

## 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:

	<b>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?</b>	<b>What steps should be taken? What activities should the MSG conduct?</b>	<b>Who needs to be engaged? Who should be consulted?</b>	<b>Technical assistance needed and who will provide</b>	<b>Timetable</b>	<b>Person responsible for overseeing the activity</b>	<b>Cost</b>	<b>Comments (e.g. risks, level of political commitment needed, other issues that should be flagged)</b>
<b>INSTITUTIONAL FRAMEWORK:</b> Consultation with government agencies	What agencies should be consulted/ engaged?  - Public Financial Management	Conduct policy dialogues  Workshop/Round table discussion, and other awareness raising activities	- International agencies - International EITI Secretariat	- International Secretariat - NRG - WB - Global Witness	2017-2019	- MEITI - MSG - MoPF		

	<p>(MEB, MOPF, JPAC, Auditor General)</p> <ul style="list-style-type: none"> <li>- President Office</li> <li>- Union Attorney General Office</li> <li>- MONREC</li> <li>- Central Bank</li> <li>- MOEE</li> <li>- Anti-corruption commission</li> <li>- Anti-money laundering taskforce</li> <li>- MFMA</li> <li>- MGJEA</li> <li>- DICA</li> <li>- Myanmar Oil &amp; Gas services association</li> <li>- Myanmar Forest Products Merchants Federation</li> </ul>	<p>Conduct bilateral meetings with relevant stakeholders</p> <p>Sensitization of BO and presentation of its linkages with the national economic policy</p> <p>-Form BO subcommittee</p> <p>Ensure high level engagement</p> <p>-Align BO regulations with existing laws</p> <p>Propose inclusion of BO provisions in Company Act or Law</p> <p>Examine gaps between central &amp; subnational levels , and link activities between central to sub national levels .</p> <p>Cooperation with related departments</p>	<ul style="list-style-type: none"> <li>- Economic Coordination Committee</li> <li>- MoNREC</li> <li>- MoPF (MEITI)</li> <li>- MoEE</li> <li>- Myanmar Development Institute</li> </ul>	<ul style="list-style-type: none"> <li>- Publish What You Pay</li> </ul>					
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		<p>Consultation with subnational level</p> <p>Awareness raising activities- develop feedback systems from the public</p> <p>Utilize existing IT systems</p>						
<p>Review of legal, regulatory, practical barriers to disclosure of BO</p>	<ul style="list-style-type: none"> <li>- What barriers do you know so far?</li> <li>- The ambiguity of the recent political transition might likely pose an obstacle.</li> <li>- How will you document these barriers?</li> <li>- No specific BO related law.</li> <li>- Anti-money laundering law.</li> <li>- Foreign Exchange Management Law.</li> </ul>	<p>Legal review workshop, seminars</p> <p>Bilateral meetings, Peer Country's learning Experience (Knowledge Sharing),</p>	<ul style="list-style-type: none"> <li>- Myanmar Investment Commission, DICA</li> <li>- Parliaments</li> <li>- MOPF</li> <li>- Attorney General office</li> <li>- MONREC</li> <li>- Myanmar Stock Exchange</li> <li>- Commission on Special Affairs and Legislative Review Committee (U Shwe Mann's Committee)</li> </ul>	<ul style="list-style-type: none"> <li>- Corporate lawyers' experience</li> <li>- International experts on shell companies and transfer-pricing mechanism</li> <li>- Local Law Firm's expertise on local practices of company incorporation the distinction between public and private companies,</li> </ul>	<p>2017-2018</p>	<p>MSG, MEITI International EITI secretariat</p> <p>Secondment staff from Attorney General</p>		<p>Political sensitivity and smart maneuvering skills should be considered</p>

