



**global witness**

777 6<sup>th</sup> Street NW  
FL 11, Suite 9-117  
Washington, DC 20001  
Tel +1 202 827 8673  
Fax + 1 202 450 1347  
Email [mail@globalwitness.org](mailto:mail@globalwitness.org)  
[www.globalwitness.org](http://www.globalwitness.org)

**Directorate of Investment and Company Administration**

[dica@mptmail.net.mm](mailto:dica@mptmail.net.mm)  
[dir.myco@dica.gov.mm](mailto:dir.myco@dica.gov.mm)

**Comment in Response to DICA “Request for Suggestion on the Transparency of the Company”**  
30 January 2019

Global Witness writes in response to the Myanmar Directorate of Investment and Company Administration (DICA) “Request for Suggestion on the Transparency of the Company,” related to DICA Directive 17/2019 (hereinafter “the DICA Directive”).

We support DICA’s work towards enacting a beneficial ownership standard based on FATF guidance that can apply to all companies. Based on FATF standards, Myanmar’s EITI Beneficial Ownership Pilot, and international experience, we believe that several next steps will help further strengthen Myanmar’s developing beneficial ownership regime:

1. Define “beneficial owners” to include insurance beneficiaries, state-owned companies, and publicly-traded companies.
2. Continue to classify persons who hold more than 5% of company shares and/or voting rights as beneficial owners.
3. Require submission of politically exposed persons (PEPs) information through the beneficial ownership disclosure process.
4. Define PEPs to include high-level officials of Ethnic Armed Organizations, and to include the family members and close associates of other PEPs.
5. Centralize the beneficial ownership submission process through DICA.
6. Specify timeframes for the submission, updating and elimination of beneficial ownership and PEP information.
7. Establish minimum information requirements for beneficial ownership submissions.
8. Require that beneficial ownership and PEP information be made publicly available, at no cost, in a machine-readable format.
9. Incorporate beneficial ownership and PEP information in company profiles on MyCO.



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10. Develop a beneficial ownership interface, based on the Beneficial Ownership Data Standard (<http://standard.openownership.org/en/v0-2-0/>), which allows for searches based on beneficial owners as well as companies.
11. Publish unique identifiers associated with beneficial owners, such as birth month/year and NRC numbers. These identifiers should be considered as some of the “basic information” subject to mandatory public disclosure.
12. Implement verification and validation measures for beneficial ownership and PEP submissions.
13. Seek additional Ministry funding and human resources for the development of beneficial ownership infrastructure.
14. Recognize that liability for incomplete or fraudulent disclosures extends to company directors and beneficial owners.
15. Enforce penalties for non-compliance based on the 2017 Myanmar Companies Act.

### **Legal Basis**

The legal basis for the DICA Directive remains unclear. The Directive references Sec. 69(c) of the 2014 Anti-Money Laundering Law and Presidential Notification No. 104/2019. However, we understand that the Anti-Money Laundering Law does not authorize DICA to issue rules or directives (it does authorize the Ministry of Home Affairs and Financial Intelligence Unit). Presidential Notification No. 104/2019 only applies to companies in the extractive industries. **We suggest that DICA clarify its legal authority for apply beneficial ownership disclosure requirements to all companies.**

### **Definition of “Beneficial Ownership”**

Although DICA’s beneficial ownership definition is mostly consistent with FATF model standard, it does not incorporate FAFT guidance that the “definition should also apply to beneficial owner or a beneficiary under a life or other investment linked insurance policy.” FATF Recommendation 25 recognizes that, without adequate oversight, trusts can shield money laundering or terrorist financing. **We recommend that the DICA Directive [Sec. 3(a)] clarify that the beneficial ownership definition covers beneficiaries under a life or other investment-linked insurance policy.**



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As the MEITI Beneficial Ownership Pilot Report has recognized, unique beneficial ownership requirements should apply to state-owned companies (which are controlled by states, not natural persons) and publicly-traded companies. **We suggest that the DICA Directive [Sec. 3(d)] require (1) state-owned companies to disclose their parent ministry and country, and (2) publicly-traded companies to disclose the name of the stock exchanges on which they are traded and links to their public filings.**

Although the DICA Directive's definition of beneficial owners requires companies to disclose their beneficial owners based on their level of direct *or indirect* control, in practice most companies have relied *only* on direct shareholding to report beneficial ownership. For example, in the EITI Beneficial Ownership Pilot Program only three companies reported beneficial owners that do not hold shares or voting rights. However, the percent of shares or voting rights remains a poor proxy for who actually controls Myanmar companies: minority shareholders may nevertheless exert influence and benefit significantly from a company. A high threshold for disclosure based on shares held or voting rights will likely hide these beneficial owners from view. **We recommend that the DICA Directive [Sec. 3(d)] continue to require disclosure of persons who “hold, directly or indirectly, more than 5% of the shares and/or voting rights” of a company.** We also encourage DICA to engage with the Central Bank and other government entities to adopt this threshold.

