

The Road Ahead : How can companies contribute to Myanmar Labour Law reform through responsible business conduct?

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Multistakeholder Forum on Labour Law Reform
18 January 2018, Kempinski Hotel, Naypyidaw

How can international and Myanmar companies support the labour law road map ?

- Your chauffeur for this presentation: MCRB
- The destination: ‘responsible business’
- The rules of the road: Myanmar law, and international standards
- ‘Sharing the driving’: what can international and Myanmar companies do?
- Potholes: challenges on the road ahead



Myanmar Centre for
Responsible Business



myanmar.responsible.business

Founders:



Current core funders:

- UK DFID
- DANIDA
- Norway
- Switzerland
- Netherlands
- Ireland

www.myanmar-responsiblebusiness.org
and www.mcrb.org.mm

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MCRB Objective

To provide an effective and legitimate platform for the creation of **knowledge, capacity and dialogue** concerning responsible business in Myanmar, based on local needs and international standards, that results in more responsible business practices.

ပို၍တာဝန်ယူမှုရှိသော စီးပွားရေးအလေ့အကျင့်များ
ဖြစ်ထွန်းလာစေရန်၊ နိုင်ငံတကာအဆင့်အတန်းများ၊
ဒေသလိုအပ်ချက်များ အပေါ်မူတည်၍ မြန်မာနိုင်ငံ၌
တာဝန်ယူမှုရှိသော အသိပညာ၊ စွမ်းဆောင်ရည်နှင့်
စကားပိုင်းများ ဖြစ်ပေါ်လာစေရန်အတွက်
ထိရောက်သော တရားဝင် အခင်းအကျဉ်းတစ်ခု
ပံ့ပိုးပေးရန်။



Sector Wide Impact Assessment

Myanmar Oil & Gas Sector Wide Impact Assessment



Institute for
Human Rights and Business

Myanmar Centre for
Responsible Business



Sector Wide Impact Assessment

Myanmar ICT Sector-Wide Impact Assessment

September 2015



Institute for
Human Rights and Business

Myanmar Centre for
Responsible Business

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

Sector Wide Impact Assessments



Sector Wide Impact Assessment

Myanmar Tourism Sector Wide Impact Assessment



Institute for
Human Rights and Business

Myanmar Centre for
Responsible Business

Institute for
Human Rights and Business



Myanmar Mining Sector Wide Impact Assessment on Limestone, Gold and Tin

DRAFT FOR CONSULTATION

Commenting on the MINING SWIA draft

- MCRB welcomes comments on this draft from all interested stakeholders to be sent to info@myanmar-responsiblebusiness.org with a subject line of "Mining SWIA Consultation Draft Feedback" by 16 October 2015.
- Submission of written feedback to the e-mail above will be posted on the MCRB website with each commentator's submitted name and organisation unless you tell us that you do not want your comments posted on our website.
- In making comments, please be as specific as possible, including identifying the relevant section or example being discussed.

IHRB

Myanmar Centre for
Responsible Business

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

Combatting Discrimination by Business and in the Workplace in Myanmar

September 2017



အနှစ်ချုပ်စာလွှာ

မြန်မာနိုင်ငံရှိ စီးပွားရေးလုပ်ငန်းများနှင့် လုပ်ငန်းခွင်၌ ခွဲခြားဆက်ဆံမှုများအား တိုက်ဖျက်ခြင်း

၂၀၁၇ ခုနှစ်၊ စက်တင်ဘာလ



Briefing Paper

Children's Rights and Business in Myanmar

April 2017

Briefing papers for Business (in Burmese and English)
www.mcrb.org.mm



Operational level grievance mechanisms

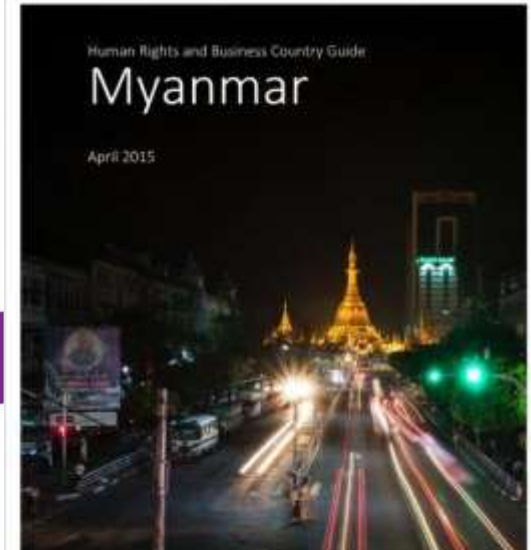
လုပ်ငန်းခွင်အဆင့်၌ နှစ်နာမူတိုင်ကြားချက်များကို ဖြေရှင်းပေးသည့် ယန္တရား

