New Myanmar FDI Law & Opportunities for Foreign Investment in Mining Sector

Ms. Cho Cho Wynn
Deputy Director-General
Directorate of Investment and Company Administration

Outline

1. Myanmar in Brief
2. Foreign Investments Flows into Myanmar
3. Existing Mining Projects in Myanmar
4. Policy Framwork
5. Facilitation and Accountability
6. New Foreign Investment Law
7. Doing Business in Mining Sector
8. Conclusion

Myanmar in Brief

Strategic Location and Climate of Myanmar

Location:
Southeastern Asia, bordering the Andaman Sea and the Bay of Bengal, between Bangladesh and Thailand

Geographic coordinates:
22 00 N, 98 00 E

Area:
total: 678,500 sq km
land: 657,740 sq km
water: 20,760 sq km

Land boundaries:
total: 5,876 km
border countries: Bangladesh 193 km, China 2,185 km, India 1,463 km, Laos 235 km, Thailand 1,800 km

The length of the coastline:
1,385 miles

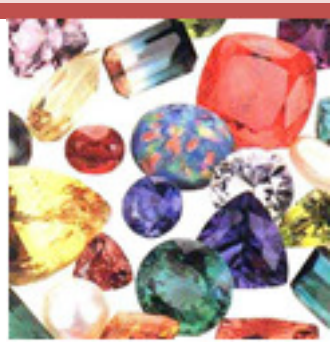
Climate:
summer, rainy season and cold season

Population:
60 Million **Total**
37.35 Million in **Labor Force**

Myanmar in Brief

Rich Natural Resources

Abundance of precious gem stone such as ruby, sapphire, jade and diamond. Ruby accounts for 90% of world supply and the largest jade resource country in the world.



Has gold deposit across the country

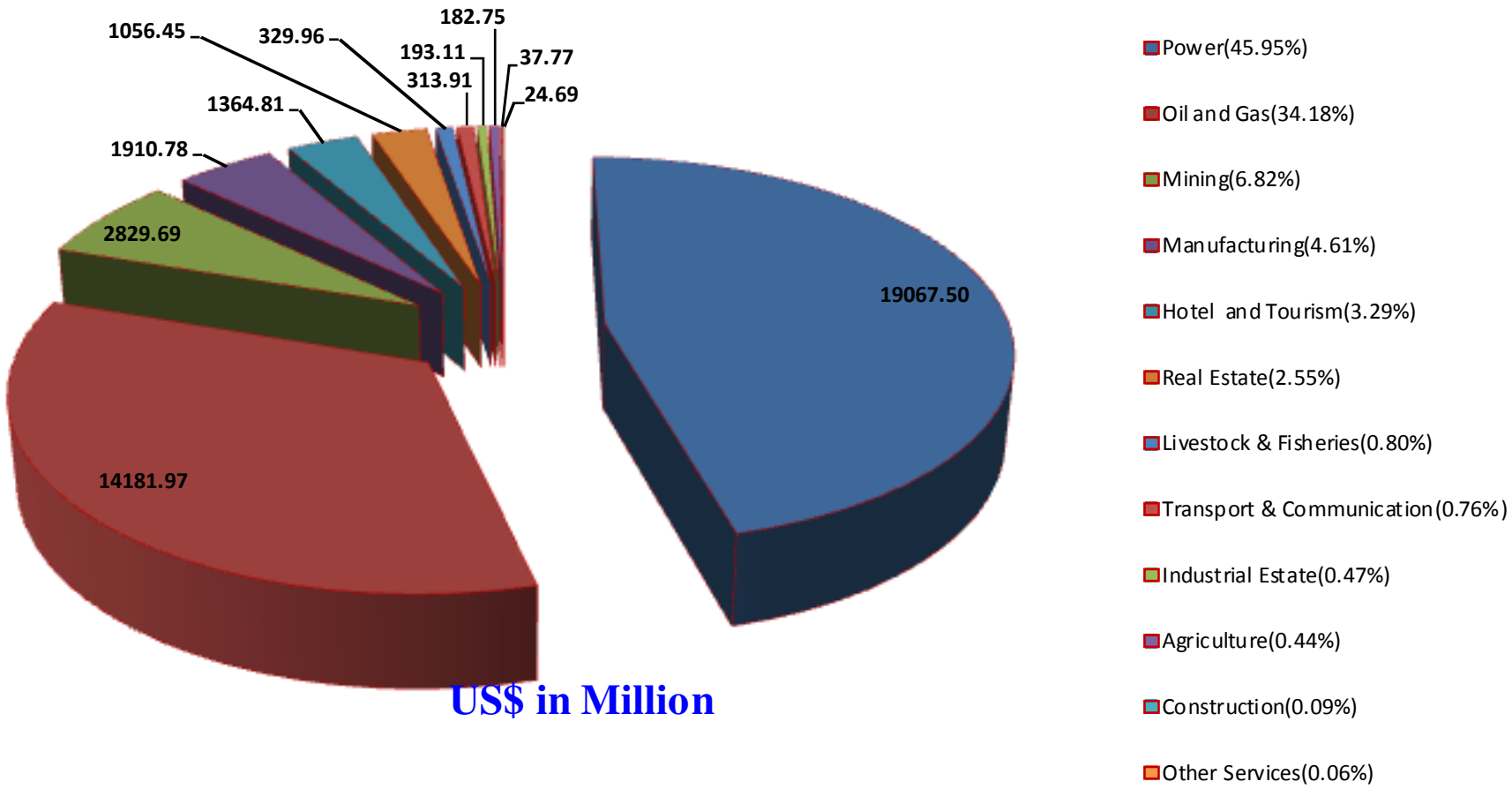
Copper is the largest export of mining product

Others mining product such as silver, lead, tin, tungsten and antimony deposit are widespread in the country

