

Terms of Reference

Independent Administrator for the MEITI Report on Forestry

Myanmar

Approved by the MSG on 9th May 2017

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1 Background

The Extractive Industries Transparency Initiative (EITI) is a global standard for improving transparency and accountability in the oil, gas and mining sectors.

EITI implementation has two core components:

- **Transparency:** oil, gas and mining companies disclose information about their operations, including payments to the government, and the government discloses its receipts and other relevant information on the industry. The figures are reconciled by an Independent Administrator, and published annually alongside other information about the extractive industries in accordance with the EITI Standard.
- **Accountability:** a multi-stakeholder group (MSG) with representatives from government, companies and civil society is established to oversee the process and communicate the findings of the EITI reporting, and promote the integration of EITI into broader transparency efforts in that country.

The EITI Standard encourages MSGs to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public understanding of revenues and encourage high standards of transparency and accountability in public life, government operations and in business. The requirements for implementing countries are set out in the EITI Standard¹. Additional information is available via www.eiti.org.

¹<http://eiti.org/document/standard>

It is a requirement that the MSG approves the terms of reference for the Independent Administrator (requirement 5.2), drawing on the objectives and agreed scope of the EITI as set out in the MSG’s workplan. The MSG’s deliberations on these matters should be in accordance with the MSG’s internal governance rules and procedures (see requirement 1.3.g). The EITI requires an inclusive decision-making process throughout implementation, with each constituency being treated as a partner.

It is a requirement that the Independent Administrator be perceived by the MSG to be credible, trustworthy and technically competent (Requirement 5.1). The MSG and Independent Administrator should address any concerns regarding conflicts of interest. The EITI Report prepared by the Independent Administrator will be submitted to the MSG for approval and made publicly available in accordance with Requirement 6.

These terms of reference include “agreed-upon procedures” for EITI reporting (see section 4) in accordance with EITI Requirement 5.2. The international EITI Board has developed these procedures to promote greater consistency and reliability in EITI reporting. The EITI process should be used to complement, assess, and improve existing reporting and auditing systems. The Board recommends that the process rely as much as possible on existing procedures and institutions, so that the EITI process draws on, complements and critically evaluates existing data collection and auditing systems. In this way, the EITI process has the potential to generate important recommendations to strengthen other oversight systems.

EITI Implementation in Myanmar

Myanmar applied for EITI Candidacy Status in December 2012, under the Government of President U Thein Sein, and established the MEITI Leading Authority under the leadership of the President Office Minister, who was designated the EITI National Champion. The Centre for Economic and Social Development of the Myanmar Development Resources Institute (CESD) was designated the MEITI National Coordination Office.

The Myanmar MSG was established in January 2014, consisting of 21 members: six representatives from government, six company representatives, and nine civil society representatives. The MSG laid out four overarching objectives for MEITI:

1. To contribute to broader reform of resource governance in Myanmar
2. To create enabling environment for EITI
3. To prepare and facilitate the process for implementing EITI
4. To increase the accessibility of data on natural resources in Myanmar

In early 2015, a National MEITI Office, staffed by civil servants, was established in the Fiscal Policy, Strategy, and EITI Division, under the Budget Department of the Ministry of Finance. However, CESD continued to share responsibility for EITI implementation with this Division. Myanmar’s first EITI report was successfully produced in January 2016. In accordance with MSG’s decision Myanmar has applied for an extension on the deadline for the second report until March 2018 and the validation process until July 2018.

Following elections in November 2015, a new government took office in Myanmar on the 1st of April 2016 under the leadership of President U Htin Kyaw. On December 19th 2016, a new MEITI Leading Committee was formed, U Kyaw Win, Union Minister for Planning and Finance was appointed as the

Chair of the EITI Leading Committee, and Renaissance Institute was designated as the MEITI National Coordinator. On 17th January 2017, the Government of the Union of Myanmar signed a Grant Agreement with the World Bank for funding support to cover implementation of the MEITI Work Plan for 2017 to 2019.