IPIECA Good Practice Survey



LAND

Myanmar Centre for Responsible Business
BRIEFING PAPER
March 2015



BRIEFING PAPER

Indigenous Peoples' Rights and Business in Myanmar

FEBRUARY 2016

Forthcoming: MCRB-AAR Handbook on employing people with disabilities



မသန်စွမ်းသူများကို
အလုပ်ခန့်ထားခြင်း
မြန်မာနိုင်ငံရှိ အလုပ်ရှင်များအတွက် လက်ဖွဲ့စာအုပ်

- In English and Burmese.
- Please send comments to MCRB by 9 February

The destination: what is a 'responsible business'?

တာဝန်ယူမှုရှိသော ရင်းနှီးမြှုပ်နှံမှုဆိုတာဘာလဲ?

- MCRB defines 'responsible business' as 'business activities that work for the long-term interests of Myanmar and all its people'. However there is no single international definition of a 'responsible business' or responsible company.
- MCRB ၏အဓိပ္ပါယ်ဖွင့်ဆိုချက် "မြန်မာပြည်သူပြည်သားများ၏ ရေရှည်အကျိုးစီးပွားများ အတွက် ဆောင်ရွက်သောစီးပွားရေးလုပ်ငန်းများ" 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 the environment
- Treats other businesses responsibly
- Treats its customers responsibly
- Is transparent
- Responds to and engages with stakeholders
- Respects human rights

ဥပဒေကိုလေးစားလိုက်နာ

လာဘ်ပေးလာဘ်ယူ (သို့)
လက်ဖက်ရည်ဖိုးပေးတာမျိုးမလုပ်
အခွန်ဆောင်

၎င်း၏အလုပ်သမားများကိုလေးစား

သဘာဝပတ်ဝန်းကျင်ကိုလေးစား

အခြားစီးပွားရေးများကို တာဝန်ယူမှု၊
တာဝန်သိမှုဖြင့်ဆက်ဆံ

၎င်း၏ Customer (ဈေးဝယ်သူ ဖောက်သည်)များကို
တာဝန်ယူမှု၊ တာဝန်သိမှုဖြင့်ဆက်ဆံ

ပွင့်လင်းမြင်သာမှု

သက်ဆိုင်သူများနှင့် ချိတ်ဆက်ဆောင်ရွက်

လူ့အခွင့်အရေးများကိုလေးစား



To be a responsible driver

You must:

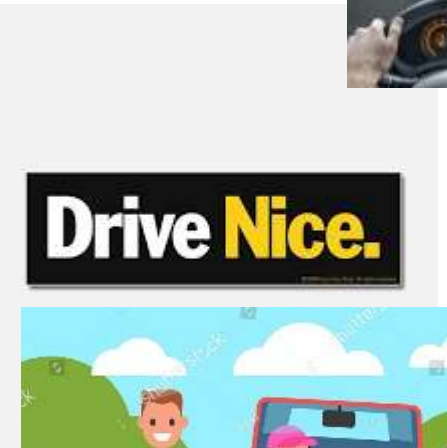
- Obey the law
- Follow the Highway Code

You can choose to:

- Treat other stakeholders e.g. other drivers, bicyclists, pedestrians with courtesy
- Teach others - family, friends - to drive responsibly
- Buy a safer more fuel-efficient car

To be a responsible business

- Obey labour law and other relevant laws e.g. Myanmar Investment Law, environment, laws etc
- Align with international standards (ILO, UN, OECD)
- Undertake human rights/labour rights due diligence on a continuing basis
- Adopt company policies e.g. diversity, creating shared value
- Invest in better technology and practices
- Share best practice
- Engage with government and national and international initiatives



2016 Myanmar Investment Law and 2017 Rules: more focus on responsible business conduct

Rule 64

The Commission must assess every Proposal to determine if.....

