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Environmental Compliance in Myanmar

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Agenda.

- I. Legal Framework
- II. Environmental Compliance Instruments
- III. Third Parties
- IV. Penalties and other Administrative Punishments



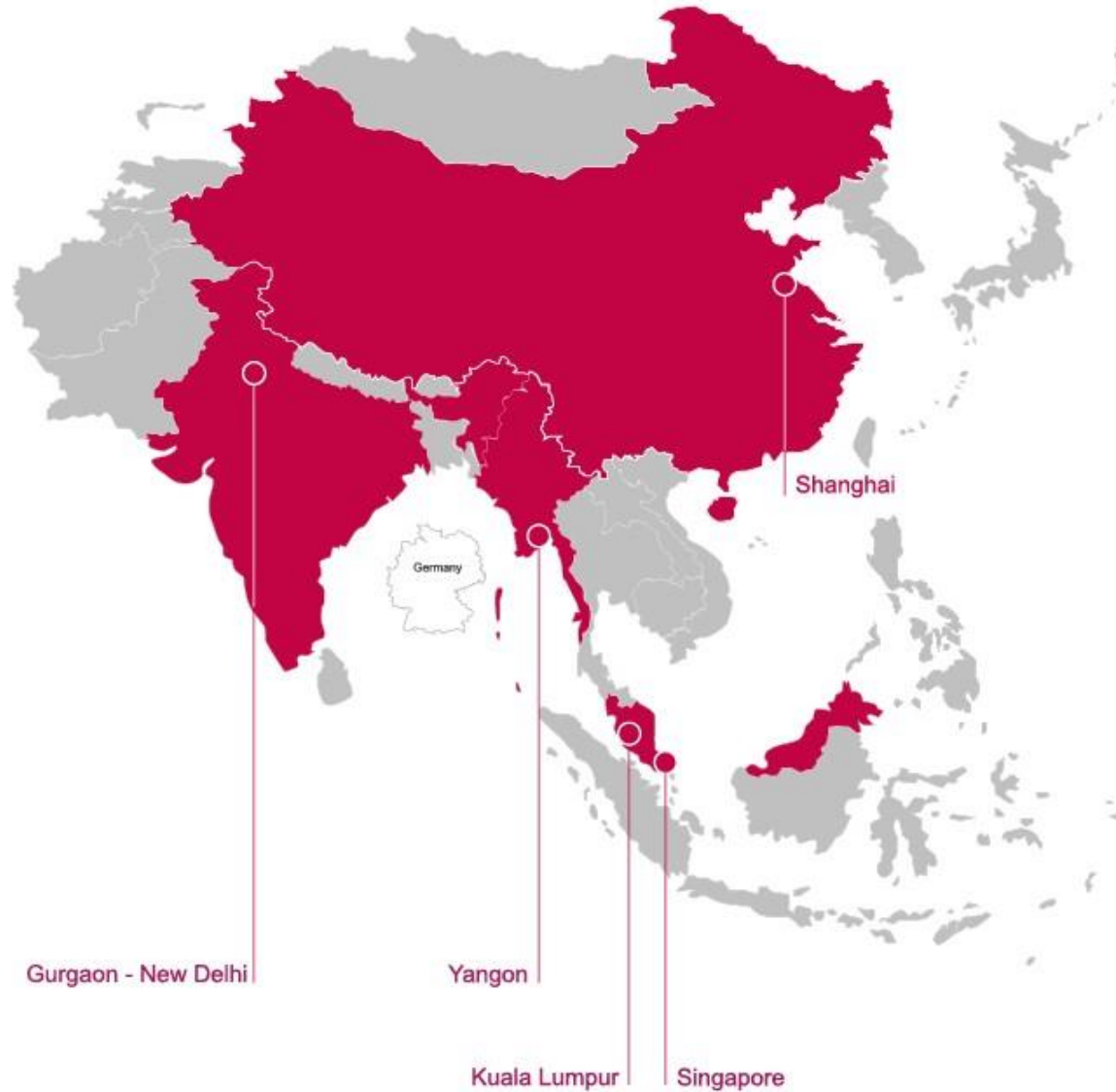
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About Luther

About Luther.

- European law firm with Asian offices in Yangon, Singapore, Kuala Lumpur, Delhi-Gurgaon and Shanghai
- Ca. 350 lawyers and tax advisors worldwide
- In Yangon since April 2013, currently ca. 40 European and Myanmar lawyers, tax advisors and accountants
- Provision of:
 - Legal advice
 - Tax advice
 - Incorporation services
 - Corporate secretarial services
 - Accounting
 - HR administration and payroll
 - Cash, fund and payment administration

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I. Legal Framework

I. Legal Framework.

Relevant Acts and Laws (not exhaustive)

- Myanmar Investment Law (2016)
- Environmental Conservation Law (2012)
- Prevention from Danger of Chemical and Associated Materials Law (2013)



I. Legal Framework.

Relevant Rules & Regulations (not exhaustive)

- Myanmar Investment Rules (2017)
- Environmental Conservation Rules (2014)
- Ministry of Environmental Conservation and Forestry – Notification No. 616/2015 (Environmental Impact Assessment Procedure)
- Environmental Quality (Emission) Guidelines (2015)
- Environmental Quality Standards (2016)
- Social Impact Assessment Procedures (2016)



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1. Myanmar Investment Law (2016)

