

# Responsible Business, CSR and oil/gas and power contracts in Myanmar

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# This presentation will cover:



- What is responsible business and what is Corporate Social Responsibility (CSR)?
- CSR, social licence to operate and natural resource contracts
- How CSR is encouraged in other countries
- Emerging requirements for CSR in Myanmar

# What is 'responsible business'?

“တာဝန်ယူမှုရှိသော ရင်းနှီးမြှုပ်နှံမှုဆိုတာဘာလဲ”?

- MCRB defines 'responsible business' as 'business activities that work for the long-term interests of Myanmar and all its people'.
- MCRB ၏အဓိပ္ပါယ်ဖွင့်ဆိုချက် “မြန်မာပြည်သူပြည်သားများ၏ ရေရှည်အကျိုးစီးပွားများ အတွက် ဆောင်ရွက်သောစီးပွားရေးလုပ်ငန်းများ”
- However there is no single international definition of a 'responsible business' or responsible company.
- ဒါပေမဲ့ “တာဝန်ယူမှုရှိသော စီးပွားရေးလုပ်ငန်း” (သို့) ကုမ္ပဏီဆိုသည်ကို သီးသန့်အဓိပ္ပါယ် ဖွင့်ဆို ထားခြင်းမရှိ

# What does a 'responsible business' do?

- ▶ Obeys the law
- ▶ Doesn't pay bribes or tea money
- ▶ Pays its taxes
- ▶ Respects its employees
- ▶ Respects human rights
- ▶ Respects the environment
- ▶ Treats other businesses responsibly
- ▶ Treats its customers responsibly
- ▶ Transparent
- ▶ Responds to and engages with stakeholders

Some businesses take being a 'responsible business' a step further by making social investments or undertaking 'CSR' programmes, or engaging in philanthropy



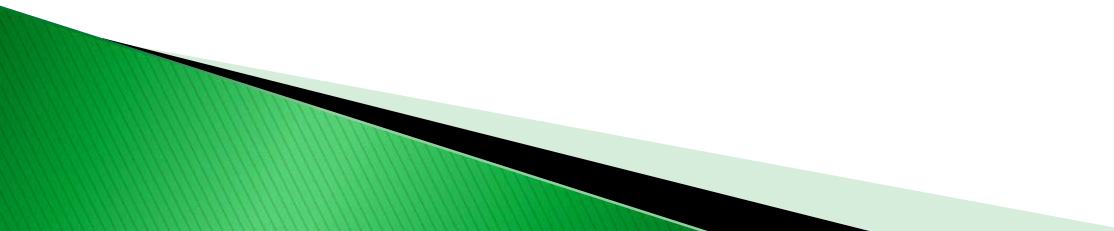
# What is corporate social responsibility?

- There are many definitions of Corporate Social Responsibility (CSR).
- MCRB uses the 2011 EU definition:
  - “the responsibility of enterprises for their impacts on society”.
  - “လူမှုအသိုင်းအဝိုင်းအပေါ် စီးပွားရေးလုပ်ငန်းများ၏ သက်ရောက်မှုများအတွက် တာဝန်ယူမှု”

# What is corporate social responsibility (2)?

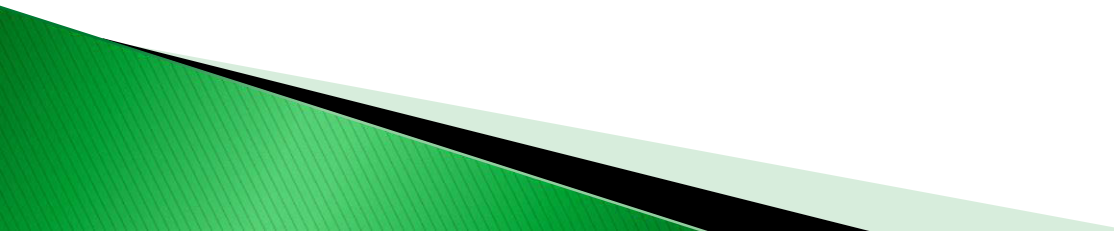
- The 'CSR' word is commonly used in Myanmar but some multinational companies do not like to use the term 'CSR'.
- They talk about 'corporate responsibility', 'sustainability', 'social investment' or investing in their 'social licence to operate'
- A company which pursues 'CSR' or 'a social licence to operate' usually both:
  - behaves responsibly, obeys the law, and respects human rights etc
  - 'goes beyond' or 'actively promotes the enjoyment of human rights'...which usually means a company spends extra money beyond what it is legally required to do to comply with the law .....

