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Stakeholder Questionnaire

SIA on the EU-Myanmar Investment Protection Agreement

Dear Stakeholder,

Thank you for your interest in the Sustainability Impact Assessment (SIA) on the Investment Protection Agreement between the European Union and Myanmar.

This stakeholder questionnaire is part of the SIA, which is financed by the Directorate General for Trade of the European Commission and to be carried out by DEVELOPMENT Solutions Europe Limited. The SIA uses qualitative and quantitative research to assess the potential impacts of the Investment Protection Agreement between the European Union and Myanmar. In support of this analysis, the SIA will employ the use of this questionnaire to gather stakeholder feedback on key issues. Stakeholders include social partners, non-governmental organisations (NGOs), business, government and academia. The results will be used solely for the purposes of this project. Further information on the study can be found at www.eu-myanmarsia.com.

Background information

On 20 March 2014, the European Union and Myanmar officially launched the negotiations for an Investment Protection Agreement which would:

- provide certain guarantees regarding the treatment of EU investors in Myanmar and of Myanmar investors in the EU;
- ensure that these investors are not discriminated against;
- allow the enforcement of the protection provisions through access of investors to investment dispute settlement;
- support sustainable development by encouraging responsible investment and promoting environmental protection and core labour standards;
- promote transparency;

and ultimately increase bilateral investment flows between the EU and Myanmar.

The European Union's aim is that the key provisions of this agreement be guided by the recently concluded EU-Canada Comprehensive Economic and Trade Agreement (CETA) and EU-Singapore Free Trade Agreement (FTA), as well as by the principles for further reform put forward in the Concept Paper of May 2015¹. Three rounds of negotiations have taken place to date in February, May and September 2015.

Questionnaire instructions

Please complete as much of the questionnaire as you can, but note that you do not have to reply to a question if you think that it is not relevant or not applicable to your situation.

When possible, we would appreciate receiving responses that describe specific cases and circumstances, substantiated if possible by indicators and/or data. If you would like to provide any supporting documentation, please forward it to us at comments@eu-myanmarsia.com.

This project is being implemented by:



Contact Us:

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¹ http://trade.ec.europa.eu/doclib/docs/2015/may/tradoc_153408.PDF



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PERSONAL INFORMATION	
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Company/ Organisation name:	Myanmar Centre for Responsible Business
Country where you or your company/ organisation is based:	Myanmar

STAKEHOLDER TYPE	
<input type="checkbox"/> Government institution/authority	<input type="checkbox"/> International organisation
<input checked="" type="checkbox"/> <u>Academia/Think Tank/Research institution</u>	<input type="checkbox"/> Non-governmental organisation
<input type="checkbox"/> Trade association representing business	<input type="checkbox"/> Business
<input type="checkbox"/> Trade union	<input type="checkbox"/> Individual
<input type="checkbox"/> Other (please specify):	
TRANSPARENCY AND CONFIDENTIALITY	
<p>To ensure that our public consultation is open and transparent, the report of the consultation will be published on the SIA and European Commission websites. This report will include a list of the names and organisations of parties that have contributed.</p> <p>Please indicate if you agree to be named as a contributor to this consultation process.</p>	
<input checked="" type="checkbox"/> <u>Yes, my name and organisation</u>	<input type="checkbox"/> Yes, my name only
<input type="checkbox"/> Yes, my organisation only	<input type="checkbox"/> Neither
<p><i>If you do not agree to publication of your name/organisation, then this information will remain strictly confidential. However, other answers will be published online.</i></p>	



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Q1: Please describe your activity in/with Myanmar
MCRB was established in 2013 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. Its co-founders are the Institute for Human Rights and Business, and the Danish Institute for Human Rights. It is supported by six European governments.
Q2: Do you think investment by investors from the European Union can benefit Myanmar? Please explain why and how.
EU investment can bring jobs and growth, technology transfer, higher standards of safety, social and environmental protection. However, this will only be the case if European companies invest responsibly and in line with international standards such as OECD Guidelines for Multinational Enterprises, UN Guiding Principles on Business and Human Rights (UNGPs), IFC Environment, Health and Safety Guidelines and Performance Standards However, it is essential that Myanmar strengthens and enforces its regulation of responsible business conduct in NATIONAL LAW
Q3: What is your understanding of the Investment Protection Agreement currently being negotiated by the European Union and Myanmar?
No detailed information has been made publicly available about the proposed IPA. It is inadequate for the purposes of genuine consultation and impact assessment to merely refer to the Canadian and Singapore agreements as being guides for the EU-Myanmar agreement since these are different types of agreement in very different country contexts.
Q4: Do you think that the Investment Protection Agreement between the European Union and Myanmar is going to have an impact on your activity? Why?
Given that MCRB analyses the impacts of the policy and regulatory framework for business on protection and respect for human rights, if the proposed EU-Myanmar IPA has an impact on these, it will impact on MCRB's work



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(Business-specific questions – italic)

Q5: If you represent a company, does your company meet the standards below to be defined as a SME*?

