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# Country specific Feasibility Study

German Supply Chain Act in Myanmar  
Focus on the Garment Industry



Delegation der Deutschen  
Wirtschaft in Myanmar  
Delegation of German Industry  
and Commerce in Myanmar



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## Abbreviations

AVE	Foreign Trade Association of the German Retail Trade
BAFA	Federal Office of Economics and Export Control
BEPI	Business Environmental Performance Initiative
BSCI	Business for Social Compliance Initiative
CMA	Chemical Management Audits
CMP	Cut-Make-Pack
DWCP	Decent Work Country Programme
ESG	Environmental, Social, and Corporate Governance
ETI	Ethical Trade Initiative
EU	European Union
FLA	Fair Labor Association
GMBC	German Myanmar Business Chamber
GPS	General Preferential System
ILO	International Labour Organisation
LkSG	Act on Corporate Due Diligence in Supply Chains, short: Supply Chain Act
MGMA	Myanmar Garment Manufacturers Association
NAP	National Action Plan for Business and Human Rights
SAI	Social Accountability International
SGD	Sustainable Development Goals
SME	Small and medium sized enterprises
UNDP	United Nations Development Programme
VLCA	Voluntary Labour Compliance Assessment
WRAP	Worldwide Responsible Accredited Production

# Feasibility study on the German Supply Chain Act in Myanmar

## Executive Summary

The German cabinet has passed the Supply Chain Act (LkSG) with the aim of improving the protection of human rights in global supply chains. The Act will take effect for large German companies from 2023. This feasibility study examines the law and analyzes the individual requirements it imposes on not only German but also foreign companies. The law is about compliance with basic human rights and environmental standards. German companies must ensure that human rights and environmental protection standards are observed in their supply chains. This feasibility study aims to provide a recommended course of action to support Myanmar suppliers on the implementation of the Supply Chain Protection Act with a focus on prevention and reduction and avoidance of human rights and environmental risks.

The research indicates that larger German companies are mostly aware of the content of the law. They have been concerned with sustainable and transparent supplier relationships for some time, and in most cases extensive certificates and compliance with international standards are already required. Smaller companies with extensive supplier relationships are currently approaching the topic with varying degrees of intensity. However, the topic of sustainability is now increasingly becoming a priority and is even opening up competitive advantages. A major challenge for companies and associations is the fact that there will be no detailed implementing regulation for the implementation of the law.

The feasibility study further highlights the relevance for suppliers from Myanmar and lists their requirements and obligations. The study shows that the local companies are not aware of the contents of the German Act. There is a complete lack of information regarding the requirements for suppliers resulting from the law. However, Myanmar companies are making efforts to address the issues of sustainability, labor, and environmental standards.

Especially due to the current difficult economic situation and the precarious political situation, a further competitive disadvantage, such as the non-compliance with the German LkSG, can cost thousands of jobs and cause the departure or relocation of an entire sector. The study focuses thus on the garment sector, firstly because garments are almost the exclusive imports to Germany. On the other hand, the garment sector in Myanmar represents a large part of the local industry. The household income of a significant part of the population depends on the sector and especially young women would be affected by a loss of their jobs.

From the findings, the study produces a recommended course of action to prepare Myanmar suppliers for the introduction of the Act. The measures developed are considered necessary and advocated also by association representatives. These tools include information events on the LkSG, training and education measures on the main topics: Labor standards, child labor and slavery, and norms as well as occupational and environmental safety. The highlight is the development of a digital tool for risk analysis. It lays the basis for further consulting on the development and implementation of measures as prevention or remediation of deficiencies, the development of standardized reporting and the documentation templates, and the introduction of an inclusive, low-threshold complaint management system.

The study is based on expert interviews and a study conducted by the Delegation of German Industry and Commerce in Myanmar among local garment manufacturers. Certifiers, German fashion companies, German and Myanmar trade associations, local suppliers and experts from human and environmental rights organizations were interviewed.

## 1 Introduction

International corporations have long been criticized for exploiting weak and poorly enforced national regulations in emerging and developing countries. The demand for companies to comply with higher standards is underscored by the fact that the International Labor Organization (ILO) estimates that 25 million people worldwide are victims of forced labor, and that global environmental damage is also steadily increasing.<sup>1</sup>

In July 2021, the German Bundestag and Bundesrat therefore passed the "Act on Corporate Due Diligence in Supply Chains" (Supply Chain Act, *Lieferkettensorgfaltspflichtengesetz*: LkSG).<sup>2</sup> The LkSG imposes significant obligations on German companies that source their products and services through supply chains from developing and emerging countries. The German companies will be forced to comply with human rights and environmental standards and expose themselves to potentially serious liability in the event of violations. The LkSG aims to ensure that, from 2023 onwards, larger German companies will be required to ensure that their suppliers comply with certain social and environmental standards by including corresponding obligations in their contracts with suppliers.

The objective of this feasibility study is to provide a recommended course of action to prepare Myanmar suppliers for the introduction of the Act. The focus of the law is on prevention as well as reduction and avoidance of human rights and environmental risks. In this context, German companies have to conduct a risk analysis, risk management and prevention measures at their direct suppliers. By developing appropriate measures to implement and verify LkSG-compliant working conditions, Myanmar companies can comply with the law and strengthen their relationships with German clients. Thus, a contribution can be made to secure supply chains, address the issue of human rights and environmental protection, and at the same time give a hand to a substantial sector of the Myanmar economy in difficult times.

Myanmar's exports to Germany come almost entirely from the garment sector. Thus, especially German buyers from the fashion industry have to deal with the implementation of the LkSG in Myanmar. This industry is also of great importance in Myanmar. The industry currently boasts close to 600 factories and employs more than half a million people. It not only generates foreign exchange and revenues for the country, but also creates essential formal jobs for mostly Myanmar women, which further contribute to the prosperity of the country and its communities.

This feasibility study analyzes the LkSG and identifies the resulting requirements and obligations for German companies. It will show the relevance for suppliers from Myanmar and list their obligations to fulfil the requirements. The target is to develop with this knowledge support offers for local suppliers. This will include a concept for risk analysis in the area of human and environmental rights in the textile industry as well as the creation of documentation standards and measures for risk elimination. Since data is scarce, the study will rely on expert interviews and a small survey.

