



Republic of the Union of Myanmar
Ministry Of Planning, Finance and Investment
National Unity Government

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Supporting Business for Socially Responsible Disengagement

It has been more than a year since the military junta seized power illegally in Myanmar. Our nation is facing one of its darkest moments. Just as the excesses of the junta against its own people have deterred ethical and responsible businesses from investing anew in Myanmar, it has become increasingly difficult for businesses to continue their operations. Businesses have been forced to consider whether their continued presence in the country is consistent with their own values in business ethics and social responsibility. Many have simply decided to disengage and divest.

The National Unity Government (NUG) values the contribution made by investors in the development of our country. During the now lost decade of relative freedom, foreign investors have created jobs and lifted masses from poverty. Whether they decide to divest or not under the present hostile environment is an active business decision. As with any business decision, due diligence must be exercised in deciding to divest.

While the people of Myanmar are resisting oppression by a murderous military regime, guilty of crimes against humanity and genocide, the businesses need must assess whether their actions risk harming the people or helping their oppressors.

The NUG published our 'three-pillar framework' guidance on responsible investment in July 2021. We are now issuing the government's policy on socially responsible divestment.

In this document, we provide an ethical framework, alongside practical guidance on when and how to consider divestment and the process of doing so. It is our intention that this document will articulate overarching principle. Detailed guidance will be available from the ministry on a case-by-case or sector-by-sector basis, recognising the nuances in applying these principles into practice.

Our policies are consistent with the principles set out by the Organisation for Economic Cooperation and Development and the United Nations guiding principles. How responsible businesses act in Myanmar will become the benchmark against which future divestment decisions are judged. The NUG recognises the dilemmas faced by responsible businesses in trying to make right decisions. We stand ready to assist businesses which try to make decisions that help the people of Myanmar.

In any struggle for life and liberty, the right side will always prevail. Soon, in a representative federal democratic union, we look forward to welcome back businesses that had the interests of the Myanmar people at heart.



Tin Tun Naing

Union Minister

Ministry of Planning, Finance and Investment



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POLICY ON SOCIALLY RESPONSIBLE DISENGAGEMENT

1. Introduction

The National Unity Government (NUG) values the presence of responsible businesses in Myanmar and applauds their commitment to our country, creating quality jobs that have lifted many of our people out of poverty.

The junta's illegal attempt to seize power on 1 February 2021 brought years of meaningful structural reform to Myanmar's business environment to an abrupt and violent halt. Amid a significant deterioration in our country's security situation, the collapse of the rule of law, and the military's arbitrary enforcement of draconian policy, responsible businesses are now forced to navigate a high-risk business environment.

Responsible businesses that continue to operate must assess the feasibility of remaining in Myanmar. Many are now seriously considering either disengagement or divestment. For some, existing business partnerships expose them to entities responsible for ongoing atrocities, including crimes against humanity and genocide.

This policy presents responsible disengagement as an option that businesses must consider when their activities — whether directly or indirectly — cause harm the people of Myanmar. This policy also serves as a guide to businesses as they decide whether to disengage and how to do so responsibly.

2. A Framework for Responsible Disengagement

The NUG encourages businesses to take all possible steps to ensure that their business remains viable and sustainable in line with the NUG's Three-Pillar Framework Guiding Responsible Investment and Continued Operations. This policy described a set of basic rights and responsibilities that all businesses must honour in the current political environment.

The NUG also fully endorses the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises ("OECD Guidelines"), the OECD Due Diligence Guidance for Responsible Business Conduct ("OECD Guidance"), and the United Nations Guiding Principles on Business and Human Rights (UNGPs) as the most authoritative elaboration of what constitutes responsible business conduct.

Guiding Principle 11, in particular, notes that the responsibility to respect human rights is a global standard of conduct for all business enterprises, wherever they operate. This responsibility exists independent of authorities' abilities and/or willingness to fulfil their own human rights obligations.

The announcement of this policy should not be understood as a call for wholesale disengagement or divestment. The NUG wishes to see responsible private sector partners remain in Myanmar wherever possible, while conducting their operations in accordance with this and other policy guidance issued by the NUG. The continued presence of any responsible business does not necessarily imply their tacit acceptance of the current status quo. However, any business presence contributing to the junta's violations of our people's human rights is a clear violation of their responsibilities and obligations to the people of Myanmar. In all such cases, the business must immediately cut all ties with the junta, and they must do so in ways that do not extend new material benefits to the military or those acting on its behalf.

