

LEGAL
ALERT

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Myanmar Introduces Mandatory Disclosure of Beneficial Ownership in line with the Extractive Industries Transparency Initiative Standard

Introduction and Background

The Extractive Industries Transparency Initiative (“EITI”) is a global standard for transparency and accountability in the oil and gas mining industries. Myanmar has been an EITI Candidate Country since 2014. Effective from January 2020, one of the requirements for a candidate country is to disclose relevant beneficial ownership information of companies in extractive industries.

In light of this, on 15 November 2019, the Myanmar companies registry and regulatory authority, the Directorate of Investment and Company Administration (“DICA”), issued Directive No. 17/2019 regarding the Disclosure on Beneficial Ownership Information (“the Directive”) for legal persons and legal arrangements in Myanmar pursuant to section 69 (c) of the Anti-Money Laundering Law 2014 and President’s Office Notification 104/2019 dated 2 October 2019 (“PO Notification”). The Directive came into force on [1 January 2020](#).

In order to comply with the EITI Standards, a Beneficial Ownership Taskforce had been formed for extractive industry with DICA being tasked as the implementing agency for disclosure of beneficial ownership information in Myanmar’s EITI reports. DICA thereafter issued the Directive which is to address the PO Notification for applicability to extractive industries. The Directive applies broadly to all legal persons (including companies, partnerships, and associations) and legal arrangements (referring to express trusts or similar arrangements) in Myanmar. It is aimed to enhance the transparency and accountability of beneficial ownership in Myanmar. This is a step forward in Myanmar’s efforts to address tax evasion, money laundering and terrorist financing matters which have often been thought to be lacking.

Definitions of Beneficial Ownership and Beneficial Owner


In considering what constitutes “beneficial ownership”, section 3(a) of the Directive defines this to mean *“the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement”*.

It further defines a “beneficial owner” to mean any individual who:

- directly or indirectly holds more than 5 % of the shares and/or voting rights;
- directly or indirectly have the right to appoint and remove majority of the board; or
- have the right to exercise, or actually exercise, significant influence or control over the public or private company or corporate entity.

Complying with the Directive

Under the Directive all legal persons and legal arrangements are required to obtain and hold up-to date information on their beneficial ownership status and submit such information in a timely manner to DICA and the Internal Revenue Department. There is no specific definition as to “timely manner” however, we are of the view that this may be generally interpreted as a reasonable objective standard.



In addition to the above reporting requirements, there is also a cooperation requirement whereby legal persons or legal arrangements are “required to cooperate with competent authorities to the **fullest extent possible** in determining the beneficial owner”. It is noted that cooperation requirements extend not only to the legal persons themselves, but also to third party company service providers defined as “Designated Non-Financial Business and Professions” (“DNFBPs”). The scope of service providers for DNFBPs includes incorporation services, nominee director services, company secretary services, registered office address and professionals including lawyers and accountants providing services relating to the creation, operation and management of companies or of legal persons and arrangements.

The information of disclosure may be filed online on DICA’s website, i.e. DICA’s “MyCo” e-registry.

Record Keeping and Protection of Beneficial Ownership Information

The legal persons and legal arrangement are required to maintain such information and records for at least five years from the date on which the company is dissolved or otherwise ceases to exist. In the case of DNFBPs or financial institutions, the five years runs from the date after the company ceases to be a client/customer.

Separately, it is noted that section 9 of the Directive allows individuals to apply to DICA to have their information protected where there is a risk of violence or intimidation. Nonetheless, basic information will be made publicly available while beneficial ownership information will be made available to competent authorities.

If you have any questions or require any additional information, please contact **Geraldine Oh** or the ZICO Law Myanmar partner you usually deal with.

This alert is for general information only and is not a substitute for legal advice.