### **Definition of “Politically Exposed Persons”**

Although the DICA Directive [Sec. 3(e)] defines “politically exposed persons” (PEPs), the Directive does not specify whether or how PEPs should be reported. **We suggest that the DICA Directive [Sec. 3(e)] be clarified to require legal entities to submit “beneficial ownership *and* PEP” data in a timely manner.**

The definition of PEPs in DICA Directive [Sec. 3(e)] is not consistent with the FATF model standard, or the 2014 Anti-Money Laundering Law [Sec. 3]. Both FATF guidance and the Law recognize that the family members and close associates of politically exposed persons are at higher risk of engaging in bribery, money laundering, and other forms of corruption through their associations. These individuals should therefore also be flagged as PEPs. **We suggest that the DICA Directive [Sec. 3(e)] be revised to include “family members who are related to a PEP in one of the categories above either directly (consanguinity) or through marriage or similar (civil) forms of partnership,” and “close associates who are closely connected to a PEP in one of the categories above, either socially or professionally” in the PEP definition.**



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The MEITI Beneficial Ownership Pilot amended the FATF definition of PEPs to include “Ethnic Armed Organizations’ senior leaders and officials.” Identification of high-level Ethnic Armed Organization members remains essential for businesses conducting due diligence, given the documented historic links between many of these groups and organized crime. **We recommend that DICA Directive [Sec. 3(e)] be revised to include “Ethnic Armed Organizations’ senior leaders and officials” in the PEP definition.**

### **Data Collection**

The DICA Directive [Sec. 5] indicates that companies should submit beneficial ownership information to DICA and the Internal Revenue Department (IRD). In our view, requiring separate submission to different government agencies would put a greater burden on businesses and increase the risk of inconsistent data. **We suggest modifying Directive [Sec. 5] to clarify that all beneficial ownership submissions be centralized through DICA, but that DICA should facilitate access to all beneficial ownership data by other government agencies.**

Although the DICA Directive [Sec. 5] requires “timely” submission of beneficial ownership information, it does not define timelines for disclosure. **We recommend that DICA establish specific periods for compliance in [Sec. 5], by one of two methods, with a strong preference for the first option (event driven):**

- By requiring companies to notify the government of any material change in beneficial ownership within a specified timeframe. For example, the United Kingdom requires companies to update their internal records within 14 days of any change in beneficial ownership, and to update their information on the Companies House database within a further 14 days.
- By requiring companies to submit beneficial ownership information as an annex to their annual returns, along with other routinely updated data. If this option is taken, all beneficial owners over the previous year should be required to be identified. In other words, it should not be possible for person A to be the beneficial owner at the time the annual return is submitted, person B to be the beneficial owner for the rest of the year, and then person A to temporarily take over as beneficial owner at the time of the subsequent annual return.

The DICA directive does not clarify how long DICA should keep non-current beneficial ownership information, although Central Bank Directive 18/2019 indicates that businesses should keep records for the past five years. **We suggest that the DICA Directive establish how long the agency should maintain historical beneficial ownership information.**



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In our view, the DICA Directive [Sec.'s 5,7] should specify minimum information requirements for companies submitting beneficial ownership and PEP information through the online form. **We suggest that DICA require the following information for each beneficial owner:**

- Legal name (as it appears on the NRC card or passport)
- Alternative names used
- Date of birth
- Place of birth
- Nationality or citizenship
- Country of residence
- NRC number (for Myanmar citizens) or passport number (for non-citizens)
- Scanned copy of the NRC or passport
- Residential address
- Business address
- Legal entity in which beneficial interest is held:
  - Company name
  - Company registration number
- Intermediate legal entities through which the beneficial interest is held:
  - Company name(s)
  - Company registration number(s)
- Form in which the beneficial ownership is held
- Amount of beneficial interest (for example, percentage of shares)
- Date that the beneficial ownership became active
- Date of cessation of beneficial ownership (if not longer active)
- Information on politically exposed persons (PEPs)
- Contact information for individuals or DNFPBs responsible under Sec. 6 of the Directive.

We especially note that PEPs are unlikely to self-identify if asked to declare themselves as “politically exposed persons.” Instead, we suggest that beneficial owners answer a series of prompts to determine whether they fall into covered categories (for example, being or being a relative or close associate of a Member of Parliament). DICA may then designate PEPs based on these inputs.

Thresholds for declaring beneficial ownership and PEPs are defined somewhat differently across countries. In Myanmar, most stakeholders lack an adequate understanding of these concepts or how to make accurate declarations. We hope that in the coming months, DICA will seek inputs on and issue additional guidance to assist companies in evaluating their corporate structure and meeting the requirements of the Directive.