..d)“ the Investor has demonstrated a commitment to carry out the Investment in a **responsible and sustainable manner**, including by, as relevant, **limiting any potentially adverse environmental and social impacts**; In the commitment, it includes without limiting to environmental conservation actions, compliance with environmental conservation policies, human rights and application of effective technology for natural resources and practices of waste management;.....

.. (g) the Investor, Associate and Holding Company are of good character and business reputation;

Rule 66

“For the purposes of rule 64(g) in assessing whether the Investor is of **good character and business reputation** the Commission may consider (without limitation) whether the Investor or any an Associate with an involvement or interest in the Investment has committed an offence or other contravention of the law of the Union or another jurisdiction, including **any environmental, labour, anti-bribery and corruption or human rights law.**”

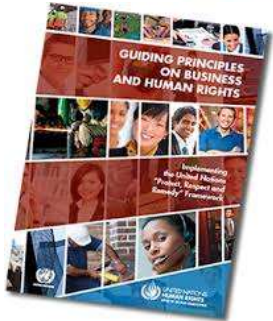
2016 Myanmar Investment Law/2017 Rules: more focus on reporting and transparency

Annual Report to be published under Rule 196 by all companies with an MIC Permit

- Progress in implementing the Investment, and any material variations from application; Amount of Investment and any changes in capital invested; Change in shareholders or parties with an interest in the investor; Export earnings, Audited financial statements; value of tax incentives claimed.
- **Employment performance**; impact on environment and local community; land used, and changes to land or land uses
- **How investor is supporting Myanmar Investment Law Section 3 objectives (includes responsible investment)**
- **Compliance with conditions of Approval, any instances of noncompliance, including non-compliance with other applicable laws**
- Material operating licences, permits and approvals obtained by the Investor since the Approval or date of the previous annual report
- **For Investors with a Permit, how it has demonstrated its commitment to carry out the Investment in a responsible and sustainable manner**

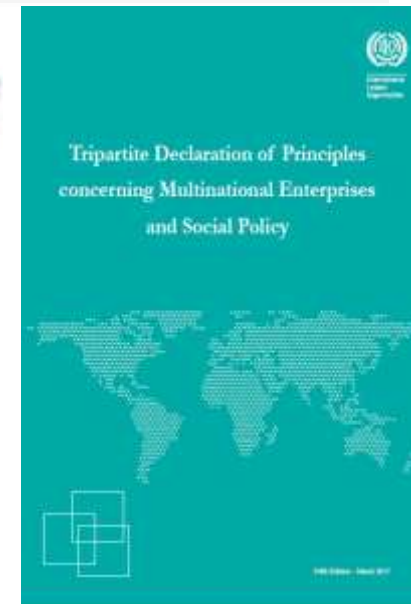
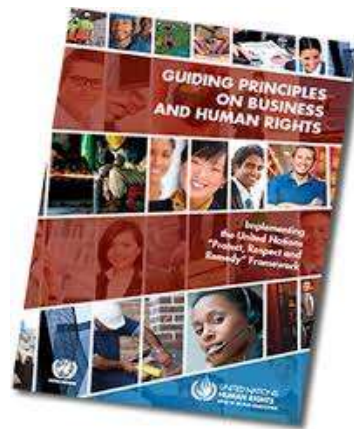
International standards

- Developed as a result of growth of multinational enterprises and global supply chains
- International organisations e.g. UN, ILO, OECD, IFC/World Bank
- Multistakeholder initiatives e.g. Ethical Trading Initiative
- Often serve as the basis for company policies and practices especially for companies headquartered in OECD member countries
- May be used by companies to define standards expected of suppliers/business partners
- Support implementation of Sustainable Development Goals esp SDG8 – decent work and economic growth
- Relevant to Myanmar:
 - Reference point for government e.g. World Bank/IFC standards in Environmental Impact Assessment (EIA)
 - Used by international investors and buyers
 - Adopted by leading Myanmar companies especially those with foreign partners



In recent years, these international standards for responsible business have been aligned