3. When and How to Disengage Responsibly

According to the OECD Guidelines and UNGPs, businesses must consider divestment unless they can ensure their activities will not contribute to or be linked to human rights violations. When making such determinations, businesses must also adopt a balance of harms approach, considering both the likelihood and scale of potential harm to stakeholders and rightsholders if they were to withdraw, balanced with the potential harm to those groups were they to stay.

The NUG calls for businesses to disengage from a partnership or project when:

- attempts to mitigate adverse human rights impacts have failed or where the enterprise deems mitigation efforts to be impossible;
- the severity of any adverse impact warrants disengagement and the entity responsible for the impact does not take immediate action to prevent or mitigate those impacts;
- when severe negative impacts or risks are identified, and the entity causing the impact does not take immediate action to prevent or mitigate them;
- a business determines it is longer able to make a meaningful, positive contribution to Myanmar society; or
- a business has established that it can no longer safeguard the rights of its workers, including but not limited to guaranteeing a safe and dignified working environment.

4. The Disengagement Process

In order to ensure that disengagement is performed responsibly, businesses considering full or partial disengagement must take account of the following:

4.1. Assess Business Relationships and Risks

Businesses should assess all business relationships and ensure that their related business activities are not contributing or directly linked to adverse human rights impacts. Investors should consider any individual business relationship or string of business relationships directly linking their products or services to the junta as being at high risk of contributing or being directly linked to severe adverse human rights impacts.

In particular, situations that have a high risk of severe adverse impacts and thus merit consideration for expedited disengagement include:

- business relationships directly with the junta, junta-linked entities, or Myanmar state-owned enterprises that have been misappropriated by the junta;
- where business activities provide a substantial source of revenues to the junta — contributing to the junta's ability to sustain the persecution of our people; and
- where the junta appropriates or utilises business operations or services to gather information that is subsequently used to harm civilian populations.

In particular, the NUG calls upon businesses to pay close attention to blacklists issued by the NUG's Ministry of Planning, Finance, and Investment (MOPFI). Businesses continuing to engage with blacklisted entities risk exposing themselves to significant money laundering and terrorist financing risks, in addition to human rights, reputational, financial, and legal risks, including violations of United States, European Union and United Kingdom laws and sanctions.

4.2. Consider Alternatives to Continued Operations

If businesses are connected to the junta through a business relationship (or series of business relationships) and are therefore financially or materially supporting the junta, they should assess alternative options to continue operations while immediately ceasing their contribution to adverse human rights impacts.

If businesses have contracts with the Government of Myanmar (GOM), alternative options may include commencing international arbitration proceedings in order to request a decision on the identity of their contractual counterparty. The junta has misappropriated GOM bank accounts and institutions. The military regime is not the recognised GOM and, therefore, cannot determine, modify, or discharge the contractual obligations of the GOM or of institutions that are a part of the GOM.

4.3. Human Rights Due Diligence

Upon identifying any potential adverse impact(s), businesses must complete Human Rights Due Diligence (HRDD) as soon as possible. This process serves to assess the human rights impacts both of alternatives to continued operations and, if necessary, withdrawal options.

4.4. Engagement with Stakeholders

Assessing and addressing potential adverse impacts of the options available to a business requires meaningful stakeholder engagement. This necessarily includes direct consultation with those impacted by decisions taken by the business. Particular attention should be paid to human rights impacts on individuals from groups or populations at heightened risk of being targeted by the junta.

Businesses should consult impacted communities and Civil Society Organisations (CSO). Businesses must also be transparent about the options available to them and the constraints they face.

Businesses should also be open to integrating different stakeholder when determining options for alternative operations and responsible exit.

Detailed guidance on HRDD from the NUG are forthcoming.

4.5. Engagement with the National Unity Government

Stakeholder engagement must always include the NUG. No responsible divestment can occur without consultation and approval from the NUG. The MOPFI maintains an open-door policy to all businesses considering divesting from Myanmar and stands ready to offer guidance in that respect.