II. Legal Framework.

1. MIL (2016) – General

- On 18 October 2016, the bill of the new Myanmar Investment Law was signed into law
- Replacing both the Foreign Investment Law (2012) and the Myanmar Citizens Law (2013)
- By combining both laws, the government made a further step towards a unified legal framework for both local and international investments

II. Legal Framework.

1. MIL (2016) – Investment Categories

- The new Myanmar investment regime provides for several investments categories:
 - **Prohibited investments** (sec. 41 Myanmar Investment Law 2016);
 - Restricted investments (sec. 42 Myanmar Investment Law 2016);
 - Promoted investments (sec. 43 Myanmar Investment Law 2016); and
 - **Investments requiring a Permit** from to the Myanmar Investment Commission (sec. 36 Myanmar Investment Law 2016)

II. Legal Framework.

1. MIL (2016) – Prohibited Investments

- Pursuant to sec. 41 Myanmar Investment Law (2016), the following investments shall be prohibited:
 - Investments which may bring hazardous or poisonous waste into the Union (hazardous and poisonous waste means all substances listed or prohibited under the Prevention from Danger of Chemical and Associated Materials Law (2013), the Environmental Conservation Law (2012) or as otherwise determined by the Ministry of Industry, Ministry of Natural Resources and Environmental Conservation or other competent authorities as prohibited from being imported, exported, stored, traded, manufactured or otherwise produced within the Union; the production or use of such substances in connection with an investment is prohibited, subject to any express statutory exception or dispensation or approval of a competent authority);
 - Investments which may bring technologies, medicines, flora and fauna or instruments into the Union which are still being tested abroad or which have not been obtained approval for use, planting and cultivation except for investments made for the purpose of research and development;
 - Investments which may affect the traditional culture and customs of the racial groups within the Union;
 - Investments which may affect the public health;
 - Investments which may cause significant damage to the natural environment and ecosystem; and
 - Investments which manufacture goods or provide services that are prohibited under the law

II. Legal Framework.

1. MIL (2016) – Prohibited Investments

- Pursuant to rule 12 Myanmar Investment Rules (2017), the Myanmar Investment Commission may issue notifications in respect of prohibited investments
- **No** such notification has been published so far

II. Legal Framework.

1. MIL (2016) – Investments requiring a Permit

- Pursuant to sec. 36 Myanmar Investment Law (2016), the following activities may require a Permit from the Myanmar Investment Commission (MIC):
 - Businesses that are strategic for the Republic of the Union of Myanmar;
 - Capital intensive investment projects;
 - Businesses which have a large potential impact for the environment and the local community;
 - Businesses which utilize public property; and
 - Businesses which are designated by the government to require the submission of a proposal to the Myanmar Investment Commission

II. Legal Framework.

1. MIL (2016) – Investments requiring a Permit

- Pursuant to rule 5 Myanmar Investment Rules (2017), an investment is considered to have a large potential impact on the environment and the local community, if:
 - It has been or is likely to be classified as an Environmental Impact Assessment Type Project;
 - It is located in a designated protected or reserved area or major biodiversity area under the laws (including the Environmental Conservation Law (2012)) or areas selected and specified to support the eco system and cultural and natural heritage, cultural commemoration and unspoilt natural areas; or
 - It has the right to occupy or use land (...)

II. Legal Framework.

1. MIL (2016) - Investments requiring a Permit

- Classification as an Environmental Impact Assessment Type Project is subject to the provisions of the Environmental Conservation Law (2012) and the Environmental Conservation Rules (2014)
- **Problem:** Provisions under said law and rules are quite broad and may apply to an extensive number of projects!

II. Legal Framework.

1. MIL (2016) – Duties of Investors

- Any investor shall:
 - Obtain the MIC Permit or Endorsement of the Commission before any investment which requires prior permission under the Environmental Conservation Law (2012) and the procedures of analysis of environmental impact (investments which have obtained a Permit or Endorsement shall report the status of any measures taken in respect of environmental and social impact analysis to the MIC throughout the entire operation);
 - Inform the MIC of any environmental or social impact assessment carried out during the course of doing business;
 - Submit confirmation of compliance with the requirements of the Environmental Conservation Law (2012); and
 - Pay effective compensation for loss incurred, if the investor causes damage to the natural environment and causes socioeconomic losses, such as that caused by logging or extraction of natural resources, which are not related to the permitted investment, apart from carrying out the activities which are required to perform to conduct investment for which a Permit or an Endorsement has been granted

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2. Environmental Conservation Law (2012)

II. Legal Framework.

2. ECL (2012) – Objectives

- Implementation of Myanmar National Environmental Policy;
- Lay down basic principles and give guidance for systematic integration of environmental conservation;
- Healthy and clean environment and to conserve natural and cultural heritage;
- Protect ecosystems;
- Manage natural resources;
- Promote public awareness;
- Promote international, regional and bilateral cooperation in the matters of environmental conservation; and
- Cooperation of/with Government departments, Government organizations, international organizations, non-government organizations and individuals on environmental conservation

