

Draft Beneficial Ownership Roadmap of Myanmar

FRAMEWORK FOR DISCUSSION:

PART I: Objectives of Myanmar Beneficial Ownership Roadmap

Myanmar's reengagement with the global community and recent economic growth potential attracted a lot of attention from the international businesses, international development partners and her own citizen with renewed hope and optimism. Myanmar became EITI candidate country in 2014 and published the first EITI report in 2016 January albeit some shortcomings, and which was hailed as a major step in transparency and accountability of Myanmar's natural resource governance. Myanmar's budget also derived half of its amount from the natural resource related revenue and with the planned oil and gas project, mining project becoming in the production stage, the country is sure to receive substantial amount in the future as well, thus making it more critical for country's integrity system to expose corrupt practices and to deter embezzlement of public resources. The beneficial ownership disclosure can do just that, and could not be more timely for Myanmar to adopt the measures to bestow trust between the citizen and the state as well as show the commitment of the state to manage its resources responsibly in a transparent manner. Moreover, the beneficial ownership has linkages with the twelve points of national economic policy of the government, and contribute to the successful implementation of those policies. The potential usefulness of the BO disclosure will not confine in the extractive sector governance, it will benefit the national procurement and public infrastructure projects should the government mainstream the BO practices in procurement.

PART II: ROADMAP DRAFTING:

	Considerations What is the current situation in Myanmar in relation to the following topics. e.g. legal framework, data collection, etc?) What challenges need to be addressed?	What steps should be taken? What activities should the MSG conduct?	Who needs to be engaged? Who should be consulted?	Technical assistance needed and who will provide	Timetable	Person responsible for overseeing the activity	Cost	Comments (e.g. risks, level of political commitment needed, other issues that should be flagged)
INSTITUTIONAL FRAMEWORK: Consultation with government agencies	What agencies should be consulted/engaged? - Public Financial Management	- Policy dialogue - Workshop - Round table discussion - Bi-lateral meetings	- International agencies - International EITI Secretariat	- International Secretariat - NRG - WB - Global Witness	2017-2019	- MEITI - MSG - MoPF		

	(MEB, MOPF, JPAC, Auditor General) - President Office - Union Attorney General Office - MONREC - Central Bank - MOEE - Anti-corruption commission - Anti-money laundering taskforce - MFMA - MGJEA - DICA - Myanmar Oil & Gas services association - Myanmar Forest Products Merchants Federation	- Sensitization of BO and presentation of its linkages with the national economic policy	- Economic Coordination Committee - MoNREC - MoPF (MEITI) - MoEE - Myanmar Development Institute	- Publish What You Pay				
Review of legal, regulatory, practical barriers to	- What barriers do you know so far? - The ambiguity of	- Legal review workshop, - seminars - Bi-Meetings, - Peer Country's	- Myanmar Investment Commission, DICA - Parliaments	- Corporate lawyers' experience - International experts on	2017-2018	- MSG, - MEITI - International EITI		Political sensitivity and smart maneuvering skills might be key to deliver

disclosure of BO	<p>the recent political transition might likely pose an obstacle.</p> <ul style="list-style-type: none"> - How will you document these barriers? - No specific BO related law. - Anti-money laundering law. - Foreign Exchange Management Law. - Central Bank Law. - Should consider in Myanmar's investment law? - Taxation law - Company Act - Mining and gemstone law 	<p>learning Experience (Knowledge Sharing),</p> <ul style="list-style-type: none"> - 	<ul style="list-style-type: none"> - MOPF - Attorney General office - MONREC - Myanmar Stock Exchange - Commission on Special Affairs and Legislative Review Committee (U Shwe Mann's Committee) 	<p>shell companies and transfer-pricing mechanism</p> <ul style="list-style-type: none"> - Local Law Firm's expertise on local practices of company incorporation the distinction between public and private companies, - Myanmar Stock Exchange 		<p>secretariat</p> <ul style="list-style-type: none"> - Secondment staff from Attorney General 			
---------------------	---	---	---	--	--	---	--	--	--