Foreign Investments in Myanmar

Foreign Investment Permitted Enterprises by Sector as of December 2012

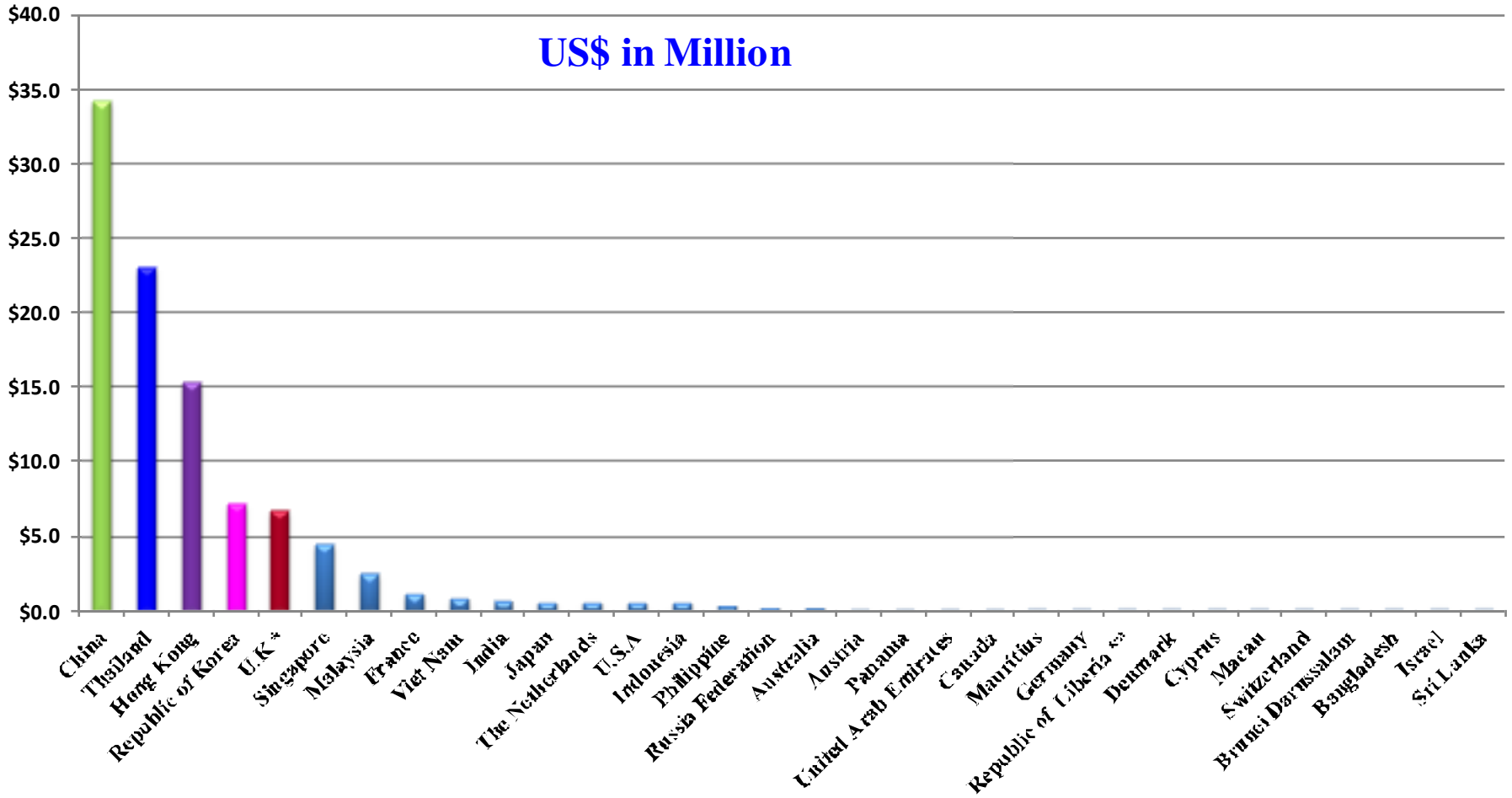
FDI Flows



Source: DICA

Foreign Investment Permitted Enterprises by Country as of December 2012

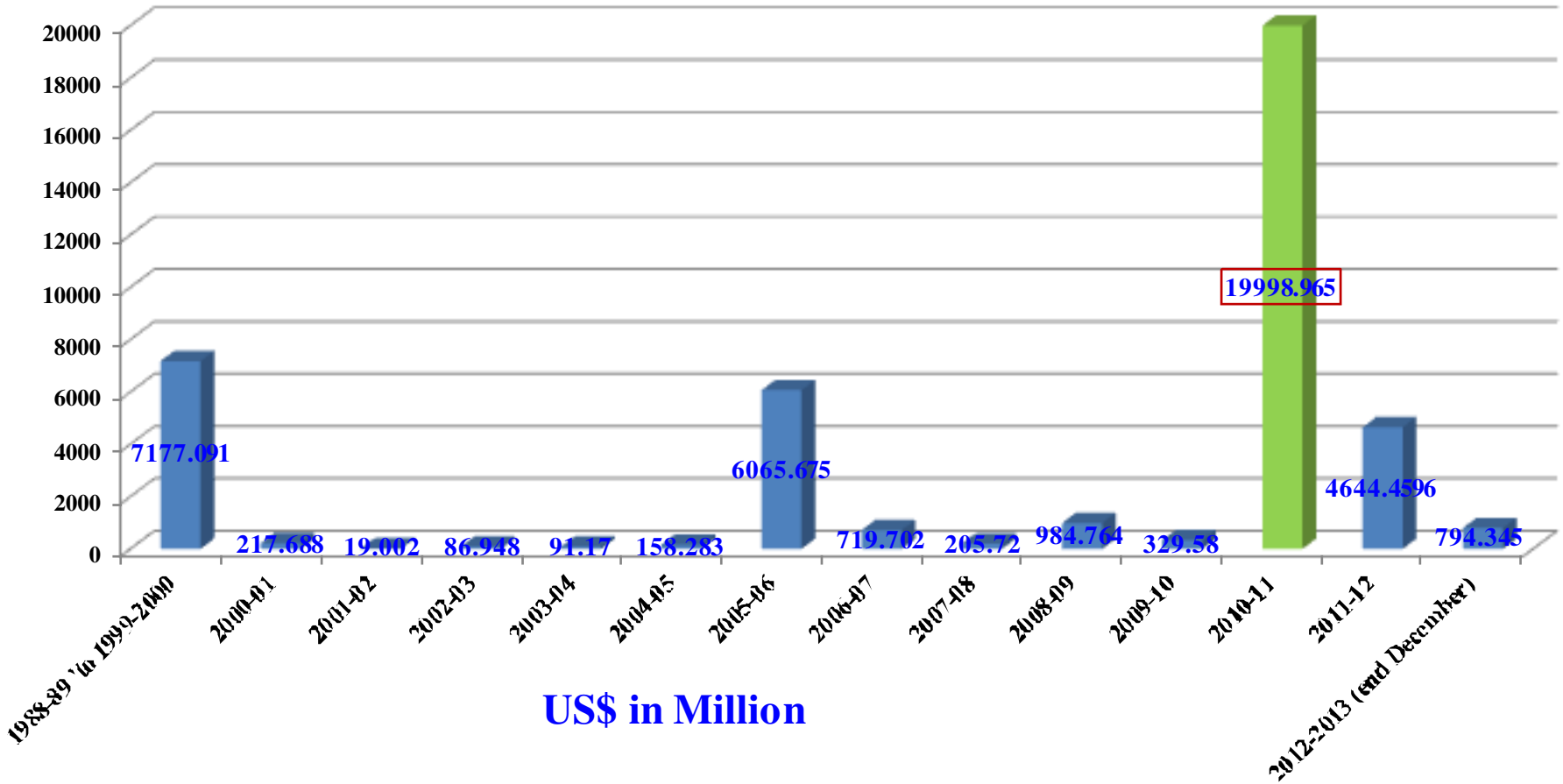
FDI Flows



Source: DICA

Yearly Foreign Direct Investment Flow into Myanmar from 1988-89 to 2012-13 (December)

FDI Flows



Source: DICA

Existing Mining Projects under Foreign Investment Law

No	Name of Company	Coountry	Location	Investment Amount (US$ Million)
1	CNMC Nickel Co., Ltd	China	Tagaung Taung Area in Mandalay & Sagaing	855.996
2	North Mining Investment Co., Ltd.	China	Nwe Taung ,Tiddin Area Township, Chin State	1.750
3	De Rui Feng Investment Co., Ltd	China	107.78 sq.km, Dawei River Area,	15.334
4	Myanmar Wanbao mining Copper Ltd.	Hongkong	Letpadung Taung Area Salingyi Township,	997.000
5	Nobel Gold Ltd	Hongkong	Banmauk Area, Sagaing	2.700
6	Myanmar Yang Tse Copper Ltd.	Hongkong	Sabetaung, and Kyisintaung in Salingyi township, Monywa	396.377
7	Myanmar Pongpipat Co.,Ltd.	Thailand	Dawei, Tanintharyi	1.000
8	Ivanhoe Myanmar Holding Ltd.	U.K	Monywa, Salingyi Township, Sagaing	8.100
9	Myanmar Simco Song Da Joint Stock Co., Ltd.	Vietnam	Na Pu Taung, Depiosite,	18.147
	Total			2296.404

Policy Framework

National Economic Policy

- Sustainable development of agriculture towards industrialization and all round development;
- Equitable and proportionate development among Regions and States;
- Inclusive development of entire people;
- Quality of statistics and statistical system;

Reforms

First Phase

- ***Focused on politic***
  - National Reconsolidation
  - Peace and Stability