II. Legal Framework.

2. ECL (2012) – Environmental Conservation

- The Ministry of Natural Resources and Environmental Conservation shall, under the guidance of the Committee, maintain a comprehensive monitoring system and implement by itself or in co-ordination with relevant Government departments and organizations in the following matters:
 - Use of agro-chemicals which cause to impact on the environment significantly;
 - Transport, storage, use, treatment and disposal of pollutants and hazardous substances in industries;
 - Disposal of wastes come out from exploration, production and treatment of minerals, industrial mineral raw materials and gems;
 - Carrying out waste disposal and sanitation works;
 - Carrying out development and constructions;
 - Carrying out other necessary matters relating to environmental pollution
- A person causing a point source of pollution shall treat, emit, discharge and deposit the substances which cause pollution in the environment in accordance with stipulated environmental quality standards
- The owner or occupier of any business, material or place which causes a point source of pollution shall install or use an on-site facility or controlling equipment in order to monitor, control, manage, reduce or eliminate environmental pollution (if impracticable, it shall be arranged to dispose the wastes in accordance with environmentally sound methods)

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II. Instruments

II. Instruments.

General

- Environmental Conservation Law (2012), Environmental Conservation Rules (2014) and Environmental Impact Assessment Procedures (2015) shall help to prevent **Environmental Impacts**
- *Definition: Pursuant to number 2 (h) Environmental Impact Assessment Procedures (2015), Environmental Impact means the probable effects or consequence on the natural and built environment, and people and communities of a proposed Project or businesses or activities or undertaking. Impacts can be direct or indirect, cumulative, and positive or adverse or both*
- Environmental Impacts include occupational, social, cultural, socio-economical, public and community health, and safety issues
- Social Impacts include Involuntary Resettlement and relating to Indigenous People

II. Instruments.

General

- The law, rules and procedures provide for the following instruments for managing environmental impacts of businesses in Myanmar:
 - Initial Environmental Examination (IEE);
 - Environmental Impact Assessment (EIA);
 - Social Impact Assessment (SIA);
 - Environmental and Social Impact Assessment (ESIA);
 - Health Impact Assessment (HIA);
 - Environmental, social and health impact assessment (ESHIA); and
 - Environmental Management Plan (EMP)

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1. Screening

1. Screening.

Preliminary Screening and Verification

- **Proponent** of a Project shall submit the Project Proposal to the Ministry
- **Definition:** *Project means any commercial, economic, agricultural, social, academic, scientific, political or other project, activity, program, business, service or undertaking, whether regarded individually or in the aggregate, the performance of which requires any approval or is licensed, restricted, or otherwise regulated to any extent by any part of the Union Government and which may have an Adverse Impact*
- **Definition:** *Project Proposal means a written document, in form, content and structure in accordance with the Ministry's requirements and guidance, accurately setting forth the key aspects and relevant details (including, inter alia, the nature and size of all known or foreseeable Adverse Impacts) of a Project or Project expansion, as the case may be, which a Project Proponent wishes to undertake, or having commenced to undertake*
- Ministry will send the Project Proposal to the Department to determine need for environmental assessment

1. Screening.

Designation of the Project

- Upon preliminary screening and verification that the Project Proposal contains all required documents and related materials, the Department shall make a determination in accordance with **Annex 1 ‘Categorization of Economic Activities for Assessment Purposes’**
- Annex 1 categorizes Economic Activities for Assessment Purposes, providing guidance as to whether an IEE or EIA is required for any proposed project or activity

1. Screening.

Annex 1 – Garment Sector

No.	Type of Economic Activity	Criteria for IEE Type Economic Activities	Criteria for EIA Type Economic Activities
All Garments, Textiles and Leather Products			
58.	Textile Manufacturing Facilities (production of yarn, fabric, garments and finished goods based on natural fibres, synthetic fibres and/or regenerated fibres)	All sizes	All activities where the Ministry requires that the Project shall undergo EIA
59.	Pre-treatment (washing, bleaching, mercerisation) or Dyeing of Textiles or Fibres	≥ 1 t/d but < 10 t/d	≥ 10 t/d
60.	Leather Products Manufacturing (includes synthetic leather, handbags, luggage, saddle, footwear)	≥ 1,000 t/a	All activities where the Ministry requires that the Project shall undergo EIA
61.	Tanning and Leather Finishing	< 12 t/d finished products	≥ 12 t/d finished products

1. Screening.

Designation of the Project

- In making its determination as to the type of environmental assessment a Project or Project expansion will require, the Department shall in addition to the provisions in number 25 Environmental Impact Assessment Procedures (2015) and the type and size categorization in Annex 1 'Categorization of Economic Activities for Assessment Purposes' consider the following factors in accordance with Ministry guidance:
 - The need for the Project to deal with an emergency situation;
 - The interest of public health and safety;
 - The interest of national security;
 - The lifespan of the Project;
 - Protection of cultural and religious norms, and historical and religious heritage;
 - Protection of areas having a fragile ecosystem;
 - Areas affected by cyclones, strong storms, flooding, earthquake (including the Sagaing Fault) and areas vulnerable to natural disaster;
 - Protection of water resources (lakes, reservoirs, rivers, groundwater aquifers) that serve or may in the future serve as primary sources of public drinking water;
 - Recreation zones and pearl production areas;
 - Conservation and protection of biodiversity;
 - Introduction of exotic or alien species;
 - Adoption of new technologies;
 - Population density;
 - National, regional and global climate change conditions;
 - Likely transboundary impacts;
 - Likely Residual Impacts or effects occurring some years after Project closure; and
 - Other factors as the Ministry may determine

1. Screening.

Designation of the Project

- Department shall designate the Project as one of the following, and then submit their designation to the Ministry:
 - EIA Type Project;
 - IEE Type Project; or
 - Non-EIA or Non-IEE Type Project, and therefore not required to undertake any environmental assessment
- The Ministry shall also make a determination whether an EMP shall be required

