

## **Comments on the disclosure of beneficial ownership information of private companies**

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We consider the **objective** of the Directorate of Investment and Company Administration (**DICA**) Directive No. 17/2019 that all legal persons and legal arrangements are required:

- to obtain and hold up-to-date information on their beneficial ownership; and
- submit their beneficial ownership information to DICA and the Inland Revenue Department (**IRD**),

an **appropriate approach** to ensure that accurate information on beneficial ownership can be obtained promptly by competent authorities. This is consistent with the recommendations of the Financial Action Task Force (**FATF**) and legislation adopted in many other jurisdictions.

We believe that Myanmar needs to implement a **more comprehensive legislative framework** in order to have an effective and workable beneficial ownership disclosure system. The additional legislative framework may be issued pursuant to section 69 of the Anti-Money Laundering Law 2014 (**AML Law**) or as separate legislation.

Proper consideration should be given to what Myanmar's legislative framework for beneficial ownership disclosure requires. As a minimum, we believe it should address the following:

- **DICA's authority:** Authorising DICA as the agency responsible for collecting beneficial ownership information and maintaining the relevant registry. The empowerment of DICA as 'beneficial ownership task force focal agency' pursuant to the President's Office Notification No. 104/2019 is *limited to extractive sectors* (see paragraph 4 thereof); and the powers granted DICA pursuant to the Myanmar Companies Law 2017 are not sufficiently broad to cover beneficial ownership disclosure.
- **Clear definition of beneficial owner:** For purposes of defining beneficial ownership for disclosure purposes generally, we believe that Myanmar should adopt a **threshold of 25%** to reflect the recognised FATF standard and the practice adopted by most jurisdictions.

While it may be appropriate to apply a lower threshold for the extractive sectors (noting the 5% threshold adopted for extractive sectors by President's Office Notification No. 104/2019), we do not consider such a low threshold appropriate for general application, outside of the extractive industries.

Subject to a lower threshold for the extractive industries sector, we recommend that Myanmar should adopt a **consistent threshold of 25%** for purposes of defining beneficial ownership for disclosure purposes as well as for purposes of reporting organisations' obligations to conduct customer due diligence pursuant to the AML Law. We note in

particular that the Central Bank of Myanmar Directive No. 18/2019 for Customer Due Diligence Measures, adopts a 20% threshold for purposes of identifying beneficial ownership (see article 31(a) thereof), and we respectfully submit that this threshold should also be amended to 25%, in the interests of consistency.

- **Beneficial ownership interests held by listed companies:** Where a legal person with a beneficial ownership interest in a company incorporated in Myanmar, is listed on a recognised stock exchange (in a reputable jurisdiction) which implements anti-money laundering and beneficial ownership disclosure measures consistent with FATF standards, such that there is sufficient transparency of ultimate beneficial ownership, we would suggest that it may suffice for Myanmar's beneficial ownership disclosure legislation to require that details of such legal person's listing on such recognised stock exchange must be disclosed, but that in such circumstances (provided there is sufficient transparency) it may not be necessary for the Myanmar company to disclose such listed legal person's ultimate beneficial owners.
- **Obligation on beneficial owners to provide information:** Statutory obligations on shareholders and beneficial owners to disclose their ultimate beneficial ownership information, including to provide supporting information to enable verification.
- **Obligation to disclose PEPs:** Obligation to disclose if any beneficial owner is a politically exposed person (**PEP**), including to provide supporting information to enable verification. DICA Directive No. 17/2019 provides a definition of PEP, but the operative provisions make no reference to PEPs.
- **Sanctions for non-compliance:** Should there be sanctions on shareholders and beneficial owners for non-compliance, in addition to sanction on companies for non-compliance.
- **Risk based approach:** A risk-based approach should be adopted, as is consistent with international standards.
- **Public access:** We suggest that access to beneficial ownership information should not be restricted to the competent authorities alone. In our view, as a minimum Myanmar should grant access to the beneficial ownership information recorded with DICA, to financial institutions and designated non-financial businesses and professionals, for purposes of complying with their obligations as 'reporting organisations' under the AML Law and the Anti-Money Laundering Rules 2015. This would be consistent with FATF's recent guidance (see FATF best practices on beneficial ownership for legal persons October 2019) and the European Union's 5<sup>th</sup> Anti-Money Laundering Directive, which requires beneficial ownership registers to be public.

In addition, we suggest that DICA should specify what 'basic information' relating to companies will be publicly available to all.

There should be appropriate data protection for sensitive information, and for information outside the definition of 'basic information', in the interests of privacy, subject to the rights of competent authorities' and reporting organisations' to access beneficial ownership information for purposes of complying with their statutory obligations.

- **Specify what information must be disclosed:** Specify the minimum information required to be provided by companies, and the process for companies to submit information to DICA.
- **Company's duty to obtain information:** Specify what the company is required to do in order to seek to obtain the beneficial ownership information, so that the scope of the company's duties are clear.
- **How is beneficial ownership information kept up-to-date:** Clarify what is required to ensure the beneficial ownership disclosures are up-to-date.
- **Timing for reporting:** Stipulate clear timing for the various reporting obligations.
- **How is the accuracy of the information confirmed?**
- **Duration that records must be retained.**

#### **Education and awareness**

It is important that comprehensive training and awareness programmes are provided, to assist in ensuring that all relevant persons sufficiently understand the beneficial ownership concepts and the disclosure obligations.

We would be happy to meet with DICA officials to explain our reasoning further.

For and on behalf of

*The Legal Working Group*  
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