- **United Nations (UN) Guiding Principles on Business and Human Rights (2011)**
- **International Labour Organization (ILO)**
 - Declaration on Fundamental Principles and Rights at Work
 - Relevant ILO Conventions and Recommendations
 - ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy - 5th edition (March 2017)
- **Organisation of Economic Co-operation and Development (OECD)**
 - Guidelines for Multinational Enterprises on Responsible Business Conduct (2011)
 - Due Diligence Guidance for Responsible Supply Chains in the Garments and Footwear Sector (2017)



UN Guiding Principles on Business and Human Rights

စီးပွားရေးနှင့် လူ့အခွင့်အရေးများဆိုင်ရာ လမ်းညွှန်အခြေခံမူများ (2011)



Prof. John Ruggie, Special Representative to the United Nations Secretary General, 2005-2011



State duty to PROTECT human rights
 နိုင်ငံတော်၏ လူ့အခွင့်အရေးများ ကာကွယ်ရန် တာဝန်

Policies မူဝါဒများ
 Law and Regulation ဥပဒေ
 စည်းမျဉ်းများ
 Adjudication စီရင်ချက်ချခြင်း

Corporate responsibility to RESPECT human rights
 စီးပွားရေး လုပ်ငန်းကြီးများ၏ လူ့အခွင့်အရေးများ လေးစားလိုက်နာတာ ရန် တာဝန်

Act with due diligence to avoid infringement ထိခိုက်နစ်နာမှုများ၊ အခွင့်အရေး ချိုးဖောက်မှုများကို ရှောင်ကြဉ်ရန် ကြိုတင်ဆန်းစစ်၊ ကာကွယ်တားစီးခြင်းများလုပ်ဆောင်ရန်
 Address impacts သက်ရောက်ထိခိုက်မှုများကို ဖြေရှင်းရန်

Access to REMEDY

ပြန်လည် ကောင်းမွန်အောင် ပြုပြင်ခြင်း/ ထိခိုက်နစ်နာမှုများအား ကုစားခြင်းများကို လက်လှမ်းမီမှု

Effective access for victims ထိခိုက်နစ်နာခဲ့သူများအတွက် ထိရောက်သောကုစားမှုကို လက်လှမ်းမီမှု
 Judicial and non-judicial တရားဥပဒေ၊ တရားရုံးနှင့်ဆိုင်သော နစ်နာချက်များ ကုစား မှု/ တရားရုံးများနှင့်မဆိုင်ဘဲ ပြင်ပ၌ နစ်နာချက်များ ကုစားမှု

ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

- Only **tripartite** guidance on responsible business. First adopted 1977
- Direct guidance to enterprises, governments and employers, workers organisation on social policy and inclusive, responsible and sustainable workplace practices.
- Covers areas such as employment, training, conditions of work and life, and industrial relations as well as general policies.
- Based on principles contained in international labour standards (ILO conventions and recommendations)
- Emphasises importance of the rule of law, law enforcement, social dialogue and consultation
- 5th Revision in 2017:
 - strengthened/added principles addressing social security, forced labour, transition from the informal to the formal economy, wages, safety and health, access to remedy and compensation of victims.
 - Aligned with UN Guiding Principles on Business and Human Rights “Protect, Respect and Remedy” Framework and the Sustainable Development Goals



All International standards say.....

.....These guidelines, standards, principles should not introduce or maintain inequalities of treatment between multinational and national enterprises - **good practice for all.**

And global supply chains makes this a necessity.

Guidelines for Multinational Enterprises

- Organisation for Economic Cooperation and Development (Paris)
- Most comprehensive set of guidelines for Responsible Business Conduct (RBC)
- All areas of corporate responsibility (labour, human rights, environment, corruption, taxation, etc.)
- Recommendations for business, backed by 48 Governments including 13 non-OECD members
- Binding for governments, voluntary for multinational enterprises
- Unique implementation mechanism (mediation by National Contact Points)
- <http://mneguidelines.oecd.org/>

COUNTRIES ADHERING TO THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

Argentina	Kazakhstan
Australia	Korea
Austria	Latvia
Belgium	Lithuania
Brazil	Luxembourg
Canada	Mexico
Chile	Morocco
Colombia	Netherlands
Costa Rica	New Zealand
Czech Republic	Norway
Denmark	Peru
Egypt	Poland
Estonia	Portugal
Finland	Romania
France	Slovak Republic
Germany	Slovenia
Greece	Spain
Hungary	Sweden
Iceland	Switzerland
Ireland	Tunisia
Israel	Turkey
Italy	Ukraine
Japan	United Kingdom
Jordan	United States