*According to the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p.36), a company qualifies as an SME if:

1) It employs less than 250 persons (including managers, etc.)

AND

2) It has an annual turnover not exceeding 50 million EURO and/or its annual balance sheet does not exceed 43 million EURO.

Please note that the previously mentioned figures (employees, turnover and balance sheet) refer to the consolidated data of the company in question and its partners and/or linked companies proportionally aggregated to the percentage interest in the capital or voting rights. For further explanations please consult the [official EU definition](#).

Q6: In which sector(s) does your company operate? (If more than one, please specify)

Q7: Does your company have investments or operations in Myanmar? If so, for how many years, with how many employees and for how much in terms of invested amounts? If not, what are the reasons?

Q8: How important is Myanmar for your company's business?

(Very important – important – rather important – not important)

Q9: How important do you anticipate Myanmar will be for your company's business in the future?

(Very important – important – rather important – not important)

Q10: What would the significance of an Investment Protection Agreement between the European Union and Myanmar be on your company's decision to invest or to expand in Myanmar:

- a) *Essential*
- b) *Important*
- c) *Not important*



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Q11: In which way do you think the following areas are going to be impacted by the Investment Protection Agreement between the European Union and Myanmar?

	Very egatively (--)	Negatively (-)	Neutrally (o)	Positively (+)	Very positively (++)
Economy					
Social					
Environment					
Human rights					

Please specify why:

Q12: According to you, what are likely to be the main economic (positive or negative) impacts of the Investment Protection Agreement between the European Union and Myanmar? Please specify why and give concrete examples. Indicators can include but are not limited to:

- Economic growth	- Real income	- Employment (overall and sector-based job creation/loss; indirect effects)	- Skills development
- Technology transfer	- Local competition	- Costs for domestic government	

It is not possible in the absence of further information to comment on the likely negative or positive impacts of the proposed agreement. There is no clear evidence whether or how much IPAs affect company decisions to invest. Factors other than an IPA - e.g. regulatory stability and transparency, costs - are more important for companies considering whether to invest in Myanmar. A number of large European companies have already invested in Myanmar in the absence of an investment treaty e.g. TOTAL, Shell, ENI, BG, Unilever, Carlsberg, Heineken, BAT, De Heus, Lafarge, Ericsson. Their presence has been positive for economic growth, and slightly positive for other issues given that the environmental and social standards they follow are higher than companies traditionally investing in Myanmar. Large companies have negotiated protections in Production Sharing Contracts (oil and gas), Licence Agreements (telecoms) or can access protection by investing via Singapore and benefitting from the ASEAN Comprehensive Investment Agreement.

The most important factors leading to increased positive impacts on the issues and rights mentioned above will be improvements to Myanmar's regulatory and administrative capacity (ease of doing business) and infrastructure (see 2013 survey conducted by the Commission. This is what the EU should focus on to encourage investment and its positive impacts.

The potential negative impacts of an IPA relate to loss of the 'right to regulate' to increase social, human rights and environmental protection, all of which are required at this stage of Myanmar's transition. While the EU has



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taken steps to introduce an approach in its May 2015 Concept Paper, no details are available of how this will be addressed by the EU-Myanmar IPA. It is therefore not possible to comment further.

Finally, the political and legislative framework in Myanmar (including relationships between centre and regions) is currently undergoing major change, much of which is poorly notified, coordinated and inadequately consulted on, as well as poorly implemented. This unstable legal framework and its impacts on investment pose a potential litigation risk for Myanmar which could give rise to costly claims which if the government lost, could result in compensations costs with negative economic, social, environmental and human rights impacts. Further information is available in MCRB's presentation to December's Yangon consultation workshop, available at <http://www.myanmar-responsiblebusiness.org/pdf/2015-12-18-Impacts-of-proposed-EU-Myanmar-Investment-Agreement.pdf>

Q13: According to you, what are likely to be the main social (positive or negative) impacts of the Investment Protection Agreement between the European Union and Myanmar? Please specify why and give concrete examples. Indicators can include but are not limited to:

