedures relating to the gemstone sector in Myanmar. It then outlines the main stages of the gemstone value chain from mine to market, with a focus on EITI, including information on licensing and production. It shows how EITI reporting in the sector can be increased, provides indications of how government can become better at assessing and collecting taxes from operations, and outlines weaknesses in value addition and how these might be addressed. It also contains a number of policy related recommendations for strengthened government management of the sector. The report focuses on jade and coloured gemstones separately, where appropriate.

### Key Findings

Definitive figures of the national production value do not exist, but various estimates identify the gems and jade industry to be Myanmar's most valuable non-renewable resource. At the same time a lack of up-to-date geological surveys means that the full potential of gemstone, other minerals or even oil and gas reserves are not known. The world's most valuable rubies are from Myanmar, consistently breaking world records at international auctions. Myanmar is also the world's largest source of high quality jade and is conveniently located next to China, the world's largest market for jade – a stone so highly prized in China that its value continues to soar and regularly fetch higher prices per ounce than gold.

Globally, the coloured gemstones industry is huge and growing, accounting for approximately USD 10-12 billion per year. In 2014, global jewellery market sales amounted to USD 157 billion and analysts predict the global gems and jewellery market to reach a market value of around USD 292 billion by the end of 2019. Gemstones are less subject to global cycles than other mineral resources. In fact, it is more useful to compare gemstones to the global art world, in that gems are luxury items entirely dependent

on consumer tastes and trends. The demand for any particular stone is highly subjective, and is based on an individual's perception of value, beauty and appreciation. This means that the gems industry has not suffered from the downturn in prices, as have other commodities over the past few years.

The significant surge in gemstone excavation in Myanmar over recent years has had two key implications: (i) environmental and social impacts have been exacerbated by increasingly large-scale operations and the introduction of heavy machinery and (ii) inefficient regulatory and management systems have led to dramatic loss of revenue to government.

Around 80% of the world's coloured gemstones are said to come from informal, artisanal and small scale-mining sources in their respective countries of origin. The global gemstone supply chain from mine to market is characterised by its extremely fragmented nature, with many levels of middlemen and traders at each stage of the chain. The sector is also notorious for its high degree of opacity. The potential for very high profits and easy transportability associated with most gemstones attract opportunities for under-reporting, illegal activities and fraudulent practices. In terms of volume, this means that significant volumes of production are not declared. In terms of value, this means that stones may be under-valued when royalties are assessed, and may eventually be sold at a much higher price. These challenges are global, and not unique to Myanmar.

The key and most influential players in Myanmar's gemstone sector are Myanmar Gems Enterprise (MGE); the Myanmar Gems and Jewellery Entrepreneurs Association (MGJEA); the two main military holding companies – Union of Myanmar Economic Holdings Limited (UMEHL) and Myanmar Economic Corporation (MEC); regional and local authorities; and, Chinese businesses.

An assessment of the institutional and regulatory framework in Myanmar highlights a number of gaps and opportunities. Myanmar Gems Enterprise (MGE), one of the leading state-owned enterprises under the Ministry of Natural Resources and Environmental Conservation (MONREC), a combination of the former Ministry of Mines and Ministry of Environmental Conservation and Forestry), is responsible for management and oversight of the sector. MGE currently assumes all gemstone related functions, from policy maker, to regulator and inspector as well as owner-operator. While this is not unusual for a country in transition to a more market-oriented economy, it does open up questions about conflicts of interest and the need for reform and clarification of functions. In addition, as with many government agencies, MGE has insufficient technical sufficient capacity to perform its duties efficiently, in terms of skills and numbers of skilled staff. The majority of MGE's senior staff are retired military personnel.

The Myanmar Gems and Jewellery Entrepreneurs Association (MGJEA) is the main industry body for the gemstone sector. It has 10,000 members, 65% of which represent the jade sub-sector and 35% of which represent coloured stones. Members include all gemstone permit and license holders. MGJEA collaborates closely with MGE and plays a central role in the annual Gems Emporium and other trading fora.

There are two main types of gemstone license in Myanmar:

- Gemstone production permit (for exploration, production, trading, processing and retail)
- Gemstone trading license (for trading, processing and retail)

As at April 2016 there were 21,392 production permits distributed among 1,475 companies, as well as 2,000 trading licenses. Private companies held 98% of production permits, while 2% represented joint venture partnerships between private companies and MGE. There are significant weaknesses in production monitoring and compliance, with government only able to effectively monitor its joint venture partnerships. This leaves 98% of permits essentially without oversight and permit-holders free to choose how they produce, what they declare, and whether or not this goes through formal channels. The tax and regulatory system is onerous and complex, with few incentives for open disclosure and with little enforcement or monitoring.

Based on research, available data, and interviews with a range of stakeholders for the purpose of this report, it is estimated that 60-80% of gemstones produced in Myanmar are not declared and therefore bypass the formal system. This represents potentially huge lost revenues to government.

Amendments to the 1995 Gemstone Law were approved by Parliament of the outgoing government in January 2016, and include some important changes. For example, with regard to licensing, four categories of production permit will now be issued: large, medium, small-scale and very small/subsistence permits. Whereas previously all production permits were issued for 3 years, now large-scale permits will be issued for 10 years, medium scale for 5 years, small scale for 3 years and very small/subsistence for 1 year. Large and medium-scale permits will be issued by MGE on a joint venture basis whereas small-scale and very small scale permits will be issued by local state or division 'scrutinising and permit bodies'. However, the amended law remains vague and unclear in many areas. It is anticipated that the forthcoming rules and regulations, being drafted by MGE, will provide some clarification.

Environmental and social impact management are major concerns in the sector. In Hpakant, the main jade-producing area in the country, numerous landslides at unregulated waste dumps have killed hundreds of subsistence 'handpicker' miners during 2015-2016. The significant and seemingly unregulated scaling-up of gemstone mining activities across all gem-producing areas in recent years has had devastating impacts on the local environment and biodiversity. Local people complain of a lack of access to jobs and other economic opportunities, among other issues. There are widespread reports of increasing foreign ownership and control of the sector, despite foreigners being prohibited by law from obtaining production permits.

The recently approved Environmental Impact Assessment (EIA) Procedures provide for strengthened environmental and social safeguards across the gemstone-mining sector. However, the government's capacity to enforce compliance remains a concern.

Most of Myanmar's higher value gemstones leave the country in rough, for cutting, polishing, treatment, carving and other processing outside of Myanmar. Some of these stones return to be made into jewellery in-country. However, it is commonly perceived that the facilities, skills, and technology are better outside of Myanmar, e.g. in Thailand, Hong Kong or China, hence offering greater returns for those in the trade. With China now taking the No.1 position in terms of global jewellery production, and with its ever-increasing appetite for rough gemstones, the challenges for value addition in Myanmar increase.

Global consumers are increasingly demanding - and expecting - greater transparency, responsibility, and due concern for the environment and local communities embodied in their products. While this represents a major challenge for Myanmar under current circumstances, it also represents a golden opportunity. With the coming into power of the new government, and as a primary source of some of the best gemstones on earth, Myanmar is perfectly positioned to begin to address some of the challenges outlined in this report.

Given the huge amount of unaccounted production, the potential revenue gain to government is very large. However at the same time poor management and low capacity means that strengthening will take time.

This report provides a number of recommendations where governance and transparency across key policy areas can be improved and where value can be added. The top ten recommendations are as follows:

1. MEITI MSG to submit request for '**Adapted Implementation**' of EITI to EITI Board as soon as possible with regard to the scope of gemstone sector coverage in the second MEITI report
2. MEITI MSG to consider **inclusion of all production permit and trading license holders, and all gemstone sector revenue streams**, in scope of scoping study for second MEITI report
3. Establishment of an inter-ministerial **Gemstone Permit Review Committee** to review all current permits/contracts and permit allocation procedures, assess compliance against a set of agreed parameters and take action as appropriate. The mandate of this committee could also be broader



4. Development of a **National Gemstone Sector Strategy** to provide strategic framework for the responsible development of the sector. This would also include a public consultation process and possibly a national conference
5. A review of the **legal and regulatory framework** to be carried out, including all contracts, to ensure in line with good practice international standards on responsibility and transparency
6. Establishment of a national '**Grievance Mechanism**' accessible to all communities and stakeholders with a clear mandate and accountability structure
7. Capacity development/support for strengthened **environmental and social management** – support to MONREC (MGE and ECD) for EIA Procedures implementation
8. A review of current **production monitoring and valuation** procedures, followed by capacity development/support to MGE/MONREC for strengthened **inspection, production monitoring and valuation** procedures
9. Assessment of **value and job creation** from gemstone industry (including mapping, mining, cutting, polishing of gemstones as well as jewellery making)
10. **Comprehensive Geological Surveys** of main gem-producing areas to be carried out, to understand potential reserves

Addressing these recommendations can help bring Myanmar into line with good practice international standards while at the same time strengthening institutions, implementing management systems, capturing 'lost' revenues, building skills and capacity, enhancing value addition, providing jobs and contributing to economic development.

The new government faces myriad challenges across many sectors, and expectations for change are high. However, with patience and small steps forward, it is possible for Myanmar to become a global leader in responsible gemstone production, carefully managing the exploitation and transformation of its extremely valuable precious resources for the benefit of its future generations.

# 1. Introduction: EITI and Gems in Myanmar

In December 2012, as part of the broader reform process, the Myanmar government announced its intention to join the Extractive Industries Transparency Initiative (EITI) in the interest of introducing transparency in revenue management and the strengthening of natural resource governance. Myanmar became an EITI Candidate in July 2014 and after considerable hard work over the following year and a half, the first EITI report was produced in January 2016. Implementation of EITI enables a country to have a better understanding about how its resources are governed, and to better manage and track the revenues related to those resources. The step-by-step implementation of EITI in Myanmar, the poorest country in South East Asia, will lead to identification of 'lost' revenues to government which can be captured and used for socio-economic development.

Myanmar is globally renowned for its abundance of high quality precious gemstones, including world-class rubies, sapphires and jadeite. Therefore, the gemstone sector in Myanmar is considered 'material', or significant for EITI purposes and should be included in the scope of the process. An extractive industries sub-sector would only be considered immaterial if it can be demonstrated that it is not significant to a country in terms of value and revenues. In Myanmar, the gemstone sector should therefore continue to be incorporated into the EITI process, in a manner agreed by the Myanmar EITI multi-stakeholder group (MSG).

There is a lack of public understanding about how Myanmar's gemstone sector works due to its particularly opaque nature, which serves to fuel speculation and uncertainty about how the sector is governed. The international media spotlight on Myanmar's gemstone sector continues to increase, in particular on jade, which is exported almost exclusively to the Chinese market, due in part to international NGO and think tank reports on this matter. It is also widely thought that the gemstone trade is one of the most profitable businesses for the country.

There are widespread calls for more regulation and oversight of the sector, and increasing pressure on the new government to address these concerns. During the production of this report, the transition from the previous government to the new NLD-led government took place, providing a fresh opportunity for dialogue on possible reform and strengthening of governance of the sector.

The purpose of this review is to provide a better understanding of how the gemstone sector works in Myanmar and highlight areas for future strengthening. It has the following key objectives:

- To provide a baseline assessment, including identification of the main challenges and opportunities along the gems and jewellery value chain
- To understand how Myanmar can expand EITI coverage of the sector
- To explore the potential for increased value addition in Myanmar
- To identify gaps and opportunities for government revenue management

## 1.1 Scope and Methodology

This review is mostly qualitative, and within the 'gemstone sector' it focuses on jade and coloured gemstones separately, as appropriate.

The review:

- Identifies the key institutions, actors, policies, regulations and procedures relating to the gemstone sector in Myanmar
- Outlines the main stages of the gemstone value chain from mine to market, with a focus on EITI,<sup>1</sup> including information on:
  - the legal framework and fiscal regime

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<sup>1</sup> In February 2016 the new 2016 EITI Standard was adopted, which includes a few strengthened provisions (e.g. on beneficial ownership) and a re-structuring of the requirements in line with the extractive industries value chain. Unless otherwise stated, the EITI Standard referred to here is the new 2016 Standard.

- number of licenses, types of licenses and license allocation procedures
- feasibility of contract disclosure and disclosure of beneficial owners for future EITI reporting

This review involved meetings and information gathering with the Ministry of Mines/Myanmar Gems Enterprise and with the Myanmar Gems and Jewellery Entrepreneurs Association, and also some meetings with other stakeholders involved in the gemstone sector in Myanmar. Meetings took place in Yangon and in Nay Pyi Taw, as well as a short field visit to Mogok in May 2015, and included:

- MONREC and MGE representatives
- MGJEA members and other gemstone company representatives
- CSO representatives with an interest in the sector from Yangon, Mandalay, Mogok (Mandalay Division), Hpakant (Kachin State), and Hkamti (Sagaing Division)
- Gemstone traders and dealers
- Jewellers
- Gemmologists

## 1.2 Summary of First MEITI Report and Recent Literature on Myanmar's Gems Sector

The gems sector has been part of the scope of EITI in Myanmar since discussions on scope began in 2014. In 2015 the MEITI Multi-Stakeholder Group (MSG) agreed that for the first MEITI report, only formal government data for the annual Gems Emporium would be included for the gems sector. Within this, a 'materiality threshold' of 10 billion MMK was applied for the inclusion of gems companies in the reconciliation process.

The first MEITI Report stated that the gems and jade sub-sector contributed USD 314 million (MMK 367 billion)<sup>2</sup> in total revenues in FY 2013-2014, or approximately 13%. This was based on formal Gems Emporium data only and did not cover an estimated 53% of the total sub-sector.<sup>3</sup> It did not include any of the following important data:

- a 20% value-based royalty on jade and gems collected at the mine site
- other royalty revenues (10% foreign currency sales royalty)
- taxes paid by companies where production is directly sold or exported
- revenues from sales of the government's shares of gems and jade.

Please see Annex 1 for more information on Myanmar's first EITI report.

There is an increasing body of evidence that suggests significantly higher values for the gemstone sector in Myanmar than those indicated in the EITI report. While the first EITI report contained only very limited contextual information about the sector, it noted other sources of recent research, particularly on the jade sub-sector. These include:

- Harvard University Ash Centre/Proximity Designs Report in July 2013 which estimated the value of jade exported in 2011 to be USD 7.8 billion, three times higher than official figures.
- New Cross Roads Asia 'Myanmar Business Update' issue of June 2015. This cites Chinese Customs data, which shows that China imported USD 12.3 billion of jade and gems in 2014<sup>4</sup>
- International NGO Global Witness October 2015 report on Myanmar's jade sector which estimated the value of the production of jade in 2014 to be up to USD 30.9 billion.<sup>5</sup>

<sup>2</sup> Exchange rate as at 13 May 2016, calculated on [www.xe.com](http://www.xe.com), 1 USD = 1,169.07 MMK

<sup>3</sup> As per MEITI first reconciliation report

<sup>4</sup> Myanmar Business Update, June 2015; <http://www.newcrossroadsasia.com/wp-content/uploads/2015/06/NCRA-Business-Update-22-6-151.pdf>

<sup>5</sup> "Jade: Myanmar's Big State Secret", October 2015; <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/myanmarijade>

The following section summarises the key findings of these reports on Myanmar's gemstone sector.

#### **Harvard University, Kennedy School Ash Centre/Proximity Designs Report<sup>6</sup>**

In July 2013, the Harvard Kennedy School Ash Centre published a report for Proximity Designs Myanmar entitled 'Creating a Future: Using Natural Resources for New Federalism and Unity' which estimated that the unofficial value of jade sales and exports in 2011 amounted to 7.8 billion USD. This was three times higher than official figures, which stood at USD 2.6 billion. The revised figure was extrapolated based on extensive interviews with industry and other representatives, in Kachin State as well as in Yangon and Nay Pyi Taw.

The research found that sales of jade at the 2011 Gems Emporium amounted to USD 2.65 billion, which was 77 times higher than official figures for jade exports, which were reported as USD 34 million. This suggested that very little of actual jade exports were recorded. The paper proposed a combination of greater tax revenues from mineral resources and a 'new federalism' with states/regions managing their own administrative affairs, supported by a share of natural resource revenues. At the time of writing in early-mid 2016, the Harvard Ash Centre and Proximity Designs are carrying out further research on the smuggling of jade and Myanmar's informal jade sector to recommend some proposed solutions to address the problem of unrecorded, and therefore untaxed, exports.

#### **Chinese Import Data<sup>7</sup>**

In June 2015, New Cross Roads Asia published an article in its Myanmar Business Update which drew on Chinese customs data provided to the UN's Comtrade database. According to this, China imported USD 12.3 billion worth of gems and jade from Myanmar in 2014.<sup>8</sup> This substantiates and goes farther than the Harvard Ash Centre/Proximity Designs Report of 2013, which estimated jade (only) exports from Myanmar at USD 7.8 billion in 2011.

#### **Global Witness Report<sup>9</sup>**

International CSO Global Witness published a report on Myanmar's jade sector in October 2015. Based on public data and non-public information obtained by Global Witness, they produced an estimated figure of up to USD 31 billion for the value of jade produced in 2014 in Myanmar. This is three times higher than any previous estimates, and, if correct, would mean that the value of the production of jade is significantly higher than that of oil and gas.

Global Witness used two alternative methodologies to estimate a value for official jade production in Myanmar in 2014. The details of the methodologies used can be found in Appendix 1 of their report.

Global Witness recognises that further data is required, particularly with regard to the total quantities mined of different grades of jade, for a definitive valuation. However, they note that each of their methodologies generates an estimate in excess of USD 30 billion as the potential value of official jade production in 2014.

Global Witness highlighted EITI as one of three key channels of influence on reforming the jade sector, and provided a number of EITI-related recommendations in their report. At the time of writing Global Witness continues its campaign to improve transparency and reform Myanmar's jade sector, and continues to advocate EITI as a key tool for achieving this.

Given this increasing body of evidence that suggests much higher values of production and exports for the gemstone sector in Myanmar, it is extremely important that the sector is incorporated more fully

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<sup>6</sup> "Creating a Future: Using Natural Resources for New Federalism and Unity; Ash Center for Democratic Governance and Innovation; John F Kennedy School of Government, Harvard University, July 2013; <http://ash.harvard.edu/files/creating.pdf>

<sup>7</sup> New Cross Roads Asia (NCRA) Myanmar Business Update, June 2015; <http://www.newcrossroadsasia.com/wp-content/uploads/2015/06/NCRA-Business-Update-22-6-151.pdf>

<sup>8</sup> UN Comtrade Database; HS Codes 711620, 710399 and 710310; <http://comtrade.un.org/db/dqBasicQueryResults.aspx?px=HS&cc=711620,710310,710399&r=156&p=104&rg=1&y=2014,2013,2012,2011,2010&so=8>

<sup>9</sup> "Jade: Myanmar's Big State Secret", October 2015; <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/myanmarijade>

into EITI reporting as soon as possible. This will ensure greater transparency around sector revenues as well as clarity regarding the contribution of the sector to the national economy.

## 2. Gems in Myanmar

Myanmar rubies and jadeite continue to command the highest prices on international markets, and Myanmar is the world's single largest source of jadeite (jade) globally, responsible for an estimated 90% of global production.

Coloured gemstones are mined in approximately 50 countries worldwide. Of these, Myanmar is renowned for its abundance of high quality gemstones, including world-class rubies, sapphires (ruby and sapphire are both a variety of corundum) and jadeite. Other gemstone varieties found in Myanmar include spinel, diamonds, tourmaline, peridot, topaz, garnet, moonstone, lapis lazuli, chrysoberyl, amber, quartz, and more. There are also a few extremely rare varieties of gemstone that are unique to Myanmar and have never been found anywhere else in the world.

In Myanmar, 'jade' and 'coloured gemstones' are generally, traditionally and institutionally referred to and treated separately, and so will be treated separately for the purpose of this paper unless otherwise stated, in which case they will be referred to generally as 'gemstones'. However, within the global gem trade all gemstones apart from diamonds are normally referred to as 'coloured gemstones', even though they also include colourless gems such as rock crystal (quartz).

A few other EITI implementing countries such as Zambia, Mozambique, Tanzania, Democratic Republic of Congo and Sierra Leone have included gemstones in the scope of their EITI reports in recent years, however in these countries gems are generally not institutionally or legislatively separated from other minerals. It is only Myanmar that separates the sub-sector so completely from an institutional and legislative perspective.

In the past, gems were (and sometimes still are) commonly differentiated as either 'precious' or 'semi-precious'. 'Semi-precious' used to refer to less valuable and softer gemstones (i.e. not sufficiently hard or tough enough for use in jewellery). However, it is important to note that the term 'semi-precious' is generally no longer used in the trade. This is because the term can no longer be defined appropriately to distinguish between the value of different gemstone varieties.

Myanmar's main gem-producing areas are geographically located along the North-eastern mountainous regions, with jadeite deposits almost exclusively in Kachin state as well as Sagaing, and other coloured gemstones in Shan, Mandalay, Kachin, Kayin and Tanintharyi. Many of the known gemstone tracts are in, or bordering, conflict zones.

The major gemstone deposits in Myanmar include:

- the large jadeite areas in Hpakant (Kachin State) and Hkamti (Sagaing),
- the Mogok Stone Tract (Mandalay Division) famous for its ruby and sapphire deposits

In Myanmar, gems and jadeite are sold to international buyers at the annual Gems Emporium, held in Nay Pyi Taw, as well as in shops and markets across the country. Foreigners are prohibited by law from extracting Myanmar's gemstones, including entering into joint venture partnerships with Myanmar citizens. Only Myanmar citizens are allowed gemstone permits.

While a number of geological surveys of Myanmar's gem-producing areas have been undertaken over the past decades, the quality and reliability of these is not known, and there is very little publicly available information. The absence of clear and up-to-date geological information leads to a considerable amount of speculation and misinformation about potential gem-yielding areas, makes the allocation of gemstone production permits more challenging, and is also therefore a deterrent to investors. This is an area requiring further attention and strengthening.

## 2.1 Coloured Gemstones

The Mogok valley in Mandalay Division, around 150 miles north east of Mandalay, is probably the most well known of Myanmar's gem producing areas due to its famous ruby deposits, and the Mogok stone tract has been known throughout history as the 'Land of Rubies'. Due to the unique geology of the Mogok area, only certain rubies found here have a particular highly desirable darker red 'pigeon's blood' colour, and are also the only ones in the world to have certain fluorescent properties. Even rubies found in other parts of Myanmar (such as Mong Hsu in Shan State) do not share these particular properties. The allure of certain wealth in return for control of the gemstone mines has fuelled conflict in this area throughout history. The world-renowned gemstone deposits have been coveted by Chinese Emperors, Burmese Kings, Shan Warlords, British colonial traders, military interests as well as an array of international jewellery dealers, mining investors and other interested international parties from ancient times right up until the present day.

It is commonly estimated that 80 - 90% of the world's rubies come from Myanmar. Ruby is also found in commercial quantities in other countries including Mozambique, Madagascar, Thailand, Sri Lanka, Vietnam, China, Pakistan and Afghanistan. The discoveries of large deposits of high quality rubies in Mozambique and Madagascar over the past decade or so has led to changes in the global ruby market. One of the world's largest ruby mines is now located in Mozambique, and is expected to provide at least 20% of the world's ruby supply over the coming decade.<sup>10</sup>

While these African competitors reflect an increasing global competition for Myanmar's stones, untreated, high quality Mogok rubies have such a high reputation that they continue to fetch the highest prices in the world. An untreated natural Mogok ruby of good colour and clarity can easily fetch around USD 80,000 per carat<sup>11</sup> at an auction at today's market rates. In May 2015, a rare, untreated, 25.59 carat 'pigeon's blood' Mogok ruby known as the 'sunrise ruby' sold for a world record USD 30.33 million at a Sotheby's auction in Geneva, which equates to over USD 1 million per carat.<sup>12</sup> The previous world record was in November 2014 when an 8.62 carat, untreated, Mogok pigeon's blood ruby set in a ring by Graff sold for USD 8.6 million at Sotheby's in Geneva, just under USD 1 million per carat.

Mogok sapphires (as mentioned above, rubies and sapphires are both varieties of 'corundum') also command incredibly high prices on global markets. Indeed, in March 2016 Bonhams noted that as part of the wider shift and rising consumer interest in coloured gemstones, sapphires are seen as the 'must-have' gem in 2016.<sup>13</sup> The peridot found in the Mogok area is also of exceptionally high quality and one of very few good quality peridot deposits globally. Mogok's spinel is also world famous, and rapidly increasing in both international popularity and value, as a beautiful but cheaper alternative to ruby. Spinel is sometimes referred to as the 'great impostor' of gemstone history given that many famous 'rubies' in crown jewels around the world (e.g. India and UK) are actually spinels, from a time when people were unable to correctly differentiate between ruby and spinel. Tourmaline and aquamarine of exceptionally good quality are also found in Myanmar and prized around the world. The list goes on, but the only high quality gem that is absolutely not found in Myanmar is emerald.

In the 1980s and 1990s rubies from newly discovered deposits in Mong Hsu in Shan State flooded the international ruby markets, mostly via Thailand. This was followed by promising ruby and sapphire deposits in Namya in Kachin State, near Hpakant and the Chinese border, particularly during the 1990s. The quality of rubies from these deposits is not considered as good as those from Mogok.

## 2.2 Jadeite

Jadeite (jade) is found predominantly in the Hpakant area of Kachin State as well as Mohnyin, and also in Hkamti Township in Sagaing Division. Myanmar is the world's main commercial source of jade although jadeite also occurs in Guatemala, Japan and the US. It is commonly estimated that up to 90%

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<sup>10</sup> Gemfields PLC – a vertically integrated (from mine to market) gemstone company: <https://gemfields.co.uk>

<sup>11</sup> 1 carat = 0.2 grammes, or 1 gramme = 5 carats

<sup>12</sup> <http://www.mmmtimes.com/index.php/national-news/14455-myanmar-ruby-sells-for-record-30m-at-auction.html>

<sup>13</sup> <http://www.jewellerynewsasia.com/en/News/14252/Sapphires-seen-as-the-must-have-gem-in-2016-Bonhams-says.html>

of the world's jade is now mined around the Hpakant area and sold to Chinese buyers. Nephrite, a similar mineral to jadeite is commonly mistaken for jadeite, is also often called 'jade' and is much more common globally. Jade is the most prized gemstone in the East Asian region, exceeded in price only by diamond. Myanmar's 'imperial jade' is the most valuable in the world with its translucent to almost transparent bright emerald green colour. Jade can vary from opaque to semi-transparent and colours range from shades of lavender and blue to white, black, red, orange, yellow and brown. Gem-quality jade is tough and durable, which makes it ideal for carvings, rounded beads and jewellery.

The Chinese have a long history of jade appreciation dating back thousands of years. The Chinese word for jade is 'Yu', the pictograph of which is said to date back to 2950 BC. Confucius wrote a thesis on the eleven virtues of jade, and in ancient Chinese mythology, there is a terrestrial bridge between heaven and hell, which is made of jade. Jade's popularity in China (as well as Hong Kong and Taiwan) continues to rise and so the demand for Myanmar's jade also rises, especially higher quality jade.

Within the international gemstone industry, the following 4 main trade terms are applied which refer to types of treatment: A, B, C and B+C jade. 'A' grade is untreated, but usually waxed and polished, and of a higher quality (not perceived as requiring further treatment); 'B' grade is lower quality jade that is bleached in acid then impregnated with synthetic resin to enhance appearance. 'B' grade can be very difficult to detect. 'C' grade is artificially dyed to improve colour and overall appearance, while 'B+C' grade is both dyed as well as impregnated with polymer resin. However, the quality of jade is usually evaluated according to colour, translucency, clarity and shape.

Jade quality is also often differentiated as 'imperial' (top quality), 'commercial' (medium quality) and utility (low quality).



## 3. Institutional and Legal Framework

### 3.1 Government Institutions

The main government institutions relevant to the gemstone sector are:

- Ministry of Mines
- Myanmar Gems Enterprise

#### **Ministry of Natural Resources and Environmental Conservation (MONREC)**

The Ministry of Mines (now under MONREC) and its state-owned enterprise Myanmar Gems Enterprise (MGE) are responsible for administration, policy and regulatory matters relating to Myanmar's gemstone sector, as well as being joint venture partners in many mining activities.

The Ministry of Mines is responsible for planning and implementation of the government's mineral policy, and for enforcing mining sector related laws and regulations. It evaluates and processes all licence applications for the exploration and production of minerals in accordance with the 1994 Mining Law. It also monitors production operations and promotes investment in the mineral sector.

The ministry has two main departments and four state economic enterprises (SEEs), one of which is MGE. The Department of Mines is responsible for administration of mineral policies and planning, licensing and granting of permits, mineral legislation, mine inspection and safety and environmental conservation. The Department of Geological Survey and Mineral Exploration (DGSME) is directly responsible for countrywide geological mapping, mineral prospecting and exploration using geological, geochemical, geophysical and exploratory drilling techniques.

In March 2016 it was announced that the Ministry of Mines and the Ministry of Environmental Conservation and Forestry (MOECF) would be merged into one ministry with the new incoming NLD government. The new, merged ministry is called the Ministry of Natural Resources and Environmental Conservation (MONREC).

#### **Myanmar Gems Enterprise (MGE)**

MGE is responsible for all functions relating to gemstones, including permitting, licensing, the regulatory framework, production/joint venture production partnerships with private companies, collection of royalties, production monitoring, oversight and marketing of jade and gemstones in Myanmar.

MGE's main roles, according to the MONREC website are:

- Designation of gemstone blocks at the gemstone tract area
- Issue gemstone production permits to national entrepreneurs and cooperative societies
- Impose tax under the gemstone law for gemstone production or for sale of rough gemstone, finished gemstone or jewellery
- Hold the Gems Emporium under the supervision of Ministry of Mines.

MGE's head office is located in Nay Pyi Taw at the Gems Museum, and it also has an office in Yangon, in Mogok and in Hpakant, each managed by an MGE Director (4 Directors in total). There are 2 main regional offices, in Mogok and in Lonkin-Hpakant, and seven sub-regional offices. MGE employs approximately 700 people in total, including about 100 at the Lonkin-Hpakant regional office and 50 at the Mogok regional office. A very small minority of MGE's senior staff are civilians (the remainder are retired military personnel).

MGE plays a key role at the local level. For example, in Mogok, it is involved in:<sup>14</sup>

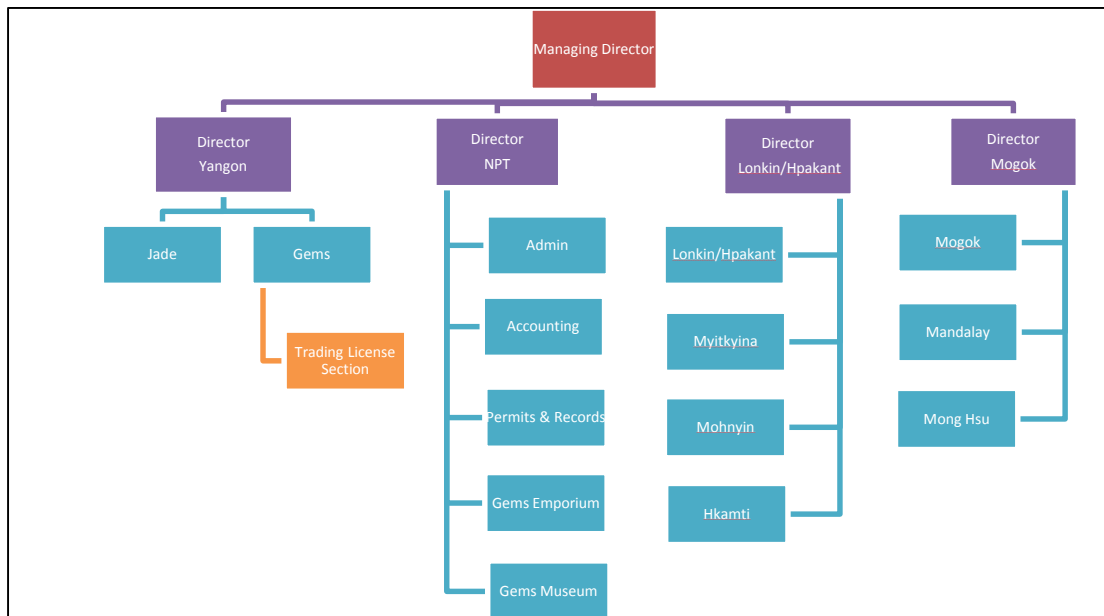
- inspection of mines
- collection of tax and royalties which are then transferred to Nay Pyi Taw
- local valuation committees – meet regularly to value declared stones and calculate royalties

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<sup>14</sup> MGE Mogok office, meeting with key staff, May 2015

- provision of daily reports to MGE in Nay Pyi Taw.

