Session 2: Legal Requirements, Biodiversity and Business

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The Importance of Law

- Environmental Conservation Law 2012
- Environmental Protection Rules 2014
- SEZ Laws and Rules 2014
- Environmental Impact Assessment Procedure December 2015
- Environmental Quality Standards December 2015
- Investment Law and Rules 2017

“EIA means the process of systematic study which is required as part of the decision making process on the proposed project, business, service or activity to determine whether there may be impacts on the physical environment, human and living things, or socio-economic conditions because of the project.” Environmental Conservation Rules, Section 2(d)
What is sustainable development?

Developing in such a way so that we can meet the needs of the present \textbf{without} compromising the ability of future generations to meet their own needs, by ensuring the promotion of an economically, socially and environmentally sustainable future and a fair and equitable society.

Sustainable Development Plan 2018 – 2030 (MSDP).
Myanmar Constitution 2008

• Article 45: The state shall protect natural environment of the country

• Article 390: It shall be the duty of every citizen of Myanmar to protect the natural environment
Policy Framework

National Environmental Policy 2019

Vision and Mission - mainstreaming environment into decision-making
23 principles

National Sustainable Development Plan 2018 - 2030

3 Pillars – 5 Goals
Implement SDG
Sustainability in all its forms

National Biodiversity Strategy and Action Plan 2015-2020

Priorities, Strategies and Mechanisms
Investment Framework

*Investment Law and Rules*
Sets out the procedures for investment permits for national and foreign investment.

*SEZ Law and Rules*
Established SEZ and Management Structure and benefits of investment in SEZ

*Environment Conservation Law and Rules*
Establishe EIA system in Myanmar and assessment, review and approval for projects and activities
EIA Legal Framework

Environmental Conservation Law 2012
- Empowers the Ministry to establish and implement EIA system

Environmental Conservation Rules 2014
- Broad framework: IEE and EIA
- Delegates responsibility to ECD
- EIA Report Review Body

Environmental Impact Assessment Procedure 2015
- Provides detailed process
- Public participation requirements
- Screening Schedule
Biodiversity Legal Framework

- **Framework Convention on Biodiversity 1992**
- **Protection of Biodiversity and Conservation Areas Law 2018**
  - Broad framework
  - Establishes network of CA
- **Protection of Biodiversity and Conservation Areas Rules 2019**
  - Provides detailed process

- **National Biodiversity Strategy and Action Plan 2015-2020**
  - Obligations to protect biodiversity
Key steps in the EIA system

1. Screening
2. Scoping
3. EIA Investigation and Preparation of an EIA Report
4. Review of EIA Report and EMMP
5. Decision-making on EIA Report
6. Monitoring, Compliance and Enforcement
How impacts need to be addressed

1. Baseline data
2. Project/impact description
3. Assessment of potential/predicted impact
4. Proposed mitigation – using the mitigation hierarchy
5. Ongoing mitigation and management must be described in the EMP
6. Residual impacts must be identified
Biodiversity Impact Assessment

1. Baselines Studies
2. Key Biodiversity Constraints
3. Recommendations to respond to these key biodiversity constraints
4. Mitigation and management measures linking to EMP
5. Monitoring, reporting and compliance issues linking to the EMP

See NSW Framework for Biodiversity Assessments
Mitigation hierarchy

- Site selection, Project Design, Timing

- Physical controls
  - Operational controls

- Low risk, Low cost

- High risk, High cost

- Avoid
- Minimize
- Restore
- Offset

Impact

Residual Impact

Current value of biodiversity
Myanmar Investment Law

The Myanmar Investment Commission (MIC) has the obligation to issue investment permits for prescribed projects. Any project prescribed under the Investment Rules 2017 would require an MIC permit. One of the objectives of the Investment Law is;

3(a) to develop responsible investments which do not cause harm to the natural environment and the social environment for the interest of the Union and its citizens

71. In conducting their investment activities, the investor shall carry out health assessments, cultural heritage impact assessments, environmental impact assessments and social impact assessments according to the type of investment activities in accordance with the relevant laws, rules, regulations and procedures.
Myanmar Investment Law

Section 25 gives the MIC the legal authority to issue notifications on projects that are restricted or prohibited. The MIC can also stipulate projects that may have a large impact on the environment.

The projects that have a large impact on the environment are those projects that would also require an Environmental Impact Assessment (EIA) under the EIA Procedure.

The Investment Law 2017 also requires that certain investment activities shall be prohibited activities:

41. The following investments activities shall be stipulated as the prohibited investments:

   (e)investment activities which may cause an enormous harmful impact to the natural environment and ecosystem
Screening

• IEE, EIA or EMP?
  – ECD determination within 15 days

• EIA Procedure – Chapter III
  – Annexure A
  – Section 25 – specific biodiversity areas
  – Section 26 – Ministry may require EIA or IEE if “special circumstances” require it.
Risk assessment is process by which investment activities can be screened to exclude those projects with extreme impacts on environment or society.

For other projects, following screening the EIA will address the environmental and social issues. The decision-maker can then apply the principles such as the precautionary principle, intergenerational equity and the polluter pays principle to ensure that the project meets Government sustainable development policies and goals, including the Sustainable Development Goals.

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