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## **Data Publication**

Beneficial ownership information should be free, open, and readily accessible to all citizens—particularly those, like journalists and civil society members, who play a critical role in strengthening public accountability. A paywall to MyCo information does not meaningfully improve the privacy of beneficial owners; it simply provides well-resourced actors with greater access to information. **We recommend that DICA’s directive require the timely publication of beneficial ownership information—including PEP information—in a free, open, and machine-readable format.**

Beneficial ownership data should help stakeholders identify the links between individuals and the companies they control. In other words, users should not only be able to check whether Company A is owned by Individual B, but what other companies Individual B beneficially owns. The Beneficial Ownership Data Standard provides a format with these capabilities. **We suggest that DICA work with developers to comply with the Beneficial Ownership Data Standard, and create a search function based on individuals as well as companies.**

A unified online interface provides stakeholders with the most effective access to company’s beneficial ownership and other useful information. For example, the UK Companies House incorporates a separate “beneficial ownership” tab for each entity in the database. **We recommend that DICA incorporate beneficial ownership data along with other company information in the Myanmar Companies Online (MyCO) registry.**

## **Data Verification & Validation**

Which beneficial ownership information DICA makes publicly accessible should depend on (1) the utility of the information to the public and (2) potential privacy or security concerns for individual beneficial owners. For example, we see no significant reason to publish a beneficial owner’s residential address: most users do not benefit from this information but the beneficial owner may have reason to not publicly disclose where they live. On the other hand, given the commonality of names and aliases in Myanmar, using additional unique identifiers such as NRC numbers is essential for positively identifying beneficial owners. To our knowledge, disclosure of NRC numbers in Myanmar has not resulted in fraud or diminished personal security. **We encourage DICA to publish additional unique identifying information on beneficial owners to the extent possible. In our view, this includes publication of month and year of birth, and NRC numbers.**



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The DICA Directive [Sec. 9] indicates that beneficial owners may seek nondisclosure of their non-basic information if there is a threat of violence or intimidation. Our experience suggests that the need for nondisclosure is exceedingly rare. For example, in the United Kingdom, only approximately 230 out of 4.5 million (less than .0001%) of beneficial owners' data has been completely suppressed. Further, only certain information disclosed through beneficial ownership process may be used to access or contact a beneficial owner: namely, addresses and contact information. **We believe the potential for abuse of [Sec. 9] outweighs its protective value. If [Sec. 9] is maintained, we encourage DICA to clarify that “basic information” includes the beneficial owner’s name, unique identifiers such as month and year of birth and NRC number, and relation to the company.**

Mistaken or fraudulent submissions remain a key challenge for beneficial ownership databases in other countries. **We recommend that DICA incorporate strong verification and validation measures into its process, including:**

- Design the online submission form to reject inputs that are incorrectly formatted (for example, NRC numbers of more or less than 9 digits) or impossible (for example, year of birth after 2020);
- Require the submission of NRC card or passport scans, as is already a condition for SIM card use in Myanmar. DICA should verify these documents to the extent possible; and
- Require that all persons submitting beneficial ownership information certify the correctness and completeness of the information.
- Create a mechanism for business partners, accountants, attorneys, civil society or journalists to report information on MyCo that appears to be incorrect. (For example, the UK Companies House incorporates a button called “is there anything wrong with this page?”)

We note that the collection, verification and validation of beneficial ownership information will require significant resources and expertise. **We suggest that DICA incorporate funding for the development and maintenance of beneficial ownership disclosure as part of MyCo in its submission for the upcoming ministerial budget. We also advise that DICA identify and train staff to work specifically on beneficial ownership and PEP issues.**

### **Enforcement**

The DICA Directive [Sec. 10] provides that “legal persons” or “legal entities” which do not provide accurate and up-to-date information can be penalized. It does not clarify to what extent individuals associated with companies—such as their beneficial owners or directors—will be held liable for



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noncompliance. In our view, DICA should be able to impose penalties on individual beneficial owners and directors as well as the companies in order to incentivize quality reporting. **We recommend that the DICA Directive [Sec. 10] clarify that beneficial owners and directors may be penalized for inaccurate or incomplete beneficial ownership submissions.**

The DICA Directive [Sec. 10] indicates that noncompliance is punishable in line with Chapter XI of the Anti-Money Laundering Law. To our knowledge, the Anti-Money Laundering Law does not authorize DICA to enforce the provisions of Chapter XI. Further, the reporting provisions in Chapter XI generally apply to banks, not to companies generally. **We suggest removal of reference to the Anti-Money Laundering Law from DICA Directive [Sec. 10]. We suggest that the Section be amended to recognize DICA's authority to penalize companies under provisions the 2017 Myanmar Companies Act, such as:**

- Sec. 7. (providing that the penalty for a domestic applicant making a false declaration in an application shall be a fine of MMK 2,500,000.)
- Sec. 24 (providing that the penalty for a foreign applicant making a false declaration in an application shall be a fine of MMK 5,000,000)
- Sec. 114 (providing penalties of MMK 1,000,000 for failure to report timely changes in share capital)
- Sec. 190 (providing penalties of MMK 10,000,000 for failure to maintain or file annual returns regarding company's directors, and directors' interests and benefits in the company)
- Sec. 400 (providing for imprisonment of up to seven years, and/or a fine, for willingly making false statements in affidavit, deposition, or solemn affirmation).