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<sup>1</sup> International Labor Organization (2017): Global Estimates of Modern Slavery: Forced Labour and Forced Marriage. International Labour Office (ILO), Geneva.

<sup>2</sup> Federal German Parliament (2021): Act on Corporate Due Diligence Obligations in Supply Chains of July 6, 2021, Federal Law Gazette 2021 Part 1 No. 46, Bonn.



On February 23, 2022, increasing the urge to act, the EU Commission presented a draft law to regulate corporate due diligence in the supply chain. However, the legislative process at European level is not yet at an end. The proposal for a European supply chain law goes significantly beyond its German counterpart, both in terms of scope and the due diligence requirements to be met.

## 2 Project background information

The feasibility study is conducted by the Delegation of German Industry and Commerce in Myanmar. The delegation aims at building and strengthening business relationships between Germany and Myanmar through projects, events, and services since 2014. It supports German companies seeking information and advice on market entry in Myanmar and since 2018 also in Cambodia and Laos. The delegation works in close co-operation with local institutions, especially the national chambers and fosters contacts with local companies. It works alongside the German Myanmar Business Chamber (GMBC). The delegation is part of the network of the German Chambers Abroad which are closely linked to the network of German Chambers of Industry and Commerce in Germany. The close cooperation with the German trade associations ensures that the delegation is networked close to the companies and markets. Based on a resolution of the Federal Government, the German Chambers Abroad are pro rata supported by the Federal Ministry of Economics and Climate.

The Federal Foreign Office through the Embassy of the Federal Republic of Germany Yangon partially finances the feasibility study.

The results of the feasibility study were presented in a webinar on March 10, 2022. The target group were the mentioned stakeholders. To highlight the German contribution, the Embassy of the Federal Republic of Germany Yangon was invited as speaker.

## 3 Content of the LkSG

The LkSG goes back to Germany's 2016 National Action Plan for Business and Human Rights (NAP), in particular supported by the Federal Foreign Office.<sup>3</sup> The NAP is intended to implement the United Nations (UN) Guiding Principles on Business and Human Rights adopted in 2011. With NAP, the German government is for the first time anchoring the responsibility of German companies and specifies the German government's expectations of both state institutions and companies with regard to the protection of human rights in supply and value chains. The action plan is intended to help strengthen human rights and shape globalization in a socially responsible way.

The UN Guiding Principles on Business and Human Rights are among the most important internationally recognized standards of corporate responsibility for human rights.<sup>4</sup> The law is a response to the devastating incidents in which German companies have been directly or indirectly involved in their international business activities in recent years. Recurring reports about burning or collapsed factories, exploitative child labor or destroyed rainforests have shown: Voluntarily, many companies do not sufficiently fulfil their responsibility in global supply chains. Against this background, the initiative *Lieferkettengesetz* was founded in September 2019 as a broad civil society alliance and has since demanded that the German

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<sup>3</sup> Federal Foreign Office (2017): Nationaler Aktionsplan - Umsetzung der VN-Leitprinzipien für Wirtschaft und Menschenrechte. Federal Foreign Office, Berlin.

<sup>4</sup> United Nations Human Rights Office of the High Commissioner (2011): Principles on Business and Human Rights. United Nations, New York and Geneva.

Federal Government passes a supply chain act.<sup>5</sup> This law would have to pursue two goals, firstly companies have to avoid damage to people and the environment by taking precautionary measures and secondly affected parties can more easily obtain redress when damage has occurred.

### 3.1 Scope of application

The Act will come into force on January 1, 2023. The scope of the Act initially applies to partnerships and corporations that have their head office, principal place of business, administrative headquarters or registered office in Germany and employ more than 3,000 people across the group. This corresponds to up to 1,000 German companies. From 2024, the Supply Chain Act will also apply to smaller companies with more than 1,000 employees. This will affect around 4,800 German companies. In June 2024, it will be reassessed whether the employee threshold will be lowered further. As a note, a future EU directive could apply already to companies with 250 or more employees operating in a high-risk sector (e.g., extractive industries, apparel), and foreign companies selling goods or providing services in the EU single market. The new EU directive is expected to include more human rights and environmental due diligence requirements such as ensuring compliance along the entire value chain, including direct and indirect suppliers. It would also allow affected people and stakeholders in third countries to bring civil claims against companies in the EU.

According to the Act, a supply chain includes all steps in Germany and abroad like own business units as well as direct and indirect suppliers, that are required to manufacture a company's products and provide its services - starting with the extraction of raw materials through to delivery to the end customer. According to the explanatory memorandum to the law, financial services are also covered by the LkSG, because a major investment or loan releases further production processes.

### 3.2 Requirements and implications for German companies

Under the Act, companies' responsibility extends to the entire supply chain, graded according to the degree of their influence. The obligations under the LkSG must first be fully implemented by companies in their own business operations and vis-à-vis their direct suppliers. Indirect suppliers, on the other hand, are only included in the obligations if the end-accepting companies become "substantially aware" of human rights or environmental violations at this stage.<sup>6</sup>

The centerpiece of the new Supply Chain Act is the regulation of human rights and environmental due diligence obligations for companies. The law specifies in section 2 para. 1 the protected legal positions by referring to the following conventions:

#### UN Human Rights Covenants

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights

#### ILO Convention

- Convention No. 29 concerning Forced or Compulsory Labor
- Protocol to Convention No. 29 concerning Forced or Compulsory Labor
- Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize

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<sup>5</sup> Initiative Lieferkettengesetz (January 28, 2022): Initiative Lieferkettengesetz. Website: <https://lieferkettengesetz.de>.

<sup>6</sup> Ibid.



- Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively
- Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value
- Convention No. 105 concerning the Abolition of Forced Labor
- Convention No. 111 concerning Discrimination in Respect of Employment and Occupation
- Convention No. 138 concerning the Minimum Age for Admission to Employment
- Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

These are the ILO core labor standards.

