

15 September 2019

U Hla Maung Thein  
Director-General  
Environmental Conservation Department  
MONREC

*Dear U Hla Maung Thein,*

#### CONSULTATION ON DRAFT 3<sup>RD</sup> PARTY REGISTRATION PROCEDURE

Thank you for inviting MCRB to the consultation on 13 September. I am sorry that we were not able to send anyone to attend.

We welcome ECD's ongoing commitment to consultation on this draft, and attach some comments on the draft registration procedure, embedded as comments in the EN PDF.

As you know, both Myanmar's regulatory authority, and the business community (EIA consultants and Project Proponents) currently have weak capacity for effective environmental impact assessment and EIA review. Furthermore, there are also environmentally damaging legacy practices and projects, particularly those that predate Myanmar's new environmental laws. To address these problems, Myanmar needs all the help and professional expertise it can get, including the submission of high quality EIAs, which will make ECD's life easier, and serve to better reduce negative environmental and social impacts of investment.

MCRB therefore supports all activities which will build the capacity of both ECD and Myanmar EIA consultants, including through international EIA professionals sharing the technical and professional experience. The requirement (Article 33c) that foreign companies should have Myanmar consultants working in their teams should support this, as well as capacity-building partnerships such as the support being given by IFC to the Myanmar Environmental Assessment Association, and the (long-awaited) World Bank/ADB-sponsored Learning Centre.

MCRB believes, however, that it is important that the Myanmar 3<sup>rd</sup> Party registration process facilitates a wide and deep pool of expertise that Myanmar can draw on and:

- **enables as wide a range as possible of qualified professionals and companies to undertake quality EIAs in Myanmar**, and facilitate responsible investment by international and Myanmar investors;
- **supports cross-border professional links, including with ASEAN, and therefore does not put barriers in the way of registration by foreign professionals.** As an example, we were concerned to see that a 2018 ECD tender posted on Facebook for a consultant to review an EIA (at the Project Proponent, and international company's expense) was limited to applications from Myanmar

nationals only. By reducing the field of applicants, this will potentially limit the capacity-building and knowledge-sharing for ECD that such a review system can offer (at Project Proponent expense).

Our recommendation is therefore that Article 33 should be drafted to ensure that foreign consultants must meet the same academic/experience qualifications as Myanmar consultants. This means that:

- where they are companies, like Myanmar companies, they should be required to **register with DICA** (now in MIFER, not MoPF), particularly as registration is now an easy online process, and one which brings companies within the scope of the Myanmar Companies Law and its Directors' Duties;
- **they should not be required to provide a registration certificate from their 'native' or another country.** Not all countries have an EIA Consultant certification system. Also many consultants pursue their professional career outside their country of their birth or citizenship.
- **they should not be required to provide a 'work permit' or 'stay permit' as part of their application.** This is because many experts undertaking EIA in Myanmar are resident in the region. Introducing this requirement will reduce the pool of specialist expertise available, and therefore reduce the quality of EIA in Myanmar. Furthermore, the Myanmar government does not issue 'work permits' (outside of MIC permitted projects); generally, businesspeople are able to work legally on the basis of a short-term or 12 month business visa.
- **they should be required to be compliant with all applicable Myanmar immigration, labour and tax laws** (but not specify these). Non-compliance could be considered a reason for suspension of EIA licence.

We believe that the procedures for Suspending or Cancelling Licences (**Article 20** of the draft) need to be separated out into those involving serious professional misconduct, and those which may be due to error.

We also believe that the data protection provisions in **Article 24** need more clarification to ensure that personal data such as NRC numbers and home addresses of consultants are not made publicly available.

We also recommend that the text concerning the obligation of the Project Proponent (**Article 55**) be greatly strengthened to reflect their serious legal obligations in the EIA Procedure.

In Annex C, to qualify consultants must submit reports '**officially approved by any country recognised by the Ministry**'. Since MONREC does not 'recognise' countries, and is not in a position to judge the quality of EIA approvals processes in other countries, we suggest dropping 'recognised by the Ministry'. The footnote on the first page of Annex C also needs clarifying.

Finally, we believe it is very important to avoid **conflicts of interest** in the EIA process. The 3<sup>rd</sup> party registration scheme provides for 'independent experts' to be involved both in Licensing Review Board (Annex F) which oversees the approval of 3<sup>rd</sup> party consultants and investigations leading to their

potential suspension/cancellation of licence. If such independent experts were also working as 3rd Party consultants in Myanmar, this would be an obvious conflict of interest.

Also included in the PDF are many additional comments on the draft Procedure which relate to internal consistency and gaps. Some of these relate to improving the English translation.

One major translation issue is that 'Third Person' (although used in the Unofficial Translation of the 2015 EIA Procedure) is not correct English. It means "he, she, it, they". 'Third Party' is the correct term, and in English can refer to an individual or an organisation so there is no need to include these words in English even if they are necessary in MM.

We hope that these comments are useful,

Yours sincerely,

*Vicky Bowman*

Director

Cc: (soft copies)

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