1. Screening.

Designation of the Project – EIA Type Project

- Environmental Impact Assessment Type Project means a Project judged by the Ministry as being likely to have potential for **Adverse Impacts**
- *Definition: Pursuant to number 2 (g) Environmental Impact Assessment Procedures (2015), Adverse Impact means any adverse environmental, social, socio-economic, health, cultural, occupational safety or health, and community health and safety effect suffered or borne by any entity, natural person, ecosystem, or natural resource, including, but not limited to, the environment, flora and fauna, where such effect is attributable in any degree or extent to, or arises in any manner from, any action or omission on the part of the Project Proponent, or from the design, development, construction, implementation, maintenance, operation, or decommissioning of the Project or any activities related thereto*
- It means generally those which:
 - Involve multiple components and many or varied pollution sources and/or pollutant types, requiring integrated EMP to be tailored specifically to mitigate such pollution;
 - Characterized by a high risk of significant, adverse environmental or social impact;
 - Of a type or size for which there is a lack of prior knowledge and experience as to what the potential adverse impacts may be and their size or significance; or
 - Where the significance of the potential environmental or social impacts or the sensitivity/vulnerability of the recipients of those impacts requires a high level of environmental and social management expertise and skills, and continued strict control and supervision throughout the life of the Project

1. Screening.

Designation of the Project – EIA (Examples for Adverse Impacts on:)

- Forest conservation area (including biodiversity reserved area);
- Public forest;
- Park (including marine parks);
- Mangrove swamp;
- Any other sensitive coastal area;
- Wildlife sanctuary;
- Scientific reserve;
- Nature reserve;
- Geophysical significant reserve;
- Any other nature reserve nominated by the Minister;
- Protected cultural heritage area; and
- Protected archaeological area or area of historical significance

1. Screening.

Designation of the Project – IEE Type Project

- Initial Environmental Examination Type Project means a Project judged by the Ministry to have some **Adverse Impacts**, but of lesser degree and/or significance than those for EIA Type Projects
- It means generally those which:
 - Are limited in scope or size;
 - Have well known environmental and social impacts that for the most part are temporary, local and reversible; or
 - Have impacts which can be mitigated and managed by well-proven and available technologies and practices but with respect to which specific controls, measures and alternatives must be assessed, designed and implemented

1. Screening.

Result

- If, as a result of that determination, an IEE or EIA is determined to be required, then 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
- Any appeal from such determination must be made in accordance with the Environmental Impact Assessment Procedures (2015)
- Notwithstanding any categorization set forth in Annex 1 'Categorization of Economic Activities for Assessment Purposes', the Ministry reserves the right to change the type of the Project as necessary, if the Ministry determines that special circumstances so warrant to require a Project that would otherwise be required to complete and submit an IEE or EIA or to exempt a Project from completing any IEE or EIA

1. Screening.

Result

- Within fifteen (15) working days of receiving the complete Project Proposal, the Department shall determine the type of environmental assessment (i.e. IEE or EIA or none) which the Project will require, and the Department shall inform the Project Proponent in writing as to such determination in accordance with the Ministry guidance

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2. Initial Environmental Examination (IEE)

2. Initial Environmental Examination (IEE).

General

- **Definition:** Pursuant to sec. 2 (f) Environmental Conservation Law (2012), IEE means the evaluation whether the impact of a project, business, service or activity is evident, the environmental Impact Assessment is required to carry out and other specified documents and certificates are necessary to prepare

2. Initial Environmental Examination (IEE).

Investigation/Reporting

- Project Proponent may carry out the IEE and reporting by itself or may appoint a registered person or organization
- In case the examination and reporting will be conducted by a **Third Party**, prior to the commencement of the examination, the Project Proponent shall inform the Department in writing
- Within seven (7) working days, the Department shall inform the Project Proponent whether such person(s) and/or organization are/is in good standing with the Department

2. Initial Environmental Examination (IEE).

Consultation

- Project Proponent shall inform the **public for consultation** as follows:
 - Immediately upon commencement of the IEE, disclose relevant information about the proposed Project to the public and civil society through the Project or Project Proponent's website(s) and local media, including by means of the prominent posting of legible sign boards at the Project site which are visible to the public, and comply with technical guidelines issued by the Ministry; and
 - Arrange the required complement of consultation meetings as advised by the Ministry, with local communities, potential Project Affected Persons, local authorities, community based organizations, and civil society, and provide appropriate and timely explanations in press conferences and media interviews

2. Initial Environmental Examination (IEE).

Report Requirements

- IEE Report means a report on an IEE Type economic activity having a focus on systematic identification and assessment of potential Adverse Impacts including:
 - Cumulative Impacts of the proposed Project, business, service or activity;
 - Systematic assessment of feasible Project alternatives; and
 - Determination of appropriate measures to mitigate potential Adverse Impacts