A new MEITI Multi-Stakeholder Group (MSG) was established on 23rd of March 2017, comprising 7 Government representatives, 7 private sector representatives and 9 CSO representatives. The MSG approved the Terms of Reference of the Independent Administrator for the second and third EITI Reports on the 15th March 2017. During their meeting on the same day, the MSG agreed to include forestry in the scope of their next report but decided that a separate report will be prepared for this.

The MSG Technical and Reporting Sub-Committee is responsible for overseeing the procurement of the Independent Administrator to conduct the scoping and reconciliation process, on behalf of, and in collaboration with, the MSG.

2 Objectives of the assignment

The MSG has agreed that a separate EITI Report on the forestry sector will be published alongside the second EITI Report covering the Oil and Gas, Mining and Jade and Gems Sectors. On behalf of the government of Myanmar, the MSG and the Fiscal Policy, Strategy and EITI Division of the Ministry of Planning and Finance, Myanmar seeks a competent and credible firm, free from conflicts of interest, to provide Independent Administrator services in accordance with the EITI Standard. The objective of the assignment is to:

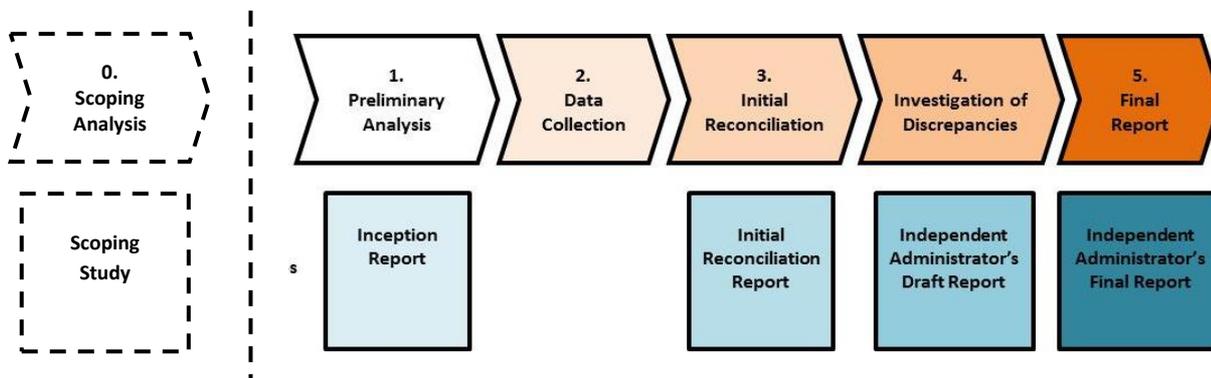
- i. Produce a scoping study to inform the MSG's decisions on the scope of their EITI Report on forestry.
- ii. Produce an EITI Report disclosing revenue and non-revenue information from the forestry sector in accordance with scope agreed upon by the MSG covering the periods of FY 2014-2015 and 2015-2016

3 Scope of services, tasks and expected deliverables

The work of the Independent Administrator has five conceptual phases (see figure 1). These phases may overlap and there may also be some iteration between the phases. EITI reporting, in the case of Myanmar, will be preceded by scoping work which is also to be undertaken by the Independent Administrator (phase 0 in the figure).

The Independent Administrator's responsibilities in each phase are elaborated below.

Figure 1 – Overview of the EITI Reporting process and deliverables



Phase 0 - Scoping and scoping study

Objective: Scoping work aims to identify what the EITI Report should cover. Scoping sets the basis for producing a timely, comprehensive, reliable and comprehensible EITI Report. It commonly involves looking at issues such as the fiscal period to be reported, the contextual information that should be part of the EITI Report, reviewing the types of assurances that are needed for ensuring that the data submitted by reporting entities is credible, determining which revenue streams from the covered sector are significant, and consequently which companies and government entities should be required to report. Scoping may also investigate likely gaps or issues that may be particularly challenging to include in the EITI Report with a view to identify options, solutions, and recommendations for an appropriate reporting methodology for consideration by the multi-stakeholder group.