4.6. Transparency and Communication

Communication provides transparency and accountability to impacted groups. Timely and iterative two-way communication is part of meaningful stakeholder engagement. Transparency is a prerequisite to both responsible disengagement and divestment.

Businesses should communicate the present risks that impacted communities are facing. Investors must ensure meaningful engagement with CSOs and impacted stakeholders as per UNGP Principle 18 and explain the rationale behind their decision to divest. This should include communicating the human rights impacts of their decision externally, together with sufficient information that allows impacted stakeholders and rightsholders to evaluate the adequacy of its response to particular human rights impacts.

Businesses should also be transparent and communicate their exit option to the public, potential adverse human rights impacts caused by its exit option, and actions the business is taking to mitigate or prevent associated adverse human rights impacts. To ensure that the communication is accessible and to encourage other investors to adopt similar approaches, businesses must also be open and available to the local and international media.

4.7. Final Exit Options

The NUG expects businesses to disengage from harmful business relationships responsibly and in ways that avoid additional negative impacts on workers and communities. Even when external events prompt disengagement, businesses must act responsibly and ensure their actions do not continue or cause even more severe adverse impacts. In particular, the exit must not extend new material benefits to the military junta, to institutions presently operating under their control, or to the allies of the junta.

This final exit option that businesses take must be agreed upon by the NUG.

4.8. Remediation of Adverse Impacts to which the Company Contributed

If businesses have caused or contributed to adverse human rights impacts while operating, responsible disengagement requires remediating or contributing to the remediation of those adverse impacts. A decision to disengage from a particular business activity or relationship does not absolve

the company from its responsibility to remediate the adverse effects it caused or to which it contributed.

At no point should businesses excuse harmful behaviour due to compliance with the dictate of an illegitimate authority. The military junta, the so-called State Administration Council (SAC), has no legitimate standing even under the military-imposed constitution of 2008. This constitution of 2008 has been annulled by the Committee Representing the Pyidaungsu Hluttaw, with the annulment subsequently ratified by the National Unity Consultative Council (NUCC). The junta is neither capable of nor responsible for enforcing the law.

5. Risks to Companies for Remaining or Disengaging Irresponsibly

If a decision is made to remain, businesses should be prepared to account for their ongoing risk mitigation efforts. They should also be aware of further reputational, financial, or legal risks arising from operations that support the junta and its allies.

If businesses exit the country irresponsibly, causing or contributing to severe adverse human rights impacts and without proper consultation with the NUG, they act contrary to the OECD Guidelines, OECD Guidance, the UNGPs, and the policy of the NUG. Failure to comply risks reputational damage and may risk litigation in the firm's home courts for complicity in human rights violations. Businesses that fail to comply with this policy also risk being unable to access the Myanmar market when a rightful government is restored.

6. Return and Re-Engage Responsibly

The NUG encourages businesses who divest to focus their efforts on supporting families, employees and workers affected by the decision. These businesses should support initiatives that will help to deliver a prosperous and democratic future for all.

The NUG looks forward to welcoming responsible businesses and investors back to Myanmar once arrangements for a federal democratic structure are in place. The NUG likewise welcomes engagement with businesses that divest responsibly on expedited re-entry once suitable conditions are established.

7. Conclusion

Responsible divestment requires investors to incorporate a broad range of environmental, social, and governance considerations into deciding whether and how to divest and ensure that such concerns are integrated into the divestment process.

An investor's commitment to Myanmar does not end with their announcement that they wish to divest. Indeed, such a consideration brings forth a new range of responsibilities.

Investors are also responsible for how their money flows into the Myanmar economy, just as they are responsible for how the junta co-opts these flows. Businesses are not neutral actors. Even if businesses do not take sides in the current conflict, their operations will impact conflict dynamics. They must be

accountable. Choosing not to abide by the steps above is an abdication of corporate responsibility, social responsibility, and oftentimes, of legal obligations.

This policy mandating responsible divestment centres around a straightforward calculus: when the junta's access to financial and other resources is depleted, their ability to finance terror and wage war upon our people will also be eroded.

Investors cannot and must not wash their hands of the responsibility to ensure their departure has no adverse effects on the people of Myanmar at this crucial moment in our nation's history.

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