  - Freedom of Media

Second Phase

- ***Focusing on Economic Development***
  - Invite more FDI
  - Change of Trade Policy
  - Monetary & Finance Policy
  - Conduct National Workshops in various economic sectors

Third Phase

- ***Focused on public Administrative***
  - ***Good Governmance***
  - ***Clean Government***

Criterions of Investment

- Protection of investors
- Safeguard of environment conservation
- Deeply emphasize on social impact
- Transparency and accountability in financial matters
- Create job opportunities
- Abide existing labour law
- Support corporate social responsibilities consistent with regional and international standard and agreements
- Transfer of Technology.

Current Reforms for Investment Facilitation and Accountability

Reforms in Investment Agenda

- Issued notification no. 39/2011 relating to the right to use land According to notification no. 39/2011, investors can lease the land not only from the State but also from private
- The Special Economic Zone Law was also enacted in January 2011 and is now proceeding for amendment.
- The Dawei Special Economic Zone Law was also enacted in January 2011.
- Revised the exchange regime into a managed floating rate on 2nd April 2012.
- Establish a Technical Coordination Team in July 2011. It is comprise of senior officials from Myanmar investment Commission, Ministry of Finance and Revenue, Ministry of Commerce and Ministry of Construction.
- Myanmar Investment Commission reorganized on 23rd Sept. 2012 and consist of 11 members who are not only from Government Sector but also from private sector, academic field and researcher field.
- Enacted new FDI Law on 2nd Nov, 2012.