The Independent Administrator is expected to undertake the following tasks during the scoping phase:

1. Produce a contextual overview of the forestry sector in Myanmar, including an overview of the sector (i.e. forest lands, existing permits), the legal and regulatory framework applicable to the forestry sector, the process for approving permits or licenses, types of permits/contracts granted by government, auxiliary rights/permits, the fiscal regime, the contribution of the sector to the overall economy, how revenues are recorded in the national budget, and the economic potential of the sector.
2. Identify governance challenges and transparency gaps in the forestry sector and assess the relevance of the application of the EITI Standard to address these issues.
3. Identify ministries and other agencies at central or local level which are involved in determining, assessing and collecting revenue from the forestry sector.
4. Identify other key stakeholders such as the number and type of companies operating in the forestry sector and the scale of operations.
5. Examine the legal and administrative barriers to reporting on the forestry sector through the MEITI process.
6. Prepare and present the report to the MEITI MSG.

Phase 1 – Preliminary analysis and inception report

Objective: The purpose of the inception phase is to confirm that the scope of the EITI reporting process has been clearly defined, including the reporting templates, data collection procedures, and the schedule for publishing the EITI Report. In case of Myanmar, The Inception Report represents the conclusion of the Scoping Analysis. The inception report thus ensures that there is a mutual understanding between the MSG and the Independent Administrator of the scope of the EITI Report and the work to be carried out.

1.1 The Independent Administrator should produce an inception report that:

1.1.1 Includes a statement of materiality (Annex 1) confirming the MSG's decisions on the payments and revenues to be covered in the EITI Report on forestry, including:

- The revenue streams to be included
- The definition of materiality and thresholds applicable to the forestry sector

1.1.2 Includes a statement of materiality confirming the MSG's decisions on the companies and government entities that are required to report, including:

- The companies, including SOEs that make material payments to the state and will be required to report in accordance with Requirement 4.1(c).
- The government entities, including any SOEs and sub-national government entities, that receive material payments and will be required to report in accordance with Requirement 4.1(c-d), 4.5 and 4.6.
- Any barriers to full government disclosure of total revenues received from each of the benefit streams agreed in the scope of the EITI report, including revenues that fall below agreed materiality thresholds (Requirement 4.1(d)).

1.1.3 Based on the examination of the audit and assurance procedures in companies and government entities participating in the EITI reporting process (1.2.3 above), **confirms what information participating companies and government entities are required to provide to the Independent Administrator in order to assure the credibility of the data in accordance with Requirement 4.9.**

The Independent Administrator should exercise judgement and apply appropriate international professional standards² in developing a procedure that provide a sufficient basis for a comprehensive and reliable EITI Report. The Independent Administrator should employ his /her professional judgement to determine the extent to which reliance can be placed on the existing controls and audit frameworks of the companies and governments. Where deemed necessary by the Independent Administrator and the multi-stakeholder group, assurances may include:

² For example, ISA 505 relative to external confirmations; ISA 530 relative to audit sampling; ISA 500 relative to audit evidence; ISRS 4400 relative to the engagement to perform agreed-upon procedures regarding financial information and ISRS 4410 relative to compilation engagements.

- Requesting sign-off from a senior company or government official from each reporting entity attesting that the completed reporting form is a complete and accurate record.
- Requesting a confirmation letter from the companies' external auditor that confirms that the information they have submitted is comprehensive and consistent with their audited financial statements. The MSG may decide to phase in any such procedure so that the confirmation letter may be integrated into the usual work programme of the company's auditor. Where some companies are not required by law to have an external auditor and therefore cannot provide such assurance, this should be clearly identified, and any reforms that are planned or underway should be noted.
- Where relevant and practicable, requesting that government reporting entities obtain a certification of the accuracy of the government's disclosures from their external auditor or equivalent.

The inception report should document the options considered and the rationale for the assurances to be provided.

1.1.4 Confirms the scope of non-revenue information in the EITI Report.

1.1.5 Confirms the reporting templates, as well as any procedures or provisions relating to safeguarding confidential information. At the direction of the MSG, the Independent Administrator should develop guidance to the reporting entities, and should provide training on how to complete the reporting templates including the BO reporting templates.