OECD Guidelines – what's included

1. **Concepts and Principles**
2. **General policies**
3. **Disclosure**
4. **Human Rights**
5. **Employment and industrial relations**
6. **Environment**
7. **Combating bribery**
8. **Consumer interests**
9. **Science and technology**
10. **Competition**
11. **Taxation**

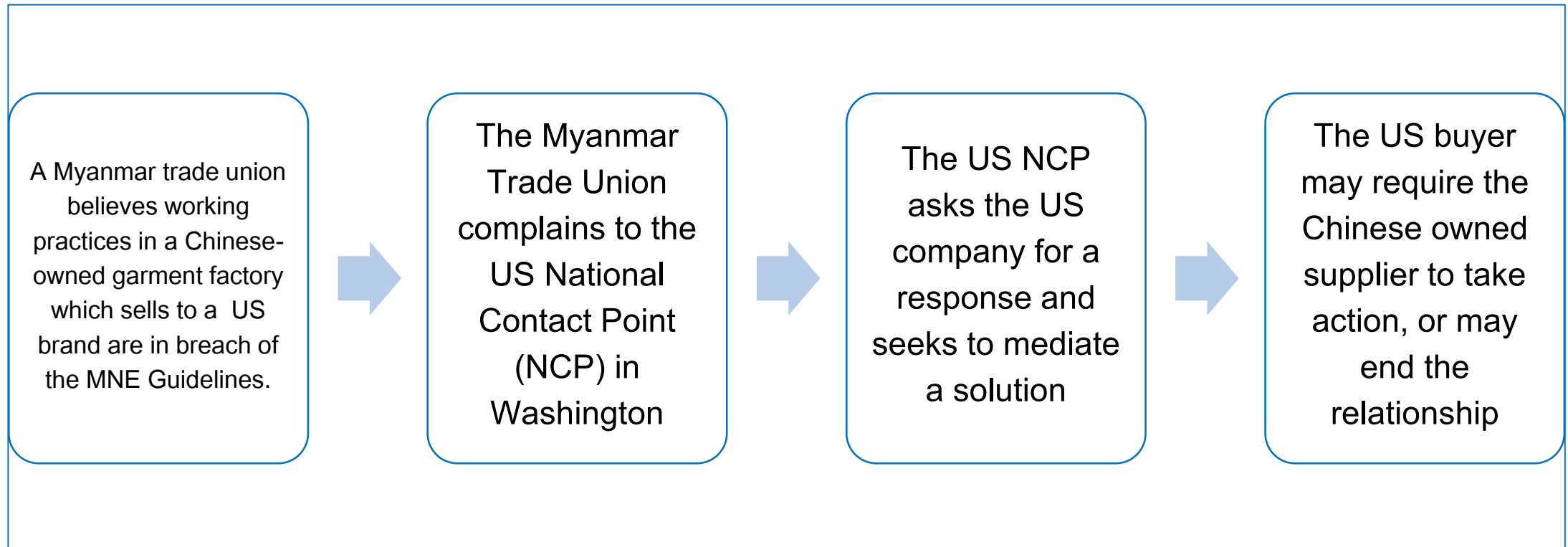
No other corporate responsibility instrument covers these issues

National Contact Point
Mediation of complaints



National Contact Point Mediation

- All governments adhering to the MNE Guidelines assign a National Contact Point (NCP) to hear complaints ('specific instances') about 'their' companies
- Even though Myanmar and many other countries investing directly in Myanmar are not OECD members, the Guidelines and NCP mediation are still relevant if the market/buyer is from an OECD country



OECD Human Rights/Labour Rights Core Due Diligence Guidance

Based on the UN Guiding Principles on Business and Human Rights



Companies should:

1. Embed responsible business conduct in enterprise policy and management systems
2. Identify actual/potential harms in the enterprise's own operations and its supply chain
3. Cease, prevent or mitigate harm in own operations and supply chain
4. Track
5. Communicate
6. Provide for or co-operate in remediation when appropriate