### MGE Organisational Structure



MGE is also responsible for the Gems Emporiums. In 2015 one main international emporium, and one smaller local emporium were held in Nay Pyi Taw.

MGE collects royalties in designated bank accounts at the Myanmar Economic Bank (MEB) and the Myanmar Foreign Trade and Development Bank. MGE's accounts are audited by the Office of the Auditor General (Myanmar's supreme audit institution which is accountable to Parliament through the President). As with other Myanmar SEEs it is likely that MGE also has 'Other Accounts'. Other Accounts are state fund accounts that are audited by the Office of the Auditor General (OAG), as are all of the state accounts held at MEB. As with all SEE's, MGE is required to submit bi-annual financial reports to the OAG, in accordance with the General Accepted Accounting Standards. OAG performs audits in line with the International Organisation of Supreme Audit Institutions (INTOSAI) audit standards.

The government knows the number of accounts that are held by MGE and the spending of funds is subject to internal controls. This information is presented to Parliament, but is not publicly available. In the interest of transparency, information about MGE's accounts should be made publicly available.

As is the case with state-owned enterprises (SOEs) in many countries globally, there is an inherent conflict of interest between MGE's role as policymaker and regulator but also as owner. A recent report by international CSO the Natural Resource Governance Institute (NRGI) assessed Myanmar's SEEs and also noted this lack of separation between policy making/regulation and ownership functions.<sup>15</sup> It is important that any government considerations of institutional reform in Myanmar's gemstone sector maintain this as a key issue to be addressed.

<sup>15</sup> 'Gilded Gatekeepers: Myanmar's State-Owned Oil, Gas and Mining Companies', NRGI, January 2016, <http://www.resourcegovernance.org/analysis-tools/publications/gilded-gatekeepers-myanmars-state-owned-oil-gas-and-mining-enterprises>

There is currently considerable opacity regarding MGE's official roles and responsibilities. For example, its relationship with MONREC (in law and in practice), its governance structure and its fiscal arrangements and revenue management systems are unclear. Given MGE's significance as one of Myanmar's most important SOEs in terms of sector value and potential revenues, it would be very beneficial for consideration to be given to this as soon as possible. The clarification and separation of MGE's roles and responsibilities in line with good practice international standards would allow for increased transparency and strengthened governance arrangements to enable MGE to function as an efficient and responsible state owned company.

Capacity is also a major issue for MGE in terms of sufficient staff with the required technical, professional and vocational skills and experience to perform its range of duties and functions as effectively as possible. It is recommended that a capacity review be carried out, to recommend and prioritise areas for skills development and technical assistance.

MGE is not currently represented on the MEITI MSG. As such it is highly recommended that a senior representative of MGE takes a seat on the MSG to ensure sufficient coordination and information sharing between MGE and other MSG members and key EITI stakeholders.

#### **Leading Committee for Myanmar Gems Sector Development**

The Leading Committee for Myanmar Gems Sector Development (Leading Committee) is the highest level and most powerful decision-making body for the gemstone sector in government. It has ultimate oversight and decision-making power over all gemstone related matters in Myanmar, from the approval of gemstone production permits to gemstone valuation. It has conventionally been composed as follows:

- Minister of Mines (Chairman)
- Deputy Minister of Mines
- Deputy Minister of Home Affairs
- Deputy Minister of Finance
- Deputy Minister of National Planning and Economic Development
- Deputy Attorney General
- Director General (DG) Directorate of Water Resources and Irrigation
- DG Department of Forestry
- DG Department of Mines

Former President U Thein Sein used to be the Chair of this Committee in 2006, and was a vocal supporter of increasing the value addition to the jade and gems industry in-country before exporting. It is not known how often this committee meets or on what basis decisions are made. It is also not known how this committee changed with the new government and ministry changes during 2016.

#### **The Central Gemstone Supervisory Committee**

The Central Gemstone Supervisory Committee (Central Committee) was established under Chapter 10 of the 1995 Gemstone Law. It is responsible for reviewing license/permit applications, tendering of gemstone blocks, setting royalty rates, and gemstone valuation. The Central Committee is the main gemstone 'Valuation Body' with oversight of all gemstone valuation matters in Myanmar. It is chaired by the Deputy Minister of Mines and includes individuals from relevant government departments as well as gemstone experts, technical experts and a secretary. From 2016 it also includes three representatives of MGJEA, as per the 2016 amendments to the Gemstone Law. The relationship between the Central Committee and the Leading Committee is not clear, and there appear to be overlaps in responsibilities. It is not clear how the Central Committee changed with the new government and ministry changes during 2016.

#### **Gems Trading Centre/One Stop Shop**

MGE has established Gems Trading Centres in Mandalay, Myitkyina and Sagaing, and in early 2016 a Gems Trading Centre was established in Nay Pyi Taw, where trade in rough stones was officially allowed. These are managed by MGE together with MGJEA.

Market prices at the trading centres are set, making the trading centres more attractive to most traders, miners and buyers who will be encouraged to use them as they will be more able to trust and rely on the prices. MGE, MGJEA, Department of Customs, mining companies and traders are all under one roof together, and, in theory, the trading centres help support the legitimisation of the gems markets by ensuring that all involved have the correct paperwork and adhere to the agreed procedures, and therefore are in everybody's interest. Plans to establish a trading centre or 'One Stop Service' in Mogoke in 2016 were suspended in 2015 due to local protests against the construction of controversial new premises on the shores of Mogoke's lake.

### **The Gemstone Law and Rules**

The Gemstone Law allows for two categories of license or permit.

- Gemstone Production Permit
- Gemstone Trading License

The Gemstone Law was promulgated in 1995 and governs all matters relating to gemstones, notwithstanding anything contained in the 1994 Mines Law.<sup>16</sup>

The objective of the Gemstone Law is the establishment and development of a gemstone and jewellery market within the country; to permit companies and cooperative societies to operate freely in the production and marketing of gemstones; to open and maintain gem markets; and, to eradicate illegal production and trade of gemstones. The Law also outlines a process and functionality for gemstone valuation.

The 1995 Gemstone Law does not differentiate jade from coloured stones, although in practice in the gemstone trade in Myanmar, and institutionally, they are commonly differentiated. The only categorisation of gemstones according to the Gemstone Law is for the payment of production-based royalties:

- Ruby, sapphire, jade and diamond (20% royalty)
- All other gemstones (10% royalty)

The Myanmar Gemstone Rules (Ministry of Mines Notification No.70/95) of December 1996 supported the Law and provided more detailed technical guidance for interpreting the Law. The 1996 Rules are available in Myanmar language but not in English. As at April 2016, new rules and regulations were in the process of being drafted and were due to enter into a public consultation phase during late May 2016.

The second amendments to the Myanmar Gemstone Law (23/2016) were passed by the Pyidaungsu Hluttaw on 29 January 2016. The first amendments were made in 2003 and were minimal. The second amendments (2016) change and update approximately 75% of the 1995 Law.<sup>17</sup> Key changes include:

1. Clearer categorisation of gemstone products (previously not clarified):
  - a. Rough gemstones
  - b. Finished - cut, polished, refurbished, shaped and sculpted out of rough gemstones and gemstones that have not been made into jewellery yet
  - c. Jewellery
  - d. Items made with gemstones
2. Gemstone Production Permits (previously just one permit type – 'gemstone production permit' - now categorised as follows):
  - a. Large-scale exploration and production – commercial scale, technology and machinery to be used as designated by MONREC, tenure = 10 years, awarded via competitive bidding

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<sup>16</sup> Tun/Baker and Mackenzie, EITI Legal Review, 2013

<sup>17</sup> According to MGE and MOM officials

- b. Medium-scale exploration and production – commercial scale, technology and machinery to be used as designated by MONREC, tenure = 5 years, awarded via competitive bidding
- c. Small-scale exploration and production – ‘a business without needing much capital’, technology and machinery to be used as designated by MONREC, tenure = 3 years, awarded via application
- d. Very small scale exploration and production - using manual operation equipment or a machine with very low horsepower, as designated by MONREC after discussing with the State or Division Government, tenure = 1 year, awarded via application

The amended law does not provide any further clarity or definition for these categories.

3. A new ‘Permit to Use Land’ will be awarded for the building of temporary structures, warehouses and accommodation relevant to gemstone extraction and production, for keeping vehicles, machinery, for sorting, producing and cutting rough gemstones, for washing waste material, and for dumping waste material.
4. Strengthened requirements regarding how a gemstone tract and block is identified and designated (Chapters 3 and 4), including:
  - a. Large Scale and Medium Scale - MONREC retains control, determines floor price, invites competitive bids, issues permit to company with the highest bid, shares profit with permit holder
  - b. Establishment of State or Division ‘Scrutinising or Permitting Bodies’ – with power to evaluate applications, issue Small Scale or Very Small Scale permits, and to determine their floor price and tenure
5. New Royalty /Service Charge (Replaces 10% Foreign Currency Sales Royalty, of which 3% is retained by MGE and 7% goes to IRD)
  - a. 3% service charge on sale value of rough gemstone (after stone has been registered and production royalty paid)
  - b. 1% service charge on sale value of finished gemstone, jewellery or any items made with gemstones
6. Strengthened responsibility for MGJEA (Central Supervisory Committee and Gems Emporium)
7. Inspection – role of Chief Inspector as DG of Ministry of Mines remains the same, however with clarified responsibility for MGE officers to be designated inspectors as well as officers from the Department of Mines.
8. Penalties and Offences – reduction of some terms e.g. number of years of imprisonment
9. Slightly strengthened environmental and social considerations
10. 2% of permit-holder profits to ‘go toward a fund for the development of health, education, transportation and other items where necessary for the operation region’. No further elaboration on this is provided.

In March and April 2016, the Department of Mines and MGE consulted with stakeholders regarding the amendments to the law and the new proposed rules and regulations, receiving comments and taking into account various considerations. MGE is responsible for drafting the rules and regulations. The rules and regulations were being drafted within 90 days of the law being approved by Parliament, and were due to be finalised in mid 2016.

The extent to which the 2016 amendments to the 1995 Gemstone Law and the proposed draft rules and regulations currently being drafted by MGE will be fully embraced by the new government, is not yet clear. In any case, it is strongly recommended that the incoming government develops a Gemstone Strategy to provide a strategic framework for the responsible development of the sector over the coming years.

## The Myanmar Mines Law and Rules

According to the Union of Myanmar Mines Law (1994), all naturally occurring minerals found either on or under the ground of any land in the continental shelf are owned by the State. The Mines Law covers all minerals including gemstones as well as metallic minerals, industrial minerals and other stones. However, references to gemstones in the Mines Law were superseded with the promulgation of the Gemstone Law and Rules 1995. Amendments to the Mines Law and Rules were debated in Parliament for 3 years before an agreement was finally reached in December 2015. The Mines Law and Gemstone Law are therefore now entirely separate from each other and the Mines Law is no longer applicable to the gems sector.

## UMEHL and MEC

The Union of Myanmar Economic Holdings Limited (MEHL) and Myanmar Economic Corporation (MEC) are Myanmar's primary military holding companies. Very little public information is available about them and their interests and they are very opaque, however it is known that they both have considerable interests in the gemstone sector among others. Myanmar's first EITI report recommends that these two military holding companies should be regarded as SOEs, however these have been viewed as private companies by the government. Both have histories of extensive engagement in the gemstone sector, and are thought to remain involved primarily as joint venture (JV) partners, in varying degrees of proportional shareholding, but mostly a 40/60 split as is the case with most other gemstone production joint venture partnerships. It is thought that MEHL has JV partnerships for jade production with 6 companies, whereas MEC has 95 active permits in the Mogok and Mong Hsu areas.<sup>18</sup> These range from 50 acres to over 200 acres in size. During the field trip to Mogok undertaken for this report, at least 3 MEHL/MEC mines were pointed out, and it was stated that there were at least 20-25 large-scale joint venture gem production operations between MEHL/MEC and private operators.

MEHL has 2 gemstone subsidiary companies:

- Myanmar Ruby Enterprise Ltd<sup>19</sup>
- Myanmar Imperial Jade Co. Ltd (included in the scope of MEITI's first reconciliation report).

In 2015 MEHL came 53<sup>rd</sup> in the Myanmar Centre for Responsible Business' (MCRB) annual Pwint Thit Sa corporate benchmarking report.<sup>20</sup> In March 2016, IRD published its annual list of the country's top taxpayers (for FY 2014-2015) and MEHL was in the top five.<sup>21</sup> In May 2016 it was officially announced that MEHL had completed its transformation into a public company, a step towards greater transparency.<sup>22</sup>

In addition to further research, it is recommended that the EITI MSG agrees and proposes a way to enter into dialogue with these 2 companies,<sup>23</sup> to begin engaging with them around EITI issues and to understand the current involvement of these two companies in the sector.

## 3.2 Private Sector

### MGJEA

The Myanmar Gems and Jewellery Entrepreneurs Association (MGJEA) is the industry association that represents the gemstone sector in Myanmar. Its stated purpose is the development of the gemstone and jewellery markets in Myanmar. There are 10,000 MGJEA members, including gem miners and investors, jewellery-shop owners, and gems and jewellery traders.

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<sup>18</sup> Meeting with MGE, March 2016. No further information was made available.

<sup>19</sup> <http://myanmarrubyenterprise.com/>

<sup>20</sup> Myanmar Centre for Responsible Business, 2015 Pwint Thit Sa Report, <http://www.myanmar-responsiblebusiness.org/pdf/TIME/2015-2nd-Pwint-Thit-Sa-Report.pdf>

<sup>21</sup> <http://www.mmmtimes.com/index.php/business/19586-annual-list-of-top-taxpayers-shows-payments-rising.html>

<sup>22</sup> <http://www.mmmtimes.com/index.php/business/19799-military-owned-mehl-applies-to-become-public-company.html>;

'Myanmar Economic Holding Limited Transforms into Public Company', Myanmar Business Today, 2 May, 2016

<sup>23</sup> For example, by appointing a sub-committee or nominating persons to begin meetings with UMEHL and MEC.

MGJEA has regional offices in Yangon, Nay Pyi Taw, Mandalay, Sagaing, Mogok, Myitkyina and Hpakant.

The objectives of MGJEA as stated on its website are as follows:

- to establish, modernise and develop a gemstone and jewellery market within the country in respect of gemstones produced in Myanmar.
- awareness raising
- access to international markets - to actively cooperate with government to promote Myanmar gemstones and jewellery in international markets.
- cooperation with government to eradicate illegal production of gemstones within the country and to prevent illegal transportation and sale of gemstones abroad.

The MGJEA's headquarters is in Yangon, where it also has a modern gemmological laboratory and a training centre. It works closely with government and serves as a bridge for dialogue and negotiations between government and its members. It helps members with issues relating to implementation of rules and regulations and also aims to create a better value added market for gems in Myanmar.

The MGJEA has an Executive Committee (comprising 91 members from across the country) and a Central Executive Committee (comprising 41 members) that meets in Yangon. The Central Executive Committee is MGJEA's main decision-making body. There are five Vice Chairmen on the Central Executive committee, each representing one of the five regional offices. MGJEA has more than 10 committees in total, including a transparency committee established in 2014. MGJEA is in the process of restructuring to become more democratic and transparent.<sup>24</sup>

Anybody with a gemstone production permit or a gemstone trading license can become a member. 65% of MGJEA members represent the jade sub-sector and 35% represent coloured stones. MGJEA membership costs USD 100 per year (1 Lakh MMK).

After the severe flooding across the country during 2015, MGJEA raised USD 6 million in voluntary contributions/donations, which has been put into a fund for CSR projects. It plans to develop a strategy for spending this fund during 2016.

The MGJEA established a Training Centre in Nay Pyi Taw in April 2016. Over USD 1 million was invested in state-of-the-art equipment, and a new USD 1 million building was constructed. The Training Centre offers training in gemstone cutting and polishing, jade carving and jewellery making, and proposes to include expert teachers from other countries. It aims to provide opportunities for skills development for lower level workers in the gems and jewellery value chain. Training fees will be waived for those who cannot afford to pay.

The MGJEA plays a very important role at the Gems Emporium, supporting government and monitoring the Emporium. The Gems Emporium Central Committee is comprised mostly of MGJEA members but also includes some government members. MGJEA is responsible for sending invitations to the Emporium and ensures government representatives are invited 'to minimise risk'.

The MGJEA also plays an important role in valuation at the Emporium, and sits on the Central Gemstone Supervisory Committee (which is also the main valuation body). MGJEA helps facilitate when disputes relating to valuation arise at the Emporium. After a reserve price for auction has been established, and one day before the Emporium commences, MGJEA has an opportunity to check the agreed value one last time and to ensure the valuation is correct. The MGJEA recognises there are opportunities for strengthening the declaration and valuation process in Myanmar and is interested in learning from other countries in this respect.

MGJEA also recognises there are challenges relating to the export of rough stones out of Myanmar (currently illegal), and supports the need for awareness-raising, training and education to address these challenges.

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<sup>24</sup> Meeting with U Yone Mu, Chairman, MGJEA, March 2016

A number of gem traders consulted for this study reported that the benefits of MGJEA membership to ordinary small and medium-sized companies are negligible.

#### **Myanmar Gems and Minerals Development Bank**

The Gems and Minerals Development Bank is being established and is due to formally open during 2016. It received a formal banking licence in February 2016. The bank is being established by MGJEA members with the aim of funding both small and large businesses in the gem industries, as well as helping entrepreneurs with business development. The bank will be based in Yangon with branches in Mandalay, Mogok, Sagaing, Hpakant and Myitkyina.<sup>25</sup>

### **3.3 Parliament Natural Resources Committee**

In February 2016 the new members of the Amyotha Hluttaw Natural Resources and Environmental Conservation committee were announced, reflecting the new incoming Parliament. Previously chaired by U Ne Win Tun, the owner of Ruby Dragon, one of the most lucrative gemstone companies in the country, the committee is now NLD led.<sup>26</sup>

The renewed composition of the committee is as follows:

- 11 NLD MPs
- 1 military MP
- 1 USDP MP
- 1 Arakan National Party MP
- 1 Ta'Ang / Palaung MP

The new committee members have stated the committee's objective as providing an oversight role over mineral extraction nationwide, to halt illegal activities and to ensure compliance with environmental and social standards.

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<sup>25</sup> 'Gems and minerals bank to register in September', 4 September 2015, Myanmar Times

<sup>26</sup> 'Amyotha committee takes aim at resource extraction', Myanmar Times, February 2016, <http://www.mmmtimes.com/index.php/national-news/mandalay-upper-myanmar/19099-amyotha-committee-takes-aim-at-resource-extraction.html>



## 4. The Gemstone and Jewellery Value Chain

The typical Extractive Industries Value Chain model outlines five distinct stages in the natural resource management process, which any resource-dependent country should move through.<sup>27</sup> These include:

- Institutional and administrative issues required for initiating activities, including the establishment of a legal and contractual framework, allocation procedures etc.
- Regulation and monitoring of operations
- Collection of taxes and royalties
- Revenue management and distribution
- Sustainable development policies and issues.

The gemstone and jewellery value chain follows a slightly different trajectory. The key stages relate to the respective stages of value added of a gemstone from the point of extraction at the mine, to the point of commercial sale or retail as a piece of jewellery to a consumer on the international market.

### Gemstone and Jewellery Value Chain



For the purpose of this report, the extractive industries value chain has been merged with the gemstone and jewellery value chain, to create a more efficient platform for assessment in the case of Myanmar and in relation to EITI and improved governance of the sector. Therefore seven principle stages have been identified as follows:

- 1. Allocation of Rights/Award of Contracts and Licenses**
- 2. Mining and Production**
- 3. Traders and Brokers**
- 4. Cutting, Polishing, Treatment and Jewellery Production**
- 5. Retail Market (Local)**
- 6. Revenue Collection, Management and Distribution**
- 7. Sustainable Development and End-Markets**

It is important to highlight that the gems and jewellery value chain is characterised by its extremely complex, opaque and highly fragmented nature, unlike other precious minerals such as diamonds or gold. This means that it is almost impossible to trace a gemstone's journey from where it was mined to, for example, a piece of jewellery sold to a consumer at an international jewellery shop. Gemstones pass through numerous hands already before being cut, polished, transformed into jewellery and sold on the international retail market.<sup>28</sup> Globally, the majority of the world's supply of gemstones comes from artisanal and small-scale mining (ASM) sources, which tends to be highly unregulated and informal. This adds to the difficulties associated with tracing the trajectory of a stone from source and as it passes through the value chain.

<sup>27</sup> EI Sourcebook: [http://www.eisourcebook.org/641\\_IIITheExtractiveIndustriesValueChain.html](http://www.eisourcebook.org/641_IIITheExtractiveIndustriesValueChain.html)

<sup>28</sup> "Coloured Gemstones: Establishing a mechanism for their traceability and certification of ethical origins", 2013, <http://www.viji.eu/wp-content/uploads/2013/04/Coloured-gemstones-presentationUNICRI.pdf>; and, Jamie Cross, Sanne van der Wal and Esther de Haan, "Rough Cut. Sustainability Issues in the Coloured Gemstone Industry" (Center for Research on Multinational Corporations, 2010); [http://somo.nl/publications-en/Publication\\_3418](http://somo.nl/publications-en/Publication_3418)

## 4.1 Allocation of Rights/Award of Contracts and Licenses

### 4.1.1 Overview

In Myanmar, according to the Gemstone Law, the MONREC<sup>29</sup> issues and has oversight of:

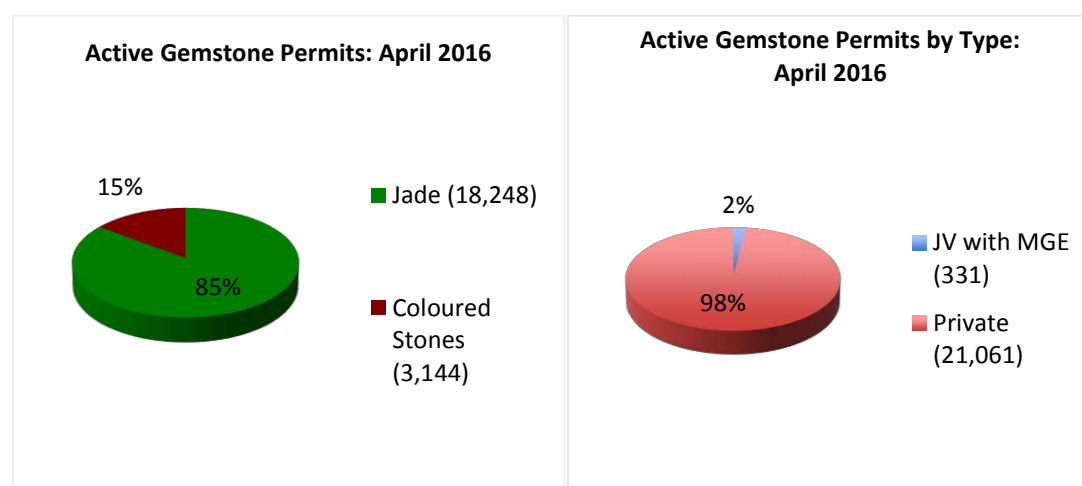
- **Gemstone production permits**, including for extraction (exploration and production) of gemstones as well as trading, processing, cutting/polishing, jewellery making, selling and exporting of gemstones.
- **Gemstone trading licenses**, for trading, selling and export of gemstones only.

In April 2016 there were 21,392 gemstone production permits and 2,000 gemstone trading licenses in Myanmar.

While the Gemstone Law does not differentiate between jade and coloured stones, in practice the two are commonly differentiated institutionally and are referred to separately. Most government procedures e.g. permit types and allocation procedures are the same for jade as they are for coloured stones, but production and valuation methods are slightly different.

Foreign investors are completely prohibited from extracting gemstones, cannot apply for a permit and cannot even enter into a joint venture partnership with a local company. This prohibition has not changed with the new amendments to the Gemstone Law (2016).<sup>30</sup> The 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) stipulates that companies must be wholly owned and controlled by Myanmar citizens. In practice however, it is widely known that the beneficial owners of many gemstone mines (both jade and coloured stones) in Myanmar are in fact foreign nationals who have entered into a business arrangement with a Myanmar citizen. The government could reconsider this prohibition in light of the fact that many foreigners are already engaged in the sector, leading to increased opacity in order to protect themselves and their business interests.

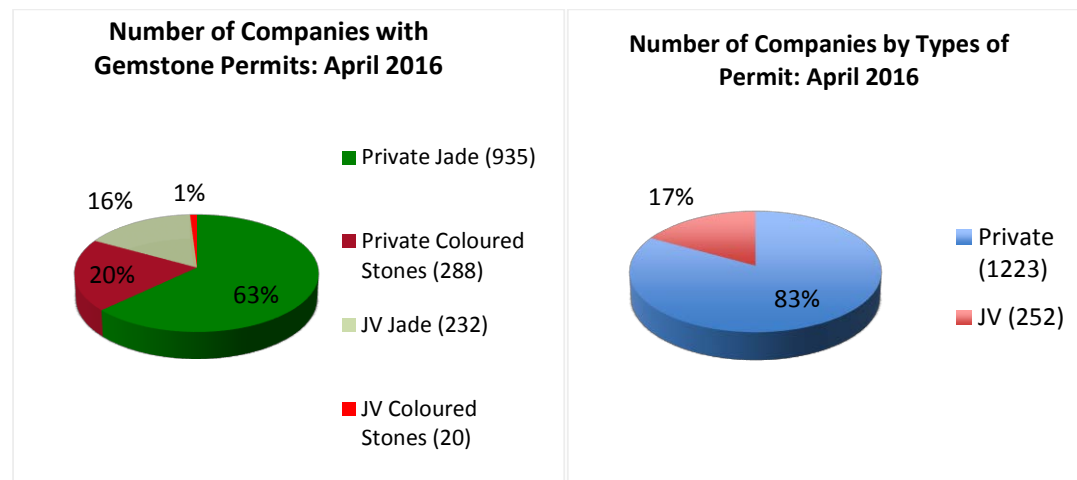
As at April 2016 there were 21,392 active gemstone production permits issued by MGE in Myanmar. Of these, 18,248 were for jade, and 3,144 for coloured stones.



<sup>29</sup> While the law stipulates the responsibility of the Ministry of Mines, in practice it is MGE that issues and has oversight of permits and licences.

<sup>30</sup> Chapter 1, Clauses 2 (h) and (i) of the Law specify companies or societies as follows: companies formed under the Myanmar Companies Act or formed solely with Myanmar citizens under the Special Company Act 1950; and, societies registered under the Co-operative Society Law.

Private companies held 98% of all permits with just 2% (331) of all permits representing joint ventures with MGE. Of these 331 JV permits, 310 were for jade (94%) and 21 (6%) for coloured stones.



The 21,392 permits were distributed among a total of 1,475 companies. 1,223 (83%) of these companies held private permits and 252 (17%) had joint ventures with MGE. Of the total 1,475 companies, 232 (16%) were JVs with MGE for jade production, and 20 (1%) were JVs with MGE for coloured stone production. Based on this data, it seems that most MGE JV's (252 in total) only hold one permit (331 in total), whereas the remaining 1,223 private companies appear to hold a multitude of permits. Furthermore, it is reported that some companies have both private as well as JV permits, and many companies also have JV's with MEC or UMEHL. This requires further analysis and clarification.

An explanation of the current system for the award or transfer of permits, as far as it is known and according to available information, is provided here.

Until 2016, gemstone production permits were issued based on three types of block categorisation, of 1 acre each, as follows:

- Discovered blocks – discovered by company or individual
- Designated blocks – identified and allocated by MGE/MONREC for companies
- Joint venture blocks – identified by MGE/MONREC or company but on a production sharing basis with MGE

There is very little information available on these categories, the rationale behind them, and their differentiation. However, both designated and discovered blocks are enshrined in the 1995 Gemstone Law, and JV blocks are now also included in the second amendments to the Gemstone Law.

The 2016 amendments to the 1995 Gemstone Law allow for 4 kinds of permit:

- Large scale extraction and production permit - 10 years
- Medium scale extraction and production permit– 5 years
- Small scale extraction and production permit– 3 years
- Very small scale (or subsistence) extraction and production permit – 1 year

In addition to these permits, it is estimated that many thousands of people are making a living as 'handpickers', which are not legally recognised.

The amended law does not specify size of blocks or acreage thresholds for each of the four kinds of permits.

What follows is an outline of the formal permit allocation procedure (until 2016 unless otherwise stated) based on the little information that has been made available.

## 1. Discovered block

The 1995 Gemstone Law states that the Ministry of Mines shall:

- from time to time designate by notification areas where discovered blocks for gemstone production operation would be permitted
- scrutinise applications for discovered blocks in accordance with the stipulations and if it is of the opinion that it should be permitted shall fix the tenure of a permit and the price
- issue the permit if the applicant pays the determined price
- redetermine the tenure of a permit and the price for each discovered block whenever the tenure of a permit expires

Companies and individuals can submit applications to MGE for 1 acre permits for 'discovered blocks'. The floor price is at least 500,000 MMK (approx. USD 400-500) per acre for new discovered blocks and at least 1 million MMK (approx. USD 800-1000) for expired discovered block per acre. Permits are issued for 3 years.

It is not known how many of the current active permits were issued for discovered blocks. In practice it is reported that this method is not commonly used or applied, given the sensitivities associated with discovered blocks. For example, if a company discovers a block that appears to be promising in terms of gemstone yield, and wishes to apply for a permit, it is widely thought that the permit would be refused and the block in question would most likely be transferred to another interested party.

The 2016 amendments to the Gemstone Law appear to eliminate the 'discovered blocks' category. These have been replaced with the establishment of State and Division level Scrutinising and Permit Bodies, with responsibility for issuing local small and very small-scale permits subject to MONREC approval and relevant 'stipulations'. Interested parties may apply for a small or very small-scale permit to MONREC. The relevant Scrutinising and Permit body evaluates applications according to the 'stipulations', determines floor price and tenure, and issues permits accordingly. It is not known what 'stipulations' are being referred to. Further clarification is required.

## 2. Designated block

The 1995 Myanmar Gemstone Law stipulates that the Ministry of Mines (now MONREC) shall:

- Designate areas where gemstones can be extracted as gemstone blocks
- Determine the tenure of a permit for each gemstone block designation
- Determine the floor price for each gemstone block for which tenure of a permit has been determined
- Invite competitive bids in accordance with bidding terms for the gemstone blocks for which the floor price has been determined
- Issue the gemstone production permit to the company or society which has submitted the highest bid

Permits for designated blocks are issued by MGE to private companies by competitive tender. Designated blocks are demarcated by MONREC on a 1-acre basis and issued to bidders who offer highest price. The floor price is at least 1 million MMK (approx. USD 800 - 1000) for designated and expired designated blocks per acre. Permits are issued for 3 years.

MONREC publishes announcements for competitive tenders 5 or 6 times a year in several daily newspapers. The announcements are published for 2 or 3 consecutive days and include bidding terms. The procedure is the same for new bids or bids to renew existing permits. The Central Gemstone Supervisory Committee evaluates the bids according to the following criteria:

- Highest price (with a minimum of approx. 800-1,000 USD or 1,000,000 MMK)
- Security deposit amount depending on the proposed price

These are then submitted to the Leading Committee for final decision and approval. The Leading

Committee scrutinises the applications received and issues permits to the companies with the highest bids. In practice, it is reported that the tendering process is not systematically used.

While all blocks are 1 acre each, companies can officially acquire up to 50 blocks maximum in total. In practice, it is known that some companies find ways to bypass this, and acquire much larger concession areas. All first 'private' permits are issued for 3 years, then are re-opened to tender after expiry of the 3-year tenure. If a company wants to extend its permit it must re-tender and enter into competition for each block in question. Permit renewal or extension costs up to USD 70,000 (100 million MMK) for three years, or over USD 70,000 for five years.<sup>31</sup>

According to MGE, when submitting competitive bids for new designated blocks, expired designated blocks and expired discovered blocks, local companies generally bid anything from 1,100,000 MMK (approx. 900-1,000 USD) to 50 million MMK (approx. 40-50,000 USD) for each block depending on the gemstone tract, the quality and the categories of gemstone produced. However, it is worth bearing in mind that there are other points of view on this, and other figures are also reportedly paid.