#### **Environmental Convention**

- Minamata Convention on Mercury
- Stockholm Convention on Persistent Organic Pollutants
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.<sup>7</sup>

The requirements listed are based on the two UN Civil and Social Covenants, the eight ILO core labor standards and as well three environmental conventions. The LkSG identifies these international conventions in which human rights are enshrined and defines supply chain-specific risks to which attention must be paid when fulfilling due diligence obligations. These include the prohibition of child labor, protection against slavery and forced labor, freedom from discrimination, protection against unlawful land confiscation, occupational health and safety and related health hazards, the prohibition of withholding an adequate wage, the right to form trade unions or employee representatives, the prohibition of causing harmful soil or water contamination, and protection against torture.<sup>8</sup>

Certain environmental risks are also taken into account: On the one hand, when they lead to human rights violations (e.g., poisoned water), and on the other hand, when it comes to banning substances that are dangerous to humans and the environment. The LkSG draws from three international conventions certain environment-related obligations that companies must comply with: the Minamata Convention on Mercury, the Stockholm Convention on Persistent Organic Pollutants, and the Basel Convention on Transboundary Movements of Hazardous Wastes and their Disposal. Violations of the environment-related obligations are also sanctioned by the control authority.<sup>9</sup>

The due diligence requirements include a risk management, an obligation to eliminate human rights and environmental violations, a complaints mechanism, and documentation and reporting requirements.

In detail, the LkSG lists the requirements for German companies as follows:

#### **Section 4: Risk management**

- Establishment of a risk management system (Section 4 paragraph 1)
- Designation of internal responsibilities (Section 4 paragraph 3)

#### **Section 5: Risk analysis**

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

- Carrying out frequent risk analyses (Section 5)

#### Section 6: Preventive measures

- Code of conduct and policy statement (Section 6 paragraph 2)
- Establish preventive measures within own company and for direct suppliers including initial screenings for new suppliers (Section 6 paragraph 4)

#### Section 7: Remedial measures

- Take action in cases (Section 7 paragraph 1-3)

#### Section 8: Complaint mechanism

- Implementation of complaint mechanisms (Section 8)

#### Section 10: Documentation and publication obligations

- Documentation and reporting (Section 10 paragraph 1-2).<sup>10</sup>

### 3.3 Monitoring, fines, and sanctions

The Supply Chain Act stipulates that the Federal Office of Economics and Export Control (BAFA) monitors compliance with due diligence obligations, reviews companies' reports, issues the necessary orders and measures, and conducts on-site inspections at companies. It acts at its discretion or upon request to monitor compliance with the obligations under the Supply Chain Act and to detect, eliminate and prevent violations of the Supply Chain Act. However, BAFA will only take action upon request if the person making the request substantiates that a protected legal position has been violated as a result of a company's failure to comply with an obligation under the LkSG or that a violation is imminent.<sup>11</sup>

In the event that a company fails to comply with the due diligence obligations under the Supply Chain Act, the law provides for sanctions in the form of periodic penalty payments of up to 50,000 euros in administrative enforcement proceedings and/or fines. The amount of the fines can be up to two percent of a company's global sales. The basis for the amount of the fine is the significance of the administrative offense, the economic circumstances of the company and the circumstances that speak for and against the company. Companies that have been fined a high amount can also be excluded from public contracts for up to three years.<sup>12</sup>

## 4 Myanmar garment sector

The garment sector is of huge significance for Myanmar. Garment manufacturers represent the largest industrial sector in the country. Three percent of the overall workforce are in garment factories and six percent of the population rely directly or indirectly to the garment industry.<sup>13</sup> There are about 700 factories in operation, many of which are concentrated around Yangon. 489 companies are organized in the Myanmar Garment Manufacturers Association (MGMA). The workforce is about 500,000 (from more than 700,000 before the pandemic) of which 85 percent or more are female. The Myanmar garment industry

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> International Labour Organisation Liaison Office in Myanmar (2021): The impact of COVID-19 in Myanmar: a study of workers laid-off in the garment sector. International Labour Organisation, Yangon.

comprises of privately-owned local, joint-venture and fully foreign owned factories alongside most micro and small-scale subcontractors. Chinese investments (including mainland China, Hong Kong and Taiwan) make a third of Myanmar's garment factories, according to the MGMA, and is by far the largest investor group.

The industry emerged mostly after 2012. The European Union's reinstatement of Generalised Scheme of Preferences (GSP) and the Everything But Arms (EBA) preferential trade regime in 2013 which grants duty- and quota-free access to the European market from developing countries, gave a strong boost, with the sector adding nearly 450,000 new jobs between 2013 and 2019.<sup>14</sup>

The most important buyers of garments are the European Union (EU), Japan, South Korea, and the USA. Myanmar garment shipments rose from less than one billion US dollars in 2011 with about ten percent of exports, to more than 6.5 billion US dollars in 2019 with about 30 percent of exports.<sup>15</sup> At least 60 European brands sourcing from Myanmar are known to the delegation.



Germany is the biggest importer of Myanmar garments within the EU. German imports from Myanmar amounted to 1,020 million US dollars in 2019 and 1,086 US dollars million in 2020. Imports shrank 17 percent to 680 million US dollars from January to September 2021. More than 90 percent of the German imports from Myanmar are textiles and shoes.<sup>16</sup>

Most leading German retailers and mail order companies source from Myanmar, among them Adidas, ALDI Einkauf, ALDI South Group, Anita Asia, Casico, C&A, Deichmann International Sourcing Ltd., Fond-of, Kaufland, KIK, LIDL Asia, Otto Gruppe, Tchibo, Tom Tailor, and Zalando.<sup>17</sup> The German buyers source from roughly 150 Myanmar suppliers. So far, German buyers have often sourced a single-digit percentage of their global supply from

Myanmar. In interviews, two German buyers said that prior to 2021, they intended to drastically increase their sourcing share from Myanmar and establish Myanmar as one of their top supplier countries.

Myanmar is regarded as a new producer country which competes successfully with established garment-producing countries such as China due to its competitive advantages in cost-competitive labor, relatively high-quality standards, and its EBA preferential trade regime. Due to initiatives in support of higher standards and better industrial relations, highly skilled employees are available to produce demanding goods, such as down jackets and bras. Thus, Myanmar has become a sought-after manufacturer of sports and outdoor clothing.