2. Initial Environmental Examination (IEE).

Initial Environmental Examination (IEE) – Report Requirements

- The Report shall contain the following documents and information:
 - Project description in reasonable detail with description of the project size, installations, technology, infrastructure, production processes, use of materials and resources, generation of waste, Emissions and disturbances together with overview maps and site layout maps (using aerial photos and satellite images in proper scale) for each Project phase and, where relevant, project alternatives for each Project phase;
 - Identification of the Project Proponent including (where the Project Proponent is not a natural person but a company or other juridical entity) the identification of the owners, directors (if any) and day to day management and officers of the Project Proponent;
 - Identification of the Initial Environmental Examination experts, including which expert is responsible for which part of the Initial Environmental Examination Report;
 - Description of applicable laws, decrees, regulations, standards, guidelines and corporate policies related to environmental and social matters of the Project together with the relevant government agencies involved and their roles and responsibilities vis-à-vis the Project.
 - Description of the surrounding environmental and social conditions of the Project including maps of all relevant physical, biological, social, socioeconomic and cultural features;
 - Identification and assessment of potential Environmental Impacts including assessment and description of Adverse Impacts and Residual Impacts with presentation of the spatial and temporal characteristics of the impacts using maps, images, aerial photos and satellite images;
 - Results of the public consultation and public participation processes, recommendations received from the public, and the Project Proponent's written responses to comments received during that process;
 - The environmental protection measures of the Project which are intended to mitigate Adverse Impacts clearly presented together with applicable environmental and social requirements and any Residual Impacts;
 - The EMP; and
 - The persons, organizations and budgets needed for implementation of the EMP

2. Initial Environmental Examination (IEE).

Report Requirements

- After completing all investigations and public consultation and participation processes required for IEE Type Projects, the Project Proponent shall submit the IEE Report for the Project to the Department in both digital form and complete paper copies, together with the required service fee as prescribed by the Department

- Project Proponent shall:
 - Submit accurate and complete IEE Report in Myanmar or English language (with a summary the Myanmar language);
 - Submit letter of endorsement to the Department;
 - Confirm that the IEE has been prepared in strict compliance with applicable laws;
 - Confirm that the Project will at all times comply fully with the commitments, mitigation measures, and plans in the IEE Report

2. Initial Environmental Examination (IEE).

Disclosure of Report

- Not later than fifteen (15) days after submission of the IEE Report to the Department, the Project Proponent shall disclose the IEE Report to civil society, PAPs, local communities and other concerned stakeholders by:
 - Posting on Project or Project Proponent's website(s);
 - By means of local media (i.e. newspapers);
 - At public meeting places (e.g. libraries, community halls); and
 - At the offices of the Project Proponent

2. Initial Environmental Examination (IEE).

Review and Approval Process

- Upon receipt of the IEE Report from the Project Proponent, the Department shall:
 - Disclose the IEE Report to the public on the Ministry and/or Department website(s), and/or through other appropriate media;
 - Invite comments and suggestions on the IEE Report from all relevant parties including relevant government organizations, institutions, civil society organizations, and PAPs, as appropriate;
 - Arrange public consultation meetings at the local level, at which the Project Proponent shall present the IEE Report; and
 - Collect and review all comments and recommendations received, and forward the same to the Ministry to enable it to make a final decision on approval of the IEE Report
- If it is determined by the Ministry that the IEE Report does not satisfy requirements, then the Project Proponent shall be called upon by the Department to undertake necessary amendments and/or to provide supplementary information as directed by the Ministry

2. Initial Environmental Examination (IEE).

Review and Approval Process

- Upon completion of its review of the IEE Report, the Ministry shall:
 - Approve the IEE Report, subject to conditions it may prescribe, and issue an ECC; or
 - Require that the Project carry out an EIA, citing the reasons for this decision and informing the Project Proponent of its decision; and, in either case
 - Publicly disclose its decision
- The Department shall deliver the final decision of the Ministry within sixty (60) working days of receipt of an IEE Report

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3. Environmental Impact Assessment (EIA)

3. Environmental Impact Assessment (EIA).

General

- *Definition: Pursuant to sec. 2 (d) Environmental Conservation Rules (2014), Environmental Impact Assessment means the process of systematic study which is required as part of the decision making process on the proposed project, business, service or activity whether there are potentials or impact processes that may cause an impact on physical environment, human and living things, social and socio-economic because of the project*
- **The Environmental Impact Assessment Process is outlined in Annex 2 of the Environmental Assessment Procedure (2015)**

3. Environmental Impact Assessment (EIA).

Investigation/Reporting

- Under the Environmental Impact Assessment Procedures (2015), the Project Proponent **must** appoint a registered Third Person or Organization to carry out the EIA investigation and reporting and shall inform the Department in writing as to the identity of the duly registered person(s) and/or organization it has selected to undertake the EIA investigation and reporting
- Within seven (7) working days, the Department shall confirm whether such person(s) and/or organization are in good standing with the Department and may conduct the EIA investigation and reporting

3. Environmental Impact Assessment (EIA).

Scoping

- **All** EIA-Type Projects shall undergo Scoping
- **Definition:** *Scoping means the process contemplated in Chapter V of the Environmental Impact Assessment Procedure (2015) for determining the scope of an EIA (i.e. the data that need to be collected and analyzed to assess the potential Adverse Impacts of a Project) and producing a terms of reference (ToR) for preparation of an EIA Report.*
- Project Proponent shall be responsible to ensure that the Scoping and the preparation of the ToR for the EIA Report are undertaken in a professional manner and in accordance with this Procedure and any applicable guidelines issued or adopted by the Ministry

3. Environmental Impact Assessment (EIA).

Scoping

- The Scoping of the proposed Project shall:
 - Define the study area, area of influence, time boundaries, Project phases, and potential stakeholders;
 - Start the process of understanding the applicable regulations and standards, and their context for Project design and completion of the EIA;
 - Make a provisional identification of Environmental Impacts, focusing in particular on the environmental, social and health issues that need to be addressed in subsequent EIA studies;
 - Provide an indication of the depth and breadth of the subsequent EIA investigations including what baseline data and information are required, what further studies and investigations must be carried out, and how such data collection, studies and investigations shall be undertaken;
 - Provide an opportunity for consultants, relevant authorities, project developers, and interested and affected parties to express their views and concerns regarding the proposal before an EIA proceeds;
 - Enable an efficient and comprehensive assessment process that saves time, resources, and costs and avoids delays; and
 - Identify potentially affected communities and other stakeholders with an interest in the Project