For local permits in Mogok the required fee is at least MMK 300,000, or MMK 1 million (approx. USD 800-1000) to renew a permit for 3 years. Most miners/company owners tend to do their required negotiations through the local MGJEA. This is because locally the government is widely considered to listen to MGJEA more than to individual miners, and the MGJEA is perceived to be 'like a bridge' between miners and government.<sup>32</sup>

The 2016 amendments to the 1995 Gemstone Law alter the procedure for allocation of designated blocks. According to the amendments, MONREC designates blocks for large-scale or medium-scale extraction and production. MONREC then determines the floor price and invites competitive bids for these designated large or medium-scale blocks. Companies may then submit bids for one or more of these blocks, 'in accordance with the stipulations'. It is not known what the stipulations are. MONREC then issues the permit to the company that has the submitted the bid with the highest price.

A key change in the amendments<sup>33</sup> is that MONREC ***"shall practice the rule to share the profit partially or in percentage with the permit holder for large-scale or medium-scale production in accordance with this law, including the evaluation costs for the environmental impacts because of production."*** This implies that all designated large and medium-scale permits are issued on a profit-sharing or joint venture basis. Furthermore, given that the newly adopted EIA Procedures require environmental assessments and environmental management plans to be put in place by gemstone mining companies as a condition of permitting, the fact that this is acknowledged here in the Gemstone Law amendments and that MONREC will share these costs, is a welcome addition to the legislation.

### 3. Joint Venture block

The 1995 Gemstone Law does not provide for joint venture ('*a kyaw thu*') profit sharing arrangements, whereas the 2016 amendments do. In practice however, JV arrangements have been happening for some years. The legal basis for the '*a kyaw thu*' system was until 2015 an agreement between MGE (40%) and the private operator (60%), and the split was based on the actual sale value of gemstone produced. Until March 2016 (and since the 1990s) JV profit sharing permits were issued on a first-come-first-served basis for concessions of up to 160 acres maximum. However, in March 2016, in line with the 2016 amendments to the Gemstone Law, it was decided that the maximum concession size under the JV partnership system would be 50 acres, but depending on the potential volume of gemstones produced.<sup>34</sup>

Until April 2016, companies interested in entering into a JV with MGE submitted an application (first-come-first-served) to MGE, which was then reviewed by the Leading Committee. The first JV permit

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<sup>31</sup> Meeting with MGE, March 2016

<sup>32</sup> Discussion with Mogok spinel miner and leading local member of MGJEA, May 2015

<sup>33</sup> 2016 Amendments to 1995 Gemstone Law, Section 12 (a)

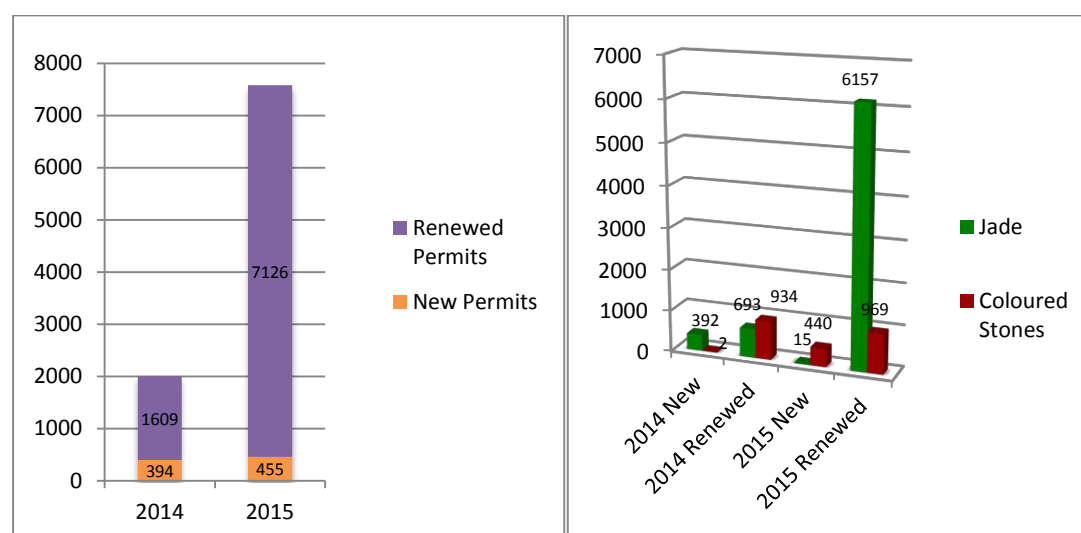
<sup>34</sup> Meeting with MGE, March 2016

was issued for 5 years. The first extension was for 3 years, followed by 2 years and then onwards every 2 years with no limit to the duration of tenure. The 2016 amendments to the Gemstone Law specify that large and medium scale permits will be awarded on the basis of competitive tender. MONREC will re-determine the tenure of an expired large or medium-scale permit after evaluating the performance of the business. It will then re-determine the floor price for each block and re-issue the permit accordingly.

In June 2015 at the 52<sup>nd</sup> Gems Emporium in Nay Pyi Taw it was agreed that the JV system would change from a 40%/60% production share split, to 25%/75%. All existing JV arrangements were amended during the Gems Emporium, so that since then all current JV permits are now split 25% MGE and 75% private company of the sale value of gemstones produced. At the time of writing in April 2016, no new JV permits had been issued in 2015-16 according to the 25%/75% split.

As mentioned above, according to the 2016 amendments to the 1995 Gemstone Law it appears that all large-scale or medium-scale permits will now be issued on a JV production-sharing basis with MGE. There is no publicly available data about JV's with MEC or UMEHL or any other government agencies, if applicable. Further clarification is required.

**New and Renewed Gemstone Production Permits 2014-2015<sup>35</sup>**



No new concessions will be granted in 2016 until the by-laws, rules and regulations to the amended Gemstone Law (2016) have been passed and approved.<sup>36</sup>

The difference in numbers of new or renewed permits between 2014 and 2015 is probably due to the fact that there was a moratorium on issuing any new or renewed jade permits between May 2012 and September 2014. As such, the figures for 2014 most likely reflect the 3-4 month period from September-December, and about a quarter of the 2015 figures.

Due to the 3-year tenure of most existing permits, many are due to expire during the 2016-2018 period. Given that 9,584 new or renewed permits were issued during 2014 and 2015 (2,003 new or renewed permits in 2014 and 7,581 new or renewed permits in 2015), and as at April 2016 there were a total of 21,392 active permits, it implies that 11,808 permits will be expiring or up for renewal during 2016. This presents an opportunity for government to review and revise the terms of any new contracts issued.

While it was not possible to review a model contract or production sharing agreement for the purpose of this report, MGE stated that permits do not stipulate clear terms e.g. about how production should

<sup>35</sup> Data provided by MGE, March 2016

<sup>36</sup> Meeting with MGE, March 2016; and, "Local mining applications delayed by new gemstones law", The Myanmar Times, 17 February 2016

be carried out. Permit holders are free to carry out primary (deep shafts/holes/tunnels excavation using dynamite blasting) or secondary (alluvial/open pit) mining activities as they wish. Permit holders are however issued separate instructions specifying that for each 1-acre block, only 1 machine, 1 bulldozer and 1 excavation/shaft/pit are allowed. Given that a model contract was not made available for the purpose of this report, it was not possible to review the typical terms included, or assess the extent to which these could be amended to ensure they are aligned with international good practice standards.<sup>37</sup>

MGE notes that many companies have gemstone production permits but just sit on their concessions without actually carrying out any mining. It is not known how many permits this may apply to.

The most recent gemstone-permitting round began in August 2015 when companies were invited to submit applications to MGE for designated mining blocks in Namyar and Maw Han in Kachin State, Mong Hsu in Shan State and Hkamti in Sagaing Region. Companies had to pay MMK 1 million (approx. 800-1000 USD) with their proposal in addition to an MMK 1 million deposit or 'advance fee'. If unsuccessful in their bid then the deposit will be refunded. If successful and the permit is awarded then the deposit will be included in the tender bid fee paid. As at April 2016, the blocks had not yet been awarded, pending the new amendments to the Gemstone Law and the change in government.

In July 2015, government issued 400 permits to local resident households in Mogok that could demonstrate they had been in Mogok for more than 20 years. The permits were all for 1 acre each for 3 years, and each applicant was limited to one 1 acre block only. The fee was approximately MMK 500,000/ approx. USD 400-500) a permit. Local residents welcomed this opportunity although it was also reported that the blocks in question were of questionable or inferior yield and quality.<sup>38</sup>

Please see Annex 2 for a Table of Gemstone Permit Types.

#### 4.1.2 Challenges

The lack of opportunities for local people to obtain permits, the apparent focus on larger-scale operations, the lack of transparency around how permits are allocated and the association of this with corruption is a recurring complaint among local people in Myanmar's gem-producing areas. This is also discussed further below under 'Beneficial Ownership'.

According to the October 2015 report by Global Witness, Myanmar's jade permitting system "is wide open to corruption and cronyism. The main concessions are in government-controlled areas of Hpakant Township, Kachin State, and blocks are awarded through a centrally-controlled process which multiple industry sources say favours companies connected to powerful figures and high-ranking officials. In the words of one jade businessman, 'if there is a big hat involved [in a bid], they will surely get it'".

Opacity in the permitting process and the huge potential profits create room for corruption. This means that permits are reportedly awarded on the basis of personal connections rather than the competitive principles stipulated in the Law. Officially, concession areas of up to 50 acres are allowed, (50 x 1 acre blocks), however it is said that in practice many mines extend their acreage to 70, 80 or 100 acres. Permits are granted for just 3-5 years but then permit holders have to pay more to extend or renew their permits. The amount they are required to pay depends on the quality of stones being produced, how much of the deposit is left and how much profit is being made. It is for this reason that most jade and gem mining in Myanmar now is as large scale and as intensive as possible.<sup>39</sup>

Local people in Myanmar's gem-producing areas are increasingly demanding a shift in policy towards small-scale, and more local ownership in mining, in the interest of benefitting communities, supporting local economic development, as well as improving tax revenues and minimising environmental impacts. Historically, local people have been involved in gemstone mining in their respective areas for centuries,

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<sup>37</sup> Meeting with MGE, March 2016

<sup>38</sup> <http://www.mmmtimes.com/index.php/business/15574-mogok-residents-to-receive-ruby-mining-licences.html>

<sup>39</sup> Meetings with gem experts, miners and CSO representatives from Mogok, 2015-2016; and, 'Conspiracy Theory: Gems & Junkies in Burma', Richard W. Hughes; [http://www.ruby-sapphire.com/burmese\\_politics.htm](http://www.ruby-sapphire.com/burmese_politics.htm) ; and 'Jade: Myanmar's Big State Secret', Global Witness, October 2015

but this has become increasingly difficult in the face of large scale production. Local CSO groups across Myanmar are urging the new government to focus on small-scale local permits, rather than larger scale permits with no local involvement, which they believe will address a wide range of local issues and concerns. Local communities and CSOs in Hpakant staged a protest in early April 2016 against the new provisions in the amended Gemstone Law, which allow for large and medium scale production permits with longer terms of tenure. The protesters demanded changes to the new classifications and procedures for gemstone production permits that enable 10-year large-scale production permits and 5-year medium-scale production permits. A 10,000-signature petition was submitted to Parliament.<sup>40</sup> It is not known how this was received by Parliament and whether any, or what follow up action was agreed.

The lack of transparency around how gemstone permits are awarded in Myanmar is a concern. While the 2016 amendments to the 1995 Gemstone Law provide a bit more clarity, the outlined procedures remain vague and unclear. For example, it is not clear what the often referred to 'stipulations' are. It is also not clear what the roles of the Central Gemstone Supervisory Committee and the Leading Committee are with regard to the allocation of permits. While the law states that permits will be issued to the highest bidder, it is not clear if there are any other evaluation criteria.

As at April 2016, no new gemstone production permits had been issued. However, as mentioned above, the amended legislation provides an opportunity for the incoming government to carefully consider the terms for all new or renewed permits, to strengthen permit allocation procedures and to publicly disclose procedures and terms of permit allocation in line with the EITI requirements.

#### 4.1.3 EITI Implications

The EITI requires that EITI reports contain contextual information relating to licenses.<sup>41</sup> This includes information about the allocation of licenses (Requirement 2.2)<sup>42</sup> as well as a register of licenses (Requirement 2.3).

##### **EITI Requirement 2.2 (a)**

*Implementing countries are required to disclose information related to the award or transfer of licenses pertaining to the companies covered in the EITI Report, including: a description of the process for transferring or awarding the license; the technical and financial criteria used; information about the recipient(s)*

##### **EITI Requirement 2.2 (c)**

*Where licenses are awarded through a bidding process during the accounting period covered by the EITI Report, the government is required to disclose the list of applicants and the bid criteria.*

Requirement 2.3<sup>43</sup> states:

*The term license in this context refers to any license, lease, title, permit, or concession by which the government confers on a company(ies) or individual(s) rights to explore or exploit oil, gas and/or mineral resources.*

<sup>40</sup> <http://www.elevenmyanmar.com/local/hpakant-protests-against-gem-law>

<sup>41</sup> The new 2016 EITI Standard has restructured the Requirements so that 'Contextual Information' is woven into the Standard in line with Extractive Industries Value Chain.

<sup>42</sup> Requirement 3.10 in 2013 Standard

<sup>43</sup> Requirement 3.9 (a) of 2013 Standard



EITI implementing countries are also required to maintain a publicly available register or cadastre system, which includes comprehensive and up to date information regarding licenses. This should include information about the license holder/company, coordinates of the license area, date of application, date of award and duration of the license, and type of commodity being produced.

In Myanmar, there is currently no publicly available register of licenses. However, the MEITI MSG has discussed the need for such a cadastre system, and it is included in the MSG's 2015-2018 Workplan.

#### 4.1.4 Recommendations

The first MEITI report includes a key recommendation for the MONREC about the allocation of licenses as follows:

***“MoM should review the current legislation to state clearly the process used for awarding licenses and when a round of bidding should be conducted with the highest bidder obtaining the concession. This will ensure transparency and could also generate higher revenues.”***

This report therefore recommends that MONREC and MGE should begin preparing this required information during early-mid 2016 for FY 2014-2015, so that it is ready and available for the second MEITI report.

As such, and in line with EITI Requirement 2.2, MONREC and MGE need to prepare information regarding all gemstone production permits that were allocated during the 2014-2015 period, including:

- a description of the process for transferring or awarding the license
- the technical and financial criteria used
- information about the recipient(s) of the license that has been transferred or awarded, including consortium members where applicable
- any non-trivial deviations from the applicable legal and regulatory framework governing license transfers and awards.

It is recommended that the government establish a committee to review all active gemstone permits as well as the revised terms and procedures in the amended Gemstone Law. The committee could review the gemstone permit allocation procedures to ensure these are fair, open and transparent and in line with EITI Requirement 2.2. It could assess compliance against an agreed set of parameters and take remedial action as appropriate. The findings could form the basis for amendments to the Law accordingly.

In addition it is recommended that the current or new model contract/s for gemstone production, be reviewed and amended as appropriate to ensure they are in line with international good practice standards. There is an opportunity to ensure that any new contracts are awarded on terms that are in line with EITI disclosure requirements (including for example, disclosure of beneficial owners), the new ESIA requirements, as well as international standards on environmental and social safeguards.

In terms of a publicly available minerals cadastre, or register of licenses, Myanmar's first EITI report published in January 2016 makes the following key recommendation:

***“An online cadastral system should be installed, which includes information on coordinates of concessions and transfers of mineral rights as well as fees paid. The MoM and the MoE should have official online cadastre maps with details of licences. The Mining Cadastre should ensure that all records are computerised and kept up to date. This would then allow the generation of reports of all***

*licensed operators with relevant details.”<sup>44</sup>*

In Myanmar, MGE is responsible for awarding permits and licenses in accordance with the Myanmar Gemstone Law. MGE holds all the relevant information pertaining to gemstone permits that is required for the cadastre. As such, MGE should begin preparing the information that will be required for the cadastre, in an agreed format.

While information about gemstone permits was not made available for the first MEITI report, MGE has agreed to disclose the necessary information to the Independent Administrator for the second MEITI report (FY 2014-2015), in addition to the information that was made available for this report.

## **Beneficial Ownership**

### **Analysis**

The EITI defines beneficial ownership as follows:<sup>45</sup>

“A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.”

In Myanmar, because gemstone production permits are issued for only 1 acre each, up to a maximum, in theory of 50 acres, many companies implement systems of multiple legal owners for their company networks, to ensure they can acquire larger concession areas of over 50 acres. Anybody can register as a company with the Ministry of Commerce for approximately USD 300. In this sense, it may seem as if a number of different companies are applying for permits when in fact the same beneficial owner can often be ‘hidden’ behind them.

A major issue in all gem-producing areas of Myanmar is the reported lack of opportunities for local people and businesses to be involved in the sector, and in particular for local smaller companies to obtain gemstone production permits. It is estimated that the beneficial owners of less than 30% of all privately held gemstone production permits are Myanmar citizens.<sup>46</sup>

Many stakeholders consulted for this report noted that the jade mines in Hpakant are mostly Chinese owned. Indeed, it is reported that up to two-thirds of current Hpakant residents are not Myanmar citizens but are Chinese citizens, many of them being mining company managers or other mining company employees.

The sector is increasingly perceived as being dominated by large mining monopolies, who are wealthy enough to obtain sizeable concessions through networks of subsidiaries and family or other connections, and who have been scaling up production during 2015 and into 2016. Huge bulldozers, machinery and other equipment are now very common in both the jade and coloured gemstone-mining areas, which are generally too expensive for smaller scale operators.<sup>47</sup>

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<sup>44</sup> MEITI Reconciliation Report 2013-2014; pages 78-79

<sup>45</sup> EITI 2016 Standard Requirement 2.5 (f) / EITI 2013 Standard Requirement 3.11

<sup>46</sup> Based on various stakeholder interviews, including with MATA CSO coalition representatives from gem producing regions

<sup>47</sup> Local mining applications delayed by new gemstones law, The Myanmar Times, 17 February 2016

According to the EITI Standard:<sup>48</sup>

*It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how the control is exerted.*

*Where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing.*

*It is required that the EITI Report documents the government's policy and MSG's discussion on disclosure of beneficial ownership.*

*It is required that by 1 January 2017, the multi-stakeholder group publishes a roadmap for disclosing beneficial ownership information .*

*By January 1, 2020, it is required that companies disclose beneficial ownership information for inclusion in the EITI Report.*

The EITI MSG agreed that for the first MEITI report the 'legal owners' not 'beneficial owners' would be disclosed in the report, due to both time and administrative constraints. The disclosure of beneficial ownership is a sensitive issue, especially in Myanmar's gemstone sector where it is widely known that many beneficial owners have sophisticated networks of companies and shell companies, often in the name of their family members or staff or other known persons.

Myanmar does not currently have a publicly available register of the beneficial owners of the corporate entities that bid for, operate or invest in extractive assets. However Myanmar's Directorate of Investment and Company Administration (DICA) is in charge of handling company registrations for local and foreign businesses under the Companies Act and maintains records of companies and company officials.<sup>49</sup> In their work on Myanmar's jade sector and beneficial ownership, international NGO Global Witness highlighted the importance of national identity numbers for identifying beneficial owners in Myanmar. The required information for MEITI could be obtained by collaborating with DICA.<sup>50</sup> However, it is important to note that the listed legal owners are not necessarily the beneficial owners.

In the first MEITI report, the Independent Administrator made a number of recommendations regarding beneficial ownership (BO), which should be implemented during 2016, including:

- 1. The MSG needs to agree a definition of BO**
- 2. Awareness raising and training for companies on BO reporting requirements**
- 3. MSG should launch a consultation with Government and companies to agree a standard format for companies to disclose BO information**
- 4. MSG could consider setting up a multi-stakeholder sub-committee on BO**

In February 2016, the EITI Board adopted the new 2016 Standard, which includes strengthened requirements on BO. All implementing countries must now ensure that companies declare who their beneficial owners are. The requirement will take effect as of 1 January 2020, allowing countries some

<sup>48</sup> Requirement 2.5 of 2016 Standard, or Requirement 3.11 of 2013 Standard

<sup>49</sup> DICA; <http://www.dica.gov.mm/en/company-search>

<sup>50</sup> Global Witness has produced a list of jade companies and their beneficial owners to assist the MEITI MSG with its preparations on BO disclosure

time to undertake the necessary preparations. However, by 1 January 2017, the MSG must publish a roadmap for disclosing beneficial ownership information.<sup>51</sup>

In April 2016, a huge global leak of confidential documents known as the 'Panama Papers' exposed how wealthy individuals around the world are using shell companies and tax havens to hide their wealth and avoid taxation. It is the largest ever leak of its kind, thrusting the issue of beneficial ownership squarely into the global limelight and pushing it to the top of many agendas.

### Recommendations

When raised with MGE for the purpose of this report, it was agreed that the disclosure of beneficial owners of gemstone production permits will be very difficult. As such, and given the strengthened requirement for BO disclosure in the new 2016 EITI Standard, it is strongly recommended that the MSG engage with MONREC, MGE and DICA, as soon as possible, to implement the Independent Administrator's recommendations from the first MEITI report and develop a roadmap for disclosure of BO information during 2016. The MSG could consider requiring some companies (e.g. over an agreed threshold) to disclose information about beneficial ownership for the second EITI report. It is also recommended that a representative of MGE takes a seat on the MEITI MSG.

## Contract Disclosure

### Analysis

EITI Requirement 2.4<sup>52</sup> encourages implementing countries to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals.

Globally, there is an increasing shift towards greater transparency with regard to contracts and the public disclosure of contracts. This enables citizens to understand and monitor the agreements and commitments their governments have made with companies. More than 25 countries are now disclosing some or all of their extractive industry contracts and others are beginning to follow.<sup>53</sup> In line with this shift towards greater contract transparency, an online searchable database of all publicly disclosed extractive industry contracts globally called Resource Contracts has been established. As at March 2016 it is possible to see, compare and download 19 different diamond contracts on this website from countries including Liberia, Cameroon, the Democratic Republic of Congo (DRC), Sierra Leone and Guinea.<sup>54</sup>

The feasibility of disclosure of contracts was discussed with MGE. The general position is that this would not be possible in the foreseeable future due to confidentiality provisions in contracts. The typically short contract terms (3-5 years) of most gemstone production permits could be viewed as a potential obstacle to contract disclosure.

As mentioned above, under the amended Gemstone Law (2016) the terms of tenure are longer, with large scale permits being granted for 10 years, medium scale for 5 years, small scale for 3 years and very small scale for 1 year of tenure. As such, and as highlighted above, it is anticipated that any new or renewed contracts issued from 2016 will be significantly different from their predecessors. This presents an opportunity for policy makers to review the terms of contracts, but also for the government to review its policy on public disclosure of contracts as per EITI Requirement 2.4 (b).

Confidentiality provisions in PSCs were an issue for the first MEITI report in that both oil and gas operators and Myanmar Oil and Gas Enterprise (MOGE) were unable to disclose the required data to the Independent Administrator. The issue was raised a few times at MEITI MSG meetings and in the end MOGE agreed to send each company a letter of consent allowing them to disclose information. It

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<sup>51</sup> EITI Requirement 3.11 on BO in the 2013 Standard has been replaced by Requirement 2.5 in the 2016 Standard.

<sup>52</sup> EITI Requirement 3.12 in the 2013 Standard

<sup>53</sup> See Resource Contracts <http://www.resourcecontracts.org> for an online searchable database of all publicly disclosed extractive industry contracts from around the world, and also Open Contracting Partnership for emerging views and news on contract disclosure <http://www.open-contracting.org>

<sup>54</sup> <http://www.resourcecontracts.org/search?q=&resource%5B%5D=Diamonds>

is extremely likely that the same situation will apply for gemstone companies for the second MEITI report.

**Recommendations**

It is strongly recommended that any necessary legal/regulatory mechanisms or EITI disclosure obligation be placed on gemstone producers to overcome contractual barriers to disclosure, in time for the second MEITI report. This is also in line with the Independent Administrator's recommendations in the first MEITI report.

It is also recommended that government review its policy on public disclosure of contracts as per EITI Requirement 2.4 (b), and that the terms of existing and new contracts are reviewed.

## 4.2 Mining and Production

### 4.2.1 Overview

Until around the mid-1990s, the majority of mining at the main gem-producing areas of Myanmar (both Mogok and Hpakant) was carried out on a smaller-scale or subsistence basis. Today, it is a different story, with larger scale, intensive mechanised extraction predominant throughout the gem-producing areas. By international standards, most machinery and equipment is of a relatively simple nature (especially in Mogok) although there are an increasing number of extremely sophisticated operations (especially in the jade mining areas).

#### Mogok

3 or 4 main kinds of mining take place:

- Primary mining: tunnels or deep shafts (vertical or horizontal or slanting down) –blasting with explosives underground directly into the host rock to extract rubies and sapphires.
- Secondary/alluvial mining: open pits of varying sizes, known as ‘inpye’ locally.
- Handpicking/subsistence mining: ‘kanase’ and ‘khesar’ on waste dumps

Mogok's rubies occur in crystalline limestone (marble). Millions of years of erosion led some of these to be displaced from their marble host rock, and be carried down the hills and rivers to the valley floors. This alluvial layer of gravel containing gems is known locally as ‘Byon’. It ranges from 1-2m in thickness and generally lies between 5-10m below the surface of the valley floor. It contains ruby, sapphire, spinel, quartz, tourmaline, feldspar grains, pyrite, and other coloured stones, and it is from this byon layer that the majority of stones have been recovered over the past decades.<sup>55</sup>

Once ‘overburden’ has been removed and sufficient byon gravel is obtained, it is transported to a washing area, where the heavier coloured stones are separated and sorted from the lighter waste. This is either done using traditional panning techniques for smaller, less mechanised mines, or separated by machine at a washing plant for larger mechanised mines.<sup>56</sup>

The majority of the most productive ruby mines today are underground shafts or tunnels, using dynamite to blast the primary host marble rock and to create the tunnel or shaft. Fragments of blasted rock are hauled to the surface using pulley systems, and then put in sorting enclosures. They are then broken down into increasingly smaller pieces, then separated and sorted, usually on mechanised sorting machines (also known as mechanised jigs) and sluices. It is generally agreed that the use of explosives to extract rubies from primary metamorphic gemstone rock has led to increased production.

#### Hpakant and Hkamti

Most jade mining consists of removing the overburden layer of rocks and other alluvial material using a combination of heavy machinery, blasting and bulldozers to expose the rocks below. The rocks then undergo an initial sorting, with waste material being discarded either at designated (or undesignated) waste dumps, or into a nearby river. Jade rocks and boulders are then either further sorted on site, or transported by truck to sorting facilities for washing and processing, after which the resulting waste material is then dumped. Jade is also found as alluvial water-worn pebbles in riverbeds, although this is extremely rare these days as the area is so over-mined.

Once the rock, gravel and gemstones have been sorted and separated, they should be formally declared and a royalty should be paid.

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<sup>55</sup> ‘Gems and Mines of Mogok’, Ted Themelis, 2008

<sup>56</sup> ‘Gems and Mines of Mogok’, Ted Themelis, 2008; and Richard Hughes, Pala Gems; <http://www.ruby-sapphire.com/pigeons-blood-mogok.htm>



Mechanised Processing Facility at Mogok Ruby Mine

## Production and Production Monitoring

In Myanmar, the formal procedure for declaration and monitoring of gemstone production is as follows:<sup>57</sup>

### 1. Joint Venture Mines

MGE/MONREC has one inspector per acre of each JV mine whose job is to monitor production on site. Each JV mine usually has at least 3 MGE/MONREC 'supervisors'. Any gems or jade produced are closely monitored on a daily basis. After production is evaluated at the end of each day, an MGE 'M14 form' is completed in which the value and volume of each gemstone produced is registered. According to MGE, there is little scope for loss or leakage in this system.

### 2. Private Mines

There is effectively no government inspection or monitoring of privately held mines. In theory, MGE/MONREC has approximately 1 Area Supervisor responsible for overseeing around 10 or 20 blocks. While exact procedures are not completely clear, the following 2 scenarios are applicable:

- In some cases (especially for jade), mine owners can store the product on site and after a certain amount has been produced they inform MGE. The local Valuation Committee, including MGE representatives, goes to the mine to evaluate the product being declared. The product is assessed, its value is determined, and all relevant data is recorded in MGE Form M14. This grants the mine owner permission to transport the declared product to Nay Pyi Taw to sell at Gems Emporium if desired. The regional MGE office formally submits this data to Nay Pyi Taw. The mine owner is required to pay a 20% or 10%<sup>58</sup> royalty on the determined value of the declared product as soon as possible into MGE's bank account at the Myanmar Economic Bank (MEB).
- When a certain amount of gemstones have been produced, mine owners are expected to report these to their local MGE office. They complete an M14 Form and take this along with the product being declared to their MGE Regional Reporting Officer - on a weekly or monthly basis, depending on the quantity and quality of gems produced and being declared. The local Valuation Committee, comprising a few MGE representatives, meets at the regional MGE office on a weekly basis. The product is assessed, its value is

<sup>57</sup> Meeting with MGE, March 2016

<sup>58</sup> 20% for ruby, sapphire, jade and diamond; 10% for all other gemstones



determined, and all relevant data is recorded in Form M14. This grants the mine owner permission to transport the declared product to Nay Pyi Taw to sell at Gems Emporium if desired. The regional MGE office formally submits this data to Nay Pyi Taw. The mine owner is then required to pay 20% or 10% of the determined value into MGE's MEB account. Given the insufficient government monitoring of privately held mines, there is considerable scope for loss or leakage in the current system.

After a stone has been declared and the royalty paid, it can either be stored, sold at the Gems Emporium, sold directly to a licenced trader, or informally traded/transported.

Production data and monitoring of production are critical issues in gemstone sector governance. The production of gemstones is inherently difficult to monitor, given that gemstones are generally low-volume and high-value, and that they are relatively easy to smuggle. A lack of efficient production monitoring encourages informal practices, tax and royalty evasion, unreported product, distorted and incorrect data regarding volumes of production and consequently significant lost revenues for government. MGE was unable to provide official production data for the purpose of this report, but has stated that all available data will be provided to the Independent Administrator for the second EITI report.

1 of 1

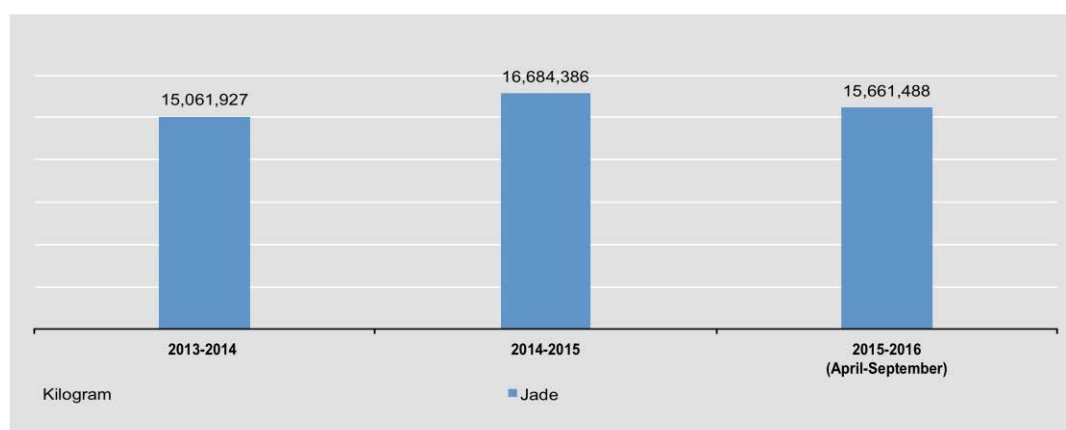
## 2.5 PRODUCTION OF PRECIOUS MINERALS AND PEARLS

FY	Jade (Kilogram)	GEMS					Pearls** (Momme)
		Rubies (Carat)	Sapphire (Carat)	Spinel (Carat)	Peridot (Carat)	Total* (Carat)	
2013-2014	15,061,927	443,510	1,142,291	446,138	384,200	16,310,221	351,641.49
2014-2015	16,684,386	496,945	1,214,687	525,594	354,500	13,631,510	424,628.01
2015-2016 (April-September)	15,661,488	228,137	534,932	202,227	212,000	8,884,941	160,888.97
<b>2014</b>							
October	934,269	39,440	125,764	42,132	-	726,331	16,812.15
November	1,044,797	32,955	82,814	31,804	-	516,921	34,293.60
December	1,570,665	29,899	55,309	42,215	-	448,377	42,086.82
<b>2015</b>							
January	2,216,057	37,737	62,364	35,225	93,800	723,309	-
February	2,760,531	35,972	67,296	43,444	-	4,220,427	135,762
March	3,491,543	41,914	66,231	37,826	50,300	1,709,602	-
April	4,836,358	44,235	42,155	34,824	50,600	973,750	-
May	5,293,921	41,825	99,811	39,862	-	1,608,347	-
June	2,694,095	39,250	32,068	42,192	99,400	1,403,164	-
July	1,367,803	44,340	102,114	28,036	-	1,771,580	-
August	634,701	41,238	166,907	20,632	62,000	1,549,619	40,061.82
September	834,610	17,249	91,877	36,681	-	1,578,481	120,827.15

\*Include Myanmar Gems Enterprise.