Phase 2 – Data collection

Objective: The purpose of the second phase of work is to collect the data for the EITI Report in accordance with the scope confirmed in the Inception Report. The MSG and national coordinator will provide contact details for the reporting entities and assist the Independent Administrator in ensuring that all reporting entities participate fully.

The Independent Administrator is expected to undertake the following tasks during the data collection phase:

- 2.1 Distribute the reporting templates and collect the completed forms and associated supporting documentation directly from the participating reporting entities, as well as any contextual or other information that the MSG has tasked the Independent Administrator to collect
- 2.2 Contact the reporting entities directly to clarify any information gaps or discrepancies.

Phase 3 – Initial Reconciliation

Objective: The purpose of this phase is to complete an initial compilation and reconciliation of the contextual information and revenue data with a view to identify any gaps or discrepancies to be further

investigated.

- 3.1 The Independent Administrator should compile a database with the payment and revenue data provided by the reporting entities.
- 3.2 The Independent Administrator should comprehensively reconcile the information disclosed by the reporting entities, identifying any discrepancies (including offsetting discrepancies) in accordance with the agreed scope and any other gaps in the information provided (e.g. assurances).
- 3.3 The Independent Administrator should identify any discrepancies above the 5 % margin of error agreed by the MSG.

Phase 4 – Investigation of Discrepancies and Draft EITI Report

Objective: The purpose of this phase is to investigate any discrepancies identified in the initial reconciliation, and to produce a draft EITI Report that compiles the contextual information, reconciles financial data and explains any discrepancies above the margin of error determined by the MSG, where applicable.

- 4.1 The Independent Administrator should contact the reporting entities to clarify the causes of any significant discrepancies or other gaps in the reported data, and to collect additional data from the reporting entities concerned.
- 4.2 The Independent Administrator should submit a draft EITI Report to the MSG for comment that comprehensively reconciles the information disclosed by the reporting entities, identifying any discrepancies, and reports on contextual and other information requested by the MSG. The financial data should be disaggregated to the level of detail agreed by the MSG and in accordance with requirement 4.7. The draft EITI Report should:
 - a) describe the methodology adopted for the reconciliation of company payments and government revenues, and demonstrate the application of international professional standards.
 - b) include a description of all revenue streams, related materiality definitions and thresholds (Requirement 4.1).
 - c) include an assessment from the Independent Administrator on the comprehensiveness and reliability of the (financial) data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided.
 - d) indicate the coverage of the reconciliation exercise, based on the government's disclosure of total revenues as per Requirement 4.1(d).
 - e) include an assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested information. Any gaps or weaknesses in reporting to the Independent Administrator must be disclosed in the EITI Report, including naming any entities that failed to comply with the agreed procedures, and an assessment of whether this is likely to have had material impact on

the comprehensiveness of the report (Requirement 5.3(d)).

- f) document whether the participating companies and government entities had their financial statements audited in the financial year(s) covered by the EITI Report. Any gaps or weaknesses must be disclosed. Where audited financial statements are publicly available, it is recommended that the EITI Report advises readers on how to access this information (Requirement 5.3(e)).
- g) include non-revenue information as per Requirement 2, 3, 5 and 6 and other information requested by the MSG. The contextual information should be clearly sourced in accordance with the procedures agreed by the Independent Administrator and the MSG (1.3.4).

Phase 5 – Final EITI Report

Objective: The purpose of this phase is to ensure that any comments by the MSG on the draft report have been considered and incorporated in the final EITI Report.

- 5.1 The Independent Administrator will submit the EITI Report upon approval to the MSG. The MSG will endorse the report prior to its publication and will oversee its publication by the national coordinator. Where stakeholders other than the Independent Administrator decide to include additional comments in, or opinions on, the EITI Report, the authorship should be clearly indicated.
- 5.2 The Independent Administrator shall translate the final report into Myanmar Language and submit the translated version to the MEITI Secretariat for editing and proof reading.
- 5.3 The Independent Administrator should produce electronic data files³ that can be published together with the final Report.
- 5.4 Following approval by the MSG, the Independent Administrator is mandated to submit summary data from the EITI Report electronically to the International Secretariat according to the standardised reporting format available from the International Secretariat (Requirement 5.3(b))⁴.
- 5.5 The Independent Administrator shall take appropriate measures to ensure that the report is comprehensible. This includes ensuring that the report is appropriately designed and laid out and has high levels of readability, legibility and usability.
- 5.6 The Independent Administrator submit to the national secretariat all data gathered during reconciliation available, including the contact information of all institutions contacted during the reporting process.