3. Environmental Impact Assessment (EIA).

Scoping

- As part of the Scoping, the Project Proponent shall ensure that the following **public consultation and participation** process is carried out:
 - Disclose information about the proposed Project to the public and civil society through posting on the Project or Project Proponent's website(s) and local media, including by means of the prominent posting of legible sign boards and advertising boards at the Project site which are visible to the public; and
 - Arrange the required complement of consultation meetings as advised by the Ministry, with local communities, potential PAPs, local authorities, community based organizations, and civil society, and provide appropriate and timely explanations in press conferences and media interviews

3. Environmental Impact Assessment (EIA).

Scoping

- Project Proponent shall prepare a **Scoping Report** either in Myanmar or English language (with a summary in Myanmar language), with the following content:
 - Executive Summary;
 - Context of the Project;
 - Overview of the Policy, Legal and Institutional Framework;
 - Project Description and **Alternatives**;
 - Description of the Environment together with maps in proper scale indicating all relevant features, images, aerial photos and satellite images;
 - Key Potential Environmental Impacts and Mitigation Measures;
 - Public Consultation and Disclosure; and
 - Conclusions and Recommendations

3. Environmental Impact Assessment (EIA).

Scoping

- **Definition:** Pursuant to number 2 (l) Environmental Impact Assessment Procedures (2015), Alternatives in relation to a proposed Project, means different realistic and feasible means of meeting the general purpose and requirements of the Project,
- These alternatives may include lower-impact alternatives to:
 - Property on which or location where it is proposed to undertake the Project;
 - Type of Project to be undertaken;
 - Design or layout of the Project;
 - Technology to be used in the Project;
 - Operational aspects of the Project; and
 - Any other substantive characteristic or aspect of the Project as deemed necessary or appropriate by the Ministry

3. Environmental Impact Assessment (EIA).

Scoping

- Based on the Scoping, the Project Proponent shall prepare the ToR for the EIA investigations in accordance with applicable guidelines issued or adopted by the Ministry and submit the completed Scoping Report and ToR to the Department for review and approval
- Within fifteen (15) working days of receiving the complete Scoping Report and ToR, the Department shall either:
 - Approve the Scoping Report and ToR with or without conditions; or
 - Require the Project Proponent to revise the Scoping Report and/or ToR in accordance with comments of the Department

3. Environmental Impact Assessment (EIA).

Investigation

- Project Proponent shall ensure that the EIA Investigation properly addresses all Adverse Impacts and is undertaken in accordance with the ToR as approved by the Department
- This investigation shall consider all biological, physical, social, economic, health, cultural and visual components of the study area, together with all pertinent legal matters relating to the environment, people and communities (including land use, resources use, and ownership of and rights to land and other resources) that may be affected by the Project during all Project phases including pre-construction, construction, operation, decommissioning, closure, and post-closure, and shall identify and assess all Adverse Impacts, risks, Cumulative Impacts and Residual Impacts for environment, social and, if relevant, health that potentially could arise from the Project
- It shall include all necessary data collection, technical studies, modelling, field surveys, field sampling, laboratory analysis, engineering designs and calculations, and consultations to determine and document that all feasible measures are taken to ensure that all Residual Impacts are within applicable limits and are acceptable to the Ministry and interested and affected persons
- It shall further include a description an analysis of alternatives, and an assessment and comparison of the Adverse Impacts, required mitigation measures and Residual Impacts of the Alternatives

3. Environmental Impact Assessment (EIA).

Investigation

- EIA shall consider the views, concerns, and perceptions of stakeholders, communities and individuals that could be affected by the Project or who otherwise have an interest in the Project
- EIA shall include the results of consultations with the public, affected populations and other stakeholders on the environmental and social issues
- Any concerns raised during such consultations shall be considered in assessing impacts, designing mitigation measures, and in the development of management and monitoring plans

3. Environmental Impact Assessment (EIA).

Investigation

- As part of the EIA investigations, the Project Proponent shall undertake the following consultation process:
 - Timely disclosure of all relevant information about the proposed Project and its likely Adverse Impacts to the public and civil society through local and national media, the website(s) of the Project or Project Proponent, at public places such as libraries and community halls, and on sign boards at the Project site visible to the public, and provide appropriate and timely explanations in press conferences and media interviews;
 - Arrange consultation meetings at national, regional, state, Nay Pyi Taw Union Territory and local levels, with PAPs, authorities, community based organizations and civil society;
 - Consultations with concerned government organizations including the Ministry, the concerned sector ministry, regional government authorities and others; and
 - Field visits for the Ministry and concerned government organizations

3. Environmental Impact Assessment (EIA).

Report Requirements

- EIA Report means a report on an EIA Type economic activity having a focus on:
 - Systematic identification and assessment of potential Adverse Impacts including cumulative impacts of the proposed Project, business, service or activity;
 - Systematic assessment of feasible Project alternatives; and
 - Determination of appropriate measures to mitigate potential Adverse Impacts
- **The EIA Report shall contain the information as outlined in Annex 3 of the Environmental Compliance Memo**