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<sup>14</sup> Myanmar Garment Manufacturers Association (2022): Report of Assessment Survey on Myanmar Garment Industry 2021 - Workers' perspective. Myanmar Garment Manufacturers Association, Yangon.

<sup>15</sup> Data Source: UNcomtrade (January 28, 2022).

<sup>16</sup> Data Source: Statistisches Bundesamt (January 28, 2022).

<sup>17</sup> The brands' online suppliers list in their CSR framework.

The industry runs under the Cut-Make-Pack (CMP) system. CMP is a form of contract work. The buyer company develops new styles and keeps the materials under his control. The buyer only outsources the labor-intensive tasks and provides all inputs necessary to the local supplier. The supplier carries out the labor-intensive work such as cutting the fabric, sewing garments together and then packing the garments for export to international markets. All documentation, paperwork, and transport from the factory to the port is organized by the client or through domestic or regional agents.

The input goods such as fabrics, buttons and lures come mostly from China. This means that the Myanmar companies are heavily dependent on a functioning supply chain. There is rarely any further production depth with locally produced raw materials. European companies appreciate the logistics and infrastructure available in Myanmar as preliminary products are brought in from China by land and the final products are exported via the Yangon port.

May, June and July are the busiest months when clothes for winter are made. Usually, 60 percent of clothing is made in Myanmar at this time. With the pandemic, the curve has flattened slightly. As companies had fewer orders during that time of the year in 2020 and 2021, some factories have been closing temporarily or permanently. A MGMA survey between January 2020 and mid-September 2021, depicts that 134 companies closed during that half year period (36 permanent, 98 temporary). Since the pandemic began, at least 157,000 jobs have been lost (24 percent) with many employees moving to the countryside.<sup>18</sup>

In the context of the pandemic and the political situation, foreign buyers have been facing several problems: closed border with China stopped the supply of inputs, pressure from unions to stop production in Myanmar altogether, and reputation problems and pressure to explain in domestic markets. That is why during 2021, German buyers explored options to shift sourcing to other countries, such as Vietnam, Cambodia, or China. Due to external reasons, such as global supply chain constraints and garment factories running at maximum capacity because of catch-up effects in the other countries in Southeast Asia, production in Myanmar has not been shifted, but it has been reduced slightly. Some orders initially failed to materialize. Companies only receive orders for the next season and no longer with long-term commitment. However, the garment industry is not affected by international sanctions.

## 5 Relevance of the Supply Chain Act

As described above, initially only German companies with more than 3,000 or 1,000 employees, respectively, will be held accountable by the LkGS. However, even smaller companies and small and medium sized enterprises (SME) already have to deal with the issues of human rights and sustainability. This is due to customer preferences and a poor image in the clothing industry. Through purely voluntary social responsibility, companies, both multinationals and SMEs, are trying to combat the bad image. They are therefore increasingly relying on positive pictures by highlighting sustainable or fair production and products.

A survey conducted by the Association of German Chambers of Industry and Commerce among around 2,500 internationally active companies of all sizes shows that German companies are already significantly concerned with the LkSG. According to their own information, 60 percent of the companies directly affected by the law have already had inquiries about human rights and environmental risks in their supply chain. 90 percent of the companies report corresponding contacts with clients or customers. For one fifth of the companies, the inquiries came exclusively or additionally from suppliers, and for 13 percent they came

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<sup>18</sup> Myanmar Garment Manufacturers Association (2022): Report of Assessment Survey on Myanmar Garment Industry 2021 - Workers' perspective. Myanmar Garment Manufacturers Association, Yangon.

from banks. More than half of the companies with 250 to 999 employees that are not directly affected also reported such inquiries. Even among companies with fewer than 250 employees, the figure was still 39 percent.<sup>19</sup>

## 5.1 Requirements and obligations for German companies

Under the LkSG, German companies must now have a risk management in place, eliminate human rights and environmental violations, implement a grievance mechanism, and document and report their actions.

### Risk management

As a first step, companies must analyze and assess their risks within their supply chains in order to be able to take appropriate measures to manage these risks. The German Supply Chain Act identifies the following twelve human rights risks and three environment-related risk complexes as relevant risk areas. The risk analysis must be carried out by companies at least once a year, but also on an ad hoc basis e.g., when a new product or service is introduced. As part of their risk management, German companies must first conduct an analysis of their own human rights and environmental risks as well as the identical risks of their immediate suppliers. In addition, German companies that gain substantiated knowledge of a possible violation of human rights or environmental standards by one of their indirect suppliers must immediately conduct a risk analysis for these violations. The results of the risk analysis must be given due consideration by decision-makers. German companies are also required to appoint a "human rights officer" who is responsible for monitoring risk management within the company.<sup>20</sup>

### Commitment to eliminate human rights and environmental violations

As a consequence of the risk analysis, companies must take measures to prevent, minimize and remedy the identified negative impacts on human rights and the environment.

Accordingly, if a company identifies a risk as part of such an analysis, management must issue a policy statement on its "human rights strategy" in order to prevent negative impacts on human rights and the environment in the future through preventive measures. This is to ensure that the company management clearly positions itself in support of the human rights strategy through the declaration. These preventive measures include, in particular, the implementation of an appropriate procurement strategy, the selection of suppliers, the assurance of a supplier's compliance with human rights and environmental requirements, the agreement of appropriate contractual control mechanisms and the implementation of risk-based control measures.<sup>21</sup>

Furthermore, if a company determines that a violation of a protected legal position has occurred or is imminent, it shall immediately take appropriate remedial action to prevent, stop or minimize such violation. The closer the company is to the threatened infringement or the infringement that has already occurred and the more it contributes to it, the greater its efforts must be to end the infringement.<sup>22</sup>

If the German company is not in a position to end the human rights and environmental violations in the foreseeable future, it must immediately create and implement a concept to minimize them: Either the company must work with the supplier who caused the violation to develop and implement a plan to