³ The files can be in CSV or Excel format and should contain the tables and figures from the print report.

⁴ The latest version of the summary data template can be found at: <https://eiti.org/document/eiti-summary-data-template>

4 Qualification requirements for Independent Administrators

The reconciliation of company payments and government revenues must be undertaken by an Independent Administrator applying international professional standards (requirement 5.1). It is a requirement that the Independent Administrator is perceived by the MSG to be credible, trustworthy and technically competent (ibid). Bidders must follow (and show how they will apply) the appropriate professional standards for the reconciliation / agreed-upon-procedures work in preparing their report.

The Independent Administrator will ideally demonstrate:

- Expertise and experience in the forestry sector in Myanmar or in Asia Region.
- Expertise in accounting, auditing and financial analysis.
- A track record in similar work. Previous experience in EITI reporting is not required, but would be advantageous.
- A Local partner with sufficient staff and capacity.
- Availability of staff with appropriate skills to complete the required task on schedule.

In order to ensure the quality and independence of the exercise, Independent Administrators are required, in their proposal, to disclose any actual or potential conflicts of interest, together with commentary on how any such conflict can be avoided.

5 Reporting requirements and time schedule for deliverables

The assignment is expected to commence on **September 5th**, culminating in the finalisation of the EITI Report by **March 15th, 2018**. The proposed schedule is set out overleaf:

Signing of contract	August 22 nd
Phase 0: Scoping Study	Sept 5 th – Oct 5 th
Phase 1: Preliminary analysis	Oct 6 th – Oct 20 th
=> Inception report / Template Training	Oct 21 st
Phase 2: Data collection	Oct 22 nd – Dec 15 th
Phase 3: Initial reconciliation	Dec 15 th – Dec 31 st
Phase 4: Investigation of discrepancies	Jan 1 st – Jan 31 st , 2018
=>Draft report	February 1 st , 2018
Phase 5: Final report	February 15 th - March 15 th , 2018
=>Final report	February 15 th , 2018

=> Summary Report	March 15 th , 2018
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The schedule of payments shall be as follows:

- 10% following contract signing
- 30% following delivery and acceptance of the Scoping Study outputs
- 30% following delivery and acceptance of the draft EITI report
- 30% following MSG approval and publication of the EITI report

6 Client's input and counterpart personnel

H.E. U Maung Maung Win, Deputy Minister, Ministry of Planning and Finance, Republic of the Union of Myanmar is responsible for contracting. The MSG will oversee the work of the Independent Administrator.

The Independent Administrator will report to MSG or Technical and Reporting Sub-committee and will be supported by the National Coordinator and the MEITI Office in MOPF, and U Soe Yee, Assistant General Manager, Myanmar Timber Enterprise, Ministry of Natural Resources and Environmental Conservation.

Annex 1 – Statement of materiality

The purpose of this statement of materiality is for the Independent Administrator to understand the scoping work and associated decisions that have already been carried out by the multi-stakeholder group or by other consultants. The Independent Administrator confirms the joint understanding of the scope of the services in the inception report. Annex 2 lists relevant attachments, including any scoping studies undertaken in the past.

1. Taxes and revenues to be covered in the EITI Report (Requirement 4.1)⁵

With regards to the revenue streams set out in Requirements 4.1-4.2, the multi-stakeholder group has agreed that the following revenue streams from the extractive sector are material and should be reconciled in the EITI Report:

Table 1 – Material revenues to be reconciled

Revenue stream	Estimated value and share of total extractive industry revenue	Government recipient	Additional commentary on work to be undertaken by the Independent Administrator as necessary.
<list of revenue streams, taking into account common revenue streams set out in Requirement 4.1 >	<value> (<percentage>)
The materiality and inclusion of the state's share of production collected in-kind (Requirement 4.2 ⁶ , where applicable)			

The multi-stakeholder group has agreed that the revenue streams from the extractive sector listed in Table 2 should be unilaterally disclosed by the government in the EITI Report rather than reconciled with company figures. The reasons for unilateral disclosure rather than reconciliation should be documented by the MSG.