	<ul style="list-style-type: none"> - Oil and Gas law - Environmental Conservation law 							
Legislating BO	<ul style="list-style-type: none"> - What amendments or legislation are in the pipeline? - Mining regulations - Oil and Gas regulation - Company Act - Gemstones law and regulations - Forest Law Review and Reform - A possible EITI law? 	<ul style="list-style-type: none"> - Legal review workshop, seminar - Engagement with Parliaments - Fiscal Regimes Review - Bi-lateral meeting with the parliament and forming a caucus on the beneficial ownership - Research on international BO related laws 	<ul style="list-style-type: none"> - Parliament - MOPF - DICA - Attorney General office - MONREC - MOEE 	<ul style="list-style-type: none"> - Corporate lawyers' experience - International experts - International Senior Lawyers Program 	2018	<ul style="list-style-type: none"> - MSG, MEITI, - International EITI secretariat, - Second ment from Attorney General 		Timely and continued engagement with the law makers from the beginning will be essential in order to move this work ahead.
BO DEFINITIONS	<ul style="list-style-type: none"> - EITI standards definition - OECD anti-corruption UN anti- 	MSG should have consensus on how best to represent the interest of the state and the citizen in implementing the Beneficial	MSG will have to engage with all the concerned stakeholders in EITI process	MSG, MEITI	2017	MSG,MEITI (Forming Sub-Committee with relevant institutions),		

	<ul style="list-style-type: none"> - corruption provision - National Anti-corruption law - Existing decrees and practices on transparency and disclosure if there is any - Production Sharing Contract Review 	Ownership requirement of EITI.						
BO in national laws	<ul style="list-style-type: none"> - In kind, in cash, in technical knowhow participation in a company and their relation to the disclosure of BO - The main Company BO and its project BO should be defined. - Public Company 	<ul style="list-style-type: none"> - Collecting registration data throughout the extractive industries from government and collaborative association. - A workshop to define BO in Myanmar. - Project by Project disclosure or company 	<ul style="list-style-type: none"> - State and regional government need to be engaged. - And consult with Third party 	<ul style="list-style-type: none"> - Monitoring and investigation - Third party assistance. 	2017-19 (scoping study- 1year, implementing - 1 year)	<ul style="list-style-type: none"> - MSG - MEITI - Leading Authority 		There is a danger of distortion and misunderstanding between Beneficial Ownership and legal Ownership definition.

	<p>and Private company nature and relations to BO</p> <ul style="list-style-type: none"> - Structure of domestic companies, Understanding corporation in Myanmar - Elimination of some provision in the existing laws, procedures and practices to support the BO disclosure. - Review of the presidential decrees and gazette for the indication of the BO in Myanmar 	level disclosure						
International definitions/ definitions in other countries	<p>What laws define BO or contain references to BO?</p> <ul style="list-style-type: none"> - Anti-money laundering 	Relevant laws should be considered	<ul style="list-style-type: none"> - Union Attorney General office and relevant ministry concern. 	International and local expertise is needed.	<p>Jan-2017 to July-2017.</p> <p>July-2017 to</p>	MSG		Guidance or master plan should be developed

	<p>law (14/2014)</p> <ul style="list-style-type: none"> - Foreign exchange management law - OECD countries definition? - Any ASEAN related laws? 		<ul style="list-style-type: none"> - MSG and UAG will be consulted 		December -2017.			
Agreement on ownership thresholds	<p>What existing definitions are most appropriate given Myanmar's objectives for BO implementation?</p> <ul style="list-style-type: none"> - Anti-money laundering law (14/2014) - Foreign exchange management law - Myanmar Investment law - Immigration Law 	<p>Exposure trip for capacity Building</p> <p>Comparative study of BO across EITI countries and pilot countries of BO</p>	<p>MSG and MEITI will be engage and consult with International experts as well as domestic tax accountants, lawyers</p>	International facilitator	Quarterly short term.	MSG – technical team		
POLITICALLY EXPOSED PERSONS	<p>What threshold will be appropriate given Myanmar's objectives for BO?</p>	<p>Awareness to the private sector.</p> <p>Informed discussion with the government</p>	<p>Government and relevant ministry, NRGi and MCRB</p>	More study from other countries	2017	MSG		<p>According to EITI Standard, the best threshold amount should</p>