\*\*Pearls include joint venture production.

Sources: Myanmar Pearl Enterprise, Myanmar Gems Enterprise,  
Myanmar Ruby Enterprise (Gems & Jewellery) Co.,Ltd,  
Myanmar Imperial Jade (Gems & Jewellery) Co.,Ltd.





Currently, the only publicly available data on production volumes in Myanmar (above) is on the Central Statistical Organisation (CSO) database, which provides the official production data for 'Precious minerals and pearls' for FY 2013-2014, 2014-2015 and the first 6 months of 2015-2016. As noted by the CSO database, the sources of data used are MGE and also UMEHL's two subsidiary companies, Myanmar Imperial Jade (Gems and Jewellery) Co. Ltd, and Myanmar Ruby Enterprise (Gems and Jewellery) Co. Ltd.<sup>59</sup>

### Valuation

A key component of the production declaration and monitoring process is valuation, which is particularly difficult in any country. This is especially true for rough stones given that a rough stone's potential is much harder to ascertain. However, in general, gemmologists use 'the four C's' to determine the value of a gemstone: colour, clarity, carat (weight) and cut. In practice valuation of gems, jewellery and other gemstone products is required at every stage of the value chain and is usually carried out by the owner or seller of the gem, or by an independent expert. However, this report focuses on official government valuation procedures given that it is these that lead to the effective collection of royalties and taxes.

Chapter 8 of the 1995 Gemstone Law stipulates that the Ministry of Mines is responsible for the establishment of gemstone 'Valuation Bodies' as necessary, 'comprising gem experts, technicians and other suitable persons at various regions'. This remains unchanged with the 2016 amendments to the Gemstone Law.

According to the Law, the Central Gemstone Supervisory Committee is the main gemstone 'Valuation Body' with oversight of all gemstone valuation matters in Myanmar. It is chaired by the Deputy Minister of Mines (now MONREC) and includes individuals from relevant government departments as well as technical experts.<sup>60</sup>

There are also local valuation committees at the State and Regional level. Chapter 8 of the Gemstone Law broadly sets out the role, duties and establishment of these local valuation committees. According to the Gemstone Law, after a rough gemstone has been declared, the valuation committee assesses its value and determines the royalty accordingly. The committee first registers the quality, quantity, weight and size of the rough stone/s declared by the permit holder. Each member of the valuation committee is supposed to give a non-biased estimated value, after which the members then agree a final value. Although not specified in the Gemstone Law, as mentioned above, the gemstone's details are recorded in MGE's M14 Form, which is then retained by MGE. According to Article 18 of the Law, if the company is dissatisfied with the value determined by the valuation committee, it has the right to request a revaluation by the Central Gemstone Supervisory Committee within 30 days.

After the value of the rough gemstone has been determined and recorded in Form M14, the permit holder is required to pay the agreed royalty as soon as possible into MGE's Myanmar Economic Bank account. The royalty rates currently levied for rough stones at the mine site, according to the Gemstone Law are:

- 20% of determined value for ruby, sapphire, jade and diamond
- 10% for other gemstones

There are 12 local gemstone valuation committees in Myanmar in the following gem-producing areas as follows:

- 2 in Hpakant
- 2 in Lonkin
- 3 in Mogok
- 1 in Mong Hsu
- 1 in Mohnyin
- 1 in Namya

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<sup>59</sup> CSO Database, Selected Monthly Economic Indicators, 'Production of Precious Minerals and Pearls'; <http://www.csostat.gov.mm/s2.5MA02.htm>

<sup>60</sup> Chapter 10 of 1995 Gemstone Law

- 1 in Hkamti
- 1 in Monye- Lonkin

Local valuation committees comprise 12 people. These include:

- 3 MGE representatives
- 1 external gemmologist/gem expert
- 1 MGJEA representative
- 4 representatives of other relevant government agencies (including Customs, IRD and MNPED)

Given the absence of transparency about official valuation procedures, and the fact that gemstones are particularly difficult to value, this represents an area that requires further attention and clarification. It is also possible that support to government could be provided to build capacity and understanding about good practice gemstone valuation and procedures.

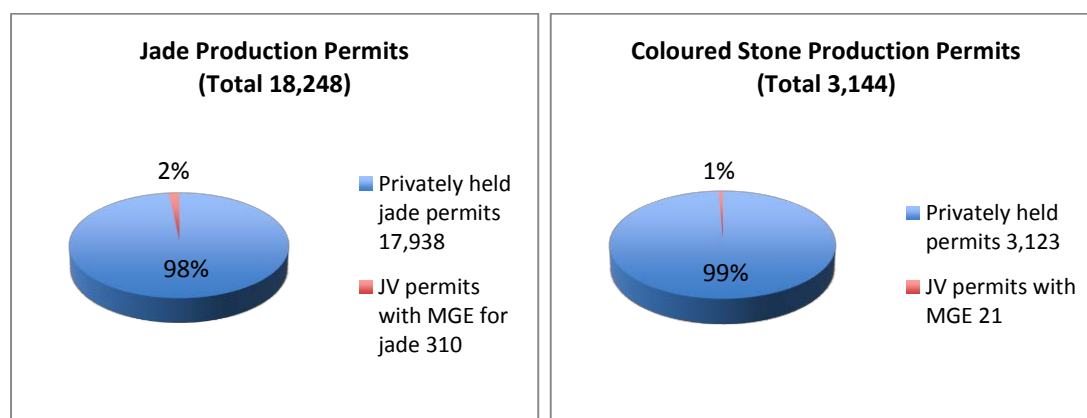
#### 4.2.2 Challenges

Based on interviews with a range of stakeholders for the purpose of this report it is estimated that 60 - 80% of gemstones produced in Myanmar are not declared and therefore bypass the formal system. A combination of both formal and informal processes seems to be the most likely, and the lines between formal and informal processes are often blurred, with stones sometimes moving from one system to the other at different stages of the value chain. Many permit holders declare a smaller proportion of their production formally, while the remainder is channelled through informal routes.

MGE and MONREC recognise that a key issue, particularly for the privately held mines, is the government's inability to monitor mining activities and gemstone production. In all privately held, non-JV mines, the government relies entirely on company/permit holder declarations about gemstone production. This means that existing production data is not reliable. If systematic monitoring and inspection of privately held mines took place then it would be possible to have more reliable production figures.

MGE notes that there is will and commitment to improve oversight of the sector, but a considerable shortage of capacity, in terms of sufficient numbers of skilled staff, experience and technical knowledge. The government's current position is that through amending the law and encouraging more JV partnerships with government, there will be more control of the sector - fewer permits of larger acreage and longer tenure will encourage better control and compliance. The existing JV mines tend to be of much larger acreage than privately held mines.

According to permit data provided by MGE (and presented above earlier), there were 21,392 active gem production permits as at March 2016. Of these, 98% were privately held and 2% were JVs with MGE. This means that 2% of all gemstone production permits are being 'monitored' by government.



Accurate data on gemstone production enables effective calculation and collection of government revenues. It is clear that there are currently significant weaknesses in the government's gemstone production monitoring procedures. MONREC and MGE currently lack the capacity, technical expertise and sufficient human resources to be able to begin resolving this complex issue.

The Gemstone Law does stipulate in Chapter XIII, clause 40 (b), that, **“failure to register the rough gemstone produced or failure to register the rough gemstone actually produced and instead registering a substituted rough gemstone shall, on conviction, be punished with imprisonment for a minimum of 7 years to a maximum of 15 years, and shall also be liable to a fine”**. In practice, it is not known whether there have been any such convictions. This clause has not changed in the 2016 amendments to the 1995 Gemstone Law. It is clear that further research, review and reinforcement of government capacity for inspection, monitoring and enforcement of compliance is required.

The procedures for valuation are not clear. For example, it is not clear whether local valuation committees physically go to a mine site to assess and evaluate production, whether the permit holder is expected to bring their production to a local office, whether a combination of these may take place or whether another procedure is in fact applied.

MGE states that there are clear guidelines for the valuation of gemstones and set procedures that the committees are required to adhere to, but was unable to provide these for the purpose of this report. However, MGE has indicated that information on valuation procedures will be supplied for the second MEITI report. Without such clear procedures, it appears that valuation is determined relatively arbitrarily by local committees and that because royalties are paid before actual sales, there is a high risk of undervaluation.

A further issue for consideration is the stockpiling of production, which also has an influence on annual data. Companies may choose to store their production in warehouses for months or years before deciding to sell it. A company's choice may be linked to perceived supply, demand and value of any particular gemstone on local (or international) markets. In practice MGE is aware of volumes of gemstones stockpiled in its JV partnerships, but privately held companies are free to do what they like and MGE does not check.

### **Mogok**

In Mogok, explosives are only officially sold by the government and are otherwise illegal. However local residents report that government explosives are too strong to be used and in practice all mines obtain explosives informally. Most mine tunnels or shafts are around 4-5 feet square all the way down, but the government explosives are too strong to effectively control the impact area for the blast. As such, there is a huge black market for explosives. Traditional explosives (known as 'Ka') are used, made of sulphur mixed with charcoal, as well as explosives imported from other countries, particularly China. It is recommended that the use of explosives in gemstone mining be formally reviewed, and options for addressing the supply and management of explosives be considered.

Several stakeholders consulted for this report suggested that Mogok's ruby deposits are in decline, especially over the past decade. Mining has become increasingly difficult and costly, with the gem deposits getting deeper and harder to access. Mine owners talk about needing double the amount of men now for the same amount of work as before.

### **Hpakant**

There was a moratorium on jade production in Hpakant from March 2012 until it officially resumed again in September 2014. This was due to the breakdown of a 17-year ceasefire agreement between the government and the Kachin Independence Army in 2011. After mining operations resumed in September 2014, mining companies renewed their permits and restarted operations, only halting temporarily in 2015 when renewed fighting broke out before fully resuming again in March 2015. Since 2014 the scale of jade mining has significantly increased, with more and more powerful equipment and machinery being used compared to before. Locals estimate that approximately 70% of jade produced in Hpakant is not declared and bypasses the formal system.

In Hpakant, there are numerous reports of drug abuse and poor working conditions at the mines. In addition, thousands of subsistence miners or 'handpickers' (Ye Ma Say) make a living in extremely poor conditions by searching through the waste disposed by mining companies. A number of fatal landslide accidents at waste dumps in 2015 resulted in the deaths of many of these miners. In March 2016 CSOs called for another moratorium on all jade-mining activities to take time for significant environmental and social concerns to be addressed.

#### **Hkamti**

Locals estimate that around 70% of all jade production in Hkamti is not declared and does not pass through the formal system. All of the jade produced in Hkamti is sold to Chinese buyers, the majority of whom buy directly from the mines.

### **4.2.3 EITI Implications**

Production data and production monitoring are reflected in the EITI Standard as follows:

#### **EITI 2016 Standard, Requirement 3.2: Production**

Implementing countries must disclose production data for the fiscal year covered by the EITI Report, including total production volumes and the value of production by commodity, and, when relevant, by state/region. This could include sources of the production data and information on how the production volumes and values disclosed in the EITI Report have been calculated.

As mentioned above, MGE has stated that all production data that is available will be provided for the second EITI report. This will enable a more accurate estimate of total production, which will also enable a more accurate estimate of the value of both jade and coloured gemstone sub-sectors in Myanmar. Of course, there are plenty of caveats to such calculations, for example different qualities of gemstones, variations in yield and quality across different companies, stockpiling of gemstones, as well as fluctuating market prices. Nevertheless, the data that will be provided for the next EITI report should enable more accurate calculations for the value of the gemstone sector to the national economy than have yet been possible.

### **4.2.4 Recommendations**

To ensure maximum government revenues as well as benefits from the gemstone sector the problem should be addressed systematically. MGE requires strengthened capacity and technical expertise to begin addressing poor monitoring and oversight, which in turn leads to foregone revenue. Regional offices are under-resourced and lack the authority or sufficient influence to engage with powerful industry players.

There are two main recommendations to begin addressing this issue:

1. Assessment of the amended 2016 Gemstone Law and proposed draft Rules and Regulations to ensure appropriate governance over gemstone production, including any potential changes or additions that may be required.
2. Provision of support e.g. technical assistance, to MGE to:
  - a. Assist with the review and development of appropriate systems and procedures for the monitoring and reporting of gemstone production
  - b. Assist with development of a national Gemstone Sector Strategy to improve governance, including production as well as allocation of permits, valuation, export and sales
  - c. Build capacity of MGE to monitor gemstone production and mining activities.

It is also recommended that the use of explosives in gemstone mining be formally reviewed, and options for addressing the supply and management of explosives be considered.

## Environmental and Social Impact Management

### Labour/Working Conditions

Mine owners usually provide workers with accommodation, food and very basic healthcare. However, at all of Myanmar's key gemstone producing areas local people complain about the lack of employment opportunities. Most mines employ migrant workers, in some cases imported from China and in other cases from other parts of Myanmar, either way exacerbating issues relating to influx of outsiders into local areas. The minimum wage (legally established in 2015) is rarely paid and workers are often tied to 6-month contracts, often working 24-hour shifts.

In Mogok, very few local people are employed. Most jobs are offered to migrant workers from Yangon. This is said to be because the companies don't trust local people and their knowledge of the quality and value of different gemstones. The basic minimum wage in Myanmar was set at MMK 3,600 per day (approx. 3 USD) during 2015, however at the mines in Mogok this is rarely paid. There are generally 2 types of payment for mine workers:

- Monthly payment – average USD 100 per month (some locals employed), but MMK 80,000 (approx. USD 70) per month for basic/lowest paid
- Share of production. Workers keep 20% of the value of any gems found.

Contracts are normally for 6 months, working 24hr shifts every day. Workers are not allowed to leave and only get paid at the end of their 6-month contract. There are a couple of mines in Mogok that offer slightly better working conditions and pay, with the highest wage being USD 250 per month and some miners are also offered commission if they find good gemstones.

In Hpakant and Hkamti, local people are increasingly frustrated by the lack of work opportunities. The majority of jobs are given to Chinese migrant workers or Myanmar migrant, often from Monywa and Mandalay. Working hours in the mines are usually 7am-6pm and workers receive less than USD 100 per month.

Health and safety of workers are also major concerns in most gem-producing areas. In the case of the informal Ye Ma Say jade handpickers<sup>61</sup> in Hpakant, health and safety issues are of particular concern, with hundreds of deaths during 2015-16 due to landslides at unstable waste dumps as well as widespread heroin addiction among the handpickers. Drug abuse (both heroin and methamphetamines) is reported to be a major problem in all gem-producing areas, but especially in relation to jade production.

### Local Economic Development

In all of the main gem-producing areas, local people are increasingly frustrated by the lack of opportunities available to them.

In Mogok, there is resentment that some of the most lucrative ruby mines are owned by outsiders, perceived to have little understanding of mining, and to not engage with or support the local community in any way. Forty CSO groups (two of which are part of the MATA CSO coalition) are collaborating in 2016 to hold workshops and lobby government about their concerns regarding gemstone mining, including in particular the importance of issuing small-scale local permits and ensuring that mining benefits the local community.<sup>62</sup>

In Hkamti, local people have no opportunities to benefit from the jade mining in their area and live in extreme poverty. They are not offered any jobs, there is no local jade market for them to trade in, and they are not able to obtain any kind of gemstone production permit. Local people report that up to 80% of the jade mining business going on around them is Chinese or Kokang-controlled and they are increasingly frustrated by their exclusion from any economic opportunities.

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<sup>61</sup> See section on ASM and Subsistence Mining on page 78

<sup>62</sup> Meetings with local community and CSO representatives 2015-2016

The combined social and environmental impacts of jade mining in the jade producing areas are so severe that local people together with CSOs are demanding the government impose a moratorium on all jade mining until some of the issues have been resolved.

### **Waste**

The dumping of waste material or tailings remains unregulated in gemstone production and there is a lack of systematic government controls or procedures. In theory, mining operations and dumping of any waste material should take place at least 200 feet away from any river, water source, municipal areas, religious sites and by agreement with local people. In practice, waste dumping is unregulated and has become an increasingly sensitive and high profile issue over the past few months. The fatal landslide disasters at Hpakant waste dumps during 2015-2016 have led to increased public scrutiny and demands for improved standards and accountability from the jade mining companies involved.<sup>63</sup> In Hpakant, companies buy land from local farmers to use as waste dumps, or simply dump their waste on a farmer's land, then pay the farmer some money if requested. This leads to landslides and flooding, which not only impact the local community, but create a significant risk for the handpickers whose livelihoods depend on the waste dumps.

In Mogok, mining companies either dump waste material into the nearest streams, or transport it in a tractor and dump it somewhere else.

MGE recognises that the need for more systematic control over waste dumping.<sup>64</sup> Although for the purpose of this report a model contract was not made available by MGE, the contracts apparently include provisions on a number of environmental-management issues. In February 2016 a new agreement was reached regarding the maximum size of waste dumps in the jade producing areas. The newly adopted EIA Procedures will require companies to implement Environmental Management Plans, which should provide for the systematic disposal of waste material.

### **Water**

Gem excavation and production is highly water intensive. While no chemicals are used (unlike some other minerals), huge volumes of water are required to power-wash the gem-bearing gravel or fragments of blasted rock material. This leads to 'rivers' of silt and muddy wastewater around the mining concessions, which then flow back down into the valley. In Mogok, waste is dumped into the rivers and streams, creating rivers and streams of red, muddy, silt that cross-cut throughout the town, regularly overflowing and causing flooding. In the rainy season the problem is exacerbated, and in the words of one local resident, "Mogok is literally drowning in mud."<sup>65</sup> The intensive use of water with no effective management is also having an impact on groundwater levels.

### **Roads**

The increase in larger scale gem production, together with heavy machinery and equipment, is putting more and more pressure on local roads. Roads in gem-producing areas are being worn down from the number of trucks coming to and from the mines, and generating a lot of dust as well as litter, which is being thrown from the trucks. Large trucks laden with rocks or earth pass in increasing numbers through residential areas, often speeding, which heightens the risk of accidents.

### **EIA Procedures**

In December 2015 the Ministry of Environmental Conservation and Forestry (MOECF – merged with the Ministry of Mines into MONREC) adopted its Environmental Impact Assessment (EIA) Procedures, which cover both social and environmental impacts. The EIA Procedures are in line with international good practice standards and not only apply to new projects but also require existing projects to put plans and commitments in place.

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<sup>63</sup> 'Up to 30 feared dead in 2 Hpakant landslips', Myanmar Times, 27 January 2016,

<http://www.mmtimes.com/index.php/national-news/18667-up-to-30-feared-dead-in-two-hpakant-landslips.html>

<sup>64</sup> Meeting with MGE, March 2016; 'Another jade mine disaster hits Hpakant', Myanmar Times, 16 December 2015,

<http://www.mmtimes.com/index.php/national-news/18159-another-jade-mine-disaster-hits-hpakant.html>

<sup>65</sup> Meeting with Mogok community representatives, February 2016

In line with the 2012 Environmental Conservation Law, the Procedures specify that all projects and project expansions which may cause impact on environmental quality are required to undertake an Initial Environmental Examination (IEE) or EIA or to develop an EMP (Environmental Management Plan), and to obtain an Environmental Compliance Certificate (ECC).

The Procedures specify that for extraction of precious stones, all projects of less than 50 acres or that produce less than 50,000 tonnes per annum are required to undertake an IEE. All projects of over 50 acres or producing more than 50,000 tonnes per annum are required to undertake an EIA.<sup>66</sup> In these cases, the proponent of the project or activity will be obliged to prepare, obtain approval for, and implement an appropriate EMP in respect of the proposed project or activity.

While the adoption of these procedures is a significant step forwards, there are concerns that government may not have the capacity to ensure effective implementation, monitoring and enforcement. As at April 2016, no IEEs or EIAs had yet been carried out by any gemstone production companies. MGE has advised that it has sent copies of the EIA Procedures to all regional offices and mine sites together with an official letter. MGE has also indicated a shortage of capacity internally to support the implementation of these Procedures in the sector.

### **Recommendations**

It is recommended that support and capacity development is provided to MGE, to better understand and support implementation of the Procedures. With the merger of MOECF and MOM into the new Ministry of Natural Resources and Environmental Conservation (MONREC) in 2016, it is hoped that direct collaboration between MGE and the Environmental Department will be possible.

All new production permits should also include sufficient environmental and social safeguards.

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<sup>66</sup> EIA Procedures Annex 1: Categorisation of Economic Activities for Assessment Purposes; Mining no. 135, page 43; <http://www.myanmar-responsiblebusiness.org/resources/environmental-impact-assessment-procedures.html>

## 4.3 Traders and Brokers

### 4.3.1 Overview

The global gemstone value chain is characterised by a very high number of ‘middlemen’ or traders, brokers, and dealers, who are responsible for a significant portion of the total trade with gemstones commonly changing hands numerous times at different stages of the value chain. In most gem producing countries official trade in gemstones is only a fraction of total trade primarily due to the layers of middlemen and the difficulties in monitoring production. This is also the case in Myanmar, where the gemstone trade is known for its high levels of secrecy and informality, based on trust between actors known to each other.

A trader buys and sells gemstones, including rough stones directly from mines, cut and polished stones from other traders or dealers, or stones at any stage of the value chain. A trader can be a dealer, a buyer and a seller of stones. Traders generally sell stones at a higher price than they paid for the stones, thereby aiming to make a profit from every transaction.

A broker negotiates and facilitates deals between buyers and sellers (traders), charging a commission for every deal made. Traders often employ brokers to help keep track of any new or valuable stones on the local market, and brokers also help with valuations and sales.

In Myanmar a **gemstone production permit** allows for trading and the right to export gemstones as well as processing, jewellery making and extraction/production, as long as a stone has been registered and the according royalty paid.

A **gemstone trading license** grants the holder the right to purchase, transport, possess, make finished gemstones and manufacture jewellery or other items from rough gemstones for which a royalty has already been paid by the permit holder. With a trading license, gemstones may be carried freely within the country in accordance with ‘the stipulations’, sold freely in Myanmar (in local or foreign currency) and exported or sold abroad in foreign currency. As at April 2016, there were 2,000 gemstone license-holders in Myanmar.

In practice, it is known that many gemstones in Myanmar are sold by unlicensed traders. Brokers and traders are mostly ‘under the radar’, and as such are essentially a major component of the informal gems economy in Myanmar.

Owners tend to sell stones only to known and trusted buyers/traders. Traders usually only sell to a network of trusted buyers and other traders, often with family ties, even if they know they could command a higher price if a gem is sold outside of their trusted network. According to one leading Myanmar gemmologist, in the case of coloured stones this is because of a customary understanding in the trade locally and especially in Mogok, that ‘everyone should benefit’.<sup>67</sup>

Stones are bought from mines and initially traded at local markets then gradually further afield. Mandalay is considered the major national hub for both jade and coloured gemstones. After Mandalay, coloured stones tend to go to Yangon then Thailand or China, or straight to China in the case of jade. Many stones, especially those of the highest quality, are sold directly by mines to buyers and immediately taken out of the country. Very good quality stones (both jade and coloured gems) are rare. Most miners have buyers waiting and lined up in advance, ready to buy the best quality stones directly from the mine or through a highly trusted broker. The highest-quality gemstones don’t appear on the market, but are sent directly to Bangkok, Hong Kong or China instead.<sup>68</sup>

In line with the general principles of secrecy in the trade, owners of a valuable stone usually keep the details secret to help guarantee a higher price among traders, but which also boosts the impression of a more valuable stone.<sup>69</sup>

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<sup>67</sup> Meeting with gemmologists and local gem experts

<sup>68</sup> Local gem miners, experts and traders, Yangon and Mogok

<sup>69</sup> Richard Hughes <http://www.ruby-sapphire.com/pigeons-blood-mogok.htm> ; and, meetings with traders and brokers in Mogok and Yangon



In Mogok, it is generally known that the traders with good connections make the most profit, and those who have a good reputation can command greater value.<sup>70</sup> Similarly, smaller scale miners with less of a reputation tend to bring their stones to the traders at the market instead of traders coming to them. There are potentially many levels of brokers and traders involved in any one deal. At Mogok, some mine owners interviewed for this study confirmed that traders come to buy stones directly from them.<sup>71</sup>

It is commonly said in Mogok that good quality stones are harder and harder to come by and previously high-yielding deposits are no longer yielding good quality stones. One trader noted that it is becoming increasingly risky for traders to make longer term deals with mining companies as the quality of stones from any particular deposit can no longer be guaranteed.

In Mogok, the gem markets are called 'Tabwhe' ('a plate for showing'). The main market is composed of two parts: one enclosed in a compound for better quality stones (noticeable for the array of expensive cars parked outside); and, the other side of the road for poorer quality stones. The market is open from 12 -3pm every day and the same traders are there on a daily basis. Each trader rents a table at the market from the local authorities for approximately MMK 3000 (approx. 2-3 USD) per month. They sit at their table under an umbrella every day and wait for people to bring them stones. Stones are placed on small brass plates for trading. It is reported that in order to be eligible for table rental in the first place a bigger fee should first be paid, although it is not clear to whom or how much. Many traders and brokers in Mogok are women.

Other than the main market in Mogok, there are 2 or 3 others in the area, usually for poorer quality stones. Near some of the largest ruby mines in Mogok there is a small morning gems market, mostly comprised of 'Kanase'<sup>72</sup> women selling stones of any value found on the waste dumps. Up in the next valley to Mogok, Bernard market is also widely known for its gems, especially peridot which is only found in that particular valley in the whole of Myanmar.

### 4.3.2 Challenges

In Mogok it was widely acknowledged by several interviewees that brokers are becoming increasingly greedy and charging higher and higher percentages for each deal. This is beginning to lead to market distortions. Similarly, tourists and foreigners are said to distort the market, because nobody knows them and they are prepared to pay any price. There are also widespread allegations of money laundering at the local market, involving gems being bought and sold by people using money made from the drugs trade in other parts of Myanmar. In Mogok, locals report that foreign traders now buy most of the best gemstones.

Traders are also increasingly bringing stones from other countries into the domestic market, including in Mogok and Yangon. In Mogok there are now large numbers of African rubies on the market as well as synthetic stones, being offered as 'Mogok stones'. It is also estimated that 90% of topaz available in Myanmar is imported (and heat treated/irradiated), as well as most amethyst and citrine.

Valuation of gemstones is extremely difficult. There is no agreed set value or benchmarking to define categories of coloured stones, but those experienced in the trade know the general parameters. It is widely regarded that low quality stones are much easier to set a price for, but good or medium quality stones are much harder to value.

In the case of jade, it is widely acknowledged that most traders are Chinese. Brokers often purchase or negotiate deals on certain stones straight from miners and sell them on to traders. The best quality jade is taken straight from the mines to China. However, local traders do work at the jade markets in Mandalay, Myitkyina and Hpakant, selling to Chinese buyers.

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<sup>70</sup> Local mine owner and trader, Mogok, May 2015

<sup>71</sup> Mine owners and MGJEA members, Mogok, May 2015

<sup>72</sup> See Section on ASM and Subsistence Mining

The gems market in Myitkina had reportedly been struggling in 2015 after Chinese buyers stopped buying due to a Chinese government crackdown on traders who buy value-added jade without paying tax. Only about 20 of the original 100 shops were still in business by early 2016, complaining of falling prices of jade. This is said to be because of high taxes in China on Myanmar value-added products.

Only lower grade jade can be transported to and sold at Myitkyina, limiting benefits to the local economy. The reason behind this restriction is not clear, and it could benefit from being reviewed, as it is likely that it encourages the smuggling of higher grade jade. In 2015 the government allowed Hpakant traders to sell raw jade at Myitkyina, but limited sales to lower grade stones. The MGJEA requested permission to trade higher-quality jade at the Myitkyina market and was in discussion with MONREC regarding the development of a Gems Trading System for exports, which would help support local markets. No further information is available or has been provided about this proposed Gems Trading System.

In Hpakant the story is similar but different. There is a thriving jade market where hundreds of traders and brokers buy, sell and exchange pieces of jade. Chinese traders are the main buyers and most of the jade is exported directly out across the border to China. This is widely reported to take place informally. In Kachin State, the KIO is said to play a key role in the jade trade and in transportation of jade to China, although many sources also point to the central role of the army in controlling this process.

#### **4.3.3 EITI Implications**

According to MGE, there were 2,000 trading license-holders in April 2016. This is a significant number but likely a huge under-estimation of actual numbers of people involved in gems trading in Myanmar. Given that there are so many unlicensed traders that are ‘under the radar’ this aspect of the value chain is extremely challenging from a transparency perspective.

Ideally, all traders would have a license and be ‘formalised’ thereby ensuring a paper trail and correct fiscalisation for all traded gemstones. As such, the key challenge from an EITI and transparency perspective is how to incentivise the informal traders to formalise and be part of the legal system.

While many of the stones that pass through this informal system are taken straight out of the country and not recorded, a significant proportion are thought to remain in country and enter the value chain formally at some point. In this case it becomes possible to levy royalties and taxes accordingly, from permit or licence holders.

#### **4.3.4 Recommendations**

To begin addressing the challenge, the MEITI MSG should consider extending the scope of EITI to include gemstone trading license holders on a phased basis. Trading licenses can however be included in the next EITI scoping study, after which the EITI Independent Administrator can recommend an appropriate scope and materiality threshold for the next EITI report, as well as a phased approach for including all licenses and permits over the next few years.

## 4.4 Cutting, Polishing, Treatment and Jewellery Production

### 4.4.1 Overview

All uncut, natural gem materials are termed 'rough'. Some rough gems are used in jewellery or as ornaments, but most rough stones are fashioned in some form, with the aim of bringing out a stone's best aesthetic qualities. The art of cutting and polishing gem materials (not including diamond)<sup>73</sup> is known as 'lapidary'. The cutting, polishing and treatment of gemstones are one of the largest opportunities for value addition within the wider gemstone and jewellery value chain, with stones increasing in value by 100% - 1000%. Both the quality and style of cut and polish can affect a stone's price, with very well cut and polished stones fetching a premium. Cutting and polishing techniques and methods, once always done by hand or using simple tools, are becoming increasingly mechanised around the world.

Gemstones are also increasingly treated to improve their colour, clarity or durability. Treatment is defined as 'the process of artificially altering and improving the appearance or properties of gem materials'<sup>74</sup> Gems have been treated throughout history, however different kinds of treatments are evolving and some treatments are now more accepted on the market than others. It is important that any treatment is disclosed to buyers as it can significantly affect the value of a gemstone.

According to the 2016 amendments to the 1995 Gemstone Law, once a permit holder has registered a rough gemstone and paid the royalty, they have the right to cut, polish, refurbish, shape and sculpt the rough gemstone, and manufacture any kind of jewellery or other items with that gemstone. A permit holder has the right to apply to the 'relevant ministry' for the import of materials, machinery and equipment for making finished gemstones or jewellery, free of customs duty.

Similarly, trading license holders have the right to 'purchase, transport, keep in possession, make finished gemstones, manufacture jewellery and any item made with gemstones in respect of rough gemstone on which the permit holder has already paid the royalty'.

However, unlike other aspects of the law, where offences and penalties are stipulated for unlawful production, declaration of production, export, trading and sale, there are no penalties mentioned for unlawful cutting, polishing or jewellery making.

#### **Cutting and Polishing of Coloured Stones (lapidary work)**

The cutting and polishing of coloured stones takes place in Mogok, Mandalay and Yangon. At all locations in Myanmar, cutting and polishing is usually carried out by traditional family-run businesses on a small-scale 'cottage industry' basis, most of who have been in the trade for generations. In Mogok, it is said that for every 300 households there are 10 lapidary houses.