Formation of Myanmar Investment Commission

- According to the Notification No(70/2012) dated on 23rd September 2012,in order to monitor the provisions of the existing Investment Laws ,the government of the Republic of the Union of Myanmar reorganizes the Myanmar Investment Commission as follows:

H.E U Soe Thane Union Minister for President Office (3)	Chairman
H.E U Aung Min Union Minister for President Office (4)	Member
H.E U Hla Htun Union Minister for President Office (6)	Member
Dr Htun Shin Union Attorney General Union Attorney General's Office	Member
Dr. Aung Htun Thet Economist	Member
U Nyunt Tin Ambassador (Retired)	Member

Source: DICA

Formation of Myanmar Investment Commission (Cont.)

U Win Khaing Chairman of the Myanmar Engineering Association	Member
Daw Mya Thuza Advisor	Member
Daw Khine Khine Nwe Entrepreneur	Member
H. E U Tin Naing Thein Union Minsiter for the President Office (5)	Secretary
H. E Thura U Thaung Lwin Deputy Minister for Rail Transportation	Joint Secretary

Source: DICA

Responsibilities related to Investment of DICA

As Secretariat Office of the MIC

- Scrutinizing the Investment Proposals
- Assisting To Solve The Difficulties On Investment Issues
- Provide information to Investors and coordinate with the relevant Ministries

Business Administration and Registration

- Business Registration
- Business Administration

Republic of the Union of Myanmar New Foreign Investment Law

Foreign Investment Law

Advantages of New FIL More than Old One

Old FIL	New FIL
No specific definition on investment	Specific definition on investment
Not mentioned on restricted activities	Mentioned on restricted activities
As a Form of JV -minimum foreign capital at least 35 %	As a form of JV, foreign capital can be defined by mutual agreement between local and foreigner
Export Promotion	Export promotion and import substitution
No description on rights and obligation of investor	Description on rights & obligation of investor
Not mentioned on specific land lease period or land use period	Initial 50 Years for land lease and extendable for 10 years in two times
No specific definition on grant of land lease or grant of land use	Specific definition on grant of land lease or grantee of land use
3 years tax holidays	5 years tax holidays
General provision on matters relating to Labor	Specific provision on matters relating to Labor
Official exchange rate	Current exchange rate
No time limitation	Reply within 15 days whether accept or not Issue MIC permit within 90 days
No description on administrative penalty	Description on administrative penalty
No description on dispute settlement	Description on dispute settlement

Relevant Economic Activities

- Economic activities stipulated by MIC with the prior approval of Union Government.
- Totally 11 restricted economic business/activities are designated as follow:-
  - Business be harmful to traditional culture and customs, public healthand environment and ecosystem
  - Business brought the hazardous or poisonous wastes
  - Factories or business produce or use hazardous chemicals under international agreements
  - Manufacturing and Services allowed to carry out by only Citizens
  - Business which are under experiment or unapproved technologies, medicines, apparatus equipment
  - Agricultural business both short or long term, Livestock breeding & Marine Fishing be allowed to carry out by only Citizens
  - Not allow to business within 10 miles around boundary line with neighboring countries , except industry zones approved by MIC
- MIC may grant to allow economic activities with the prior approval of the Union Government for the interest of the State and the People.

Foreign Investment Law

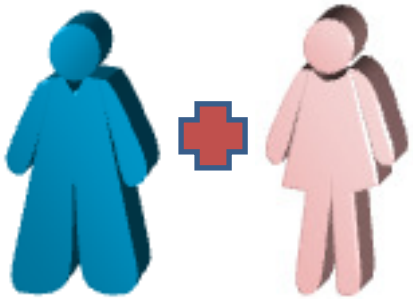
Forms of Investment

1

100% Foreign Owned

2

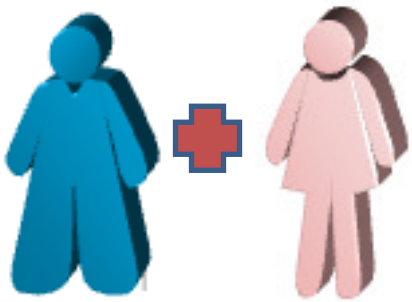
A Citizen or Concerned Government Organization



Joint Venture

3

Any System Included in the Mutually Agreed Contract



Form of Investment

- 100% foreign investment in allowed economic activities are prescribed by MIC
- Joint-venture between Foreigner and Citizen or relevant Ministries, Organizations
- Business which are conducting under the Mutual Contract Agreement

❑ In carrying an investment under section 9:-

- Company may be formed according to existing Law;
- If a Joint-venture is formed, the foreign capital and foreign equity ratio can be defined by mutual contract between Foreigner and Citizens
- In carrying out investment by foreigner, the minimum capital has to be defined by MIC based on business types under a prior approval from the Union Government
- If a Joint-venture between foreigner and citizens is to carry out in restricted business, the foreign capital can be proposed as per rules and regulations of FIL.
- The rules and regulations relating to FIL are being discussed and will be issued within 90 days from the date the new FIL was enacted.

Foreign Investment Law

Tax Incentives

- 5 years tax holiday
- Further tax exemption/relief for an appropriate period in case if it is considered beneficial for the State
- Exemption or relief from income tax on profit which is reinvested within one year.
- Right to accelerate depreciation in respect of capital assets used in business, at the rate fixed by the State for the purpose of income-tax assessment.
- Relief from income tax up to 50 percent on the profit from exports.
- Right to pay income tax of the foreign employees at the rate applicable to the citizens of Myanmar.
- Right to deduct the research and development expenditure.
- Right to carry forward and set off losses up to 3 consecutive years, from the year the loss is sustained.

