

Client Alert

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Myanmar introduces Mandatory Disclosure of Beneficial Ownership of Companies

On 15 November 2019, Myanmar's Directorate of Investment and Company Administration ("**DICA**") issued a directive mandating the disclosure of beneficial ownership of companies in Myanmar ("**Directive**"). The Directive becomes effective on 1 January 2020.

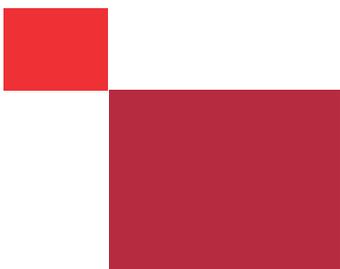
Summary

- The Directive obligates Myanmar incorporated companies and other legal arrangements (trusts, joint ventures, partnerships, associations etc.) to obtain, and keep records of, information on their beneficial owners. The information (and presumably changes thereto) must also be submitted to DICA in a timely manner.
- The Directive requires Myanmar companies to appoint certain authorised individuals to provide beneficial ownership information on their behalf, and such persons will be made accountable to DICA.
- Records of the information must be kept for a period of 5 years from the time the company ceases to be a customer of a financial institution, or the time it ceases to exist.
- Failure to comply with the Directive renders the company subject to certain penal sanctions under Myanmar's anti-money laundering legislation.
- Companies would be well advised to prepare for this new requirement as soon as possible given that it will come into force imminently.

Background

Countries around the world are increasingly resorting to mandatory disclosure of beneficial ownership to combat money laundering, tax evasion and corruption.

Myanmar is a candidate country of the Extractive Industries Transparency Initiative ("**EITI**"), as well as a member of the Asia Pacific Group on Money Laundering ("**APG**"). In 2016, EITI instituted a requirement that implementing countries compel disclosures of beneficial ownership of companies operating in the extractive sector by January 2020. Moreover, APG's 1st Follow-Up Report on the "Mutual Evaluation of Myanmar" dated August 2019 noted that Myanmar authorities had not identified a provision of law requiring a resident to be accountable to authorities for providing beneficial ownership information.





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Consequently, pursuant to the Presidential Notification No. 104/2019, Myanmar established a Beneficial Ownership Task Force to make decisions on the disclosure of beneficial ownership. DICA issued the Directive following the efforts of the task force and the EITI multi-stakeholder group, and under the powers in Section 69(c) of the Anti-Money Laundering Law ("**AML**") and the Presidential Notification.

Legal Requirements under the Directive

The Directive requires that all juristic entities incorporated in Myanmar (which can establish a permanent customer relationship with a financial institution or can otherwise own property) ("**Legal Persons**") must obtain and hold up-to-date information on their beneficial ownership and submit it in a timely manner to DICA and the Inland Revenue Department ("**IRD**").

The Directive also imposes similar obligations on "**Legal arrangements**" which refer to express trusts or other similar legal arrangements.

All Legal Persons and Legal arrangements are required to co-operate with authorities to the fullest extent possible in determining their "Beneficial Owner(s)" (see definition below) either by:

- authorising natural persons, who are accountable to DICA, to provide basic information and beneficial ownership information; or
- authorising certain Designated Non-Financial Business and Professions ("**DNFBP**") which include directors, company service providers, lawyers and accountants) in Myanmar, accountable to DICA, to provide the information.

The information would need to be submitted using an online form made available on DICA's website.

Legal Persons and Legal arrangements must keep the information for at least 5 years after the date on which the Legal Person ceases to be a customer of the financial institution, or is dissolved or otherwise ceases to exist.

For purposes of the Directive, a "Beneficial Owner" is a natural person who:

- holds, directly or indirectly, more than 5% of the shares or voting rights of the Legal Person;
- has the right to, directly or indirectly, appoint and remove the majority of the board of directors or other governing body of the Legal Person; or
- has the right to, or actually, exercises significant influence or control over the Legal Person.

Legal Persons or Legal arrangements who fail to comply with the Directive are threatened with penal sanction under Chapter XI of the AML.



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Observations

The Directive places the obligations of compliance on the companies and other non-natural entities. It appears to apply only to Myanmar incorporated entities or arrangements. It also appears to place some obligations on DNFBPs which are said to be "accountable to DICA" although the consequence of failure of accountability are not expressly set out.

The Directive leaves vague how quickly the information must be submitted to DICA and the IRD other than its reference to a "timely manner". The Directive does not provide for the event where a corporate body does not obtain beneficial ownership information from its shareholders despite asking for it, and the consequences of that to the directors or officers of the corporate body or the DNFBPs.

It would seem that additional clarification from DICA on the detailed requirements of the Directive will be required as it comes into force.

Recommendations

Companies in Myanmar are encouraged to take note of this new reporting requirement and work with their advisers to comply with this new requirement.

The "to dos" would include:

- reviewing the group structure and investigating the identify of potential beneficial owner(s);
- appointing DNFBPs;
- gathering prescribed particulars of the beneficial owner(s);
- sending notices to the beneficial owners or any other person who has reason to know the location of the owners, to confirm details of the owners;
- creating and maintaining a register of beneficial owners; and
- submitting the relevant information to DICA and IRD using the online form, and where necessary applying to DICA to have the information protected from public scrutiny and made available only to competent authorities.