In Mogok, there are three main ways that stones pass through the cutting and polishing stage:

- Cutters/polishers buy the rough stones from market and then they sell these for a higher price after working on them (they become a trader), essentially creating a 'finished product'
- Miners bring rough stones to cutting/polishing houses for an agreed price and then sell the stones at a premium, either in local markets or through networks of traders
- Traders buy stones at market and bring them for cutting/polishing so that they can then sell them on at a premium

It is also reported that a large European gemmological laboratory and lapidary company is preparing to invest in a comprehensive lapidary training centre in Myanmar.

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<sup>73</sup> For diamond, the term 'diamond manufacture' is used

<sup>74</sup> The Gemmological Association of Great Britain (Gem-A)

A jade lapidary tradition exists in Myanmar, although this is reportedly very traditional and perhaps outdated in its approach, with poor quality instruments and equipment being used. However, many big jade mining companies also own lapidary, jewellery manufacturing and retail facilities. Pieces of jade are cut, carved and polished into various carvings, which are then sold in the company's jewellery shops. There are at least 10 such large, vertically integrated jade companies in Myanmar. In some of these cases, the jade is taken to China for carving and then brought back to Myanmar for selling.

Despite this, Chinese jade carving masters are known to be the best in the world. Guangzhou in particular is famous for its jade cutting, polishing and carving. As such, better quality jade is taken to China to be cut and carved into higher quality carvings. In China over 90,000 workers are said to depend on the jade market.<sup>75</sup> While most jade carvings are then sold on to the Chinese market, some are re-imported to Myanmar for selling locally.

### **Treatment**

In the gems trade it is generally said that up to 90% of the world's rubies and sapphires are heat treated, to improve colour and/or clarity. In Myanmar, the number is thought to be lower, with estimates varying from 50 -80% of rubies and sapphires mined in Myanmar. The majority of these stones are treated in Chanthaburi, Thailand. Many are returned to Myanmar for further cutting and polishing if necessary, and are then made into jewellery. However, a considerable proportion stays in Thailand and sold on to international traders from there. Within the trade it is reported that 'carriers' smuggle the stones from Myanmar across the border into Thailand, then smuggle them back into Myanmar. Even though Myanmar does have one or two heat treatment facilities, most gem dealers and traders prefer to take their stones to Chanthaburi, famous for its good quality heat-treating facilities and where it is perceived that the quality of the treated product will be much better than if the same treatment were carried out in Myanmar.

In the case of jade, all but the highest quality jade usually undergoes heat treatment and polymer resin impregnation to improve colour and lustre. This takes place directly at many mines but also in Hpakant and in Mandalay. It is not known what proportion of jade produced in Myanmar is treated, and little is known about this stage of the value chain for jade. Sources also mention large numbers of jade treatment facilities in Chinese border towns. Given that much rough jade is said to go straight out of Myanmar informally, it is likely that this is the case.

### **Jewellery Manufacture and Production**

In Myanmar there are around 10,000 jewellery manufacturing workshops or factories. These are mostly local small and medium-sized enterprises (SMEs), which are often family run, and usually employing less than 25 people. About 70% of all jewellery manufacturing in Myanmar takes place in Yangon, with the remainder mostly in Mandalay. Jewellery manufacturing houses with more than 100 staff are very rare and perhaps only a handful of these exist in the country. One of the largest is a gold-smithing workshop in Yangon, which employs about 200 people.

Stones and precious metals are usually sourced in-country at local markets or through networks of known traders. Most Myanmar jewellers tend to use mostly Myanmar stones, given their wide range and availability. A few exceptions are:

- diamond – most diamond is imported illegally to avoid a 25% import duty<sup>76</sup>
- blue topaz – irradiated in Thailand or elsewhere to obtain the particular blue colour, and then imported into Myanmar
- amethyst – Myanmar has an abundance of amethyst, but the cutting and polishing is of a very poor quality, so most amethyst is imported from Thailand
- emerald – no geological occurrence of emerald in Myanmar, so any emeralds are imported

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<sup>75</sup> MGJEA Interview with U Yone Mu, Myanmar Times, and, MGJEA/China Gems and Jewellery Association collaboration

<sup>76</sup> Further research is recommended



**A jewellery manufacturing workshop in Yangon**

Thailand and Hong Kong are considered to be the best places for jewellery making by those in the trade in Myanmar. The quality of craftsmanship in jewellery making, but also cutting and polishing of stones is recognised as being superior to that of Myanmar. China is also gaining increasing recognition as a jewellery making location, and has become the world's leading jewellery manufacturer over the past few years. Most jewellery manufacturing operations are based in the Shenzhen area, with an annual output of USD 8 billion, estimated at over 70% of China's actual jewellery production. China is moving from a primarily low-cost manufacturing model to one with a highly skilled workforce and state-of-the-art technology, including digital, computer aided and extremely precise cutting equipment. The industry is investing heavily in technology as well as staff skills levels.<sup>77</sup>



**Jewellery Making in Myanmar**

<sup>77</sup> 'Exploring the Chinese Gem and Jewellery Industry', GIA, Spring 2014, <http://www.gia.edu/gems-gemology/spring-2014-lucas-chinese-gem-industry>

There appears to be a lot of will to incentivise value addition through jewellery making inside Myanmar, and progress is slowly being made during 2016. The Gemstone Law also includes the following relating to foreign investment in the sector:

*“The Ministry of Mines may, with the approval of the Government, issue a permit to an individual or an organisation wishing to make finished gemstones, manufacturing jewellery and selling rough gemstones, finished gemstones and jewellery and any items made with gemstones with foreign investment to do so.”*

The new MGJEA training centre in Nay Pyi Taw will offer courses in jewellery design and manufacture, but there remains a lack of sufficient training options and resources for international standard jewellery making for Myanmar citizens.

A widely respected local jeweller and small mine owner, together with a leading local gemmologist (both MGJEA members) have recently established the non-profit Myanmar Jewellery Designers Association, with the aim of providing capacity development and training in all aspects of jewellery design and production to budding young Myanmar jewellers, as well as a platform for collaboration. The proposed training programme will also include opportunities for Myanmar students to learn from foreign experts, both in Myanmar and in the region. The Association does not intend to compete with the MGJEA Training Centre in NPT but rather to complement it, and is seeking financing and support to develop and fulfil its objectives.

In early 2016, international NGO Turquoise Mountain, in partnership with the Suu Foundation<sup>78</sup> and an established international ethical jeweller, launched its first line of ‘Myanmar Made’ jewellery. The high-end jewellery is being produced in Myanmar and will be for sale internationally at premium prices from autumn 2016. Turquoise Mountain’s jewellery project is the beginning of a wider traditional crafts project including textiles, woodwork and lacquerware. The aim is that through training and skills development, and international export at the highest end, these products “will be an ambassador for everything that is beautiful and unique about the country, drive significant and sustainable incomes for women and men, and with this bring a renewed sense of cultural pride.”<sup>79</sup>

There is rapidly increasing interest globally (especially the US and EU) in ethically sourced gemstones and jewellery, and in transparent mine to market supply chains that openly disclose a piece of jewellery or a gemstone’s provenance. This is largely driven by consumer demand, with a generation of more socially and environmentally minded consumers wanting to ensure that their jewellery has been responsibly made and has not contributed to any negative environmental or social impacts in countries of origin. There have been various attempts to establish certification or traceability mechanisms, but due to the complexities of the coloured gemstone sector these have not been successful so far.<sup>80</sup>

#### 4.4.2 Challenges

Some gem experts have highlighted that while there are many expert lapidarists using traditional but rudimentary methods in Myanmar, they do not necessarily meet the high quality international standards expected by many buyers, or take the best advantage of stones in terms of cutting and calculating the best yield. Many traders bring their stones to Thailand to benefit from the range of state-of-the-art, increasingly digitised and scientifically accurate lapidary equipment available there.

While the quality of gemstone cutting may be of a relatively acceptable standard in Myanmar, polishing is generally not considered to be, and most coloured stones are taken to Thailand, Hong Kong or China because of the higher standards of polishing technology and equipment available there.

Stakeholders consulted agreed that if the treatment facilities available in Myanmar were of a sufficiently high standard, then there would be no need for the stones to be treated in Thailand, but could be treated in-country instead. One gem expert noted that in terms of treatment of stones in

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<sup>78</sup> Suu Foundation <http://www.suufoundation.org/>

<sup>79</sup> Turquoise Mountain Myanmar <http://turquoisemountain.org/project-entries/turquoise-mountain-myanmar>

<sup>80</sup> This is discussed further under ‘Sustainable Development and End-Markets’ on page 69.



Myanmar there is 'no technology, no skills and no government support'. It is therefore recommended that more research be carried out in this area to understand the value added of establishing high quality treatment facilities in Myanmar.

In terms of value addition of jade carving and polishing, the new MGJEA Gem Training Centre in Nay Pyi Taw will offer courses in jade carving. However as at April 2016 good teachers still had not been secured. One industry expert commented that most gem and jewellery business people in Myanmar support value addition in country and would be happy to pay fair taxes. However, due to the poor quality of jade carving in Myanmar, two main options for jade carving were suggested:

- take rough/raw jade from Myanmar to China and pay tax on the export of rough, then again on the import of 'finished product' bringing it back into Myanmar after it has been carved; or
- bring one Chinese master to Myanmar to teach as many people as possible and pay him a higher than average wage to do so, e.g. USD 6000 per month.

Jewellers and other gem industry experts consulted for this report also highlighted that some Myanmar stones are more readily available at better prices outside of Myanmar. Good quality Myanmar stones are often purchased at trade fairs or through traders in Thailand or Hong Kong or elsewhere, and then brought back to Myanmar to be made into jewellery. It was noted by two jewellers (one international and one local) consulted for this report, that the price of Myanmar rubies and spinel is sometimes cheaper in other countries, e.g. India, the US and UK, than in Myanmar. It is not clear why this is, but it may reflect the variability of gemstone values globally according to consumer demand, i.e. consumers in Myanmar tend to focus on and demand rubies, but many higher quality rubies are exported out of Myanmar as soon as they have been mined. This leads to a supply shortfall in country. However, higher quality Myanmar rubies may then be more readily available on international markets where there is increased competition from large numbers of other stones from various global sources, thereby leading to lower prices than in the country of origin.

There are many challenges for jewellery making in Myanmar, largely due to poor levels of local skills and capacity. According to one or two experts Myanmar jewellery makers often bring in Thai employees who are considered to be significantly more skilled than their Myanmar equivalents, and are consequently paid higher wages than their local counterparts.

During the course of research for this report, various industry experts suggested that not more than 10% of all the jewellery available to purchase in Myanmar could really be considered of sufficiently good quality to be of interest to international markets. Of this some is foreign-made, and some is made locally. The remaining 90% is locally made but of relatively poor quality and not suitable for international markets. The majority of jewellery made in Myanmar is of a particular style favoured in the domestic and regional Asian markets, but not really suitable for global or Western markets.

Many Myanmar jewellers complain of a lack of support to develop the sector. They feel that without sufficient training and institutions to support cutting, polishing and production in country, the sector is suffering. They recognise that Myanmar products are currently not of a world class standard, and are pushing for technology, financing, greater market access, as well as capacity development and technical assistance.

Also, many jewellers complained that until 2016 the trading license enabled them to export finished jewellery products but not rough stones, a restriction which was imposed with the aim of adding value within the jewellery sector in Myanmar.<sup>81</sup> The 2016 amendments to the 1995 Gemstone Law revise this restriction, and give license-holders the right to export and sell abroad in foreign currency in line 'with applicable laws'. It is not clear what laws are applicable but this is a good step forwards nonetheless towards minimising the illegal and undeclared export of rough stones.

The growing global trend for ethical, transparent and responsible gems and jewellery also presents a challenge for Myanmar where there are currently no 'ethical' or 'responsible' practices in the gems and

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<sup>81</sup> <http://www.mmmtimes.com/index.php/business/9772-jewellers-demand-new-gems-law.html>

jewellery sector. This represents a missed opportunity for Myanmar and an area that requires further attention and strengthening.

Myanmar is currently less competitive than it could be in terms of this stage of the value chain. However, as highlighted here, there are two or three initiatives underway that aim to build capacity and train Myanmar citizens with the required technical skills that will help Myanmar gem and jewellery products become more competitive on international markets while also adding maximum value in country. However, these are being planned or developed independently of each other, without systemic longer term planning or collaboration, and may have areas of overlapping priorities while overlooking other important areas completely.

#### **4.4.3 EITI Implications**

This stage of the value chain has few direct implications for EITI given that it is unlikely that the cutting, polishing and jewellery making sub-sector will be included in the scope of EITI reporting in the foreseeable future. However, the key implication relates to securing increasing transparency along the value chain, which is more likely with increased value addition taking place in Myanmar. It is clear that Myanmar is currently uncompetitive in terms of this stage of the value chain, with most gemstones being exported in their rough state in order to add value and take advantage of cutting, polishing and treatment facilities in neighbouring countries, where methods, techniques and equipment are perceived to be better. However, changes appear to be happening at a fast pace in early-mid 2016, with various reports of lapidary, carving and jewellery-making training schools and facilities being planned or established in Myanmar in the near future.

#### **4.4.4 Recommendations**

It is recommended that more research needs to be carried out into this area to assess and evaluate both lapidary/cutting and polishing, and gemstone treatment processes and options, to understand the potential value added that improvements and higher quality standards could bring to the domestic market.

It is recommended that a Jewellery Sector Strategy be developed, which could fit within the larger 'National Gemstone Sector Strategy'. This would focus on short, medium and longer-term priorities, goals and objectives, and on collaborative systemic planning to achieve these. It is also recommended that further research needs to be undertaken to address the potential for unlocking added value in Myanmar's jewellery sector while also developing the sector in a responsible and strategic manner.



## 4.5 Retail Market (local)

### 4.5.1 Overview

In Myanmar, a gemstone production permit or a gemstone trading licence is required to formally sell stones and jewellery or open a gem shop. As mentioned previously, a production permit is comprehensive and allows for extraction, processing, trading and retail – whereas the scope of a trading licence is smaller, allowing for trading, processing (since the 2016 amendments to the Gemstone Law) selling and retail only. As at March 2016 there were 2000 active trading licenses in Myanmar. With a license, jewellery can be sold in foreign currency, for which until 2016, a 10% foreign currency sales royalty was levied (on the value of the sale), which goes to MGE and then to IRD. A license used to have to be renewed an annual basis but since 2015 MGE issues them for three years.

According to the 2016 amendments to the 1995 Gemstone Law, license holders can sell gems and jewellery at either an authorised government-licensed shop, government approved ‘legal’ gem markets or at the Gems Emporiums. Gems are also sold unofficially by individual traders on the streets and at or near formal gem markets, all over the country.

Until 2016, a gemstone trading license did not allow for the right to export or sell rough stones in foreign currency (whereas a production permit did), and rough stones could officially only be sold at the Gems Emporium. However this has changed with the 2016 Gemstone Law amendments and license holders now have the right to export and sell rough gemstones abroad (provided a royalty has been paid) in foreign currency. In the case of exports, an additional ‘export license’ is required from the Customs Department.<sup>82</sup>

The recently established Gems Trading Centre<sup>83</sup> in Nay Pyi Taw allows the sale of rough stones. Many gems and jewellery retailers report that foreign buyers are most interested in rough stones at the Emporium, and are concerned that the value-added work takes place in other countries where stones are sold for 10, 100 or 1000 times or more of the original purchase price.

In terms of procedures, trading license holders are given a ‘cash memo’ book by MGE. This includes a receipt form that must be completed for every sale in foreign currency, with MGE’s logo on each page, duplicated 4 times:

- Original copy – for customer
- Customs copy – for customs
- Account copy – for MGE
- Book copy – for jeweller

When the license holder completes a sale in foreign currency, they give an original receipt to the customer. They then take the remaining three copies to the Myanmar Foreign Trade Bank (MFTB). The MFTB then processes the payment and collects the 10% foreign currency sales royalty (known locally as ‘mining tax’), dividing 3% for MGE and 7% for IRD, and gives receipts of this transaction to the jeweller.

The jeweller then sends the transaction receipts to MGE’s office in Nay Pyi Taw, usually with an agent. The cash memo receipt also serves as an ‘export permit’ for the customer taking the jewellery out of the country.

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<sup>82</sup> Please see Section 6 on page 80 ‘Smuggling and Exports’

<sup>83</sup> Opened in Nay Pyi Taw in April 2016

MGE Trading License 'Cash Memo' Book,  
Customs Copy

During the consultation phase for the amended Gemstone Law, MGJEA and jewellers lobbied for a reduction from 10% to 3% foreign currency sales royalty, and also for the restrictions on export of rough or loose stones to be lifted. These were both achieved and the 2016 amendments to the Gemstone Law now replace the foreign currency sales royalty with a 'service charge' of:

- 3% of sale value for rough gemstones, after a production-based royalty has been paid
- 1% of sale value for cut and polished finished gemstones, jewellery or any items made with gemstones or derived from rough gemstones on which the production-based royalty has already been paid.

#### 4.5.2 Challenges

Stakeholders consulted for this report concurred that the profit margins in the jewellery industry are relatively low, from 10-20%. It is therefore common practice for license-holders to significantly understate the sale price in the cash memo. As such, cash memo's usually state a price that can vary from as low as 10% of the actual sale price, to around half of the actual sale price. It is reportedly very rare that anything more than half of the actual sale price is stated in the cash memo.

MGJEA and jewellers confirm they consider the revised 'service charge' of 3% and 1% to be fairer than the 10% foreign currency sales royalty, and are happier to pay this. It is not clear however, how the 3% and 1% service charge will be levied or how this will be distributed between MGE and IRD.

#### 4.5.3 EITI Implications

The EITI MSG should consider extending the scope of EITI reporting to include trading license holders as well as production permit holders.

#### 4.5.4 Recommendations

It is recommended that license procedures and the fiscal framework for gems and jewellery license holders be reviewed. As has been noted above, cash memos currently serve as the formal record of transactions on which the 10% foreign currency sales royalty has been levied (until 2016) but are generally undervalued, leading to considerable leakage in terms of government revenues. The new service charge rates of 3% and 1% should incentivise more honest declaration of sales and compliance. However, it is recommended that current procedures be studied carefully and options considered for strengthened government monitoring and revenue collection.

#### Gems Emporium



Myanmar has been holding Gems Emporiums since 1964. In previous years there were two or more international (foreign currency) and local Gems Emporiums (local currency) held each year, but since 2014 only one of each has been held.

Gemstones are sold by auction/competitive bidding or by a tendering system. Gemstones are sold in lots, and there can be tens of thousands of lots at any emporium. Each lot is assigned a reserve price and bids are placed using bidding forms. The Central Gemstone Supervisory Committee is responsible for fixing the reserve price for lots sold at the Emporium.

The international emporium lasts approximately 2 weeks. This includes at least 3 days of viewing in advance, then 6 days for tendering and auctioning of jade followed by 1 day for coloured stones. The foreign currency used is Euros, due to US sanctions on the import of Myanmar's gemstones. Some lots are valued and sold for millions of Euros. For example, at the 2014 Gems Emporium Lot no. 7308 was a single piece of jade, weighing 233 Kg with a reserve price of Euros 60 million. Lot 7228 comprised 2 pieces of jade weighing 63Kg and valued at Euros 16.08 million, Lot no 7210 comprising 3 pieces of jade with a total weight of 16Kg was valued at Euros 2.8 million, and Lot 7241 comprised 2 pieces weighing a total of 56 Kg and with a reserve price of 3.8 million Euros (see pictures). The highest-grade jade (A and B stones) can officially only be sold only at the Emporium.



Each Gems Emporium requires approval from Cabinet and the President's Office before going ahead. The Myanmar Gems Emporium Central Committee is responsible for management and oversight of the Gems Emporium. It meets two or three times a year and then a few times before each Emporium to approve budget and valuation. It is not clear how the Gems Emporium Central Committee works and collaborates with the Central Gemstone Supervisory Committee.

The Gems Emporium Central Committee comprises 45 persons including:

- 4 Ministers (including Minister of Mines as Chairman)
- 4 or 5 Deputy Ministers
- Managing Director of MGE
- A number of DGs, including from Customs, Ministry of Planning and Finance, Energy, and others)
- 10 MGJEA representatives

It is not known how this committee has changed with the new NLD government since April 2016.

MGJEA and MGE collaborate closely for the Emporium. MGJEA plays a key role in the Gems Emporium Central Committee, decides who can sell at the Emporium and sends invitations, including to government representatives.

There are approximately 400-500 production permit and trading license holders selling at any Emporium.<sup>84</sup> Each company is limited to a certain number of lots. Smaller companies sometimes do deals with larger companies to sell their gemstones as part of the larger company's lots.

The benefits of participating in the Emporium for privately held companies are said to be:<sup>85</sup>

- Higher chance of extending or renewing their production permit
- Higher prices for jade received (from Chinese buyers)
- Only one tax payment required

As in the art world, auctions are a common way to sell gemstones globally although usually these are organised by private companies on behalf of collectors, but increasingly now by mines themselves. Recent Gemfields Plc auctions in Singapore and Zambia of its emeralds and rubies have been so successful that they have surpassed all expectations. When Gemfields' first Singapore auction was compared to Myanmar's Gems Emporium, it was reported that the Singapore auction:

*"featured more sophisticated grading criteria, and the lots were better organized by size and quality. Far more lots were offered there than at the Myanmar auctions, and they were broken down into narrower categories of detailed size and quality ranges."*<sup>86</sup>

Until 2015, 40% of all JV company Gems Emporium revenues went to MGE, and was then transferred to the MONREC treasury account, as the government's share of sales profits.<sup>87</sup> From July 2015 the government's share was reduced to 25%. In addition, until 2016, MGE received a 10% foreign currency sales royalty on all emporium sales that was shared between IRD and MGE respectively 7% and 3%. MGE received the total 10% and transferred the 7% to IRD. As mentioned above, from 2016 this has been replaced with a 3% or 1% service charge. It is not clear how the service charge will be collected or allocated.

It is estimated that 90% of buyers at the Emporium are Chinese. The increasing demand for Myanmar's jade from China is reflected in increasing competition at the Gems Emporium. One expert reported that a leading well-known Hong Kong jewellery company that regularly comes to the Gems Emporium and places one or two bids of 2 or 3 million Euros each every year, could only afford to place one bid instead of two at the 2015 emporium due to increased competition from Chinese buyers. The 2016 Gems Emporium was held at the end of June and early July 2016.

Unofficial figures reported Euros 944 million worth of sales at the 2015 Gems Emporium. However, accurate revenue figures are complicated to calculate because not all sales are completed after every emporium. It is very common that a bid is won but the buyer does not complete the sale. The normal timeframe to complete a sale is 3 months, but this is extendable. In many cases a sale is made in one

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<sup>84</sup> Meeting with MGE, March 2016

<sup>85</sup> Meeting with MGE

<sup>86</sup> "Gemfields Inaugural Rough Ruby Auction in Singapore" Comparing Singapore and Myanmar Auctions, GIA, 17 July 2014, GIA; <http://www.gia.edu/gia-news-research-gemfields-ruby-auction-singapore>

<sup>87</sup> The remaining 60% was retained by the company



year's emporium, but is not paid until the following year, and in other cases sales are not completed at all. MGE estimates that 50% or less of sales from the 2014 and 2015 emporiums were completed. This means that any records of sales made do not accurately reflect the actual value and volume of sales completed. To mitigate this, starting from the 52<sup>nd</sup> Gems Emporium in 2015, buyers were asked to pay a 10% deposit on the value of gems purchased at a Myanmar Gems Trading Bank account.<sup>88</sup>

Stakeholders consulted for this report noted some of the well-known informal arrangements through which jade and coloured stones are sold at the Gems Emporium.

**1. Artificial Value Inflation**

Regular stones that have already been registered and valued (i.e. 20% production royalty has been paid at the mine site on much lower recorded value than actually worth) are placed for sale at the Emporium at up to 3 or 5 times higher value than that recorded. The stone does not sell. The seller takes it back after the Emporium and then sells it informally, or exports it informally without paying any further taxes or royalties.

**2. Artificial Value Deflation**

A higher quality stone can be placed for sale at the Emporium at a much lower price than it is worth. Perhaps it has not been formally registered /no production royalty has been paid at the mine site. The seller pre-arranges that friends or family or business partners buy it at the lower price. Through the transaction the stone is legitimised and a formal Gems Emporium certificate/cash memo sales receipt is provided that also serves as an 'export permit'. The stone is then exported and sold at its true value. This scenario is common with higher quality jade.

**3. Legitimising Undeclared Jade**

Smaller gemstone and jewellery trading licence holders can buy some jade from e.g. the Ye Ma Say handpickers, then do a deal with a mine so that it seems the jade has been mined there. The jade is then placed for sale at the Emporium at an agreed value. The licence holder then buys the jade, which is legitimised through the transaction, and a formal Gems Emporium certificate/cash memo sales receipt is provided.

**4. Paying Larger Companies for Emporium Share**

It is harder for smaller businesses to get a place at the Emporium so many choose informal options for selling their gemstones. For example, a small jade miner that chooses to sell at the Gems Emporium can make an agreement with a larger company and pay to put the jade in the Emporium under the larger company's name.

The local gems emporiums focus on rough jade and coloured stones for local buyers in Myanmar Kyat with the idea of promoting value addition in the gems and jewellery sector. Since 2015, a commercial tax on rough materials of 15% was applied, while value-added products were taxed at 5% (commercial tax). The 10% foreign currency sales royalty was not applied given that sales were made in MMK.

The 2016 amendments to the Gemstone Law give greater power to MGJEA with regard to the Gems Emporium. They also enable MGJEA to hold Gems Emporiums in border towns with permission from MONREC and in accordance with the 'Border Trade Rules and Regulations'.<sup>89</sup>

The Gems Emporium represents the main official channel through which jade and coloured stones are sold in Myanmar, and is responsible for managing transactions worth millions of Euros every year. There is currently insufficient transparency with regard to the governance of the Gems Emporium, and any related policies and procedures that may exist. The Central Gems Emporium Committee comprises a very large number of persons (45) and it is not clear how this committee makes decisions or is governed in practice. It is also not clear what the relationship is between this committee, the Central

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<sup>88</sup> <http://www.mmtimes.com/index.php/business/9772-jewellers-demand-new-gems-law.html>

<sup>89</sup> 2016 Amendments to Gemstone Law, Clause 34 (h)

Gemstone Supervisory Committee and the Leading Committee. This needs clarification. Also, the extent to which these committees have changed with the new government is not clear. There are also widespread reports of informal trading practices at the Gems Emporium.

Given the increasing success of gemstone auctions globally, with prices of coloured stones at global auctions continuing to rise, it's clear that if managed transparently and effectively, auctions present a very valuable system for legally exchanging a country's precious resources with revenues. Myanmar's Gems Emporiums could benefit significantly from a review of governance practices and procedures, to ensure greater efficiency, transparency and accountability in the ways in which the auctions are held.

## **Direct Sales**

Not all declared gemstones are brought to the emporiums (international or local). According to the 2016 amendments to the Gemstone Law, in addition to selling at emporiums (international and local), production permit holders have the right to export and sell abroad, to sell at government approved gems markets and trading centres, at licensed shops, to foreign gem traders, as well as at foreign gems emporiums/trade fairs.

In addition to selling at emporiums (international and local), trading license holders have the right to sell at government approved gems markets and trading centres, as well as at licensed shops 'and places permitted under the license'. License holders now also have the right to export and sell abroad in foreign currency.

Therefore, in addition to the Gems Emporium, gemstones can officially be sold in the following official ways inside Myanmar:

- **Gems Trading Centres/Gems Markets/ One Stop Service**

Only cut, polished and 'finished' stones and jewellery can be sold. As at April 2016 there are three Gems Trading Centres, in:

- Yangon
- Mandalay
- Myitkyina

Mogok residents had been lobbying with MGJEA and MGE for the establishment of a Trading Centre, but by 2016 it had been decided not to proceed with this. It is not clear how many other government approved gems markets, trading centres or one-stop services exist in Myanmar. In any case, all official gemstone transactions at these locations should include completion of 'cash memo receipts', which enable the 10% foreign currency sales royalty (until 2016) or 3%/1% service to be levied. It is not known how the system will change with the new 'service charge' (which is applicable to both foreign and local currency sales).

- **Licensed Shop**

Until the 2016 amendments to the Gemstone Law, only cut, polished and 'finished' stones and jewellery could be sold in licensed shops. Foreign currency transactions were completed using MGE Cash Memos and the 10% foreign currency sales royalty was applied. As per the second amendments to the Gemstone Law (2016), license-holders now also have the right to sell rough stones, and the revised royalty (now named a 'service charge') rates are 3% for rough gemstones and 1% for finished gemstones or jewellery products. As above, all official gemstone transactions should include completion of 'cash memo receipts', which enable the 10% foreign currency sales royalty to be levied. It is not known how the system will change with the new 'service charge' (which is applicable to both foreign and local currency sales).

As described above, all official non-emporium gemstone sales that take place inside Myanmar should involve completion of cash memo receipts, by permit or license holders. As such, transactions are recorded and are traceable via this 'paper-trail'. However, with the 2016 changes to the Gemstone Law that replace the foreign currency sales royalty with a service charge, there is a lack of clarity as to how this service charge will be levied and to what extent the cash memo procedure will change accordingly. This requires clarification.

It is recommended that the MEITI MSG consider including all gemstone production permit and gemstone trading license holders in the scoping study for the next EITI report, for the Independent Administrator to then assess and recommend an appropriate materiality threshold accordingly.



## 4.6 Revenue Collection, Management and Distribution

### 4.6.1 Overview

An understanding of government revenues and company payments supports and informs public debate about the governance of the extractive industries.

During 2015, the following various payments from companies to government in the gemstone sector applied:

Applicable Payment Types 2015	%	To Who
Production value based royalty at mine site	20% (ruby, sapphire, jade) 10% (other gemstones)	MGE
Foreign currency sales royalty	10% until 2016 – now 3% or 1%	MGE
Emporium Fee - on actual sale value of lots sold at the Gems Emporium	1%	Gems Emporium Central Committee Fund
Supervision Fee - for JV companies that sell in foreign currency	1%	MGE
Permit and license fees (new or renewal)	variable	MGE
JVs share of post-tax revenues	40% until July 2015, then 25%	MGE
Commercial tax	15% on sale value of rough stones, 5% on finished jewellery products	IRD
Corporate Income tax	25% of profit	IRD

#### Mine Site/Production Based Royalty

A 20% royalty on the value of production is levied by MGE at the mine site for jade, rubies, sapphires and diamonds. For all other coloured stones a 10% royalty is levied. The royalty is payable in Myanmar Kyat (MMK) into an MGE Myanmar Economic Bank account. It is not known how much has accumulated in MGE's account, how it is allocated or what it is used for. As mentioned above, there are currently considerable weaknesses in terms of gemstone production monitoring procedures, with 98% of gemstone production permits (83% of companies holding permits), not being properly monitored by government.

MGE was unable to provide data on 2014-2015 royalty revenues for the purpose of this report, however has agreed to do so for the second MEITI report.

#### Foreign Currency Sales Royalty (Service Charge)

Until 2016, MGE collected a 10% royalty on the actual sale value of rough stones, finished products and jewellery sold at the Gems Emporium, gems markets and licensed shops. The 10% was divided with 3% being retained by MGE and 7% going to IRD. It is not clear how the 3% was allocated within MGE.

The 2016 Amendments to the 1995 Gemstone Law replaced the 10% foreign currency sales royalty with a 'Service Charge', which the law defines as the service fees collected by MGE for managing the Gems Emporium, *"or activities arranged by the Ministry of Mines to sell rough gemstones, finished gemstones, jewellery or any items made with gemstones which are levied royalty fees from the permit holder or licence holder either in local currency or foreign currency."*

A 3% service charge on the actual sale value of rough stones is levied, while 1% of the actual sale value of finished products and jewellery is levied. MGE was unable to provide data on recent years' foreign

currency sales royalty revenues for the purpose of this report, but agreed to provide available data for the purpose of the next MEITI report.