Guarantees

- The Union Government guarantees as follow:-
  - against nationalization
  - against termination of investment during the permitted term
  - to transfer the entitled Foreign Capital to investor on the expiry of the term of the contract

Foreign Investment Law

Right to Transfer Foreign Currency

Foreign currency entitled to by the person

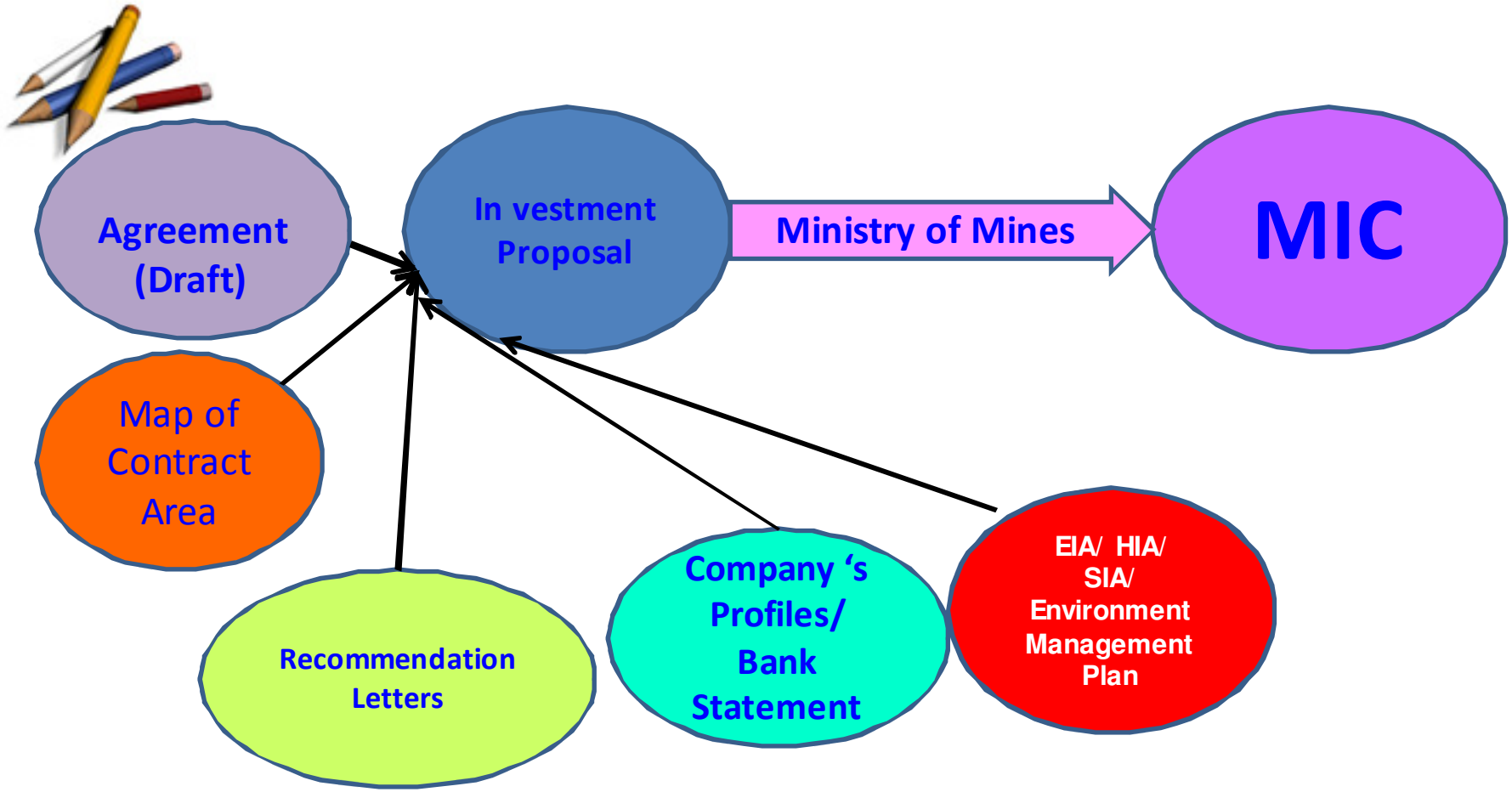
Foreign currency permitted for withdrawal by the MIC

Net Profit

Legitimate Balance

Through
The Banks that can Operate the Foreign Banking

Application Procedure for Mining Investment Proposal



Appointment of Personnel and Employees

- appoint Citizens employees, technicians and service personnel for skilled businesses as follows :
  - (a) First 2 years → 25%
  - (b) Second 2 years → 50%
  - (c) Third 2 years → 75%
- Arrange to provide necessary vocational training and practicing training to Citizen employees in order to upgrade their skills
- Appoint only Citizens at the works in which expertise is not required;
- Carry out labor recruitment through the Work and Labor Recruitment Office, local labor recruitment agents or by own arrangement;
- Employ, in employing citizen skilled workers, technicians and staff, by signing the employment agreement mutually between the employer and employee in accord with the existing Labor Laws and Rules;

Appointment of Personnel and Employees (Cont.)

- Grant equitable treatment both Local Citizen employee and Foreign employee in respect to salary and rights at technician rank.
- The foreigners working in permit investment enterprise may apply work permit certificate , stay permit certificate issued by the State through MIC
- Investor shall:-
  - Make a employment agreement in accordance with the stipulations in appointing personnel and employees;
  - Carry out for enjoyable rights contained in the existing Labor Laws and rules including minimum wages and salary, leave, holiday, overtime fee, damages, workman's compensation, social welfare and other insurance relating to employees in stipulating the rights and duties of employers
  - Settle the dispute arisen among employers, among employees, between employers and technician or service personnel in accord with the relevant existing laws.

Doing Business in Mining Sector

Mineral, Prospecting, Exploration Agreement of Mining Project

- (1) Minerals Prospecting Stage → initial 1 year and extendable for 1 year
- (2) Minerals Exploration Stage → initial 2 years and extendable for 1 year
- (3) Feasibility Study Stage → initial 1 year and extendable for 1 year
- (4) Development & Production State → JV between Ministry of Mines and Company
- Royalty → precious metallic minerals from 5% to 7.5 %
  Iron, copper, zin, lead, etc. from 3 % to 4 %
  gold, silver, platinum from 4 % to 5 %
- Bonus → within 30 days after signed agreement
- Dead Rent → based on period of Mineral, Prospecting, Exploration stages, area of sites, and type of minerals

- .