# What is social licence to operate? (SLO)

- ▶ There is no universally accepted definition of *Social License to Operate (SLO)* but it can be defined as ‘Ongoing acceptance by the people that live and work in the area of impact and influence of any given project’.
  - ▶ SLO does not mean that every individual stakeholder or group supports the project but does mean that there is at least broad on-going social acceptance of the project.
  - ▶ SLO takes time to earn, but can be lost very quickly.
  - ▶ Losing it can lead to conflict, delays and additional costs of a project.
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# Is social licence to operate (SLO) a legally binding document?

- ▶ No. It is neither legally binding, nor an actual document.
  - ▶ SLO is outside of a government or a legally-granted right to operate a business.
  - ▶ SLO is rooted in the beliefs, perceptions and opinions held by the local population and other stakeholders about the project.
  - ▶ A company can only gain a 'social license to operate' through broad acceptance of its activities by society or the local community.
  - ▶ This acceptance is sometimes built on a **Community Development Agreement** particularly in the mining industry
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# Why do companies and communities pursue Community Development Agreements (CDAs)?

- Governments have imposed a specific obligation on developers to formally enter into a CDA.
  - e.g. Papua New Guinea (Mining Act 1992); Mongolia (Article 29.1 of the Mongolian Mining Law 2006)

Or

- There is a legal regime that requires developers seeking access to Indigenous lands to negotiate the conditions of access or use with the traditional custodians of that land
  - e.g. Australia (Native Title Act 1996), Canada (agreements with First Nations)

Or

- There has been significant conflict involving the developer and local communities, and an agreement has been negotiated in an effort to resolve these conflicts
  - e.g. Tintaya copper mine Peru (BHPBilliton)

Or

- Because it strengthens the social licence to operate.
  - Eg Ahafo gold mine, Ghana (Newmont)

# Different terms for Community Development Agreements (CDA)

- ▶ Community Development Initiatives
- ▶ Voluntary Agreements
- ▶ Indigenous Land Use Agreements
- ▶ Partnering or Partnership Agreements
- ▶ Community Contracts
- ▶ Landowner Agreements
- ▶ Shared Responsibilities Agreement
- ▶ Community Joint Venture Agreements
- ▶ Empowerment Agreements
- ▶ Exploration Agreements (Canada)
- ▶ Impact Benefit Agreements (Canada)
- ▶ Social Trust Funds (Peru)
- ▶ Investment Agreements (Mongolia)
- ▶ Benefits Sharing Agreements (Chile)
- ▶ Social Responsibility Agreements
- ▶ Participation Agreements
- ▶ Socio-economic Monitoring Agreements

(Adapted from the World Bank's "Mining Community Development Agreements – Practical Experiences and Field Studies", 2010)

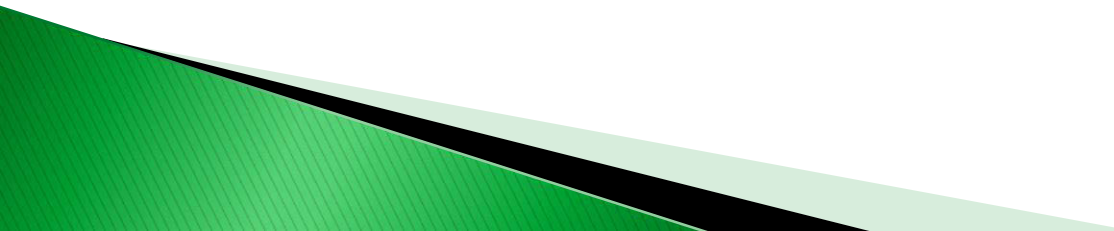


CDA are something for Myanmar to think about....particularly as a mechanism of ensuring CSR spending has community support.....