	<ul style="list-style-type: none"> <li>- Central Bank Law.</li> <li>- Should consider in Myanmar's investment law?</li> <li>- Taxation law</li> <li>- Company Act</li> <li>- Mining and gemstone law</li> <li>- Oil and Gas law</li> <li>- Environmental Conservation law</li> </ul>			<ul style="list-style-type: none"> <li>- Myanmar Stock Exchange</li> </ul>				
Legislating BO	<ul style="list-style-type: none"> <li>- What amendments or legislation are in the pipeline?</li> <li>- Mining regulations</li> <li>- Oil and Gas regulation</li> <li>- Company Act</li> </ul>	<p>Legal review workshop, seminar</p> <p>Engagement with Parliaments</p> <p>Fiscal Regimes Review</p> <p>Bilateral meeting with the parliament and forming a caucus on the beneficial ownership</p>	<ul style="list-style-type: none"> <li>- Parliament</li> <li>- MOPF</li> <li>- DICA</li> <li>- Attorney General office</li> <li>- MONREC</li> <li>- MOEE</li> </ul>	<ul style="list-style-type: none"> <li>- Corporate lawyers' experience</li> <li>- International experts</li> <li>- International Senior Lawyers Program</li> </ul>	2018	MSG MEITI International EITI secretariat, Secondment from Attorney General		Timely and continued engagement with the law makers from the beginning will be essential in order to move this work ahead.

	<ul style="list-style-type: none"> <li>- Gemstones law and regulations</li> <li>- Forest Law Review and Reform</li> <li>- Consider possibility of an EITI law?</li> </ul>	Research on international BO related laws						
BO DEFINITIONS	<ul style="list-style-type: none"> <li>- EITI standards definition</li> <li>- OECD anti-corruption UN anti-corruption provision</li> <li>- National Anti-corruption law</li> <li>- Existing decrees and practices on transparency and disclosure if there is any</li> <li>- Production Sharing Contract Review</li> <li>- BO definition still unclear</li> </ul>	<p>MSG should have consensus on how best to represent the interest of the state and the citizen in implementing the Beneficial Ownership requirement of EITI.</p> <p>MSG will conduct activities to explain who the shareholders are</p> <p>MSG will get data from relevant agencies such as financial intelligence unit</p> <p>MSG to conduct activities to understand company structure</p>	MSG will have to engage with all the concerned stakeholders in EITI process	MSG, MEITI	2017	MSG,MEITI (Forming Sub-Committee with relevant institutions),		

		<p>and types of ownership</p> <p>Conduct legal review to identify gaps in law enforcement</p> <p>Review list of current investors</p> <p>Conduct awareness raising activities and workshops with stakeholders</p> <p>Study the possibility of providing incentive for BO disclosure</p> <p>MSG will look into how to identify companies and other details such as office address, list of directors, percentage of share holding, sources of finances , profit sharing ratio</p> <p>Build comprehensive database for companies &amp; beneficial owners</p>						
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		<p>Facilitate inter-coordination among ministries, companies &amp; MSG</p> <p>Require IT Development</p> <p>Build knowledge about BO's legal framework</p>						
BO in national laws	<ul style="list-style-type: none"> <li>- In kind, in cash, in technical knowhow participation in a company and their relation to the disclosure of BO</li> <li>- The main Company BO and its project BO should be defined.</li> <li>- Public Company and Private company nature and relations to BO</li> </ul>	<p>Collecting registration data throughout the extractive industries from government and collaborative association.</p> <p>Conduct a workshop to define BO in Myanmar.</p> <p>Ensure project by project disclosure or company level disclosure</p> <p>Examine existing laws</p>	<ul style="list-style-type: none"> <li>- State and regional government need to be engaged.</li> <li>- And consult with Third party</li> </ul>	<ul style="list-style-type: none"> <li>- Monitoring and investigation</li> <li>- Third party assistance.</li> </ul>	2017-19 (scoping study- 1 <sup>st</sup> year, Implementation - 1 year)	<ul style="list-style-type: none"> <li>- MSG</li> <li>- MEITI</li> <li>- Leading Authority</li> </ul>		There is a danger of distortion and misunderstanding between Beneficial Ownership and legal Ownership definition.