Production Sharing Agreement of Mining Project

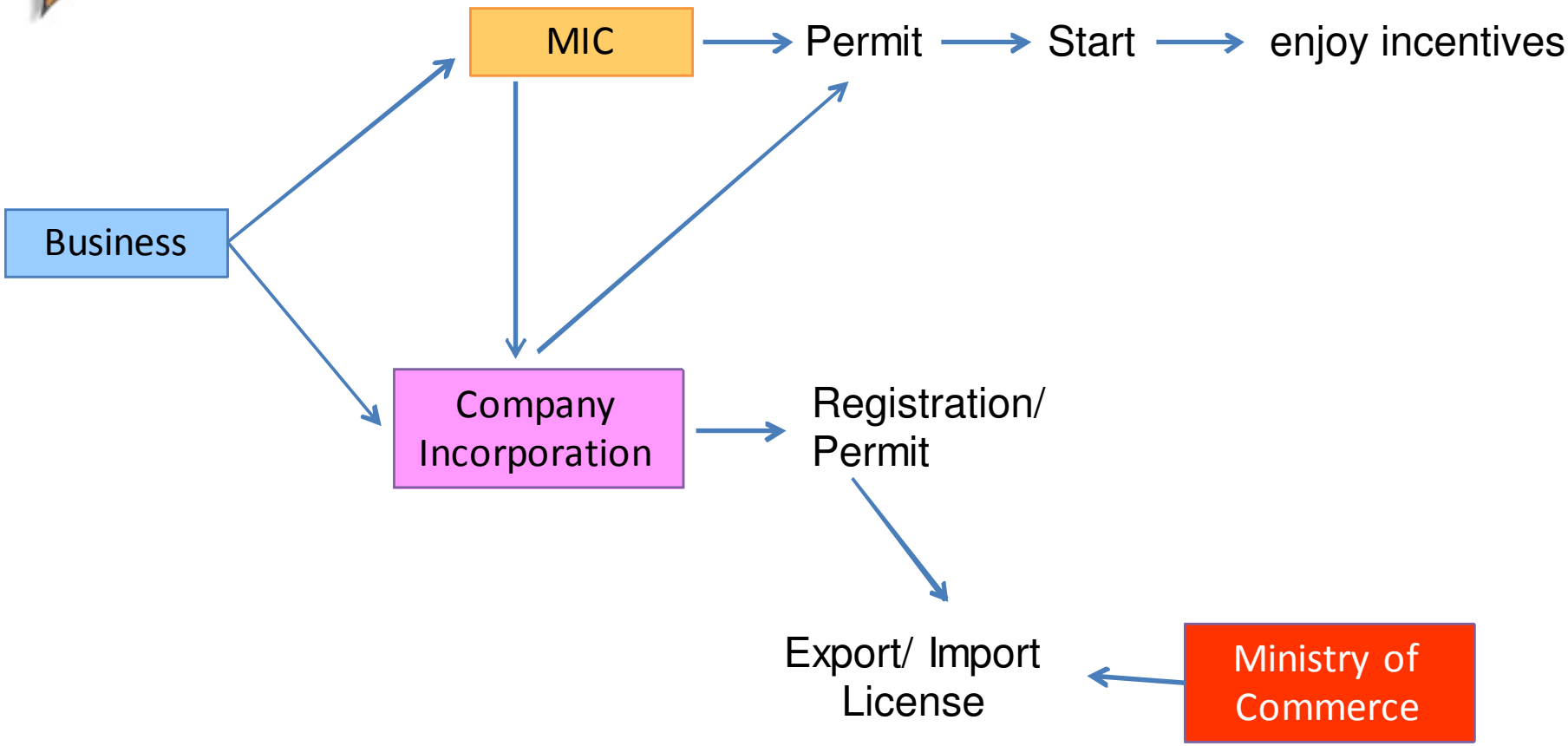
- Minerals Prospecting Stage → initial 1 year and extendable for 1 year
- Minerals Exploration Stage → initial 2 years and extendable for 1 year
- Feasibility Study Stage → initial 1 year and extendable for 1 year

Full Risk

- Development & Production State → JV with Ministry of Mines and Company
- Royalty → precious metallic minerals from 5% to 7.5 %
  Iron, copper, zin, lead, etc. from 3 % to 4 %
  gold, silver, platinum from 4 % to 5 %
- Bonus → within 30 days after signed agreement
- PSC ratio → 30 : 70 (Ministry of Mines ratio will be increased, if the production is increased)
- Dead Rent → based on period of Mineral, Prospecting, Exploration stages, area of sites, and type of minerals

Doing Business in Myanmar (For Mining Sector)

Mode of Doing Business



Doing Business in Myanmar (For Mining Sector)