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<sup>19</sup> Association of German Chambers of Industry and Commerce (2022): German supply chain law already concerns half of internationally active companies. Association of German Chambers of Industry and Commerce, Berlin.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

remedy the grievance, or solutions must be developed within the respective industry as part of industry initiatives and industry standards in order to increase the company's ability to exert influence on the perpetrator. Alternatively, the company may temporarily suspend the business relationship with the supplier while efforts are made to mitigate the risk (including contractual penalties, removal from award list). Termination of business relationships is only required as ultima ratio in the event of serious human rights violations by suppliers that cannot be remedied in any other way.<sup>23</sup>

### **Complaint mechanism**

Companies must establish a complaint mechanism for misconduct with respect to human rights and environmental standards caused by the economic activities of the company or its direct or indirect suppliers. The complaints procedures must be designed in such a way that persons who may be injured in a protected legal position as a result of such economic activities, as well as persons who have knowledge of such an injury, e.g., non-governmental organizations, can point out these risks or violations. The effectiveness of the complaint procedure must also be reviewed by the companies at least once a year and on an ad hoc basis.<sup>24</sup>

### **Documentation and reporting requirements**

The fulfillment of due diligence obligations must be documented on an ongoing basis within the company and corresponding evidence must be kept for at least seven years. The German companies concerned are also required to prepare an annual report on the actual and potential negative impacts of their business activities on human rights and the environment and submit it to the Federal Office of Economics and Export Control. The report must also outline what measures the company has taken to fulfill its due diligence obligations. Companies must make the report publicly available on their website for a period of seven years.<sup>25</sup>

### **Obligation to make an effort and proportionality**

The law establishes a duty to endeavor, but neither a duty to succeed nor a guaranteed liability. Both the duty to analyze risks and the duty to implement follow-up measures are not designed as a duty to succeed, but as a duty to make the best possible effort in the sense of a duty to endeavor. This means that companies are not obliged to prevent all human rights and environmental violations in their own business operations and at their suppliers under all circumstances. Rather, the required risk management is based on the principle of proportionality. The measures that are proportionate and reasonable for the individual company depend in particular on the actual influence that the company can exert within its supply chain, the causal contributions to the human rights and environmental risk, and the countries to which the supply chain extends.<sup>26</sup>

## **5.2 Relevance and requirements for suppliers from Myanmar**

Good labor practices provide business benefits that enable Myanmar companies to improve and reduce staff turnover in the short term, increase productivity in the medium term, and improve business competitiveness in the long term. Myanmar is seeking to increase its export share in the garment sector. The industry is aware that attracting European buyers and investment requires ensuring compliance with social and labor standards that meet the expectations of the international community. For local

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

companies, labor standards compliance has two levels: mandatory compliance with national laws and regulations and voluntary compliance with company/brand codes of conduct or trade-related requirements that go beyond legal requirements. The LkSG is now added to the second group.

In the apparel industry, many international buyers require compliance with higher standards that include not only labor conditions, but also good environmental practices, sound safety management, and appropriate treatment of suppliers. Therefore, Myanmar already has seminars and in-house trainings to provide this knowledge and assist with implementation. However, these services do not cover the full spectrum of the LkSG and need to be adapted.

Many European apparel companies are vertically positioned, meaning they control complex globalized value and supply chains from production to retail. In Myanmar, in most cases only CMP activities are carried out. Thus, larger German brands are in the position to easily change supply contracts with companies in the country. German companies also have the leverage to pass on due diligence requirements to direct and indirect suppliers. Thus, the law impacts all levels of the supply chain and has relevance not only in Germany.

Due to the large geographical distance between Myanmar and Germany, a pass-on will especially be seen in the specifications for risk analysis, prevention, reduction and avoidance of violations, complaint mechanism and documentation. Thus, suppliers will be held accountable to prove that they comply with human rights and environmental LkSG requirements and take action against violations. In doing so, they will have to document their compliance with due diligence requirements and their actions and regularly submit corresponding evidence. It will be their task to also establish a complaints management system. If local suppliers are unable to meet the set requirements or standards, German buyers will have to make efforts to ensure that local organizations support with trainings or active support in implementing the measures.

## 6 Study objective

The aim of the feasibility study is to develop a recommended course of action that prepares Myanmar suppliers for the introduction of the Supply Chain Act with a focus on prevention as well as reduction and avoidance of human rights and environmental risks. Support offers within the framework of Responsible Businesses are to be developed. This should enable Myanmar suppliers, here with a special focus on the garment sector, to qualify as LkSG-compliant. This should make the local garment industry more attractive for German and European buyers and thus increase local business opportunities.

This feasibility study examines what Myanmar companies are already doing towards due diligence. It examines what audits look like and which certifications already exist in Myanmar's garment companies. The study aims to find out whether there are challenges in implementing the LkSG standards.

The target group is the local, export-oriented textile industry. It consists of over 700 companies. MGMA represents 489 companies with about 490,000 workers and supports member companies in exporting.<sup>27</sup> The association is thus the potential partner for future support services and is also interested in the results of the feasibility study. In particular, the study addresses companies that serve or are interested in serving the German market. They are among the potential customer group for the tools to be developed, to the extent that the major German brands are not already working with their suppliers on LkSG compliance.

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<sup>27</sup> Myanmar Garment Manufacturers Association (2022): Report of Assessment Survey on Myanmar Garment Industry 2021 - Workers' perspective. Myanmar Garment Manufacturers Association, Yangon.



85 to 90 percent of the employees in the MGMA textile companies are women. They often come from the surrounding villages and finance the livelihood of their entire family. With the decline in jobs, these young women are falling into financial hardship and often only find alternatives in prostitution. They in particular would benefit from a smooth implementation of the LkSG and the resulting export opportunities to Germany. Stable supply chains that take the LkSG into account secure jobs and promote the practice of labor in accordance with international human rights standards.<sup>28</sup>

## 7 Methodology

Since data is scarce in Myanmar, the study will rely on expert interviews and a small and non-representative survey. Local suppliers, certifiers, German fashion companies, German and Myanmar trade associations and experts from human and environmental rights organizations are interviewed. The interviews and data collection were conducted mostly from December 2021 to January 2022.

It is currently a challenge for international companies to operate in Myanmar due to the political situation. The interviews were therefore conducted confidentially. The interlocutors wish that the information given cannot be sorted into individual conversations or conclusions drawn about their current activities. Thus, only a list of the interlocutors' companies is attached.