### Commercial Tax

There is no Value Added Tax (VAT) in Myanmar, but a Commercial Tax is imposed on a range of goods and services instead. The Union Tax Law 2015 was promulgated on 2 April 2015, and replaced the previous Union Tax Law 2014, where tax rate changes first occurred. This specifies commercial tax rates for the gems and jewellery sector. It is anticipated that that tax rate changes may be made on an annual basis, and more changes may take place again during 2016. Commercial tax is to be paid on the sale value if the gemstones are produced within the country, on the landed costs if the gemstones are imported from foreign countries, and on the stated value of foreign exports.

There is no tax data available from IRD for the purpose of this report. The Union Tax Law 2015 includes a clause which gives it precedent over all others including gems law, but previously the gems law had exemptions. The second amendments to the Gemstone Law (2016) no longer include exemptions and are now in line with the Union Tax Law.

Until the 2016 amendments to the Gemstone Law, only production permit-holders had the right to export gemstones abroad, and even then it was prohibited to export rough or loose stones. In practice, the 30% export rate (see below) was never applied. However, according to the amended law, both permit and license holders now have the right to export any kind of gemstone – rough/finished/jewellery - abroad in foreign currency, and according to ‘applicable laws’ (it is not clear what the applicable laws are). In addition to a production permit or trading license, an export license is required from Customs for the export of gemstones or jewellery.

### Union Tax Law 2015: Commercial Tax Rates

Tax Rate Type	Gemstone Products	Old Tax Rate	New Tax Rate (from 2 April 2015)
<b>Local Production</b>	Jade, rubies, sapphires, emeralds, diamonds, and other coloured stones	30%	15%
	Jewellery made from jade, rubies, sapphires, emeralds, diamonds, other coloured stones	15%	5%
<b>Foreign Exports<sup>90</sup></b>	Jade, rubies, sapphires, emeralds, diamonds, and other coloured stones	30%	15%
	Jewellery made from jade, rubies, sapphires, emeralds, diamonds, other coloured stones	10%	5%

### Emporium Fee

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. This goes to the Myanmar Gems Emporium Central Committee fund. The Central Committee spends this fund on *“enabling the development of gemstone sector, environmental conservation works, socioeconomic development of the local people dwelling in the treasure land, the development of transportation networks, other development affairs including the building of infrastructures for holding Emporiums and maintaining thereof.”* No further information about this fund or how it is managed has been made available, but this requires clarification. In addition, a portion of this fund could be used for value-addition and capacity development in the gems sector.<sup>91</sup> In June 2016 a high profile investigation was launched after it was reported that millions of dollars had disappeared from this fund.<sup>92</sup>

<sup>90</sup> The 30% rate was never applied.

<sup>91</sup> Myanmar could also consider the example of Malaysia’s Palm Oil sector, where a portion of export tax levied on crude palm oil (CPO) is managed by the industry association, for capacity building and the development of new technologies.

<sup>92</sup> ‘Myanmar Gems and Jewellers’ Association says no trust in inquiry commission’,

### **Supervision Fee**

JV companies are also required to pay an additional 1% supervision fee for foreign currency sales.

### **Corporate Income Tax**

Companies incorporated in Myanmar under the Myanmar Companies Act (trade/business income and rental income from movable or immovable property) and companies incorporated under the Foreign Investment Law pay corporate income tax on profit at a rate of 25% to IRD. Since 2014, MGE also pays 25% corporate income tax of total revenues to IRD.

### **Revenues from Sale of Government's Share**

JV companies split the balance into 40% to MGE and 60% for the company. According to MGE, it contributes its 40% share of this split to MOF, which then allocates it through the budget to Ministries, States and Regions with government approval to be spent on areas as necessary. As mentioned earlier, in June 2015 at the 52<sup>nd</sup> Gems Emporium, the JV ratio changed from 40/60 to 25/75. As such, for much of FY 2015-16, MGE's share of revenues from JV company sales will be 25%. The change was applied to reflect increased tax requirements as per the Union Tax Law 2015 (commercial tax) and New Income Tax Law 2015 (corporate income tax).

### **Exemptions**

According to the 1995 Gemstone Law:

- If a permit holder sells a gemstone or finished product/jewellery in MMK after the 20% production royalty has been paid, it is exempt from paying tax under any other existing law with respect to that gemstone.
- If a permit or license holder has paid the 10% foreign currency sales royalty in foreign currency, it is exempt from paying tax under any other existing law with respect to that gemstone.

As at April 2016 it is not clear how these exemptions were applied in the past. However, they have been removed in the 2016 amendments to the Gemstone Law, rendering the Gemstone Law more aligned with the requirements of the Union Tax Law (commercial tax).

### **2015 Gems Emporium**

At the 52<sup>nd</sup> Gems Emporium (2015), MGE collected tax as follows:

- 15% commercial tax for rough stones (transferred to IRD) and 5% commercial tax for finished products (transferred to IRD)
- 10% foreign currency sales royalty (3% to MGE and 7% to IRD)
- 25% JV profit share
- 1% emporium fee
- 1% supervision fee

However, as highlighted throughout this report, not all gemstones produced pass through the Gems Emporium. In fact, given that MGE is only really monitoring production of the 17% of gemstone companies (2% of permits) that it shares JV partnerships with, it is likely that the volumes of gemstones actually produced but not declared are very high. JV companies are also not obliged to sell their product at the emporiums.

In practice, there are 3 key ways in which companies sell their gemstones.

1. Gems Emporium (least likely – estimated 10-20%)
2. Directly and/or exported with tax and royalty payments (approx. 10-20%)

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<http://mizzima.com/news-domestic/myanmar-gems-and-jewellers%E2%80%99-association-says-no-trust-inquiry-commission>; and 'Team Investigating Missing Gem Funds Submits Report to Myanmar Government', <http://www.rfa.org/english/news/myanmar/team-investigating-missing-gem-funds-submits-report-to-myanmar-government-06092016161558.html>

3. Direct and/or exported informally with no tax or royalty payments (most – estimated approx. 60-80%)

The majority of companies probably use a combination of both formal and informal approaches.

#### 4.6.2 Challenges

As indicated, it is estimated that 60-80% of gemstones produced and sold in Myanmar bypass the formal system and are channelled through the informal system instead, with only a small proportion being formally declared. This represents huge potential revenues that are currently lost to government.

There is no reliable data available on the value of gemstones sold directly by private mines. If production, or a proportion of it, has been declared then at least some data will be available based on the 'paper trail' of what has been officially recorded.

A further challenge is that many of Myanmar's gemstone deposits are relatively near, or in areas exposed to conflict between the Myanmar army and ethnic armed groups (EAGs) near the borders. This means that agreement about control of the resources and a share of the wealth of the resources is a critical issue. It is a very complex political issue inextricably linked to historical and ongoing conflicts in Myanmar's ethnic areas, and to current efforts to secure peace agreements, and is beyond the scope of this report. However, a very brief summary is provided here.

The EAGs that control some of the disputed border areas in or near gemstone producing areas have strong, established networks responsible for collecting taxes or other payments or facilitating exports out across their border area. For example, with regard to the Kachin Independence Organisation (KIO) it is reported that a local-level fiscal regime is enforced. In terms of gemstones such as jade, taxes or royalties may be levied for production, transportation or export.

The majority of mines are located in government-controlled areas, however many mine owners have longstanding arrangements with groups who coordinate and manage gemstone exports easily for an agreed fee or tax payment. Once across the border, many mine owners have partners (often part of their business), who collect the rough gems for processing and adding value on the other side.

It is also reported that the military commonly levies some local-level taxes and fees such as a 'security fee'. For example, in the case of JV mines in Hpakant in Kachin State, it is reported that the MGE representative may be a military representative who ensures the required security fee is paid to the local Tatmadaw Commander.

From the perspective of many local people in disputed areas, issues around ownership of natural resources, taking back control of the gemstone sector from the elites and the military, the decentralisation of natural resource revenues and responsible gemstone sector governance are crucial issues of concern.

The ongoing efforts to bring all ethnic armed groups into peace talks and a nationwide ceasefire agreement continue. Discussions around ownership, management and resource revenue-sharing arrangements are therefore absolutely central to any peace negotiations. However, they are beyond the scope of this report.<sup>93</sup>

#### 4.6.3 EITI Implications

In line with EITI Requirement 4 (2016 Standard), the EITI requires a comprehensive reconciliation of company payments and government revenues from the extractive industries.

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<sup>93</sup> There is a huge amount of information available, and research being carried out on options for natural resource revenue sharing. For more information and analysis of natural resource revenue sharing in Myanmar, see, for example, NRG's report, 'Sharing the Wealth: A Roadmap for Distributing Natural Resource Revenues' which outlines various options available <http://www.resourcegovernance.org/analysis-tools/publications/sharing-wealth-roadmap-distributing-myanmars-natural-resource-revenues> and MDRI-CESD, The Asia Foundation, and the International Growth Centre 2014 report 'Natural Resources and Subnational Governments in Myanmar: Key considerations for wealth sharing'

*The EITI Requirements related to revenue collection include:*

*Requirement 4.1 - comprehensive disclosure of taxes and revenues*

*Requirement 4.2 – sale of the state’s share of production or other revenues collected in-kind*

*Requirement 4.3 – Infrastructure provisions and barter arrangements*

*Requirement 4.4 – transportation revenues*

*Requirement 4.5 – SOE transactions*

*Requirement 4.6 – subnational payments*

*Requirement 4.7 - level of disaggregation*

*Requirement 4.8 - data timeliness*

*Requirement 4.9 - data quality*

For the first MEITI report, only payment and revenue data from the formal Gems Emporium was included. It did not cover an estimated 53% of the total sub-sector,<sup>94</sup> including any of the following important data:

- 20% value-based royalty on jade and gems collected at the mine site
- other royalty revenues (10% foreign currency sales royalty)
- taxes paid by companies where production is directly sold or exported
- revenues from sales of the government’s shares of gems and jade

#### **4.6.4 Recommendations**

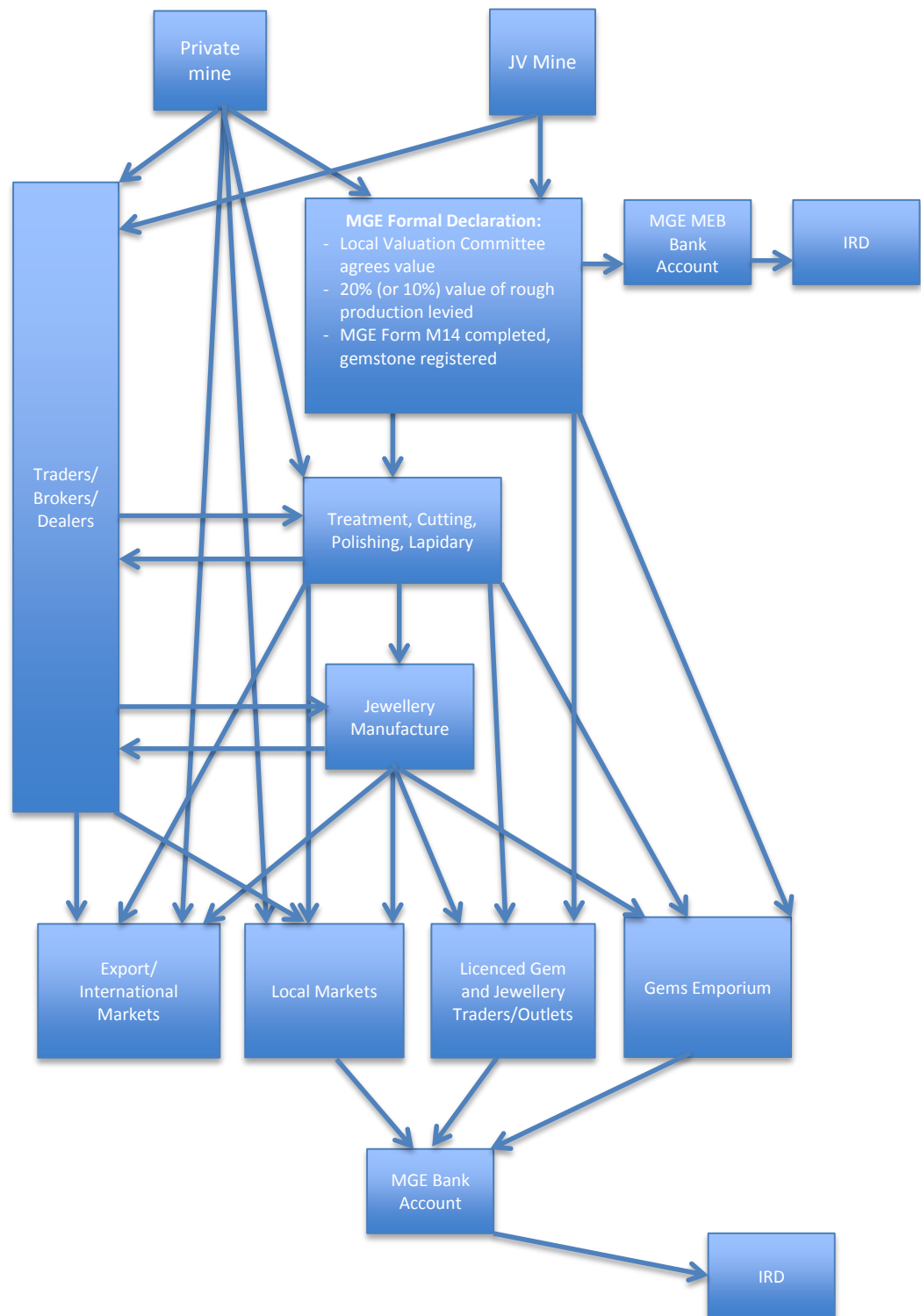
It is important that all available gemstone-related revenue streams are included in the scope of the next EITI report, to be in line with EITI Requirement 4.

There have been some major transformations over the 2015-2016 period, including the change in government, the changes in the Union Tax Law, the changes in the JV system with MGE (MGE share decreasing from 40% to 25%), and the 2016 amendments to the Gemstone Law. As at May 2016, the extent to which the new NLD government will retain the current fiscal regime and regulatory framework for gemstones is not known. However it is recommended that a systematic review of the gemstone fiscal regime and regulatory framework be carried out as soon as possible. This should lead to the development and implementation of a comprehensive, responsible national Gemstone Strategy or Policy. This clearly is not a ‘quick win’ that can be resolved overnight, but will likely take a few years. As with many of the reforms currently taking place in Myanmar, a longer-term vision with a considered step-by-step approach, patience and a commitment to continued dialogue among stakeholders, is required.

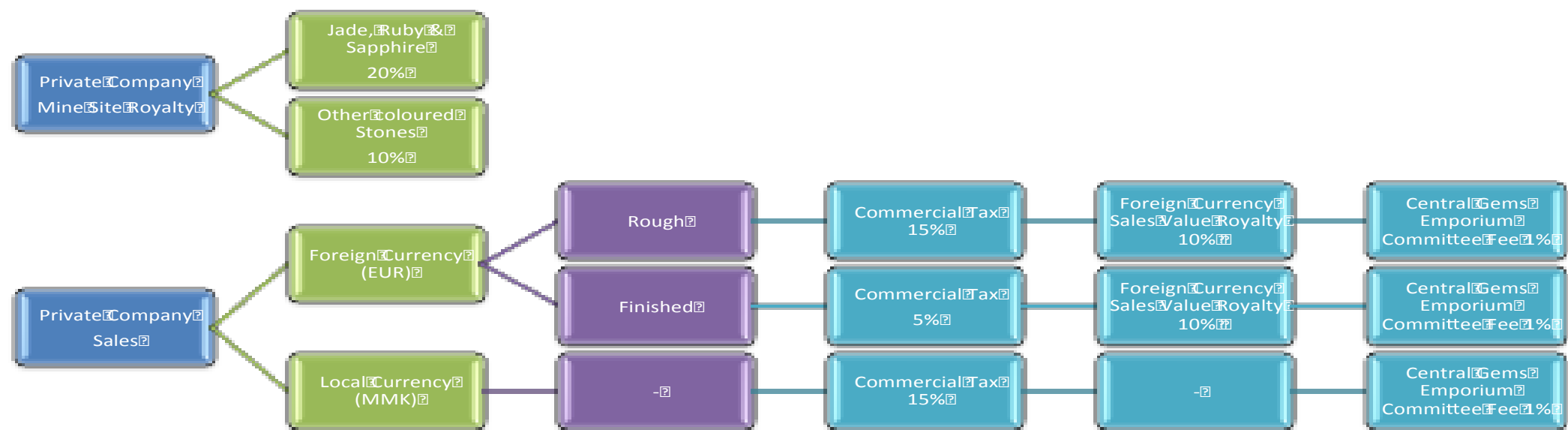
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<sup>94</sup> As per MEITI first reconciliation report

## Revenue Flows through the Gemstone and Jewellery Value Chain in Myanmar

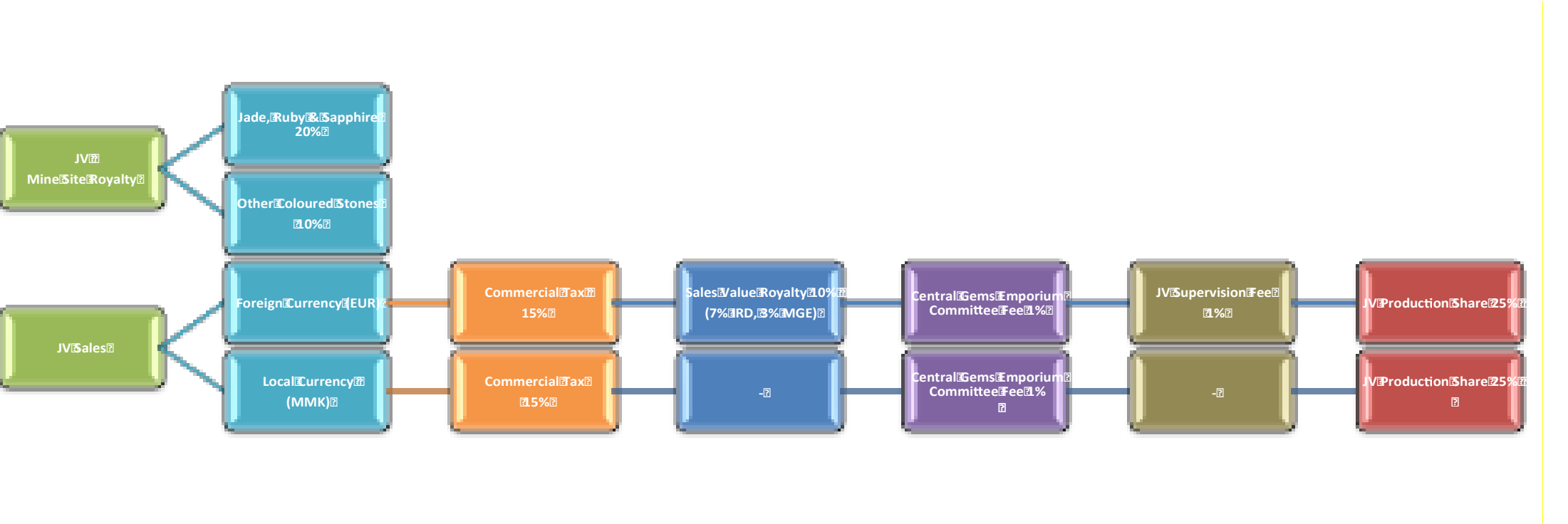


Private Company Royalty and Tax Payments to Government 2015<sup>95</sup>



<sup>95</sup> Source: MGE

Joint Venture Company Royalty and Tax Payments to Government 2015<sup>96</sup>



<sup>96</sup> Source: MGE



## 4.7 Sustainable Development and End-Markets

### 4.7.1 Overview

China is the largest purchaser of Myanmar's jade, whereas the main international markets for Myanmar's coloured stones have been the US, Europe and Japan over the past few decades, and now increasingly China also. Many of the highest-quality and most expensive stones are exported to China, Hong Kong and Switzerland from where they are sold to other markets. Jade is the most popular gemstone sold in Myanmar for export markets. It is reported that China buys approximately 80% of Myanmar's gems, and is by far the biggest buyer. Hong Kong and Thailand follow respectively.<sup>97</sup>

A number of experts consulted for this study suggested that China and Hong Kong are now by far the largest markets for Myanmar's gems - both jade as well as coloured stones. In the trade it is also believed that New York is one of, if not the biggest, 'end market' for all Myanmar coloured stones. Coloured stones can gain hundreds or even a thousand times in value from dealer/traders to final consumers in these international markets. This does not take into account the added value in processing a rough stone into a cut and polished stone in the country of origin, in this case Myanmar.

China increasingly dominates the global jewellery trade. In 2014 global jewellery market sales amounted to USD 157 billion, of which China (mainland and Hong Kong) contributed retail sales of USD 80.7 billion, representing 51.4% of global share.<sup>98</sup> In 2013 the global jewellery market's total sales amounted to USD 112.3 billion. In 2014, China and India were the main global suppliers of jewellery, representing a combined share of 53% of global exports. China was the fastest growing global jewellery supplier from 2007 to 2014 at +35% growth rate per year, with France second at +16% per year.<sup>99</sup>

The global gems and jewellery market is projected to grow at a compound annual growth rate (CAGR) of around 6% during 2015-20. Demand for coloured gemstones has also been growing due to changing consumer jewellery trends and preferences, from gold to coloured stones, platinum and palladium.<sup>100</sup> Chinese luxury goods consumption was USD 106 million in 2014, equating to 46% of the global luxury goods market, and is predicted to keep on growing.<sup>101</sup>

China's dominance in the global jewellery market is dependent on securing a sufficient supply of rough gemstones. The prices of rough stones at international gem markets are dramatically increasing, primarily due to Chinese consumption, and numerous reports confirm the challenges of purchasing rough gemstones when trying to compete against Chinese buyers.<sup>102</sup> According to one report, and in the words of one US coloured stone dealer,

*"I went to a mine to buy rough, and a Chinese buyer had already been there and bought their production. When I returned six months later, the Chinese had purchased the mine."*<sup>103</sup>

This increase in Chinese demand and in the global prices of rough gemstones is clearly also having an impact in Myanmar, China's closest gem-rich neighbour. The MGJEA signed a Strategic Cooperation Memorandum with the Gems and Jewelry Trade Association of China (GAC) in November 2015, "to deepen mutual understanding between the two sides." The agreement acknowledged that cross-border trading "has risen to a new height".

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<sup>97</sup> U Yone Mu, Chairman MGJEA

<sup>98</sup> Global and China Jewelry Industry Report 2014-2018; <http://www.prnewswire.com/news-releases/global-jewelry-market-sales-led-by-china-at-514-share--forecasts-to-2018-and-beyond-in-new-jewelry-research-reports-522311161.html>

<sup>99</sup> <http://www.wrcbtv.com/story/31331309/global-jewellery-market-analysis-and-forecast-to-2020>

<sup>100</sup> "Global Gems & Jewelry Market Forecast & Opportunities, 2020";

<http://www.researchandmarkets.com/reports/3341376/global-gems-and-jewelry-market-forecast-and#relb0>

<sup>101</sup> <http://www.researchandmarkets.com/reports/3338819/development-and-market-of-the-global-and-chinese#rela6>

<sup>102</sup> Gemmological Institute of America, 2013

<sup>103</sup> 'Exploring the Chinese Gem and Jewellery Industry', GIA, Spring 2014, <http://www.gia.edu/gems-gemology/spring-2014-lucas-chinese-gem-industry>

In November 2015 a Myanmar delegation of the MGJEA, including the MGJEA Chairman, visited the largest jewellery fair in China 'to investigate the Chinese market, enhance mutual understanding, and to seek opportunities for in depth cooperation with China.'<sup>104</sup>

The Guangdong Province Jade Association notes that since the late 1990s, thousands of tons of rough jade have been imported from Myanmar through the port of Guangzhou. It is then carved or manufactured locally. The area has become the national hub of jade sales and manufacturing, with over 20 jade auctions held a year and is where hundreds of specialist master jade carvers are based. The other key entry point is Yunnan province, on the China/Myanmar border. In 2007 around 6,000 jade companies were observed in Yunnan but by 2013 the number had increased to over 21,000.<sup>105</sup>

From 2000 to 2009, the price of jade rose by an average of 20% annually. For 2011 and 2012, this rate increased more than 30% annually.<sup>106</sup> Chinese consumers are increasingly investing their discretionary income in gold and gemstones.<sup>107</sup>

Jade and coloured gemstones continue to set higher and higher records at international auctions.<sup>108</sup> At Christies Hong Kong December 2015 auction a necklace with 60 jade beads and a diamond clasp sold for USD 7.6 million, three times higher than the original estimated price. Good quality natural, untreated, Mogok 'pigeon's blood' colour rubies continue to break records at international auctions, most recently fetching over USD 1 million per carat (0.02g). They are generally also valued up to 200-300% more than their African counterparts.

A further trend in the global market is vertical integration. Divisions that used to exist in jewellery mining, cutting and manufacturing are increasingly blurring, with larger companies consolidating and taking increasing shares of the market.<sup>109</sup> There are an increasing number of vertically integrated gems and jewellery companies in Myanmar also.

In general, two key factors other than fashion and 'the 4 C's' (cut, colour, carat/weight and clarity) influence the price of gemstones, whether they are treated and their country of origin. However, it is generally agreed that the country of origin has the most significant impact on price. Given the importance of country of origin, and growing consumer demand for 'ethics' and transparency in gemstone and jewellery supply chains, there is increasing pressure on gem laboratories to be able to confirm the origin of a stone.<sup>110</sup>

#### **4.7.2 Certification, Traceability and Responsible Jewellery Supply Chains**

There is an ever increasing global interest in responsible jewellery supply chains, largely driven by consumer demand and by a growing international movement that embraces responsible, ethical and sustainable business practices (corporate responsibility, sustainability, good governance and CSR). In the gems and jewellery sector, transparency, traceability (i.e. being able to trace a gemstone's journey from mine to market) and certification are becoming increasingly important, and reflect part of the increasing global trend towards greater responsibility, transparency and accountability across all economic sectors.

International transparency and certification initiatives in the diamond and the gold supply chains have had some relative but limited success (due to the fact that both diamond and gold supply chains are significantly simpler and less complex than those of coloured stones), but have nevertheless encountered huge challenges and are not functioning as effectively as anticipated.

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<sup>104</sup> Gems and Jewellery Trade Association of China, [http://www.jewellery.org.cn/en\\_n11.aspx](http://www.jewellery.org.cn/en_n11.aspx)

<sup>105</sup> <http://www.gia.edu/gia-news-research-jadeite-trading-centers-hsu>

<sup>106</sup> China Industrial Information Network, 2013

<sup>107</sup> <http://www.gia.edu/gia-news-research/shenzhen-china-gem-jewelry-industry>

<sup>108</sup> [http://www.ruby-sapphire.com/jade\\_burma\\_part\\_1.htm](http://www.ruby-sapphire.com/jade_burma_part_1.htm)

<sup>109</sup> Gemfields Plc is a good example of this trend

<sup>110</sup> The Colour of Money, Rapaport Magazine, February 2016;  
<http://www.diamonds.net/Magazine/Article.aspx?ArticleID=54434&RDRIssueID=146>

A number of initiatives have developed as a direct response to the use of 'conflict minerals' in global supply chains. For example, the international multi-stakeholder Kimberley Process Certification Scheme (KPCS), which was established by the UN in 2003 to prevent 'conflict diamonds' from entering mainstream rough diamond markets, is widely acknowledged to not be functioning effectively. International NGO Global Witness pulled out of the process in 2011, as have many of the original key players since then, due to the process's failure to control the flow of conflict diamonds.<sup>111</sup>

With regard to 'conflict minerals' specifically, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas<sup>112</sup> was developed in 2010. Although the Guidance focuses mostly on so-called 'conflict minerals' – cassiterite (tin), wolframite (tungsten), columbite-tantalum or coltan (tantalum) and gold from Africa – mostly the Democratic Republic of Congo (DRC), in practice the scope is not actually restricted. The guidance provides a 5-step approach with detailed recommendations to help companies respect human rights and avoid contributing to conflict through their mineral purchasing decisions and practices. The guidance is voluntary, and is for use by any company sourcing minerals or metals from 'conflict-affected' and 'high-risk' areas.

The Chinese 'Due Diligence Guidelines for Responsible Mineral Supply Chains' were launched in December 2015, by the China Chamber of Commerce of Metals, Minerals and Chemicals Importers & Exporters (CCCMC). They were developed in close collaboration with the OECD and aim to align Chinese company due diligence with international standards. The guidelines apply to all Chinese companies that extract and/or use mineral resources and their related products, and are engaged at any point in the supply chain of minerals. The guidelines are voluntary.<sup>113</sup>

In 2010 the US Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 1502 of the Act focuses on mandatory company disclosure of sourcing of 'conflict minerals' (as mentioned above these are generally considered to be tin, tungsten, tantalum and gold (the 3 T's plus gold) given their association with funding of conflicts in Africa). Section 1502 requires US-listed companies to apply due diligence processes and publicly disclose the locations from which these minerals have been sourced in their supply chains. Section 1504 (Cardin-Lugar Amendment) requires US registered companies to publicly report all payments over USD 100,000 made to host governments for the extraction of oil, gas, or minerals on an annual basis to the US Securities and Exchange Commission (SEC). Reporting will be required on a disaggregated, country-by-country and project-by-project basis and will be mandatory. There was considerable opposition to Section 1504, resulting in the American Petroleum Institute filing a lawsuit against the SEC, and as at May 2016 the issue remains unresolved. However, it is expected that final rules will be agreed to put these disclosure requirements into effect during 2016.

The mandatory disclosure of extractive industry related financial transactions is now increasing with a growing number of extractive industry-related corporate governance reporting frameworks being established around the world.

In April 2013, EU Member States, the Parliament and Commission agreed to adopt new transparency rules for oil, gas, mining and forestry companies. In November 2013 the EU Transparency and Accountability Directives formally entered into force. They apply to all extractive companies listed on EU stock exchanges. Companies are required to report all payments over EUR 100,000 they make to governments on a project-by-project and country-by-country basis. EU member states were obliged to transpose the directive into national law by autumn 2015, and companies started reporting from 2015 onwards.

In 2014, Canada passed the Extractive Sector Transparency Measures Act with similar provisions to the US and EU frameworks. Switzerland and Norway are also developing similar legislation.

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<sup>111</sup> <http://www.kimberleyprocess.com/> and [https://en.wikipedia.org/wiki/Kimberley\\_Process\\_Certification\\_Scheme](https://en.wikipedia.org/wiki/Kimberley_Process_Certification_Scheme)

<sup>112</sup> <http://www.oecd.org/fr/daf/inv/mne/mining.htm>

<sup>113</sup> <http://en.cccmc.org.cn/news/cccmcinformation/41161.htm>

Various other global initiatives have been established that aim to provide certification or ‘chain of custody’ systems in the precious minerals sectors, but due to the complexities associated with the coloured gemstone supply chain, these have tended to avoid coloured gemstones until now. A brief summary of the main relevant initiatives is outlined here:

### **1. Scope includes coloured gemstones**

- UK based Responsible Jewellery Council (RJC) ‘Chain of Custody’ certification system for gold, platinum and diamonds. In March 2016 the RJC announced that it was extending its certification system to include coloured gemstones.<sup>114</sup>
- The UN Interregional Crime and Justice Research Institute (UNICRI) partnered with the Vienna International Justice Institute (VIJI) and the International Colored Gemstone Association (ICA) in 2013 with the aim of establishing a global certificate of origin and traceability system for coloured gemstones, based on the improvement of environmental, social and governance performance along the value chain.<sup>115</sup> The initiative has since stalled.

### **2. Scope includes diamonds, gold and precious metals**

- The Initiative for Responsible Mining Assurance (IRMA) is an international multi-stakeholder responsible mining assurance system to improve social and environmental performance in the mining sector. The new IRMA 2016 Standard is currently under development.<sup>116</sup>
- ‘Fairmined’ standard<sup>117</sup> for gold mined from ASM sources focuses on certification of ASM gold mines in Latin America and Africa, as part of the Alliance for Responsible Mining (ARM). ARM is considering the feasibility of extending its standard to incorporate coloured gemstones.
- ‘Fair gold’ standard for fair trade gold and precious metals certifies small-scale mines under the umbrella of the international Fairtrade Labelling Organisations (FLO).<sup>118</sup>

In February 2016 the Responsible Ecosystems Services Platform (RESP) published a report assessing the main challenges that have prevented an international collaborative framework from being established in the coloured gemstone sector to date.<sup>119</sup>

Most discussions and initiatives focus on the ASM (artisanal and small-scale mining) nature of global gemstone production and sourcing, which is not as applicable in Myanmar as in other gem-producing countries.<sup>120</sup> The jade and coloured gemstone sector in Myanmar includes many larger companies owned by powerful individuals, as well as significant numbers of small-medium sized companies, also often owned by well-connected, influential people. Access to the lucrative gem-producing concessions is highly regulated and controlled leaving little room for extensive ASM production to take place. However, as outlined later in this report, Myanmar’s gem-producing areas are characterised by large numbers of subsistence ‘wastepickers’ who are free to search mining company waste dumps for any valuable gem materials that may have been overlooked. As such, the situation in Myanmar is quite different from the majority of gemstone producing countries. Any approach to addressing transparency issues in global gemstone and jewellery supply chains will need to keep this consideration in mind with regard to Myanmar.