	<ul style="list-style-type: none"> <li>- Structure of domestic companies, Understanding corporation in Myanmar</li> <li>- Elimination of some provision in the existing laws, procedures and practices to support the BO disclosure.</li> <li>- Review of the presidential decrees and gazette for the indication of the BO in Myanmar</li> </ul>							
International definitions/ definitions in other countries	<p>What laws define BO or contain references to BO?</p> <ul style="list-style-type: none"> <li>- Anti-money laundering law (14/2014)</li> <li>- Foreign exchange management law</li> </ul>	Relevant laws should be considered	<ul style="list-style-type: none"> <li>- Union Attorney General office and relevant ministry.</li> <li>- MSG and UAG will be consulted</li> </ul>	International and local expertise is needed.	<p>Jan-2017 to July-2017.</p> <p>July-2017 to December -2017.</p>	MSG		Guidance or master plan should be developed



	<ul style="list-style-type: none"> <li>- OECD countries definition?</li> <li>- Any ASEAN related laws?</li> </ul>							
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"> <li>- Anti-money laundering law (14/2014)</li> <li>- Foreign exchange management law</li> <li>- Myanmar Investment law</li> <li>- Immigration Law</li> </ul>	<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> <ul style="list-style-type: none"> <li>- 5% minimum or so, depending on the project cost</li> </ul>	<p>Raise awareness within the private sector.</p> <p>Conduct informed discussions with the government</p> <p>MSG will document all laws applicable to PEPs</p>	Government and relevant ministry, NREGI and MCRB	More studies from other countries	2017	MSG		According to EITI Standard, the best threshold amount should be set close to zero per cent.

	<ul style="list-style-type: none"> <li>- Study of existing PEPs definition</li> <li>- International treaty</li> </ul>	<p>MSG will identify who the PEPs are and who regulates them</p> <p>MSG will find out the relationship between BO &amp; PEPs</p>						
National definitions and reporting requirements for PEPs	<ul style="list-style-type: none"> <li>- Adoption of government on the declaration of the conflict of interest policy for the senior government officials for both political and administrative appointees</li> <li>- Politics and economics conflict of interest</li> <li>- The parliament needs to be engaged</li> </ul>	<p>Link with anti-corruption commission, National Economic Coordination Committee (NECC)</p>	<p>National coordinator will engage.</p> <p>MSG will appoint a dedicated staff for BO roadmap implementation</p> <p>MSG will document all regulations applicable to PEPs</p>	Grievance team ?	2018	MSG		