Application Procedures for Foreign Investment

Preliminary appraisal of proposal
From Investment Information team

Submit proposal
To MIC

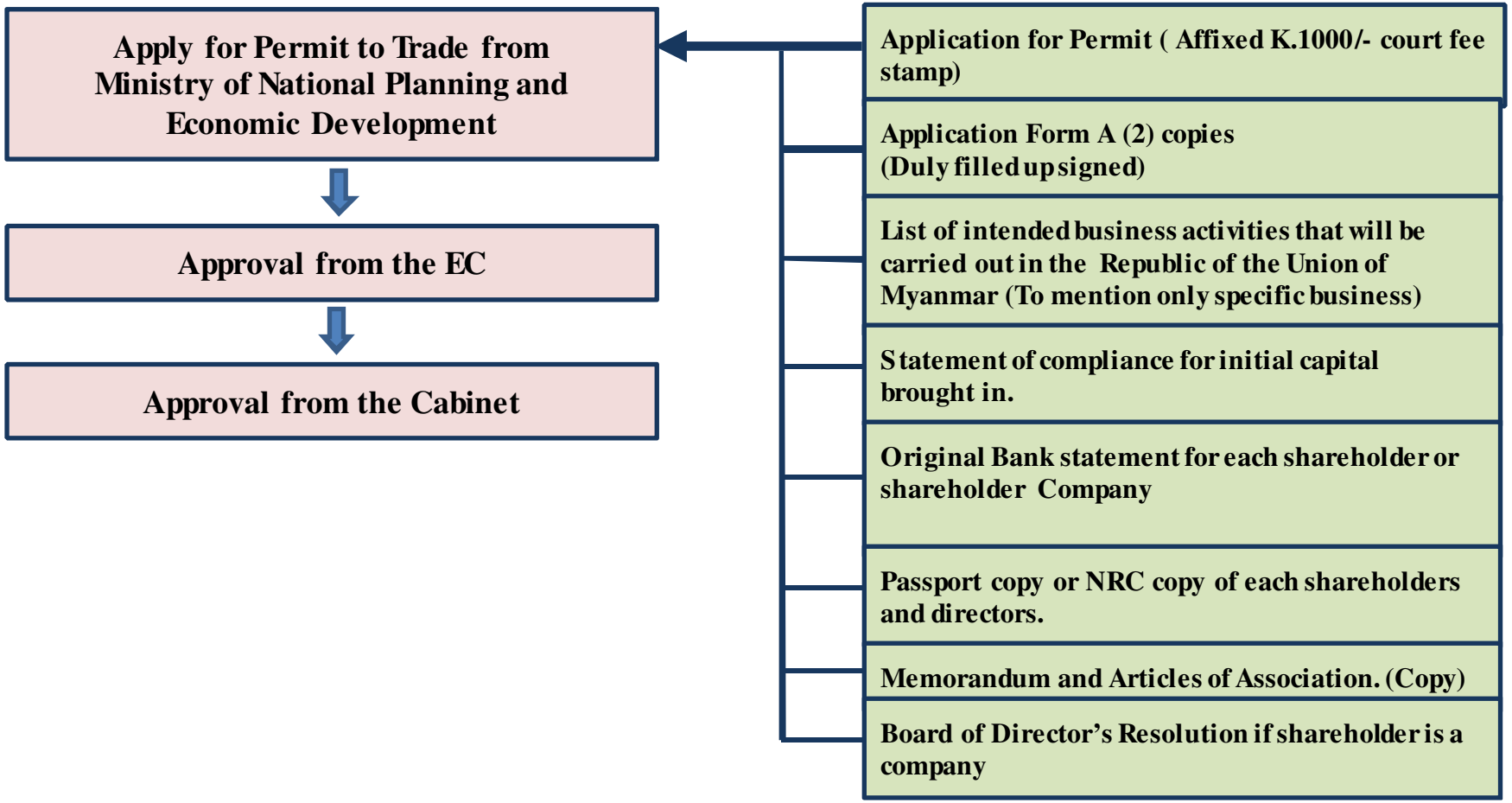
Approval from the Cabinet (submit from Ministry of Mines

MIC grants and approves issuance of a Permit to carry out business

- Latest audited financial accounts
- Bank reference and recommendation of investor's business standing
- Economic justification of the proposed project
- Draft Contract to be executed with the State organization for the wholly foreign owned
- Draft contract between the partners for the joint-venture
- Draft land lease agreement
- Draft Memorandum and Articles of Association
- An application for exemptions and relief defined under Section 21 of the FIL

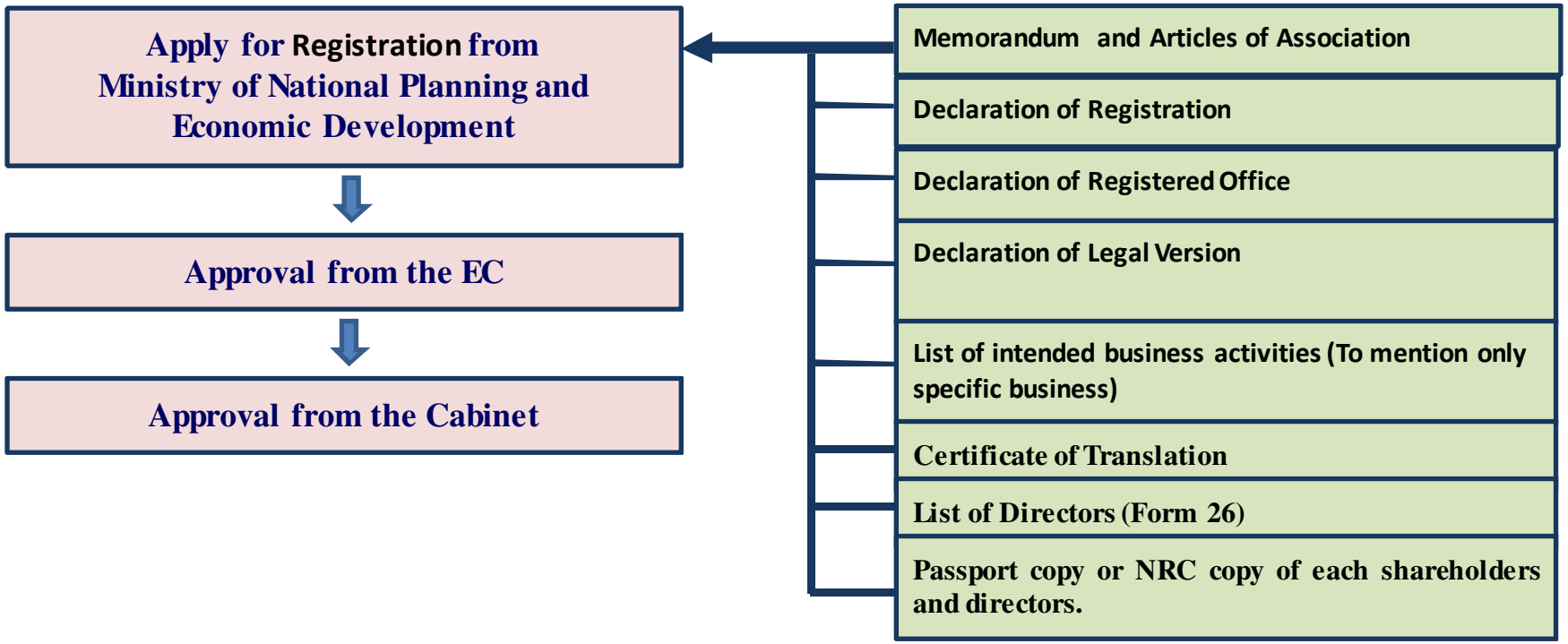
Doing Business in Myanmar (For Mining Sector)