Further, in the period from January 19 to February 18, 2022, the delegation conducted a survey in the Myanmar garment sector. The aim was to find out whether the export-oriented companies are willing and have free capacities to supply German companies and whether they already meet the requirements of the LkSG or in which areas there is still a need to catch up. For the survey, the delegation approached 82 export-oriented cut-make-pack garment suppliers. 20 responses from Yangon, Mandalay and Bago can be evaluated for this study. Of the 20 companies, 16 are foreign investment, three are locally owned and one is a joint venture. Eighty percent of the companies already supply buyers in Europe. German buyers include among others Lidl, Takko, C&A and Tchibo. The share of exports to Europe from these companies ranges from five to 100 percent. Adjusted for the 5 percent outlier, the average is 66 percent. Fifty-five percent of the responding companies are MGMA members. All companies have been in operation for at least two years.

## 8 Stocktaking of Human and Environmental Rights in Myanmar

Myanmar opened up in 2012. With the opening and the introduction of EBA, international companies have seized the opportunity to invest in their supplier network in Myanmar. They already demand compliance with social and labor standards and offer a range of training and certification to this end. A number of international organizations have also established themselves for this purpose. This section takes stock and lists what measures are already in place for the garment industry in Myanmar.

However, in Myanmar, the basic legal framework for foreign and local workers is set out in the Myanmar Companies Law 2017, including equal rights and remuneration for workers and dispute resolution procedures. The 2012 Environmental Protection Law provides guidance to companies on how to meet environmental standards and reduce impacts on communities, although implementation is often still questionable. Also in 2012, the Law on the Settlement of Labor Disputes was enacted to strengthen

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<sup>28</sup> Myanmar Garment Manufacturers Association (2022): Report of Assessment Survey on Myanmar Garment Industry 2021 - Workers' perspective. Myanmar Garment Manufacturers Association, Yangon.

workers' rights, create peaceful workplaces, and resolve disputes between employers and employees in an equitable manner.

## 8.1 Myanmar Garment Manufacturing Association

The MGMA is the main forum and business services organization supporting the garment industry in Myanmar. According to MGMA data, there are currently roughly 500 member factories providing jobs to more than half a million workers. Per law, CMP manufacturers have to be a member of the MGMA to receive an import license. However, MGMA members do not include all factories supplying German buyers in the fashion industry. Some suppliers like shoe factories, most backpack and handbag factories, sporting goods factories and some others are not MGMA members.

Myanmar companies are already aware that European buyers often expect factories to adhere to strict rules. Therefore, it is crucial for them to be familiar with the relevant set of requirements. Thus, for several years already MGMA introduces to its member the international framework (i.e., ILO conventions), the western buyers' requirements (shown by the example of the amfori BSCI auditing), the national framework (i.e., the Myanmar labor legislation) as well as its own Code of Conduct.

### Code of Conduct

In 2015, MGMA and its members drew up a Code of Conduct to acknowledge their corporate responsibility.<sup>29</sup> The Code of Conduct is provided to the companies as a voluntary instrument and as a set of guidelines for responsible business behavior. It outlines areas of corporate responsibility and suggests relevant values and principles which should become part of the business practices and policies of the companies. The Code of Conduct is inspired by ILO Declaration on Fundamental Principles and Rights at Work, the UN Guiding Principles on Business and Human Rights, UN Global Compact and the OECD Guidelines for Multinational Enterprises. The Code of Conduct covers eight fundamental conventions of the ILO which also form part of the LkSG requirements.

As European buyers have been dealing with social compliance for more than 20 years, a lot of companies had already defined their own Codes of Conduct and made it mandatory to future suppliers to sign them, too.

### Voluntary Labor Compliance Assessment

The Voluntary Labor Compliance Assessment (VLCA) is a self-assessment tool by MGMA attempting to improve the export chances of its members. It looks on labor, social and business compliance. The questionnaire was developed in cooperation with ILO Myanmar. The official launch was in February 2020. Due to the pandemic and the resulting difficulty in physically visiting companies, less than ten companies have participated so far. The service is free of charge and the results are kept confidential.

A consultant and a project officer of MGMA visit the factories and conduct interviews with the director, administration, managers, and workers. Further, they check documents such as company licenses, certificates, etc. In the last step, they take a seeing sight tour throughout the factory. In a final report, they describe their findings and assess them in five topics: Employment Relationship, Working Conditions, Working Environment, Employee Treatment and Industrial Relations. The evaluation is not based on a transparent and structured algorithm but on the assessment of the labor officer.

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<sup>29</sup> Myanmar Garment Manufacturers Association (2015): Code of Conduct. Myanmar Garment Manufacturers Association, Yangon.

The local participants receive an internal audit report and recommendations as well as corrective actions. The idea is that international buyers can base their business decisions on this report and that the Myanmar garment industry's understanding of responsible corporate behavior is enhanced. It goes in alignment with the target of the MGMA Code of Conduct. The assessment focuses on the ILO core conventions and covers parts of the LkGS requirements.

## 8.2 Initiatives by international organizations

In the Myanmar garment sector, several initiatives have been introduced to improve social, environmental and safety standards in supplier factories, to upgrade workers' skills and to strengthen labor relations, such as the SMART Myanmar Programme and ILO's Decent Work Country Programme. Due to restrictions in the country as because of the pandemic and the political situation, their actual scope of work is limited and often fails due to the reluctance of the local companies as they struggle to keep their business up at all.

The German economic cooperation organization GIZ is promoting sustainability in the textile and garment industry with its project FABRIC in Myanmar, Bangladesh, Cambodia, Pakistan, Viet Nam, and China. The objective is to make the production conditions in the Asian garment industry more socially responsible and environmentally friendly. This shall be achieved through an inter-Asian network of producer associations with conferences, digital seminars and a knowledge platform. In 2021, the GIZ withdrew from Myanmar with all its experts, and thus has to rely on third parties and digital trainings. The project results in Myanmar are expected to be limited.