<p>LEVEL OF DISCLOSURE AND DATA RELIABILITY</p>	<p>nationality, residence, residential address, 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"> <li>- Data integrated in one place</li> <li>- Increased in revenue</li> <li>- Manual data</li> <li>- Weakness in coordination and sharing information among ministries</li> <li>- Delay in data collection</li> <li>• How will you ensure data reliability?</li> <li>• Challenge: similar names</li> </ul>	<p>Define the scope in MSG meeting for EITI report</p> <p>MSG Meet with the company Heads</p> <p>Workshop with the private sector for awareness raising on BO</p> <p>According to the output of the workshop, MSG will meet with the relevant Ministry to start and move the BO Process</p> <p>MSG to decide on guidelines for collection of data from agencies to ensure reliable data</p> <p>MSG should decide on a precise BO definition</p> <p>Collection of data through IA</p> <p>Department's data management system</p>	<ul style="list-style-type: none"> <li>- DICA</li> <li>- Head of the Companies included in the EITI report</li> <li>- Relevant ministry for license</li> <li>- Stock exchange</li> <li>- MIC</li> </ul>	<p>BO consultant</p> <p>Consolidation of the Data Management</p> <p>INGOs</p> <p>Hire consultant to assess data reliability</p>	<p>2018-2020</p> <p>Capacity building-2017-2018</p>	<ul style="list-style-type: none"> <li>- MSG</li> <li>- MEITI</li> <li>- Relevant Ministry</li> </ul>	<p><b>Risk</b></p> <ul style="list-style-type: none"> <li>- Funding availability</li> <li>- Tight schedules</li> <li>- Not Clear scoping defined yet</li> <li>- To Start MSG Meeting</li> </ul>
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	<ul style="list-style-type: none"> <li>• Barrier: No supporting law</li> <li>• Challenge: Accuracy of gems law – emporium data is different from company data (As seen from previous report)</li> <li>• It takes time to gather data</li> <li>• Different timing of data collections</li> <li>• How to identify sub-contracting arrangements</li> <li>•</li> </ul>	<p>should use standard coding.</p> <p>Timing for data collection by agencies should be aligned</p> <p>Ensure reliability of entity that will collect data</p> <p>MSG should consider what information to include. e.g alternative names, mother’s name, business address instead of residential address, national ID, fingerprint</p> <p>MSG to decide who will be considered PEP and what details they should report</p> <p>MSG should consider how to assure reliable data through laws. It will see if there are already existing laws on data reliability</p>						
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		<p>Details of PEP disclosure will be decided by MSG. Undertake activities to understand PEPs</p> <p>MSG to discuss who will certify reporting templates to make sure data is authentic</p> <p>MSG to decide on a proper mechanism to validate data</p> <p>MSG to secure political commitment</p> <p>MSG to consider IT development, appropriate softwares should be considered</p>						
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DATA TIMELINESS	What would be the most appropriate	Consider yearly list of BO,	- MOGE, - MGE,	- International Secretariat		- MSG - MEITI		-
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	<p>time for data collection?</p> <p>To be done together with third party. How will you reflect changes in ownership over time?</p>	<p>Link data collection with license registration, reports to DICA,MOGE, MGE(Before contract),</p> <p>Develop a template that will reflect changes (possibly quarterly or yearly)</p> <p>MSG to agree on regularity of submission of data</p> <p>Include BO in the EITI Report – the IA should collect data from national coordination office</p> <p>MSG to propose changes in data collection to ensure that data collection is speedy and accurate</p> <p>Government to improve information infrastructures , e.g.</p>	<ul style="list-style-type: none"> <li>- License Registration</li> <li>- DICA,</li> <li>- ME(1,2),</li> <li>- Forestry Dept.:</li> <li>- Ministry of Industries (MOI)</li> </ul>	<ul style="list-style-type: none"> <li>- WB</li> <li>- DICA</li> <li>- MIC</li> </ul>		<ul style="list-style-type: none"> <li>- MoPF</li> <li>- National coordination Office</li> </ul>		
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		<p>mining cadaster being developed</p> <p>Facilitate inter-agency coordination to see how other issues such as tax evasion can be linked to BO</p> <p>Disclose BO information online (by 2020)</p>					
<p>DATA COLLECTION PROCEDURES AND DATA ACCESSIBILITY</p>	<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>Identify all Related Extractive Industries and relevant ministries</p> <p>MSG (IA rent?),</p> <p>Consider online publication to increase public awareness</p> <p>Publish information in newspapers</p> <p>Create a data collection Team (Technical Sub-Committee), or ask IA to do scoping</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"> <li>- International Secretariat</li> <li>- Consultant</li> </ul>	<p>Reporting Template to be updated yearly</p> <p>Law-before end of 2019</p> <p>BO form-2017</p> <p>Consultation Activities-2017</p> <p>BO pilot-2017</p>	<ul style="list-style-type: none"> <li>- MSG</li> <li>- MEITI</li> <li>- Relevant Institutions/Offices</li> </ul>	<p>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.</p>

		<p>MSG to develop BO declaration form/reporting template</p> <p>MSG to decide how data will be collected (i.e. according to PSC, percentage, income</p> <p>MSG to establish BO register</p> <p>Create Subcommittee for data collection</p> <p>Propose BO law to ensure data collection</p> <p>Ensure data reliability by making sure there are sanctions for false data</p> <p>Ensure that data is available to the public 2017,</p> <p>create a website to ensure feedback from the public</p>						
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		<p>Pilot Beneficial Ownership disclosure and review and disclose findings in next ETI Report</p> <p>MSG to scrutinize collected data</p> <p>Create a BO working group</p> <p>CSOs will publish on website and newspaper</p> <p>MSG to suggest how to ensure sustainability of data collection process</p>						
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**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.)