Procedures and Documentary Requirements for Permit Application

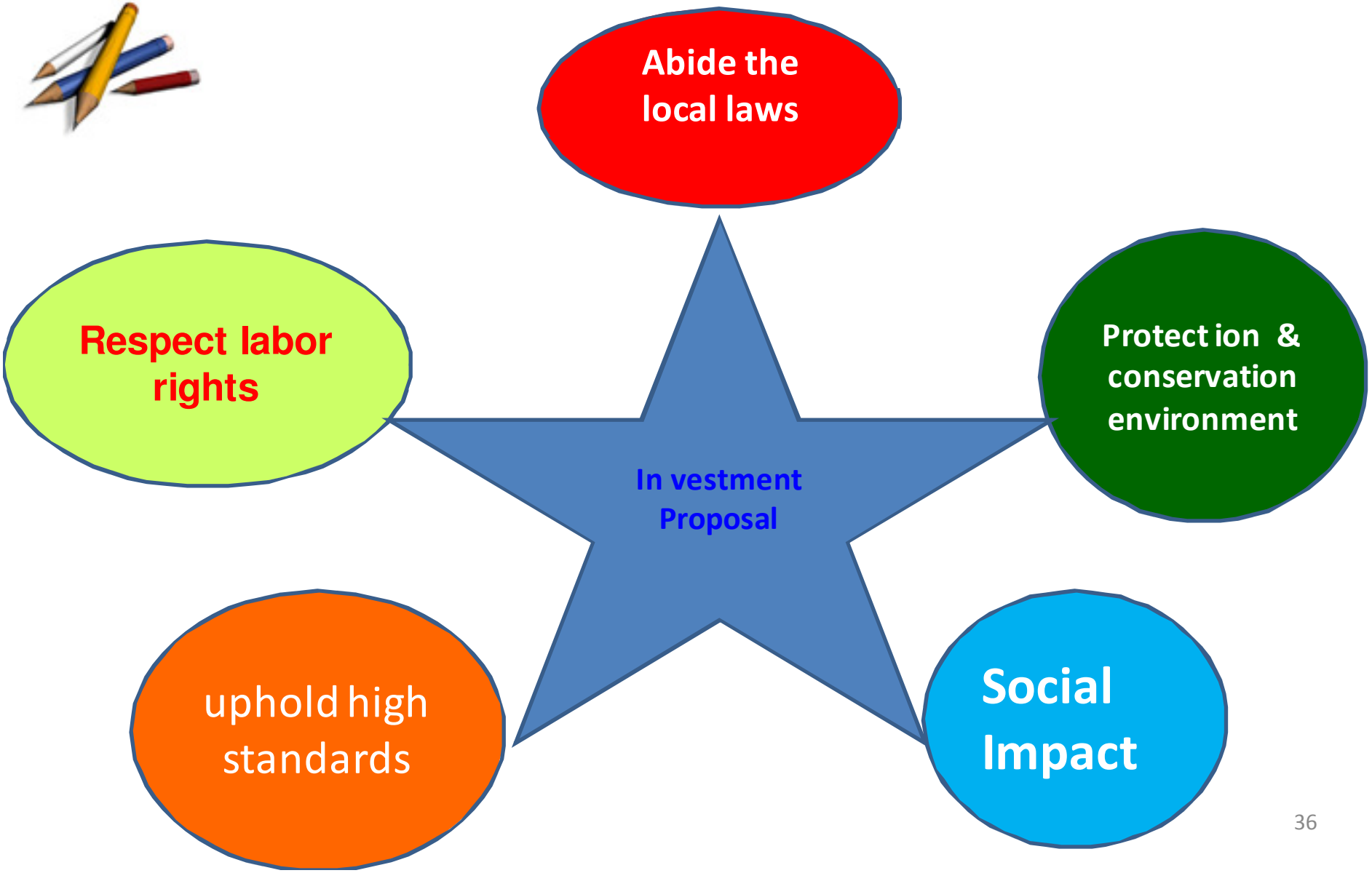


Doing Business in Myanmar (For Mining Sector)

Procedures and Documentary Requirements for Registration Application



Conclusion


Abide the local laws
Respect labor rights
Protect ion & conservation environment
In vestment Proposal
uphold high standards
Social Impact

For More Information

www.dica.gov.mm

www.facebook.com/pages/DICA/365149220225843

Realize the potential.

DICA

Facilitate Business,
Promote Investment,
Sustain the Country's Development.

DICA

Contact e-mail: chochowynn2011@gmail.com
Thank You