Recommendations/guidance – voluntary for companies

But if a company to does not do business responsibly, it could be the subject of a complaint to the NCP



More practical detail in the OECD Guidance for Garment and Footwear Sector



- **Sector level Human Rights Due Diligence Guidance for companies on how to operate and source responsibly**
- **Adopted 2017 by OECD through multistakeholder process**
- **Aligned with the UN Guiding Principles on Business and Human Rights, and the ILO Conventions/Declarations**
- **Consistent with a collective bargaining and social dialogue approach**
- **Communication to promote transparency (Myanmar Investment Law reporting)**
- **This guidance would be valid for much of light manufacturing.**
- **Similar guidance available for Finance, Extractives, Agriculture)**



Garment/Footwear Guidance - Modules

- Child labour
 - Sexual harassment and sexual and gender-based violence (SGBV) in the workplace
 - Forced labour
 - Working time
 - Occupational health and safety
 - Trade unions and collective bargaining
 - Wages
- Introduction to environmental modules
 - Hazardous chemicals
 - Water
 - Greenhouse gas emissions
 - Bribery and corruption
 - Responsible sourcing from homeworkers



Example due diligence module :

Trade unions and collective bargaining

Step 2: Identify actual and potential harms in the company's own operations and in its supply chain

- a) Assess legal and institutional framework of the country
- b) Assess suppliers – primarily by interviewing workers, management and trade unions for:
 - Intimidation of workers and anti-union behaviour.
 - The promotion of employer-dominated structures, worker involvement mechanism and corrupt labour relations practices.
 - The refusal to bargain in good faith.
 - The effect of short term contracts and other forms of casual contracts and informal employment on the ability of workers to organise.
 - Systemic or organised employer opposition and hostility to trade unions.



Example due diligence module :

Trade unions and collective bargaining (contd)

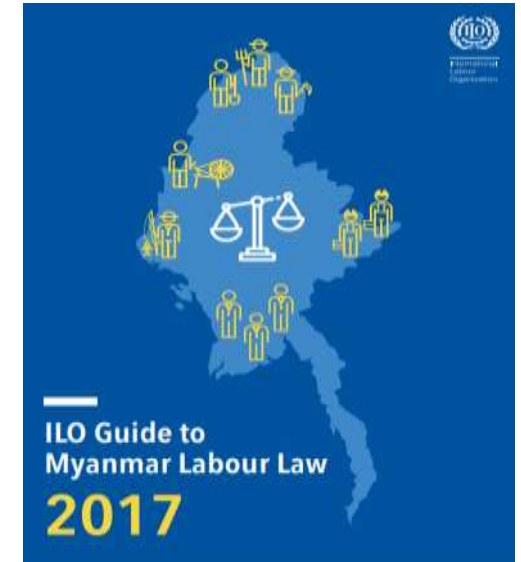
Step 3: Cease, prevent or mitigate harm in the enterprise's own operations and in its supply chain

Companies are recommended to

- Use leverage with a supplier to prevent anti-union practices in supply chain.
- If the supplier does not show measureable improvement after a reasonable amount of time (e.g. 6-9 months), suspend orders until the supplier has demonstrated improvement.
- Address any of its own activities which may contribute to or increase the risk of anti-union activities, such as its purchasing practices (Box 4 of the Guidance covers on **responsible purchasing practices** e.g. pricing, deadlines, forecasting etc)
- In cases in which severe human rights impacts have been identified, such as violence against trade unionists, the enterprise should disengage responsibly:
 - comply with national laws, international labour standards and the terms of collective bargaining agreements;
 - provide detailed information supporting the business decision to management and to the union, where one exists;
 - give the supplier sufficient notice of the ending of the business relationship.

‘Sharing the driving’: what can international and Myanmar companies do?