SMART Textile & Garments aims to improve working conditions, promote labor and environmental standards, and reduce labor rights abuses in the textile and garment industry. The project improves, expands, and strengthens responsible and sustainable manufacturing practices in Myanmar's garment industry. It is funded by the EU and co-financed by private sector partners. The project promotes collaboration between all stakeholders along the value chain in Europe and Myanmar. Activities include training and advising factory managers and workers on workplace safety, labor law compliance and environmental practices, and promoting dialogue between the public and private sectors.

In Myanmar, the United Nations Development Program (UNDP) is expanding its capacity-building support. UNDP is addressing the issue of human rights due diligence for businesses in Myanmar. However, due to the unstable environment, UNDP is placing a higher focus on Heightened Human Rights Due Diligence. It has produced a training guide that includes training modules that clarify what is required to conduct human rights due diligence by focusing on the basics and adhering to internationally agreed principles and commonly understood terminology. The training is also supported by the Human Rights Self-Assessment Training Tool.

ILO has launched several projects in Myanmar to support local businesses. The organization supports advocacy for the elimination of forced labor in the country, it helped establish a grievance mechanism to enable victims of forced labor to seek redress; and most recently, in 2018, ILO signed its first Decent Work Country Programme (DWCP) for Myanmar with the government, employers and workers' organizations. Developed on a tripartite basis, the DWCP highlights priority areas for ILO technical assistance and plays a key role in helping Myanmar meet its commitments to the 2030 Sustainable Development Goals (SDG).

The Foreign Trade Association of the German Retail Trade (AVE) established a chamber partnership between AVE and MGMA as part of a publicly funded chamber network project. Special emphasis was in this case placed on improving social standards in the supply chain. MGMA had been supported in creating important structures that enable sustainable garment production by a long-term expert seconded by AVE and numerous short-term assignments of technical experts (e.g., from amfori). The work focused in part on

capacity-building activities for MGMA. Primarily, however, support was provided to textile producers seeking to improve their social standards while making progress on productivity and product quality. The project ended in December 2021.

### 8.3 Auditing and Certificates

In order to streamline requirements and support the implementation of ILO core conventions and human rights in practice, various multi-stakeholder initiatives have formed in recent years worldwide. The requirements contained in these initiatives are broadly similar. Some of the key initiatives include the Ethical Trade Initiative (ETI), the Fair Labor Association (FLA), Worldwide Responsible Accredited Production (WRAP), Social Accountability International (SAI), and the Business for Social Compliance Initiative (BSCI). WRAP and SAI have developed verifiable social certification standards, such as SA8000 and WRAP certification, while the business-focused initiatives ETI and amfori BSCI have developed codes of conduct and audits.

Further international certificates and audits existing in Myanmar and demanded by international buyers are SA 8000, ISO 26000, ISO 14000, ISO 9000, OHSAS 18001 and ISO 45001. In the current situation of the pandemic and with closed Myanmar borders, audits cannot be carried out or could only be carried out to a limited extent. Only few auditors have a branch office in Myanmar and certifiers often used to come from Thailand or Singapore.

Local audits regarding social and environmental standards can comprise Myanmar Initial Environmental Examination, Myanmar Environmental Quality Standards, Myanmar Environmental Impact Assessment, Myanmar Social Impact Assessment, Myanmar Environmental and Social Impact Assessment and Environmental Management Plan. However, the enforcement has been limited and with the tense political situation are even less executed.

amfori is the leading international trade association for socially responsible production conditions, responsible use of resources and the promotion of global trade relations. The organization was founded in 1997 by German companies. It supports and brings together 2,400 retailers, importers, brands and national associations from more than 40 countries. More than 800 German companies are listed. Myanmar is among the top ten sourcing countries for amfori members. According to reports, trainings related to human rights offered in Myanmar is mostly based on the amfori BSCI values.

The initiative Amfori BSCI (Business Social Compliance Initiative) was launched in 2003. BSCI provides companies with a methodology that supports them in their efforts to build an ethical supply chain. The BSCI is based on three fundamental pillars, such as auditing of production sites to verify the level of implementation of the BSCI Code of Conduct, training of participants and their suppliers to improve the understanding and implementation of the social requirements contained in the BSCI Code of Conduct, and continuous dialogue with stakeholders. BSCI does not conduct audits itself but provides a network of 23 external auditors such as TÜV Nord, TÜV Rheinland, and SGS, several of them used to be active in Myanmar. Producers that meet all BSCI requirements are encouraged to go further and achieve the best practice, SA8000 social management certification developed by SAI.

The amfori BSCI Code of Conduct refers to international conventions such as the universal Declaration of Human Rights, Children's Rights and Business Principles, UN Guiding Principles for Business and Human Rights, OECD Guidelines, UN Global Compact and ILO Convention and Recommendations.

The amfori BEPI (Business Environmental Performance Initiative) is a corporate initiative that provides companies with a uniform system to manage and improve their environmental sustainability along the entire value chain. The initiative was established in 2014 and has over 400 members. amfori BEPI is based

on the Global Social Compliance Programme environmental reference tools and is aligned with the standards of the GRI Environmental Module. amfori BEPI's Environmental Assessment covers a comprehensive scope of environmental areas.

amfori BEPI Chemical Management Audits (CMA) evaluate the level of implementation of an organization's chemical management system and determine the capability and effectiveness of the management system ensuring continual conformity with customer requirements, statutory and regulatory requirements and the defined scope of activities. The audit protocol is to be used for factories from the textile and footwear sector only. The audit protocol follows the ZDHC audit foundational level.

## 8.4 Interviews

Extensive discussions with German companies, associations and institutions for trade and development promotion revealed that larger German companies and companies with many suppliers have generally already been working for a long time on sustainable and transparent concepts for supplier relationships, taking into account international labor and environmental standards. In particular in the garment sector, the larger companies are under pressure to make public statements. Here, entire departments deal with the topic of corporate social responsibility. These departments are currently even being further expanded and additional workers are being sought. Larger companies are mostly familiar with the content of the LkSG and are currently looking for ways to implement it.