3. Environmental Impact Assessment (EIA).

Report Requirements

- After completing all required investigations and public consultation and participation processes, the Project Proponent shall submit the EIA Report to the Department in both digital form and complete paper copies, together with the required service fee as prescribed by the Department
- Project Proponent shall submit a letter of endorsement to the Department together with the EIA Report, confirming:
 - Accuracy and completeness of the EIA;
 - That the EIA has been prepared in strict compliance with applicable laws including this Procedure and with the ToR for the EIA; and
 - That the Project will at all times comply fully with the commitments, mitigation measures, and plans in the EIA Report

3. Environmental Impact Assessment (EIA).

Disclosure of Report

- Not later than fifteen (15) days after submission, the Project Proponent shall disclose the EIA Report to civil society, PAPs, local communities and other concerned stakeholders:
 - By means of national media (i.e. newspapers);
 - Website(s) of the Project or Project Proponent;
 - At public meeting places (e.g. libraries, community halls); and
 - At the offices of the Project Proponent

3. Environmental Impact Assessment (EIA).

Upon receipt of Report

- Department will make EIA Report publicly available and shall:
 - Submit EIA Report to the EIA Report Review Body for comment and recommendations;
 - Invite comments and suggestions on the EIA Report from all relevant parties including involved government organizations, institutions, civil society organizations, and PAPs, as appropriate;
 - Arrange public consultation meetings at national, regional, state, Nay Pyi Taw Union Territory and local levels where the Project Proponent shall present the EIA Report; and
 - Collect and review all comments and recommendations received, including those of the EIA Report Review Body, and forward the same to the Ministry to enable it to make a final decision on approval of the EIA Report
- If it is determined by the Ministry that the EIA Report does not satisfy requirements, then the Project Proponent shall be called upon by the Department to undertake the necessary amendments as directed by the Ministry

3. Environmental Impact Assessment (EIA).

Upon review of Report

- Ministry shall deliver final decision within ninety (90) working days of receipt of the EIA Report
 - Approve the EIA Report with the guidance of the Committee, subject to any conditions as may be prescribed, and issue an Environmental Compliance Certificate (ECC); or
 - Inform the Project Proponent of its decision to reject the EIA Report and cite reasons for doing so (grounds for rejection of an EIA Report shall be in accordance with guidance from the Ministry)

3. Environmental Impact Assessment (EIA).

Appeal Process

- Within thirty (30) days of public disclosure of the decision, any Project Proponent, person or organization which submitted the EIA Report, and any other person or organization potentially affected by any Adverse Impacts of the Project, shall have the right to file an appeal to the Committee through the Ministry
- Provided, however, that:
 - No appeal of a decision by the Ministry to reject an EIA Report shall be allowed, except where the appellant has specifically alleged that such rejection was not duly made in accordance with this Procedure or that such rejection was based upon an unsubstantiated or unjustified decision by the Ministry;
 - Not more than one (1) appeal on the same case shall be allowed with respect to a decision by the Ministry; and
 - No condition prescribed by the Ministry shall be subject to appeal by a Project Proponent
- Within fifteen (15) days of receipt of such appeals, Ministry shall forward the appeals to the Committee for consideration
- Within thirty (30) working days of receipt of a forwarded appeal from the Ministry, the Committee shall consider that appeal and make a decision to:
 - Uphold the decision of the Ministry, or
 - Instruct the Ministry to require the Project Proponent to revise and resubmit the EIA Report to the Ministry, or
 - Instruct the Ministry to alter, revise or cancel its decision on the EIA Report and cite its grounds for such instruction
- Decision of the Committee shall be final and the Ministry shall inform the Committee decision to the appellant and the Project Proponent
- Upon receipt of the decision from the Committee, the Ministry shall publicly disclose any reversal or modification of its decision concerning an EIA Report

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4. Environmental Management Plan (EMP)

4. Environmental Management Plan (EMP).

General

- **Definition:** Pursuant to rule 2 (g) Environmental Conservation Rules (2014), EMP means the method and the plan to be adopted to protect, avoid and mitigate environmental impacts due to each project phase like planning, implementation, operation, decommissioning and after decommissioning of a project, business, service or activity or any other reasons because of the project

4. Environmental Management Plan (EMP).

General

- Ministry shall determine whether an EMP shall be required in respect of any Project
- Such plan includes programs to manage and implement activities, and monitor changes to the environmental context
- EMP is intended to support environmental conservation and protection, include measures for dealing with an environmental emergency, and to refrain from, protect against or mitigate environmental impacts caused by a project, business, or activity, or by any of its related parts

4. Environmental Management Plan (EMP).

Investigation/Reporting

- Project Proponent may prepare an EMP by itself or may appoint a person or organization who/which is officially registered

4. Environmental Management Plan (EMP).

Two Types of EMPs

- Environmental Impact Assessment Procedures (2015) provide for (i) Construction Phase EMP and (ii) Operational Phase EMP
- **Definition:** Detailed and comprehensive EMP for the construction phase of a Project (Such plan shall present all relevant commitments, Emission Limit Values, Environmental Quality Standards and other environmental requirements. The plan shall include a description of the construction works, installations, and infrastructure, and shall present an overview of Adverse Impacts, present mitigation measures and monitoring programs together with time schedules, projected budget use, overview maps, images, aerial photos, satellite images, site layout plans, cross-sections, transects, environmental management and monitoring sub-plans for each construction site, thematic sub-plans, and management procedures, as appropriate)
- **Definition:** Detailed and comprehensive EMP for the operational phase of a Project (Such plan shall present all relevant commitments, Emission Limit Values, Environmental Quality Standards and other environmental requirements. The plan shall include a description of the Project operations, installations, and infrastructure, and shall present an overview of Adverse Impacts, present mitigation measures together with time schedules, projected budget use, overview maps, images, aerial photos, satellite images, site layout plans, cross-sections, transects, environmental management and monitoring sub-plans for each Project site, thematic sub-plans, and management procedures, as appropriate)