- Employment	- Working conditions	- Income distribution and social inclusion	- Income distribution and inequalities
- Poverty rate	- Availability of basic goods and services	- Social protection and access to health	- Access to education

See response to Q12

Q14: According to you, what are likely to be the main environmental (positive or negative) impacts of the Investment Protection Agreement between the European Union and Myanmar? Please specify why and give concrete examples. Indicators can include but are not limited to:

- Land (agriculture, forest, desertification, urbanization)	- Water (seas and coasts, fresh water, fisheries)	- Biodiversity (ecosystem, protected areas' species)	- Modes of production and consumption (energy resources, waste, transport)
- Pollution (air, soil, water)			

See response to Q12

Q15: According to you, what are likely to be the main human rights (positive or negative) impacts of the Investment Protection Agreement between the European Union and Myanmar? Please specify why and give concrete examples. Indicators include but are not limited to:

- Right to due process	- Rights to adequate standard of living	- Freedom of expression	- Right of people with disabilities
- Right to property	- Right to privacy and protection of data	- Right to assembly	- Rights of indigenous peoples

See response to Q12



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Q16: In your opinion, could there be an impact on consumers from an Investment Protection Agreement between the European Union and Myanmar? Please specify why and give concrete examples. Indicators can include but are not limited to: consumer prices, quality, availability, choice and safety of goods and services, consumer information, knowledge or trust.

See response to Q12

Q17: In which way do you think the following sectors are going to be impacted in terms of their respective economic, social, environmental and human rights situations by the Investment Protection Agreement between the European Union and Myanmar? (positively, neutrally and/or negatively)

Please choose the 3 most important sectors.

	Economic			Social			Environment			Human Rights		
	-	O	+	-	O	+	-	O	+	-	O	+
Agriculture and fishery												
Construction												
Energy												
Finance												
Food and beverages												
Information and communications technology												
Mining												
Textile												
Tourism												
Transport												

Please also explain why.

See response to Q12

Q18: Can you think of any measures to maximise potential positive impacts of the Investment Protection Agreement between the European Union and Myanmar? If so, please explain.

As mentioned above, the EU and member states should support the development of policy, regulatory and enforcement capacity relating to business, and reforms which increase the 'ease of doing business' while supporting protection of rights and the environment.



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Q19: Can you think of any measures to prevent or mitigate potential negative impacts of the Investment Protection Agreement between the European Union and Myanmar? If so, please explain.

1. Before completing the negotiations, the Myanmar Government should ensure it undertaken a cross-government assessment of the risk of litigation and regulatory chill posed by an EU/Myanmar IPA. This should including through examination of the effect on existing laws, contracts and licences, in consultation with existing investors. Development partners could be asked to provide legal assistance for this
2. To promote trust and understanding of the purpose of the EU/Myanmar IPA, the EU should:
 - Immediately publish its proposal for the EU/Myanmar IPA as it did for the US/TTIP
 - Undertake genuine capacity-building for civil society (consistent with its commitments under the CSO Roadmap), media and business
3. To attract EU investment, the Myanmar government should focus in 2016 on
 - Regulatory reform and implementation, particularly labour and land law
 - Better inter-departmental coordination and speeding up processes across government
 - More consistent law and decision-making
 - Improved communication and transparency
4. The EU (and other development partners) should provide (further) assistance for these reforms to improve the investment climate
5. Any future EU-Myanmar Investment Protection Agreement should:
 - include provisions on the right to regulate which take into account the Myanmar context and the do no harm principle;
 - ensure that language for articles on national treatment, fair and equitable treatment; and observation of written commitments (umbrella clause) reflects the narrower definitions included in the agreement with Singapore, to reflect the current state of administrative competence from Myanmar than from Singapore.
6. Both the EU and Myanmar sides should pursue ongoing and genuinely transparent consultation with business (Myanmar and foreign) and civil society

Q20: We thank you for your time and participation. Your input is much appreciated. If there are other issues related to that are not mentioned on which you would like to provide your views, please do so below or email them to us at comments@eu-myanmarsia.com.

Please refer to MCRB's comments and presentation here

<http://www.myanmar-responsiblebusiness.org/news/eu-myanmar-investment-protection-agreement.html>

Disclaimer: *This project is financed by the European Commission and executed by DEVELOPMENT Solutions. Any views expressed in this document are those of the consultant and do not represent an official view of the European Commission.*