# CSR spending – what do other governments do? **India**

- ▶ India is the only country with legislated mandatory CSR spending
- ▶ Companies Law (Clause 135) adopted 1 April 2014 requires all companies, including foreign firms, with a minimum net worth of Rs 500 cr (US\$82million), turnover of Rs 1,000 cr (US\$164million), and net profit of at least Rs 5 cr (USD820,000), spend at least 2% of their profit (averaged over three years) on CSR
- ▶ Around 2,500 companies affected
- ▶ Eligible activities are defined including:
  - Eradicating extreme hunger and poverty; Promotion of education; Promoting gender equality and empowering women; Reducing child mortality and improving maternal health; Combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases; Ensuring environmental sustainability; Employment enhancing vocational skills; Social business projects; Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and Such other matters as may be prescribed.
- ▶ Issues to be resolved around
  - non-tax deductibility of mandated spending
  - how to audit spending

# CSR spending – what do other governments do: **European Union**

- ▶ February 2014 EU Directive on disclosure of non-financial information by certain large companies requires all publicly traded companies with more than 500 employees to provide “relevant and useful information” concerning their human rights impacts, environmental performance, anti-corruption measures, and diversity programs in their annual reports.
  - ▶ Such **reports** are to be based on recognized CSR frameworks such as the U.N. Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.
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# CSR/social spending – what do companies do? Some examples from Myanmar:

- ▶ **Unilever:** promoting hand-washing with soap; work with PSI in Myanmar (globally: 15 October World Handwashing Day with celebrities, employees teaching under-5s to wash their hands)
- ▶ **Coca-Cola:** \$3 million grant to PACT to support the development of the women's empowerment and microfinance programme Swan Yi, part of Coke's global commitment to economic empowerment of five million women across its global value chain by 2020 through an initiative known as 5 BY 20
- ▶ **TOTAL Socio-economic programme:** since 1995, 50,000 people in the pipeline area have access to education, public health services, and road infrastructure. The socio-economic program currently covers 25 villages.

# The development of CSR spending in Myanmar

- ▶ Professor Aung Tun Thet, member of the Myanmar Investment Commission (MIC) has publicly stated that foreign investors whose proposals are being considered by MIC should commit to spending '1 – 3% of their net profit on CSR'
- ▶ MIC does not appear to be including this as a contractual or permit requirement (however the renegotiated Letpadaung contract includes a requirement for 2% of net profit to go into a fund for the development of the community around the mine site)
- ▶ Ideas for this spending – which MIC says should be decentralized – include:
  - local programmes defined by company with local communities and authorities
  - contributing to a 'social business/enterprise' investment fund

# Issues to consider concerning CSR in Myanmar

- ▶ Contractual requirements? If so, a requirement to do what:
    - Behaviour (international standards)?
    - Spending?
    - Reporting?
  - ▶ Just foreign – or foreign and Myanmar companies?
  - ▶ Most communities prioritise jobs and economic development more than CSR projects – how to combine the two?
  - ▶ Cost to companies: an additional ‘tax’? Or tax-deductible?
  - ▶ Based on profit? But companies may start making profits a long after the best time for social investment
  - ▶ Ensuring integrity in how funds are spent (companies have strict anti-corruption obligations e.g. US FCPA)
  - ▶ Local context and potential to drive conflict?
  - ▶ Compulsory reporting helps drives performance
  - ▶ Transparency: Myanmar EITI – will introduce reporting obligations on extractives companies to disclose social investment payments and obligations on governments to disclose receipts (where payments made to government)
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