### **4.7.3 Laboratory Testing and Certification of Gemstones**

Gemmological laboratories analyse gemstones and jewellery for clients and provide independent reports certifying a stone or a piece of jewellery’s particular qualities, which helps to assess value. There are thousands of gem labs around the world, and a few in Myanmar. It is estimated that less than 2% of all loose stones and jewellery sold in Myanmar are lab certified in Myanmar. MGJEA established a new gem testing and inspection facility in Yangon in 2014, with state of the art equipment, and already

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<sup>114</sup> <http://www.responsiblejewellery.com/>

<sup>115</sup> [http://www.unicri.it/special\\_topics/metals\\_gemstones/](http://www.unicri.it/special_topics/metals_gemstones/)

<sup>116</sup> <http://www.responsiblemining.net/>

<sup>117</sup> <http://www.fairmined.org>

<sup>118</sup> <http://www.fairgold.org>

<sup>119</sup> <http://www.resp.ch/resources/publications/challenges-advancing-environmental-and-social-responsibility-coloured-gems>

<sup>120</sup> Please see ASM and Subsistence Mining section on page 75

had the largest lab testing facility in the country in Yangon. However, in April 2016 the new facility appeared to be not yet fully operational and was encountering various challenges. There are also a few private labs that test and certify gemstones in Myanmar.

Given the increased value of coloured stones globally, buyers are demanding more and more lab reports for their stones. In the case of higher value or more important stones, it is not uncommon for any given stone to have two or three reports certifying its characteristics. As demand increases for lab certified stones, labs are under increasing pressure to maintain higher standards and to continually pursue better ways to determine the origin of stones and to detect any treatments.<sup>121</sup>

However, it is widely agreed that the equipment and facilities at local labs in Myanmar are not of a sufficiently high standard. As the gems and jewellery market expands in country, so the need for high quality testing and reliable certification of stones increases. It is recommended that further research be carried out on this issue, to ascertain opportunities for adding value to the Myanmar market in lab testing and certification.

#### **4.7.5 Recommendations**

There is considerable interest in establishing some kind of supply chain due diligence process for gemstones in Myanmar and various stakeholders have expressed a keen interest in developing a process to specifically address the jade sub-sector. However, it is strongly recommended that efforts first prioritise the strengthening of government institutions, policies and procedures, the regulatory framework and government's capacity to enforce compliance. This will enable a stronger foundation to be built, onto which any jade (or coloured gemstone) specific transparency or certification initiative could then be developed and have a greater chance of being effective. Without strengthened institutions, regulations and procedures for management and oversight of the sector, any efforts to establish certification or traceability mechanisms for Myanmar's gemstones are highly unlikely to have any meaningful impact. The viability of such a system should be formally assessed in 3-5 years time, after broader institutional and governance reforms are well underway.

However, as highlighted here, there is rapidly increasing global consumer interest in responsible supply chains, traceability of gemstones from mine to market, and in 'ethically sourced' or responsibly produced gemstones. This represents a huge opportunity for Myanmar's gemstone miners to embrace this as yet un-tapped global consumer market, and for Myanmar to potentially become a leader in this field in the future. It is recommended that as a first step, a targeted awareness raising and capacity development programme be delivered/offered to gemstone producers and also MGE on issues of corporate responsibility, responsible gemstone production, international good practice standards, and environmental and social impact management. Training for producers could potentially be developed and delivered through a collaborative training programme with MGJEA.

Furthermore, a pilot project for 'responsibly sourced' Myanmar gemstones could be developed. This could focus on a small number of gemstone mines and involve the provision of technical support to work towards an agreed set of responsibility criteria as well as the facilitation of access to international jewellery markets. The pilot project would require close collaboration with MGJEA, MGE and civil society.

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<sup>121</sup> Rapaport Magazine, 'the Colour of Money', February 2016;  
<http://www.diamonds.net/Magazine/Article.aspx?ArticleID=54434&RDRIssueID=146>

## 5. ASM and Subsistence Mining

### 5.1 Analysis

Artisanal and small-scale mining, also known by its abbreviation 'ASM', or subsistence mining, is widely practised in the poorest parts of the world, by those who normally have few livelihood alternatives. ASM typically involves anything from one or two people, to entire families or small groups of people, digging holes for minerals with the most rudimentary equipment and techniques. It often falls outside the scope of legal and regulatory frameworks and is therefore often illegal. It is common for entire families to work at an ASM site, with men, women and children each having their own designated roles and responsibilities within the ASM site structure. ASM typically involves extremely hazardous working conditions, with little or no awareness of health and safety standards and a high rate of major incidents, including fatalities. Given that ASM lacks institutional support in the majority of countries in which it takes place, exact numbers regarding how many people are involved are not known. It is estimated that around 13 million people in about 30 countries across the world are small scale/artisanal miners, with up to 100 million people depending on ASM for their livelihoods.<sup>122</sup> Women are estimated to constitute approximately 30% of the sector, and the International Labour Organisation (ILO) estimates that approximately 1-1.5 million children are currently employed in ASM, with the numbers increasing rapidly.<sup>123</sup>

Gold, diamonds and gemstones attract the majority of artisanal and small-scale miners. It is estimated that 75% -80% of all gemstones, 20-25% of gold and 15-20% of the total global mineral supply are from ASM sources; a strong indicator of the importance of ASM to the global minerals market.<sup>124</sup>

There is very little available information about ASM of coloured gems or jade in Myanmar. ASM gold mining on the other hand remains extremely common in Myanmar, with hundreds of thousands of people thought to be involved across the country. It is known that historically ASM gemstone mining was common and practiced widely. However, the increase in larger scale mechanised gem production over the past few years, together with tighter government control of gem-producing areas, has left little room for informal subsistence miners to operate.

However, there is a customary practice in Myanmar's gem producing areas that is widely acknowledged and respected by all. Once the gem gravel and overburden have been processed and then abandoned or dumped by a formal gem-mining operation, the waste is then freely available to any small, independent subsistence miners to sift through to see if they can find any gems that may have got through. Any stones found become the property of the finder. Subsistence miners, also known as 'handpickers' or 'scavengers' in Myanmar, sift through the waste material dumped by larger scale mining operations, usually in extremely dangerous conditions and with no protective equipment. Many handpickers have informal agreements with site managers, and while usually they barely find enough to survive on, occasionally higher quality gems have been found and they can find up to USD 10 worth of stones per day.

In the case of rubies and other coloured gems, the word commonly applied for these handpickers or subsistence miners is 'Kanase' although in practice there are actually two kinds:

- 'Kanase' – those who look for gems in wastewater drainage channels from gem sluices
- 'Khesar' – those who look for gems in the waste gravel and rocks (no water)

Traditionally, only women and children are allowed to search for gems in this manner, although increasingly men are also involved, and, sometimes, entire families sift through waste dumps together. Men usually only get involved in the next phase, the breaking up of the stones, after an actual or likely

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<sup>122</sup> World Bank, small scale mining and Communities and Small-scale Mining (CASM) Initiative, [www.artisanalmining.org](http://www.artisanalmining.org)

<sup>123</sup> Child labour in mining has been classified by the ILO's International Programme for the Elimination of Child Labour (IPEC) as one of the 'Worst Forms of Child Labour'. <http://www.ilo.org/ipecinfo/product/download.do?type=document&id=4146>

<sup>124</sup> CASM: A global partnership for action; World Bank, <http://siteresources.worldbank.org/INTOGMC/Resources/CASMFACTSHEET.pdf>  
[http://www.artisanalmining.org/UserFiles/file/CASMBrochure\\_Updated.pdf](http://www.artisanalmining.org/UserFiles/file/CASMBrochure_Updated.pdf)

gem has first been recovered by the women.

The same customary practice exists in the jade mining areas, where the handpickers or subsistence miners are called 'Ye Ma Say' ('no water wash'). However, unlike the Kanase or Khesar, the Ye Ma Say subsistence jade miners are usually men, and women are not at all involved. There has been considerable media attention on the Ye Ma Say handpickers during 2015 and 2016 after a series of fatal landslides at waste dumps in which many died. In addition to this, reports of widespread heroin abuse and addiction, and extremely poor safety, working and living conditions among the waste dumps have thrust the status of the Ye Ma Say handpickers into the media spotlight, which in turn is galvanising further ground-level support for substantive change in the jade sector.

In May 2016 it was reported that following a visit to the area by the new minister for natural resources and environmental conservation, the government agreed to step up supervision of jade mining in Hpakant. The ministry is proposing that tailings/waste be discarded in old mine pits, and at the time of writing, discussions about this are continuing with the state government.

As described here, Myanmar's custom of 'handpickers', whose livelihoods depend on sifting through the tailings or waste dumped by companies is quite different most gem-producing countries where ASM miners actually secure and excavate their own shafts in the ground or sift through alluvial gravel to find gems. More work needs to be carried out to understand the extent of informal and ASM gemstone mining in Myanmar, both in terms of actual ASM mining (as is carried out in most gem-producing countries) but also in terms of the subsistence handpickers who live from the waste dumped by companies.

## 5.2 Recommendations

It is recommended that the MEITI MSG undertake a study during 2016 to better understand the status of ASM gemstone mining in Myanmar. The MEITI Workplan already includes a review of the ASM sector in Myanmar, but it is recommended that a separate study focusing only on the gemstone sector is carried out. This will also help Myanmar meet EITI Requirement 6.3(a) on the contribution of the informal/ASM sector to the national economy.

There is increasing public awareness about the handpickers, especially in the jade mining areas and as a result of several lethal landslides where many have been killed. As such, it is expected that the new regulatory framework will address this and provide improved governance procedures and safeguards for gemstone handpickers across Myanmar.



## 6. Smuggling and Exports

### 6.1 Analysis

It is widely known that large numbers of gemstones, both jade and coloured stones, are informally smuggled out of the country. Coloured stones in particular are extremely easy to carry and smuggle. As noted earlier, there is also evidence that official production figures are likely to be significantly lower than what is actually produced, due to a lack of enforcement and production monitoring. It is therefore currently not possible to accurately estimate how much (in terms of either volume or value) is actually being informally smuggled out of the country. However, it is clear that informal smuggling practices represent huge sums of lost revenues for the government.

From the government's perspective, there is awareness of the potential degree of smuggling across the borders, but they say they are constrained by their inability to effectively reach many of these areas. The relatively low numbers of local staff on the ground lack capacity and technical expertise, which in addition to the fragile security situation means that it's easier for informal practices to continue.

In line with EITI Requirement 3.3:

### 3.3 Exports

*Implementing countries must disclose export data for the fiscal year covered by the EITI Report, including total export volumes and the value of exports by commodity, and, when relevant, by state/region of origin. This could include sources of the export data and information on how the export volumes and values disclosed in the EITI Report have been calculated.*

The first MEITI report included available export data for 2013-2014, and stated<sup>125</sup> that according to data collected from the Customs department, the total exports of jade in 2013-2014 amounted to USD 924.2 million. However, the March 2015 Monthly Economic Indicators<sup>126</sup> from CSO mention that the direct exports of both gems and jade for 2013-2014 amounted to USD 1,011.6 million, accounting for 10% of total exports. The Independent Administrator noted discrepancies between the various sources of data, and recommended further clarification on this issue.

As mentioned earlier, the UN Comtrade database data for 2014 states that China imported USD 12.3 billion of Myanmar gemstones in 2014, the majority of which was thought to be jade.

Available export data is based on the value declared by the exporter to Customs. Customs does not collect any gems or jewellery related duties or taxes. Every time a company or individual wants to export something they require an 'Export License' from Customs. While a gemstone production permit and trading license give holders the right to export, an export license is also required. This is an onerous procedure, and for gems and jewellery, requires completing a customs clearance form and declaring the value of product to be exported, together with supporting evidence – either a 'recommendation' or 'certificate' from MGE or a copy of an invoice or MGE cash memo receipt in the case of jewellery. In practice, most people rely on customs agents to carry out the procedures on their behalf. It is also normal practice for companies to use other companies, who have the required trading and export licenses, to export.

Until 2015 no customs duties or taxes were levied on exports of gems or jewellery. As at 2016 there is still zero customs duty levied on the export of gems or jewellery. In terms of tax, until the 2015 Tax Law was promulgated, there was in theory a 30% tax on foreign exports of rough gems and 10% on jewellery, however in practice this was never applied. In 2015 the Union Tax Law introduced new Commercial Tax requirements, including 15% on rough stones and 5% on finished jewellery products.

<sup>125</sup> Section 3.3.12 Gems and jade Exports

<sup>126</sup> Central Statistical Organisation



It is not known how this will be calculated and applied.

Export data was not made available for the purpose of this report, however it is clear from the evidence available that it is not possible for official figures to reflect the true volumes of gemstones leaving the country. This whole issue presents a significant challenge and requires further research and clarification.

In addition, many stakeholders consulted for this report raised the issue that (until 2016), loose stones (rough or cut and polished) were prohibited from being taken out of the country, or exported to international markets. Only stones already set in jewellery or finished jewellery products could be formally exported. Most industry representatives and experts consulted for this study felt that this system actively encouraged informal practices. Not only did they feel that tax and royalty rates were too high and not viable for business, but the prohibition on exporting loose stones meant that everyone found ways to get around this.

In practice, many gem and jewellery traders and business owners took their stones to Thailand by placing them in simple/low quality silver jewellery, which could be easily disassembled. In Thailand, stones are easily sold and sent to international buyers (e.g. via DHL and Fedex).

This prohibition was lifted with the 2016 Gemstone Law amendments, which give both permit and license holders the right to export gemstones for which a royalty has already been paid, and sell them abroad, in line with 'applicable law'. As mentioned above, permit and license holders require an additional export license from Customs in order to formally export gems or jewellery products. To obtain an export license, the value of goods to be exported must be declared by the exporter. Despite changes to the system, it remains complicated and not very easy, representing a major disincentive for the formal declaration of exports.

The role of the Customs Department is clearly of importance in addressing this issue. However, there is a lack of transparency regarding customs policies and procedures and it is also not known how customs requirements are enforced or controlled at Myanmar's borders. Customs should in theory manage and process paperwork for gemstone exports at border control points. The resulting 'paper trail' should provide a relatively accurate indication of gemstones crossing borders.

In practice it is not known how many gemstones are leaving Myanmar's borders unrecorded and informally. However, given the insufficient official production monitoring and enforcement, especially at privately held gemstone mines (98% of all gemstone production permits), an analysis of current practices and procedures, and extensive discussions with a wide range of stakeholders, it is estimated that 60-80% of Myanmar's gemstones are sold or exported informally with no tax or royalty payments. This represents huge potential revenues currently being lost to government.

The 2016 Amendments to the 1995 Gemstone Law state:

*"Whoever takes out any items made with the gemstone to a foreign country not in accordance with rules, orders, directives and procedures issued with this Law and under this Law shall, on conviction, be punished with imprisonment for a term which may extend from a minimum of one year to a maximum of three years and shall also be liable to a fine."*

This reduces the terms of imprisonment from the 1995 Law, which were a minimum of 10 years to a maximum of life imprisonment. It is not clear how this provision was enforced in the past, or how the government will enforce compliance with this new provision. However, if enforced, this penalty could serve as a valuable deterrent to smuggling.

## 6.2 Recommendations

In line with EITI Requirement 3.3 all available data on gemstone exports should be provided to the Independent Administrator for the next EITI report. However, given the lack of reliable data on the

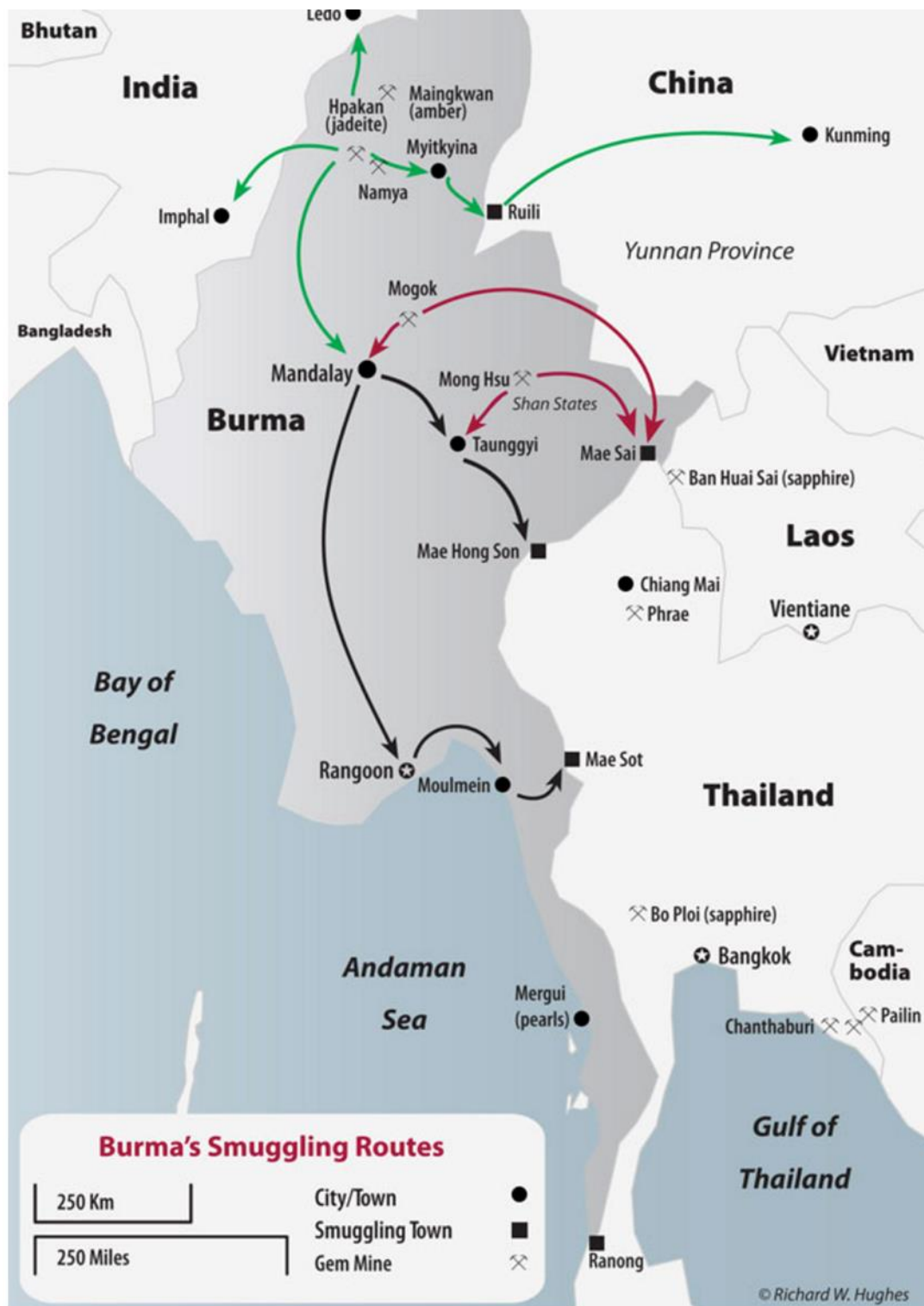
volume and value of actual exports, it is crucial that border monitoring and controls with respect to gemstone smuggling are strengthened.

To address this, it is essential that Customs Department representatives work closely with other relevant departments to strengthen border monitoring and controls with respect to gemstone smuggling. Technical assistance could be provided to Customs and other relevant departments to build capacity and provide appropriate support to carry out this function effectively. A review of existing policies and procedures with respect to gemstone exports could be carried out, and options for the establishment of specific export procedures adapted to gemstones could be considered.

For example, simplified export procedures for smaller traders could be established. These could allow informal or smaller traders to trade gemstones up to a certain volume or value, with simplified documentation, across borders. Allowing informal traders to trade gemstones (up to a certain limit) may allow officials to better allocate their resources to focus on larger smugglers. In addition, it could be helpful to do further research on how to foster trust between traders and officials at border checkpoints (so that traders know the rules and officials do not abuse their role).<sup>127</sup>

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<sup>127</sup> Lessons could be learned from Zambia, where a World Bank 'Diagnostic Trade Integration Study' proposed a Charter of simplified procedures for informal and smaller traders, 'Cross-border Trade in Zambia: A Path to Growth and Jobs', <http://www.worldbank.org/en/news/feature/2013/10/16/cross-border-trade-in-zambia-a-path-to-growth-and-jobs>



Map of Thailand and Burma, showing the locations of important mines, smuggling towns and major smuggling routes.  
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## 7. US Sanctions

Myanmar has been under various US economic sanctions since early 1997. In 2003 President George Bush issued Executive Order 13310, which included a ban on the import of gemstones from Myanmar. In July 2008, this was modified and enacted by the US Congress as the 'Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Public Law 110-286). This prohibited the importation into the US of jade and rubies mined or extracted in Myanmar, and also included jewellery containing jade or rubies mined or extracted in Myanmar. Between 2008-2009 various amendments to the regulations were developed and enforced.<sup>128</sup> Penalties include fines of up to USD 1 million and prison terms of up to 20 years, although in practice this has not really been enforced. The intent of the JADE Act (and previous EU legislation) was to deny the previous regime revenues from the sale of gemstones.

Since the JADE Act came into effect, it has become more difficult to purchase Myanmar stones in the US and in other Western countries, although sales to other countries continued to rise. Many European and US jewellery companies, including Bulgari, Cartier and Tiffany have voluntarily refused to deal in Myanmar gems due to the complexities associated with sanctions and legality.

In any case, it is extremely difficult to identify a gemstone's origin, and many stones find their way to the US via other countries. However, the law had a loophole that permitted gemstones from Myanmar to be legally imported into the US if they were cut in and exported from another country. Given that the majority of Myanmar gemstones are processed in other countries, particularly Thailand, the ban has had little effect.

In reality it is almost impossible anyway for US customs agents to take any action to stem the flow, or to spot a Myanmar gemstone, even if they tried. Once in Thailand, Myanmar stones are mingled with those from other countries and there is no certificate of origin at this stage. Once the stones have moved to Bangkok, they are further mixed with other stones and it is usually only at this point that the certificate of origin or authenticity might appear. At this stage only a laboratory or expert gemmologist would be able to determine the origin of a stone.

In August 2013, President Obama signed Executive Order 13651<sup>129</sup> renewing the ban on the import of Burmese ruby and jade for another year.

In May 2016 the US Treasury announced it was renewing most of its sanctions, including those applicable to gemstone imports. However, the sanctions against MGE (and other SEE's) were lifted, while some others relating mostly to US investment and certain blacklisted persons were relaxed slightly.

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<sup>128</sup> <https://www.federalregister.gov/articles/2010/03/23/2010-6387/prohibitions-and-conditions-for-importation-of-burmese-and-non-burmese-covered-articles-of-jadeite>

<sup>129</sup> Executive Order 13651—Prohibiting Certain Imports of Burmese Jadeite and Rubies', Presidential Documents, US Federal Register, <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/13651.pdf>; <https://www.whitehouse.gov/the-press-office/2013/08/07/executive-order-prohibiting-certain-imports-burmese-jadeite-and-rubies>

## 8. Conclusions

Myanmar's gemstones are renowned for their quality and high value around the world, and all research indicates that the gems trade in Myanmar is extremely valuable, more than previously thought and that it is increasing in value. Globally, the market value of gemstones is generally far higher than the cost of production, meaning that profits can be very high - and Myanmar is no exception, but this means that control of production is very valuable. This in turn leads to illegal smuggling and untapped taxes – a situation that characterises the gemstone sector globally.

The international market for coloured gemstones is huge and increasing (some estimates point to approximately USD 10-12 billion per year), and in 2014 global jewellery market sales amounted to USD 157 billion. Because gemstones are a luxury commodity, they are less subject to global commodity cycles and downturns than other minerals. Gems have remained virtually unaffected by the global commodities downturn of the past two years, with good quality gems continuing to earn extremely high prices. In this sense it is more helpful to think of the world of gemstones as being more similar to the global art world than a part of the global commodity trade. This renders precise economic analysis more difficult and at the same time means that the sector is harder to govern.

The gemstone supply chain from mine to market is extremely fragmented globally, with a high degree of opacity. The high value and transportability of most gemstones provide opportunities for illegal activities, often attracting the involvement of organised criminal or unregistered groups, who facilitate the trade and smuggling of gemstones out of the country of origin and benefit accordingly. False declaration and smuggling are the primary ways in which gemstones evade tracking through the value chain. These leakages and practices mean it is very hard to trace a gemstone's journey from mine to market, but also lead to lost revenues for governments in the country of origin. The opportunities and challenges inherent in the gems sector are the same for all gem-producing countries, not just Myanmar.

In Myanmar, the greatest challenges and opportunities for reform are found in the following areas, (i) institutional strengthening, (ii) legal and regulatory framework, (iii) production/export monitoring and valuation, (iv) geoscience data management, (v) environmental and social impact management, (vi) value and job creation.

### ***Institutional Strengthening***

In Myanmar, a combination of weak and insufficient government management systems, together with low capacity to monitor, enforce and implement management systems, have led to very poor governance of the sector. Again, Myanmar is not unique in this sense as many gem-producing countries share the same challenges. However, unlike many other countries Myanmar is still in transition from the legacy of decades of military rule and a closed economy. While it is not clear what this unique legacy may mean in terms of improving governance and transparency of the gemstone sector, it may present an ongoing challenge.

In terms of value chain governance and transparency, issues around licensing and production monitoring represent particular challenges. The absence of systematic, transparent procedures for allocating permits together with the extremely high potential profits to be made from gems, mean that licensing and control of the gem-producing areas is especially problematic. This has also led to opacity in terms of who is really benefitting from the gems sector which is perceived to be controlled in the hands of a few.

### ***Legal and Regulatory Framework***

The legal and regulatory framework is poorly applied in practice. Government capacity to enforce compliance is weak, and there are insufficient incentives for companies to comply entirely. While around 75% of the 1995 Law was updated in early 2016, many areas remain vague. It is hoped that the Rules and Regulations being drafted by MGE will go some way to clarify, but a comprehensive review of the entire framework in line with good practice international standards would be more beneficial. In any case, compliance remains a major challenge.

### ***Production/Export Monitoring and Valuation***

The government is currently only able to really monitor the production from 2% of all gemstone production permits which are under joint ventures with MGE, leaving the remaining 98% (privately held permits) subject to weakly enforced monitoring and therefore open for permit-holders to choose whether or not to declare production and pay royalties and taxes accordingly. This means that all available data on volumes and value of production can only reflect around 2% of what is in fact being produced. Furthermore, vague pricing and valuation methods increase the risk of undervalued production considerably. This translates into billions of potential lost revenue for government. Many production permit and trading license holders point to high fiscal obligations as major disincentives for transparent declaration.

There are three main channels used by gem producers to trade their stones:

1. Formal declaration of production, payment of royalties and taxes accordingly, and sale through Gems Emporium. This is considered the least attractive option - from the perspective of operators' profitability - and is estimated to represent approximately 10-20% of total production.
2. Formal declaration, payment of royalties and taxes accordingly, and sale/export directly to buyers. This is considered the second most attractive option and is estimated to represent approximately 10-20% of total production.
3. No formal declaration, no formal royalty and tax payments, and sale/export directly to buyers. This is considered the most attractive option and is estimated to represent approximately 60-80% of total production. It is also likely that the distinction between formal and informal processes is often blurred. For example, some stones may be formally declared but then disappear into the informal system.

In terms of addressing the challenges of smuggling and production monitoring, it is hoped that the 2016 amendments to the 1995 Gemstone Law will help address some of these, especially given the amended and more relaxed fiscal obligations for permit and license holders. However, tax incentives and the strengthening of border controls remain very important considerations. Indeed, the scale of the challenge is such that a variety of incentives need to be put into place, together with targeted institutional strengthening and capacity building. Strengthened and systematic procedures and collaboration between MGE, the Internal Revenue Department, MONREC and Customs will also improve government revenue collection.

### ***Geoscience Data and Management***

A further consideration is the lack of reliable geological information. Insufficient geological survey data means there is little understanding of actual reserves or potential yield of known or possible reserves. This raises the risks of investing in the sector, and together with poor governance structures and perceived political volatility, does not make Myanmar an attractive option for regular or responsible investors. Despite this, permits to extract Myanmar's gems can officially still only be granted to Myanmar nationals.

### ***Environment and Social Impact Management***

As with the mining of other minerals, gemstone mining in Myanmar has also been the source of considerable controversy and grievance among citizens for many years, with land-grabbing, environmental devastation, corruption, and a lack of access to jobs and opportunities for social and economic development among local people in mining areas, all contributing to a volatile mix of mismanagement, a lack of transparency and high levels of community discontent. There are widespread calls for more regulation and oversight of the sector, and increasing pressure on the new government to address these concerns.

There are many signs of hope however. In terms of government institutions, systems and procedures, the new government's merger of the Ministry of Mines and Ministry of Environmental Conservation and Forestry, into a new bigger Ministry of Natural Resources and Environmental Conservation, may ensure greater synergy and collaboration between relevant government departments in terms of

environmental and social impact management, and the new EIA Procedures, approved at the end of 2015, place stringent requirements on gemstone producers, which must now be effectively enforced.

### ***Value and Job Creation***

There are also enormous opportunities to add value in country at all stages of the gemstone and jewellery value chain. Many stones, especially the most valuable ones, leave the country before they have had a chance to be processed (treated, cut, polished, carved, made into jewellery etc.) inside Myanmar. Stakeholders consulted for this report cited various reasons for this, including skills, technology and generally higher quality processing at all stages of the value chain outside Myanmar, usually in Thailand or China. This represents an area that could benefit from strategic, targeted development.

As global consumer demand increasingly moves towards transparency, responsible practices, and the ethical sourcing of products, Myanmar risks being left behind unless it takes steps to embrace the opportunities available to become a responsible gems and jewellery producer. In a world where international scrutiny is intensifying, Myanmar can only benefit by strengthening transparency in gemstone governance and along the value chain.

The challenges associated with the governance of the gemstone sector are global. Myanmar is not alone. However, as one of the world's primary sources of high value gemstones, and at this important juncture in the country's transition to a democratic economy, Myanmar is uniquely placed to address the various challenges. Furthermore, Myanmar also has the potential to become a world leader in this respect.

The new government has an opportunity now to take stock, review current practices and procedures and to develop a comprehensive National Gemstone Sector Strategy that includes responsible development of the sector in line with good practice international standards on transparency, and environmental and social impact management. This should include provisions for the strengthening of institutions, the development and implementation of clear systems, policies and procedures and capacity development for to the responsible governance of the sector in line with EITI Standard.

The government has indicated that it will provide all available data for the purpose of EITI scoping. This together with the active participation of MGE and MGJEA on the MEITI MSG, will ensure that Myanmar's next EITI report provides a clearer picture of strengths and weaknesses of the sector from a governance and transparency perspective, and can build on the challenges and opportunities outlined here in this report.

A number of recommendations (next section) are provided here for the consideration of the government and other key stakeholders, which address many of the challenges outlined in this report.

Myanmar is blessed with an abundance of precious, but finite, resources. It has a golden opportunity now to start managing the transformation of these in a responsible manner for the benefit of future generations. This report has been produced at a time of significant change in Myanmar. Most significant of all, the first democratically elected civilian government has replaced the previous, quasi-civilian government, heralding a new era in Myanmar's history, full of hope and opportunity. This hope and opportunity extends to Myanmar's precious resources, a national treasure chest for its people and future generations.

## 9. Recommendations

As at June 2016, the extent to which the new NLD government will retain the current and new, proposed fiscal regime and regulatory framework for gemstones is not known. However the key recommendation of this report is that a systematic review of the gemstone legislative framework including permit allocation and compliance be carried out as soon as possible, together with the development and implementation of a comprehensive National Gemstone Sector Strategy. This will provide a strategic framework for the responsible development of the sector over the coming years. For this purpose, and as a first step toward the development of the strategy, an inter-ministerial Gemstone Permit Review Committee should be established.