- Understand, and comply with Myanmar law
- Raise awareness of law amongst employees and business partners: training, sharing good practice, audits
- Be a responsible buyer
- Develop long-term supplier relationships so that suppliers can plan for a long-term workforce;
- Support suppliers to be legally compliant and raise standards
- Adopt international standards of responsible business conduct
 - e.g. use OECD Guidance to conduct human rights due diligence
- Provide feedback to make Myanmar labour law better by participating in consultation processes including the Labour Law Reform process
- Collaborate and share with others in the sector e.g. supplier assessments to reduce audit fatigue



The Roadmap: Opportunities and Challenges (or Potholes and Road Improvements)

The Destination: Road-Map Outcomes 2018-January 2019

as agreed by the National Tripartite Dialogue Forum 17/1/2018

By January 2019

1. key pieces of labour **legislation** will have been amended, based on **social dialogue** and **International Labour Standards**
2. preparation to draft a **Labour Code/Labour Standards Act** will have progressed, based on social dialogue and International Labour Standards.
3. strengthened **capacities** for **sound industrial relations and dispute settlement** at national, township, sectoral, and enterprise levels.
4. National Tripartite **Dialogue Forum** will have been **institutionalised**
5. Technical Working Group on **Communications** will have been established and is operational



Challenges/Opportunities (1)

Challenge		Opportunity	
<p>Complexity of/conflict of Myanmar labour law.</p> <p>Interaction with laws on working conditions which MOLIP does not oversee e.g. Social Welfare: disability, gender, children, and sectoral (e.g. offshore gas, hotels)</p>		<p>National Tripartite Dialogue Forum</p> <p>Parliamentary involvement</p> <p>Improved transparency - Communication WG</p> <p>Involve/consult other Ministries/stakeholders when developing Code</p>	

Challenges/Opportunities (2)

Challenge



Businesses have difficulty understanding and implementing laws and draft laws.

Ministries have few lawyers; Attorney-General Office is overloaded

Laws need to be flexible to adapt to new forms of work

How to benefit from (free) international investor/lawyer experience and expertise when amending labour laws?

Opportunity



UMFCCI meets international Chambers (e.g. US, Australia, EU, Japan) on a regular basis and has proposed sectoral dialogue/working groups e.g. manufacturing.

Could focus this instead on cross-sectoral issues such as a Labour Law reform joint working group to feed into UMFCCI contribute to tripartite dialogue? (previously foreign law firms/companies made input into technical working groups for standard labour contract)

Ensure quality bilingual translations available through consultation and adoption process (legal firms will help for free)

Challenges/Opportunities (3)

Challenge		Opportunity	
Lack of company knowledge and in-house expertise (human resources managers, corporate counsel)		ILO Labour Law Guide and other guidance Communication Working Group Scope for Human Resources Directors, who currently meet/network informally, to establish professional institute? With development partner support? (cf future Myanmar Institute of Directors, Myanmar Impact Assessment Association)	
Lack of capacity/awareness in government (MOLIP and other departments), particularly as law changes		Training and awareness-raising Communication Working Group	

Challenges/Opportunities (4)

Challenge		Opportunity	
Lack of employee awareness of rights	Better respect for freedom of association, role of trade unions in educating workers Inclusion of labour rights and life skills in National Skills Standards Qualifications		
Language barriers to good industrial relations	ILO Labour Law Guides in English, Burmese, Chinese, Japanese, Korean MCRB working with Myanmar Investment Commission on a multilingual guide to cross-cultural etiquette to 'Do's and Don'ts in the Workplace		

Challenges/Opportunities (5)

Challenge		Opportunity	
<p>Labour force challenges due to Myanmar's level of development and transition e.g. child labour, full implementation right to freedom of association</p> <p>Critical NGO reports published</p>		<p>Engage constructively with criticism</p> <p>Businesses should take more of a lead on tracking/monitoring - including via worker representatives, and communicating challenges honestly</p> <p>Businesses should disclose issues and progress (part of due diligence, also legal reporting requirements in home country (EU) or under Myanmar Investment Law</p>	

Challenges/Opportunities (6)

Challenge



Damage to the 'Made in Myanmar' brand due to Rakhine crisis, shareholder/customer pressure to divest/stop buying

Opportunity



Buyers need to demonstrate that they are creating decent jobs in Myanmar (importance of the Roadmap, and the ILO Decent Work Programme)

Non-discrimination is at the core of international standards for labour.

Can employers and TUs demonstrate they are actively contributing to respect for diversity and non-discrimination through workplace training, life skills, responsible social media usage, and thus to building a peaceful, democratic nation?



Thank you!

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