⁵ Guidance Note 13: on defining materiality, reporting thresholds and reporting entities, https://eiti.org/files/Guidance%20note%20on%20defining%20materiality_0.pdf

⁶ Guidance Note 18: SOE participation in EITI Reporting, https://eiti.org/files/GN/Guidance_note_18_SOEs_EN.pdf

Table 2 – Material revenues to be unilaterally disclosed by the government

Revenue stream	Estimated value and share of total extractive industry revenue	Government recipient	Additional commentary on data sources and work to be undertaken by the Independent Administrator as necessary.
...	<value> (<percentage>)

The multi-stakeholder group has agreed that the following revenue streams from the extractive sector are immaterial and should not be reconciled or unilaterally disclosed by the government in the EITI report:

Table 3 – Immaterial revenue streams from the extractive sector to be excluded from the EITI Report

Revenue stream	Estimated value and share (%) of total extractive industry revenue	Government recipient	Additional commentary on data sources and rationale for concluding that the revenue stream is immaterial
...	<value> (<percentage>)

2. Additional benefit streams:

With regards to the benefit streams set out in Requirements 4, the MSG has agreed the following:

Table 4 – Additional benefit streams

Benefit stream	Applicable/material?	Estimated value and share (%) of total extractive industry revenue	Government recipient	Additional commentary on data sources and work to be undertaken by the Independent Administrator as necessary.

The materiality and inclusion of infrastructure and barter arrangements (Requirement 4.3) ⁷				
The materiality and inclusion of <u>mandatory</u> social payments (Requirement 6.1(a)) ⁸				
The materiality and inclusion of <u>voluntary</u> social payments (Requirement 6.1(b)) ⁹				
The materiality and inclusion of transportation revenues (Requirement 4.4) ¹⁰				

⁷ Guidance note 15: Infrastructure and barter provisions: <https://eiti.org/guidance-notes-and-standard-terms-reference#GN14>

⁸ Guidance note 17: Social expenditures: <https://eiti.org/guidance-notes-and-standard-terms-reference#GN17>

⁹ Guidance note 17: Social expenditures: <https://eiti.org/guidance-notes-and-standard-terms-reference#GN17>

¹⁰ Guidance note 16: Revenues from transportation of oil, gas and minerals: <https://eiti.org/guidance-notes-and-standard-terms-reference#GN16>

3. Reporting companies (Requirement 4.1)

The MSG has agreed that any company making payments [equal to or above [insert threshold]] against the material revenue streams identified in table 1 are required to be included in the EITI Report:

Table 5 – Companies to be included in the EITI Report

Companies	Sector	Additional commentary on work to be undertaken by the Independent Administrator as necessary.
...

4. Government - government transactions (Requirement 4)

Table 6 – Government to government transactions included in the scope of the EITI Report

Transactions	Applicable/material ?	Financial flow	State-owned company	Government agency	Additional commentary on work to be undertaken by the Independent Administrator as necessary.
The disclosure and reconciliation of payments to and from state-owned enterprises (Requirement 4.6) ¹¹					
Transactions	Applicable/material ?	Financial flow and revenue sharing formula	Government agency executing the transfer	Government agency receiving the transfer	Additional commentary on work to be undertaken by the Independent Administrator as necessary.
The materiality and inclusion of mandatory sub-national					

¹¹ Guidance Note 18: SOE participation in EITI Reporting, https://eiti.org/files/GN/Guidance_note_18_SOEs_EN.pdf

transfers in accordance with Requirement 5.2 ¹²					
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¹² Guidance Note 10: Sub-national reporting, <https://eiti.org/files/Guidance-note-10-Subnationalreporting.pdf>