At the same time, it is considered that Myanmar can generate very significant royalty collections in the short term if production and exports are better monitored and accounted for. If total actual production was properly monitored, the royalty collection alone (excluding profit tax, dividends and others) could generate as much income to the state as the oil and gas sector.

On the other hand, the legal reforms clearly are not a ‘quick win’ that can be resolved overnight, and will likely take a few years. As with many of the reforms currently taking place in Myanmar, a longer-term vision with a considered step-by-step approach, patience and a commitment to continued dialogue among stakeholders, is required.

Throughout this report various recommendations have been made. Some are specific to EITI and others relate to institutional, capacity or policy constraints. The top ten recommendations can be summarised as:

1. MEITI MSG to submit request for **‘Adapted Implementation’** of EITI to EITI Board as soon as possible with regard to the scope of gemstone sector coverage in the second MEITI report.
2. MEITI MSG to consider **inclusion of all production permit and trading license holders, and all gemstone sector revenue streams**, in scope of scoping study for second MEITI report.
3. MONREC to establish an inter-ministerial **Gemstone Permit Review Committee** to review all current permits/contracts and permit allocation procedures, assess compliance against a set of agreed parameters and take action as appropriate. The mandate of this committee could also be broader, e.g. oversight of legal and regulatory assessment, and of development of national gemstone sector strategy.
4. An assessment of the **legal and regulatory framework** to be carried out, to ensure in line with good practice international standards on responsibility and transparency.
5. Development of a **National Gemstone Sector Strategy** to provide strategic framework for the responsible development of the sector over coming years. This would also include a public consultation process and possibly a national conference.
6. Establishment of a national **‘Grievance Mechanism’** accessible to all communities and stakeholders with a clear mandate and accountability structure.
7. Capacity development and support to MONREC for strengthened **environmental and social management** (in particular to MGE and Environmental Conservation Department) and for EIA Procedures implementation.
8. A review of current **production monitoring and valuation** procedures, followed by capacity development and support to MONREC/MGE for strengthened **inspection, valuation, production and export monitoring** procedures.
9. Assessment of **value and job creation** from gemstone industry (including mapping, mining, cutting, polishing of gemstones as well as jewellery making).
10. **Comprehensive Geological Surveys** of main gem-producing areas to be carried out, to understand potential reserves.

In addition, a summary table of key recommendations is provided here below, divided into the following categories and areas identified for potential reform (i) EITI, (ii) institutional strengthening, (iii) legal and regulatory framework, (iv) production/export monitoring and valuation, (v) geoscience data management, (vi) environmental and social impact management, (vii) value and job creation.



## 9.1 Summary Table of Recommendations

	Key Recommendations
<b>EITI</b>	<ul style="list-style-type: none"> <li>• MSG to submit request to EITI Board for 'Adapted Implementation' of EITI with regard to the scope of gemstone sector coverage in the second MEITI report, as soon as possible</li> <li>• MSG to consider inclusion of all production permit and trading license holders, and all gemstone sector revenue streams, in scope of scoping study for second MEITI report</li> <li>• Government to nominate MGE representative to MEITI MSG</li> <li>• MGJEA to nominate representative for MEITI MSG</li> <li>• MONREC and MGE to review confidentiality provisions in gemstone contracts as soon as possible, and prepare any necessary legal/regulatory mechanisms or EITI disclosure obligations for gemstone producers to overcome contractual barriers to disclosure</li> <li>• MSG to undertake a study on status of ASM gemstone mining in Myanmar</li> <li>• MSG to agree and propose a way to enter into dialogue with UMEHL and MEC, to begin engagement with them around EITI issues and to understand the current involvement of these two companies in the sector</li> <li>• MSG to engage with MONREC, MGE as well as DICA as soon as possible, to begin developing a roadmap for disclosure of Beneficial Ownership information during 2016. MSG could consider requiring some companies (e.g. over an agreed threshold) to disclose information about Beneficial Ownership for the second EITI report.</li> <li>• MGE (and MONREC) to prepare information regarding all gemstone production permits that were allocated during the 2014-2015 period in time for second EITI report</li> <li>• MSG to ensure all available data on gemstone exports is collated in time for scoping study</li> <li>• Information on MGE's accounts, including 'Other Accounts', should be made publicly available.</li> </ul>
<b>Institutional Strengthening</b>	<ul style="list-style-type: none"> <li>• Government to consider clarifying and separating MGE's policy and regulatory functions from its owner and operator functions</li> <li>• A review MGE's governance structure, revenue management systems and procedures to be carried out</li> <li>• Government to consider establishment of a separate Gemstone Regulatory Authority/Agency, which could be an independent or quasi-independent body responsible for regulatory enforcement and oversight</li> <li>• A review of Gems Emporium governance practices and procedures to be carried out</li> <li>• A review of government gemstone committees – objectives, functions, governance and composition – to be carried out</li> <li>• MGE to begin preparing required information for the minerals cadastre, in electronic/computerised format</li> <li>• Capacity needs assessment of MGE to be carried out and capacity development/ technical assistance/ training options identified and prioritised.</li> </ul>

	Key Recommendations
<b>Legal and Regulatory Framework</b>	<ul style="list-style-type: none"> <li>• MONREC to establish an inter-ministerial Gemstone Permit Review Committee to review all current permits/contracts and permit allocation procedures, assess compliance against a set of agreed parameters and take action as appropriate. The committee should ensure that any new contracts are awarded on terms that include necessary measures for EITI disclosure, anti-corruption, and environmental and social safeguards. The mandate of the committee could also be broader, e.g. oversight of both legal and regulatory assessment, and development of National Gemstone Sector Strategy (below)</li> <li>• A systematic assessment of the legal and regulatory framework (amended 2016 Gemstone Law and draft Rules and Regulations) and fiscal regime against good practice international standards should be carried out as soon as possible to determine gaps in gemstone sector governance, transparency and accountability (including e.g. production management, environmental and social safeguards, revenue collection etc.) – this should include options for strengthening and developing appropriate systems and procedures (e.g. royalty collection after sale) where necessary. The assessment could include collation and publication of all applicable existing laws, rules, regulations and procedures to make it easier to see what the framework is and have everything together in one place</li> <li>• Development of a National Gemstone Sector Strategy to provide strategic framework for the responsible development of the sector over coming years. This should include a public consultation process and possibly a national conference</li> <li>• A review of prohibition on foreign engagement in sector to be considered – to include an assessment of options</li> <li>• Training, awareness raising and capacity development be delivered/offered to gemstone producers as well as MGE officials on issues of responsible gemstone production, international good practice standards, and environmental and social impact management.</li> </ul>
<b>Production/Export Monitoring and Valuation</b>	<ul style="list-style-type: none"> <li>• A review of official production monitoring and valuation procedures to be carried out, to understand opportunities for improvement</li> <li>• Provision of capacity development and support to MONREC/MGE for strengthened inspection, valuation, production and export monitoring procedures</li> <li>• Customs Department representatives to work closely with other relevant departments (MGE, MONREC, IRD, etc.) to strengthen border monitoring and controls with respect to gemstone smuggling. Provision of technical assistance to Customs and other relevant departments to build capacity and provide appropriate support to carry out this function effectively</li> <li>• A review of existing export policies and procedures to be carried out, and options for establishment of specific export procedures adapted to gemstones, or simplified procedures for small or informal traders to be considered</li> <li>• Myanmar to ensure clear, fair and transparent terms of trade with China, and consider options for collaborative approach to addressing illegal /informal cross-border smuggling</li> <li>• The viability of a jade (or coloured stones) traceability or certification mechanism for Myanmar to be formally assessed in 3-5 years after broader governance reforms are well underway.</li> </ul>
<b>Geoscience Data and Management</b>	<ul style="list-style-type: none"> <li>• Comprehensive Geological Surveys to be carried out at main gem-producing areas to better understand potential reserves – these may require technical assistance as necessary.</li> </ul>

	Key Recommendations
<b>Environmental and Social Impact Management</b>	<ul style="list-style-type: none"> <li>• Establish a 'Grievance mechanism'/'Mining Sector Ombudsman' for transparent and accountable treatment of reported grievances, accessible to all communities and stakeholders with a clear mandate and accountability structure</li> <li>• MONREC/MGE to review the use of explosives in gemstone mining, and options for addressing the supply and management of explosives be considered</li> <li>• Capacity development and support to MONREC (in particular MGE and Environmental Conservation Department) for EIA Procedures implementation and strengthened environmental and social impact management</li> <li>• MONREC to commence IEE and EIA implementation for existing permit holders</li> <li>• Pilot project for responsibly sourced Myanmar gemstones - requiring close collaboration with MGJEA, MGE and civil society. The pilot project will involve a few gemstone producers working towards an agreed set of responsibility criteria and benefitting from facilitated access to international jewellery markets.</li> </ul>
<b>Value and Job Creation</b>	<ul style="list-style-type: none"> <li>• Further research required to assess and evaluate lapidary/cutting and polishing, gemstone treatment processes, lab testing and certification and jewellery production options, to understand the potential value added that improvements and higher quality standards could bring to the domestic market. A Jewellery Sector Strategy could be developed, which could fit within the larger 'National Gemstone Sector Strategy'</li> <li>• Establishment of a School of Mines and Gemstones</li> <li>• A collaborative training programme to be developed with MGJEA for gemstone producers – on responsible gemstone production, EITI, good practice international standards, and environmental and social impact management. The training programme could be rolled out by MGJEA during 2017-2018.</li> </ul>

## 9.2 Broader Recommendations

### 9.2.1 EITI

#### EITI Scope

MGE has indicated that it will provide all available data on the gemstone sector for the purpose of the second EITI report, including production data. It is recommended that all production permit holders be included and all gemstone sector revenue streams be included in the scope of the second MEITI report scoping study, and that the MSG considers including all trading license holders also. This will enable the Independent Administrator to analyse all information provided, and recommend an appropriate materiality threshold and scope for Myanmar's second EITI report, which the MSG can then discuss and approve. A phased approach to including all permit and license holders in the scope of EITI reporting over the following three years is recommended. The second EITI report should also provide estimates, where feasible, of the informal sector. This will go some way in addressing transparency and governance of the sector in line with the EITI Standard in the short term.

However, there are clearly limitations to the scope in that available data will not cover the informal sector and processes, which as outlined in this report represent a significant and material proportion of the gemstone sector. As such, it is important that the MSG submit a request for 'Adapted Implementation' of EITI to the EITI Board as soon as possible, in line with EITI Requirement 8.1 on Adapted Implementation of the EITI.

#### EITI Multi-Stakeholder Group

It is recommended that a senior representative of MGE be invited to sit on the MSG as a main government MSG member. This will ensure sufficient coordination and information sharing between MGE and other MSG members and key EITI stakeholders. It is also recommended that a senior representative of MGJEA (or designated MGJEA member) be invited to sit on the MSG as a main industry MSG member. This will help ensure EITI Requirement 1 is met.

#### EITI Disclosure

It is strongly recommended that confidentiality provisions in contracts be reviewed as soon as possible and any necessary legal/ regulatory mechanisms or EITI disclosure obligations be placed on gemstone producers to overcome contractual barriers to disclosure, in time for the second MEITI report. This is also in line with the Independent Administrator's recommendations in the first MEITI report. The MEITI MSG should work with MONREC and MGE during 2016 to ensure the required information is ready and available for the second MEITI report. Implementation of these recommendations will help Myanmar meet EITI Requirement 2.4.

#### Allocation of Permits

In line with EITI Requirement 2.2, MONREC and MGE need to prepare information regarding all gemstone production permits that were allocated during the 2014-2015 period, in time for the second EITI report including:

- a description of the process for transferring or awarding the license
- the technical and financial criteria used
- information about the recipient(s) of the license that has been transferred or awarded, including consortium members where applicable
- any non-trivial deviations from the applicable legal and regulatory framework governing license transfers and awards.

MONREC and MGE should review any confidentiality provisions in existing gemstone contracts as soon as possible, and prepare any necessary legal/regulatory mechanisms or EITI disclosure obligations for gemstone producers to overcome contractual barriers to disclosure.

It is recommended that information on MGE's accounts, including 'Other Accounts', should be made publicly available.

### **UMEHL and MEC**

It is recommended that the EITI MSG agrees and proposes a way to enter into dialogue with UMEHL and MEC, to begin engaging with them around EITI issues and to understand the current involvement of these two companies in the sector. In line with the recommendations of the first MEITI report, it is recommended that these two military holding companies be regarded as 'state owned enterprises' for the purpose of EITI reporting. This will also help Myanmar meet EITI Requirements 2.6, 4, 5, and 6.

### **Beneficial Ownership**

Given the strengthened requirement for Beneficial Ownership disclosure in the new 2016 EITI Standard (Requirement 2.5), it is strongly recommended that the MSG engage with MGE and MONREC as well as DICA as soon as possible, to implement the Independent Administrator's recommendations from the first MEITI report and develop a roadmap for disclosure of Beneficial Ownership information during 2016. The MSG could consider requiring some companies (e.g. over an agreed threshold) to disclose information about Beneficial Ownership for the second EITI report.

### **Exports**

In line with EITI Requirement 3.3 all available data on gemstone exports should be provided to the Independent Administrator for the next EITI report and should be collated in time for scoping study.

### **ASM and Subsistence Mining**

It is recommended that the MEITI MSG undertake a study during 2016 to better understand the status of ASM gemstone mining in Myanmar. The MEITI Workplan already includes a review of the ASM sector in Myanmar, but a separate study focusing only on the gemstone sector should be carried out. The scope of this study should include the handpickers. This will help Myanmar meet EITI Requirement 6.3 (a).

## **9.2.2 Institutional Strengthening**

### **MGE**

As the de facto policy maker, regulator, and owner/operator of Myanmar's gemstone sector, MGE's official role, responsibilities, relationship with MONREC, governance structure and revenue management systems and procedures could all benefit from improved transparency. Its roles and responsibilities currently also reflect a conflict of interests. It is important that any government considerations of institutional reform in the gemstone sector maintain this as a key issue to be addressed, and consider clarifying and separating MGE's policy and regulatory functions from its owner/operator functions.

In addition, a review of MGE's governance structure, revenue management systems and procedures would enable MGE to function efficiently, effectively and responsibly as one of Myanmar's leading state owned companies. The possibility of establishing some kind of 'Gemstone Regulatory Authority' or 'Agency', should be considered, which could be an independent or quasi-independent body responsible for regulatory enforcement and oversight.

MGE currently has insufficient staff with the required technical, professional and vocational skills and experience to perform its range of duties and functions as effectively as possible. It is recommended that a capacity needs assessment of MGE to be carried out and skills development/ technical assistance/ training options should be identified and prioritised accordingly.

### **Committees**

The governance structures and divisions of roles and responsibilities of the Leading Committee for Myanmar Gemstone Works Development and the Central Gemstone Supervisory Committee are not clear. It is also not clear how the two committees function and how they work together. The role and management of the Central Gemstone Emporium Committee is also not clear. It is recommended that a review of these committees is carried out to assess effectiveness, functionality and transparency.

### **Gems Emporium**

The Gems Emporium represents the main official channel through which jade and coloured stones are sold in Myanmar, and is responsible for managing transactions worth millions of Euros every year. It is therefore essential to include all fiscal data related to the Gems Emporium in the next EITI report in line with EITI Requirements 4, 5 and 6. There is a lack of transparency regarding governance of the Gems Emporium, and any related policies and procedures that may exist. There are also widespread reports of informal trading practices at the Gems Emporium. The role and responsibilities of the Central Gems Emporium Committee and how it relates to the other government-led gemstone committees are not clear and require clarification. It is recommended that a review of Gems Emporium governance practices and procedures is carried out. This should result in prioritised recommendations, actions and targeted support to ensure greater efficiency, transparency and accountability in the ways in which the auctions are held.

### **Register of Permits/Cadastre**

MGE holds all the relevant information pertaining to gemstone permits that is required for the cadastre. As such, MGE should begin preparing the required information that will be required for the minerals cadastre, in electronic/computerised format. The information should include coordinates of permits, duration of tenure, commodity being produced, transfers of rights, permit holder name as well as fees paid. This will help bring Myanmar into line with EITI Requirement 2.3 'Register of Licenses'.

## **9.2.3 Legal and Regulatory Framework**

### **Gemstone Permit Review Committee**

MONREC should establish an inter-ministerial Gemstone Permit Review Committee as soon as possible to review all current permits/contracts and permit allocation procedures, assess compliance against a set of agreed parameters and take action as appropriate. It is estimated that approximately 11,808 permits will be expiring or up for renewal during 2016. This presents an opportunity for government to review and revise the terms and procedures of any new contracts issued. The committee can ensure that any new contracts are awarded on terms that include necessary measures for EITI disclosure, anti-corruption, and environmental and social safeguards and that any 'model contract' is amended accordingly. The mandate of the committee could also be broader, e.g. oversight of both legal and regulatory assessment, and development of National Gemstone Sector Strategy (below).

### **Assessment /Review of Legal and Regulatory Framework**

The extent to which the 2016 amendments to the 1995 Gemstone Law and the rules and regulations drafted by MGE will be fully embraced by the new government, is not yet clear. The change in government represents an opportunity to review the legal and regulatory system to bring it into line with good practice international standards. It is therefore recommended that a systematic assessment of the legal and regulatory framework and fiscal regime against good practice international standards should be carried out as soon as possible. This should determine gaps in gemstone sector governance, transparency and accountability (including e.g. production management, environmental and social safeguards, revenue collection etc.) and include options for strengthening and developing appropriate systems and procedures (e.g. royalty collection after sale) where necessary. The assessment could include collation and publication of all applicable existing laws, rules, regulations and procedures to make it easier to see what the framework is and have everything together in one place.

### **National Gemstone Sector Strategy**

A National Gemstone Sector Strategy should be developed to provide a strategic framework for the responsible development of the sector over coming years. The development of the strategy can begin with the review of permits and legal and regulatory framework (above). It should include a public consultation process, which could include a national conference on the gemstone sector.

### **Foreign Ownership**

It is widely known that there is considerable foreign/Chinese beneficial ownership of the sector. The prohibition on foreign ownership contributes to the high levels of opacity in the sector. A review of prohibition on foreign engagement in the sector should be considered. This should include an assessment of options or a phased approach to foreign engagement.

### **Training on Standards**

Training, awareness raising and capacity development be delivered/offered to gemstone producers as well as MGE officials on issues of responsible gemstone production, international good practice standards, and environmental and social impact management.

## **9.2.4 Production/Export Monitoring and Valuation**

### **Production Monitoring**

MONREC and MGE could benefit significantly from strengthened capacity and technical expertise to begin addressing the weaknesses in monitoring and oversight of gemstone production. Regional offices are also under-resourced and lack sufficient authority or influence. It is recommended that a review of current production and inspection procedures be carried out to understand opportunities for improvement. Further to this review, it is recommended that capacity development and support is provided to MONREC and MGE for strengthened inspection, valuation, production and export monitoring procedures accordingly. This could include for example, assistance to develop appropriate systems and procedures for the monitoring and reporting of gemstone production.

### **Valuation**

Given the lack of transparency about official valuation procedures, and the fact that gemstones are particularly difficult to value, it is recommended that a review of official valuation procedures should be carried out, to understand opportunities for improvement. Support to government could be provided to build capacity and understanding about good international practice with regard to gemstone valuation and procedures.

### **Exports**

Due to the lack of reliable, concise data in this area, it is essential that border monitoring and controls with respect to gemstone smuggling are strengthened. The role of the Customs Department is clearly important in addressing this issue. However, there is insufficient transparency regarding customs policies and procedures and what requirements are applied at Myanmar's borders. To address this, it is essential that Customs Department representatives work closely with other relevant departments (MGE, MONREC, IRD, etc.) to strengthen border monitoring and controls with respect to gemstone smuggling. A review of existing export policies and procedures should be carried out, and options for the establishment of specific export procedures adapted to gemstones, or simplified procedures for small or informal traders can be considered. Technical assistance could be provided to Customs and other relevant departments to build capacity and provide appropriate support to carry out this function effectively.

China's position as the global leader on the international gems and jewellery market continues to rise. Given that Myanmar is China's closest gem-producing neighbour there are major implications for Myanmar. It is therefore important for Myanmar to continue to maintain clear, fair and transparent terms of trade with China, and to consider options for a collaborative approach to addressing illegal /informal cross-border smuggling in a comprehensive manner.

The viability of a jade (or coloured stones) traceability or certification mechanism for Myanmar should be formally assessed in 3-5 years after the new government is firmly established and any institutional and governance reforms are well underway.

## **9.2.5 Geoscience Data and Management**

Comprehensive geological surveys should be carried out in Myanmar's main gem-producing areas to better understand potential reserves. These may require technical assistance as necessary.

## **9.2.6 Environmental and Social Impact Management**

The adoption of EIA Procedures is a significant step forwards, but there are concerns about government capacity to ensure effective implementation, monitoring and enforcement. MGE has also indicated insufficient capacity internally to support implementation of these Procedures. It is therefore recommended that capacity development and support be provided to relevant MGE and MONREC (Environmental Conservation Department) staff at both national and sub-national levels, to better

understand and implement the Procedures. Support could extend to capacity development and/or technical assistance for strengthened environmental and social impact management more broadly. MONREC should commence IEE and EIA implementation for existing permit holders as soon as possible. All new production permits should also include sufficient environmental and social safeguards, including EIA Procedure obligations.

It is recommended that a 'Grievance mechanism' or 'Mining Sector Ombudsman' for the transparent and accountable treatment of reported grievances be established. This should be accessible to all communities and stakeholders and have a clear mandate and accountability structure.

Given the huge black market for illegal explosives in gem-mining areas, it is recommended that MONREC/MGE formally review the use of explosives in gemstone mining, and consider options for addressing the supply and management of explosives.

A pilot project for responsibly sourced Myanmar gemstones should be developed. The project will require close collaboration with MGJEA, MGE and civil society. It will involve a few gemstone producers working towards an agreed set of responsibility criteria with the provision of technical support, and benefitting from facilitated access to international jewellery markets.

### **9.2.7 Value and Job Creation**

#### **Gems and Jewellery Value Chain**

Myanmar is currently less competitive than it could be in terms of value addition in the gems and jewellery sector. There is a lack of sufficient skills as well as technology in relation to gemstone cutting, polishing treatment, lab testing and certification and jewellery production in Myanmar. It is recommended that further research be carried out to assess and evaluate lapidary/cutting and polishing, gemstone treatment processes, lab testing and certification and jewellery production options, to understand the potential value added that improvements and higher quality standards could bring to the domestic market. A Jewellery Sector Strategy could be developed, which could fit within the larger 'National Gemstone Sector Strategy'. This could focus on short, medium and longer-term priorities, goals and objectives, and on collaborative, systemic planning and capacity development to achieve these.

There is also rapidly increasing global consumer interest in responsible supply chains, traceability of gemstones from mine to market, and in 'ethically sourced' or responsibly produced gemstones. This represents a huge opportunity for Myanmar's gemstone miners to embrace this as yet un-tapped consumer market.

#### **Skills Development and Training**

It is recommended that a 'School of Mines and Gemstones' be established to provide training and skills development in key areas relating to gemstone mining and the gems and jewellery value chain, including inspection, international environmental and social standards, gem lapidary/cutting/polishing, lab testing and certification and jewellery design and manufacturing.

A collaborative training programme could be developed with MGJEA for gemstone producers, focusing on responsible gemstone production, EITI, good practice international standards, and environmental and social impact management. The training programme should be rolled out by MGJEA during 2017-2018.



## Annex 1: Summary of Myanmar EITI First Report and Scoping Study

The MEITI Multi-Stakeholder Group (MSG) was established in January 2014, and comprises 21 members representing government, the private sector and civil society. As the decision-making and implementing body of EITI, the MSG agreed a 3-year 'workplan' of activities in 2014, which was then revised during 2015. The MSG is now working to implement the workplan and ensure its reporting is on track.

The MEITI workplan is aligned around 4 key objectives. Each objective has a number of agreed activities under it. The 4 objectives are:

- Contribute to broader reform for resource governance
- Create an enabling environment for EITI
- Prepare and facilitate the process for implementing EITI
- Increase the accessibility of data (Communication and Information Sharing)

One of the agreed workplan activities is a review of the jade and gemstone sectors (MEITI MSG Workplan Activity number 1.2.8), as follows: *"Carry out review of the jade and gemstone sectors for potential inclusion in scope of 2nd MEITI report (If not effectively covered and/or included in scoping study and first EITI report)"*. The MSG concluded that it should begin in November 2015, after the MEITI Scoping Study had been produced.

In December 2014, the MEITI MSG agreed that the scope of the scoping study (for the first MEITI report) should include:

- oil and gas sectors
- mining sector (including jade and gemstones, according to formal government Gem Emporium data only)
- Financial year 2013-2014.

In mid-2015, international accounting firm Moore Stephens was contracted as the Independent Administrator to carry out the scoping study for the MEITI MSG (to determine the scope of the first EITI report), followed by production of Myanmar's first EITI report.

The scoping study was completed in October 2015, after which the MSG decided that three sub-sectors: oil and gas, gems and jade, and other minerals would be covered in Myanmar's first EITI report. It concluded, based on data made available to Moore Stephens, that for FY 2013-2014 the mining sector accounted for 21% of government revenues from the extractive sector (oil and gas = 79%), of which 97.5% was attributable to the gemstone sub-sector (using available non-tax revenue data from Ministry of Mines and Gems Emporium formal data). Official revenues from gemstone sales at the Gems Emporium in 2014 were estimated at USD 3.4 billion.

Based on an analysis of the data received, Moore Stephens recommended a materiality threshold of Kyats 10 billion (USD 2.3 million) for the 256 jade and gems operators (289 licences), which covered 67% of the government revenues collected from the sector for that year. The remaining 33% of revenues was attributable to companies that sell or export directly to customers (not via the Gems Emporium) and also make payments to government.

The scoping study identified 30 companies whose tax payments to the government in 2013-2014 were over this proposed materiality threshold (according to Gems Emporium data only), and recommended that these should be retained in the scope of the first report. The scoping study also highlighted some inconsistencies in definitions and descriptions of gems and jade related data, and recommended that these could benefit from clarification as well as greater detail.

Further to the recommendations of the scoping study, the MSG agreed that the 30 jade and gems companies (which represent just 2% of total number of companies operating in the sector) identified should be included in the reconciliation scope of the first report with the suggested applicable threshold

of Kyats 10 billion. This meant that in addition to these 30 jade and gems companies, the Ministry of Mines and Myanmar Gems Enterprise (MGE) were also retained in the reconciliation scope of the first report. The MSG also decided that MGE data for companies below the threshold should be disclosed in the first report.

It is also interesting to note that only 4 of the 30 gems and jade companies included in the first MEITI report are 'gems' companies and the remaining 26 are companies that focus only on the jade sub-sector.<sup>130</sup>

The first MEITI Report stated that the gems and jade sub-sector contributed USD 314 million (MMK 365,847,975,019.81 MMK)<sup>131</sup> in total revenues in FY 2013-2014. This was based on formal Gems Emporium data only and did not cover an estimated 53% of the total sub-sector.<sup>132</sup> It did not include any of the following important data:

- a 20% value-based royalty on jade and gems collected at the mine site
- other royalty revenues (10% foreign currency sales royalty)
- taxes paid by companies where production is directly sold or exported
- revenues from sales of the government's shares of gems and jade.

Key points from Myanmar's first EITI report include:

- Total revenue collected from the extractive sector in the fiscal period 2013-2014 amounted to MMK 3,011,283 million (USD 2.5 billion)<sup>133</sup>. Of this, gems and jade represented 13% and other minerals 2%.
- Revenues received by government from gems and jade companies in 2013-14 amounted to MMK 388,767 million (approximately USD 331 million). Of this, MMK 380,197 million was collected by MGE from the Gems Emporium, and MMK 8,570 million in social payments (approx. 7-7.5 million USD).
- According to data provided to the Independent Administrator by MGE, the total sales of jade and gems at the two Gems Emporiums held in Myanmar in 2013-2014 amounted to USD 1,531.61 million (MMK 1,471,130 million).
- This was broken down into 2,361,172 carats of gems and 6,245 tons of jade sold at the two Gems Emporiums.
- According to Myanmar Central Statistical Organisation (CSO) data, the sale of jade amounted to USD 3 billion in 2014.
- According to CSO data, the value of jade and gems exported in 2013-2014 amounted to USD 1.01 billion (accounting for 10% of exports).<sup>134</sup>
- According to data submitted by MGE to the Independent Administrator (based on Gems Emporium data only), the value of gems and jade exported during 2013-2014 amounted to USD 6.56 million and USD 1,444.17 million (total of approximately USD 2.1 billion), respectively.
- Customs department data indicated that total exports of jade in Myanmar for the year 2013-2014 amounted to USD 924.2 million.

There are some notable discrepancies between some of the sources of information, such as the available data on gemstone sector exports. This clearly requires further analysis and clarification. The Independent Administrator also highlighted the apparent material discrepancies between the various information sources published and recommended a need for greater detail and consistency of definition and presentation.

<sup>130</sup> According to MEITI Report Appendix 10.b

<sup>131</sup> Exchange rate 1 USD = 1,165.12 MMK calculated on 09 May 2016 on [www.xe.com/currencyconverter](http://www.xe.com/currencyconverter)

<sup>132</sup> As per MEITI first reconciliation report

<sup>133</sup> Exchange rate 1 USD = 1,165.12 MMK calculated on 09 May 2016 on [www.xe.com/currencyconverter](http://www.xe.com/currencyconverter)

<sup>134</sup> Central Statistical Organisation, Monthly Economic Indicators (March 2015)

## Annex 2: Table of Gemstone Permit Types

	Issuing Authority	Number (as at April 2016)	Allows	Pre 2016 Gemstone Law amendments	Post 2016 Gemstone Law amendments
Gemstone Production Permit	MGE (under Ministry of Mines)	21,392 permits <ul style="list-style-type: none"><li>98% private companies</li><li>2% JVs with MGE</li><li>1,475 companies in total</li></ul>	Exploration, production, trading, processing, jewellery manufacture, retail, export and foreign sales	Designated blocks: <ul style="list-style-type: none"><li>1 acre blocks designated by MONREC</li><li>Up to 50 blocks per company</li><li>Competitive tender – awarded to highest bidder</li><li>3 years tenure</li><li>Re-tender required for renewal</li></ul>	Large Scale: <ul style="list-style-type: none"><li>JV 25% govt/75% company</li><li>Competitive tender – awarded to highest bidder</li><li>Up to 50 acres per permit</li><li>Commercial scale production – technology and machinery may be used</li><li>10 years tenure</li></ul>
				Discovered blocks: <ul style="list-style-type: none"><li>1 acre blocks ‘discovered’ by applicant</li><li>Application</li><li>3 years tenure</li></ul>	Medium Scale: <ul style="list-style-type: none"><li>JV 25% govt/75% company</li><li>Competitive tender – awarded to highest bidder</li><li>Up to 50 acres per permit</li><li>Moderately commercial scale production – technology and machinery may be used</li><li>5 years tenure</li></ul>
				JV partnerships (not in law): <ul style="list-style-type: none"><li>40% govt/60% company</li><li>Application – ‘first come first served’</li><li>5 years tenure</li><li>Up to 160 acres</li></ul>	Small Scale: <ul style="list-style-type: none"><li>Application to MONREC (MGE) from ‘businesses that do not need much capital’ evaluated and issued by relevant State and Division level Scrutinising and Permit Body</li><li>A fair amount of production, technology and machinery may be used</li><li>3 years tenure</li></ul>
					Very Small Scale / Subsistence: <ul style="list-style-type: none"><li>Application to MONREC (MGE), evaluated and issued by State and Division level Scrutinising and Permit Body</li><li>Manual operated equipment and low horsepower machinery only</li><li>1 year tenure</li></ul>
Gemstone Trading License	MGE (under Ministry of Mines)	2,000	Pre 2016 law amendments: <ul style="list-style-type: none"><li>Allowed trading and retail in MMK and foreign currency</li><li>1 year duration</li></ul>		Post 2016 law amendments: <ul style="list-style-type: none"><li>Additionally allows processing, jewellery manufacture, retail and export of both rough and finished stones and jewellery products in MMK and foreign currency</li><li>3 years duration</li></ul>