	<ul style="list-style-type: none"> - 5% minimize or so. (depend on the project cost) - Study of the existing PEPs definition - International treaty 							be set close to zero per cent.
National definitions and reporting requirements for PEPs	<ul style="list-style-type: none"> - Adoption of government on the declaration of the conflict of interest - policy for the senior government officials for both political and administrative appointees - Politics and economics conflict of interest - The parliament need to be engaged 	Link with <ul style="list-style-type: none"> - anti-corruption commission, - National Economic Coordination Committee (NECC) 	<ul style="list-style-type: none"> - National coordinator will engage. - MSG will appoint a dedicated staff for BO roadmap implementation 	Grievance team	2018	MSG		Need to be done
LEVEL OF DISCLOSURE	nationality, residence, residential address,	<ul style="list-style-type: none"> - Define the scope in MSG 	<ul style="list-style-type: none"> - DICA - Head of the Companies 	BO consultant	2018-2020	<ul style="list-style-type: none"> - MSG - MEITI 		Risk <ul style="list-style-type: none"> - Funding availability

AND DATA RELIABILITY	<p>level of ownership, date of birth, stock share, NRC number, Branches,</p> <p>What are the opportunities and challenges with such disclosures?</p> <ul style="list-style-type: none"> - Data integrated in one place - Increased in revenue - Manual data - Weakness in coordination and sharing information among ministries - Delay in data collection • How will you ensure data reliability? 	<p>meeting for EITI report</p> <ul style="list-style-type: none"> - MSG Meet with the company Heads - Workshop with the private sector for awareness raising on BO - According to the output of the workshop, MSG meet with the relevant Ministry to start and move the BO Process 	<p>included in the EITI report</p> <ul style="list-style-type: none"> - Relevant ministry for license - Stock exchange - MIC 	Consolidation of the Data Management		- Relevant Ministry		<ul style="list-style-type: none"> - Tight schedules - Not Clear scoping defined yet - To Start MSG Meeting
DATA TIMELINESS	What would be the most appropriate time for data collection?	<ul style="list-style-type: none"> - Yearly list of BO, - license registration, 	<ul style="list-style-type: none"> - MOGE, - MGE, - License Registration 	<ul style="list-style-type: none"> - International Secretariat - WB 	Yearly	<ul style="list-style-type: none"> - MSG - MEITI - MoPF 		-

	To be done together with third party. How will you reflect changes in ownership over time?	<ul style="list-style-type: none"> - DICA, - MOGE, - MGE(Before contract), - MSG take data by linking with DICA 	<ul style="list-style-type: none"> - DICA, - ME(1,2), - Forestry Dept;, - Ministry of Industries (MOI) 					
DATA COLLECTION PROCEDURES AND DATA ACCESSIBILITY	<p>Which companies should participate?</p> <p>How will data be collected?</p> <p>Will the MSG develop its own BO declaration form?</p> <p>How does the MSG intend to make the data accessible?</p> <p>How will it be published?</p> <p>Will the MSG establish a BO register?</p> <p>Will this be mainstreamed?</p>	<p>All Related Extractive Industries</p> <p>MSG (IA rent?),</p> <p>Related Ministries,</p> <p>Online and public awareness</p> <p>Newspaper,</p> <p>Data collection Team (Technical Sub-Committee),</p>	<p>All Related Extractive Industries,</p> <p>MSG(IA rent?),</p> <p>Related Ministries,</p> <p>Online and public awareness</p> <p>Newspaper,</p> <p>Data collection Team (Technical Sub-Committee),</p>	<ul style="list-style-type: none"> - International Secretariat - Consultant 	Yearly	<ul style="list-style-type: none"> - MSG - MEITI - Relevant Institutions 		Before authorized persons have not done yet the data collection task should be included in the ToR of IA when they develop scoping study for the reconciliation report.

PART III. For further discussion

1. Cost for each item
MSG should also calculate the estimated cost of BO roadmap implementation by agreeing on how many national workshops, seminars, bi-lateral meetings and work group meetings needed as well as some consultant fees.
2. Technical and financial assistance needed – is a consultant needed to support the BO implementation (for finalizing the roadmap, for data collection...)? Yes, a dedicated BO staff and consultant is needed
3. Timetable for each activity
(MSG will have to agree on the detailed time table)
4. Persons responsible for each activity. Is a working group needed?

(MSG will have to form another sub-committee aka working group on BO as to drive the agenda.)