4. Environmental Management Plan (EMP).

Submission

- Project Proponent shall submit a letter of endorsement to the Department (prepared either in Myanmar or English language)
- Project Proponent shall submit the EMP to the Department in both digital form and complete paper copies, together with the required service fee as prescribed by the Department, and confirming:
 - The accuracy and completeness of the EMP;
 - That the EMP Plan has been prepared in strict compliance with applicable laws including this Procedure; and
 - That the Project will at all times comply fully with the commitments, mitigation measures, and plans in the EMP

4. Environmental Management Plan (EMP).

Review of EMP

- Department shall review and submit to the Ministry to enable it to make a final decision on approval of the EMP
- If it is determined by the Ministry that the EMP does not satisfy requirements, then the Project Proponent shall be called upon by the Department to undertake necessary amendments and/or to provide supplementary information as directed by the Ministry

4. Environmental Management Plan (EMP).

Decision on EMP

- Ministry shall:
 - Approve the EMP, subject to any conditions it may prescribe, and issue an ECC; or
 - Require that the Project Proponent carry out an IEE or EIA, citing the reasons for this decision and informing the Project Proponent of its decision; and
 - Publicly disclose its decision
- Department shall deliver the final decision of the Ministry within thirty (30) working days of receipt of an EMP
- If the Ministry requires an EMP to be amended, then the due date for delivery of the Ministry's decision shall be extended accordingly

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5. Prior Permission

5. Prior Permission.

General

- **Definition:** *Pursuant to number 2 (ee) Environmental Impact Assessment Procedures (2015), Prior Permission means the permission issued by the Ministry in respect of Projects listed in Annex 1 'Categorization of Economic Activities for Assessment Purposes', setting forth environmental conservation terms and conditions in accordance with Section 24 of the Law*

5. Prior Permission.

General

- Ministry may stipulate categories of businesses, work-sites, factories or work-shops which may cause an impact on the environmental quality and shall require a Prior Permission before commencing their operations
- Owner/Occupier of such business shall submit an application (**Form-1**) for a Prior Permission with the Ministry
- Ministry may, after scrutinizing whether or not the application is in conformity with the stipulations, grant or refuse to issue the Prior Permission (**Form-2**) by stipulating terms and conditions relating to environmental conservation
- If an application is not in compliance with the law, the Ministry may refuse to issue a Prior Permission, but allow such application to re-apply for the issue of Prior Permission after it is performed in conformity with such stipulations completely
- Ministry shall register the business, work-site, factory or workshop records in its records and may conduct inspections whether or not it is performed in conformity with such terms and conditions or inform the relevant Government departments, Government organizations to carry out inspections

5. Prior Permission.

Insurance

- Prior Permission holders shall effect Insurance according to the category of his business, work-site or factory, workshop for any accident that may cause impact on the environment in accordance with the existing law
- Insurance may ask the Ministry to elaborate on the extent and potential environmental impact in respect of the business, department or organization which carries out the business to be insured

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III. Third Parties

III. Third Parties.

General

- **Definition:** Pursuant to rule 2 (e) Environmental Conservation Rules (2014), Third Party means an individual or an organization who does not develop or approve a project, business, service or activity

III. Third Parties.

Application

- If specific terms, conditions and/or registration procedures have **not** been separately issued by the Ministry, any third person or organization, whether foreign or domestic, who wishes to prepare an IEE/EIA shall first apply to the Department
- Such application shall include:
 - Name, contact address and profile of the person or organization;
 - Relevant experience of the person or organization; and
 - For key personnel, an outline of each person's experience in the field of environmental assessment, academic credentials, relevant certificates and accreditations
- If specific terms, conditions and/or registration procedures have been separately issued by the Ministry, any Third Person or Organization who wishes to prepare an IEE/EIA shall first apply to the Department in accordance with the terms, conditions and/or procedures for such registration

III. Third Parties.

Registration

- Department will review the application in order to determine each applicant's suitability to carry out such assessments
- Based upon the materials submitted by an applicant, the Department may register the applicant as deemed to be suitable on payment of the application fee or may refuse to register the applicant if deemed to be unsuitable in accordance with Ministry guidance
- Any applicant whose registration application has been rejected may re-apply for registration after the applicant has resolved or corrected the defect(s)
- Upon approval, the Registration shall be valid for a period of three (3) years

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IV. Penalties and other Administrative Punishments

IV. Administrative Punishments.

General

- Ministry shall have the right to impose penalties on a Project for any breach by the Project, the Project Proponent, or any contractor or subcontractor of the Project or any other Person acting on behalf of the Project, of commitments as set forth in the Prior Permission
- In addition it shall take action in imposing other administrative punishment
- **Detailed Overview in Annex 3 of the Environmental Impact Assessment Procedure (2015)**
- In addition, the MIC shall take action in imposing fines/penalties under the Myanmar Investment Law (2016) and the Myanmar Investment Rules (2017)

Q&A

Thank you for your attention.



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