In contrast, smaller German companies and companies without a large supplier network have not yet dealt intensively with the Supply Chain Act. One reason for this may be that the law does not yet apply directly to smaller companies with fewer than 1,000 employees. However, discussions with associations and companies revealed that more and more medium-sized companies - irrespective of the new LkSG - are also making efforts to improve sustainability, labor and environmental aspects at their suppliers and have launched or are planning initiatives to improve these issues. For German companies, the topic of sustainability is now becoming increasingly a priority and is even opening up competitive advantages. This is particularly true for companies with direct end-customer contact or for products with a high image value.

For many companies the supply chains are often too complex and often consist of several hundred, sometimes several thousand companies. In most cases, however, companies are only aware of their direct suppliers. Reporting requirements that go beyond this are therefore associated with considerable bureaucratic effort. In addition, the existing legal uncertainty is a particular cause for concern: Up to now, companies have only been able to prepare themselves on the basis of the sometimes very vague formulations in the text of the law. This is also reflected by a survey of the Association of German Industry and Commerce in Germany: only 60 percent of the large companies surveyed with more than 1,000 or 3,000 employees say they have carried out a risk analysis or are planning to do so. The uncertainties associated with the law are also challenging supply chains, with 41 percent of directly affected businesses that perceive challenges subsequently questioning engagement with individual countries. Directly affected companies often also pass on their obligations to their suppliers - often SMEs - in the form of "codes of conduct" or recourse clauses as a result of the legal requirements. These suppliers must contribute the required information, for example by answering comprehensive questionnaires, and must therefore in turn have a detailed knowledge of their own supply chain. However, small companies are often still unaware of how

they are indirectly affected: only one in three SMEs has implemented appropriate risk management or plans to do so.<sup>30</sup>

In contrast, the Federal Ministry of Economic Affairs and Climate Protection has stated that the idea is not for large companies to squeeze out due diligence to small companies and for certificates to become mandatory for suppliers. Certificates do not replace exercise of due diligence. The heart of the LkSG is risk analysis and prioritization. Prevention measures cannot be replaced by certification alone. Certificates are an indication of compliance. Therefore, companies must look at suppliers and check where there are risks, how do I address them.

The German Chambers of Industry and Commerce and trade associations are already providing information about the new LkSG throughout Germany. There are a large number of publications on websites, in member magazines and newsletters, and information events and seminars have been held to raise companies' awareness of the issue. Extensive basic information is available. Nevertheless, companies are missing concepts and templates for the execution. Some interviewees of regional buyers stated that they know that the matters of the LkSG have so far been discussed and dealt with exclusively at headquarters, but that no further information has yet been passed on to the regional buyers' offices.

The interviews with German brands and regional buyer's offices revealed a mixed picture in the Myanmar garment sector, with some supplier factories maintaining better standards than others. German company representatives reported that labor and safety standards in Myanmar factories are higher than those in the region, based on the relatively young age of the textile industry and the newer factories. European brands have invested in the Myanmar garment sector as they have been concerned with sustainable and transparent supplier relationships for some time. They mostly already require extensive certification and compliance with international standards. Some brands closely monitor working conditions in supplier factories, including worker safety and pay, and respect for freedom of association and the need for rapid intervention in the event of grievances. Often, these international brands also conduct their own or externally commissioned on-site audits of their suppliers abroad. As a result, these seamstresses in Myanmar receive regular training and fair, above-market wages. Some brands have even turned to grievance management and already operate hotlines or apps for worker engagement, and others are considering introducing such systems. However, it has to be indicated that this only accounts for a small part of the garment factory that supplies responsible brands, the same high standards are not be found in the entire industry.

In Myanmar, the association MGMA and the local companies are not aware of the contents of the German LkSG. There is a complete lack of information regarding the requirements for suppliers resulting from the law. However, the interlocutors were already aware that a European supply chain law will probably come into force in the next few years. The exact contents were not known, nor was it known what a possible implementation might look like.

A survey by ILO and MGMA indicated, however, that Myanmar garment factories are aware of the need to abide by international standards and step ahead. In 2020, ILO and the MGMA conducted a needs assessment among corporate members that clearly indicated the need for a voluntary audit. According to the members, this audit service should be designed to provide corporate members with a robust and confidential assessment of their performance, identify non-compliance or deficiencies in compliance with national labor standards, and measure their performance against more advanced labor standards or

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<sup>30</sup> Association of German Chambers of Industry and Commerce (2022): German supply chain law already concerns half of internationally active companies. Association of German Chambers of Industry and Commerce, Berlin.



international certification requirements. Once a member has completed the assessment, the audit shall also provide a clear indication of whether the company is ready to enter a certification process (e.g., SA8000), which is often required by international buyers for certain markets.

Organizations and institutions report that the situation of garment workers has deteriorated quantifiably since the beginning of the pandemic. Workers face serious problems in their workplaces. Given the scarcity of jobs, bribery in hiring is slowly reemerging according to several reports. The problem of child labor is also resurfacing as fewer and fewer people in the family earn money. There are cases of people working overtime without being paid a premium. Inflation is a cause for workers having to work more overtime to make a living, even though they earn the same amount as before. It is reported that some workers who complain or take leave have been threatened with losing their jobs or being reported to the police. All of this is due to the fact that there is no or only insufficient grievance mechanism, and even if there is one, it is not clear or not an effective mechanism to discuss or negotiate the problems.

But workers also face problems outside the workplace. Transportation is increasingly becoming a problem, which is why some companies offer shuttle services. Since the political changes, workers face the risk of security checks on their way home from overtime work. If they are late getting home from work, some workers are arrested on suspicion, sometimes for failing to report to the district administration. This is especially true for workers who are not from Yangon.

## 8.5 Survey

The results of the survey among 20 export-oriented garment suppliers cannot be taken as representative of the whole industry. However, the delegation wanted to find out how far Myanmar's exporting companies are already prepared for the introduction of the LkSG. Eighty percent of these responders are already exporting to Europe. It can be assumed that these companies are already very well prepared by the European fashion brands for higher standards in the area of human rights and environmental protection. Thus, the survey only reflects what the status may be among the best-prepared suppliers in Myanmar due to bias and low response.

The companies were asked how high their capacity utilization is. The figures for maximum capacity as of the beginning of 2020, before the pandemic, were compared with the current number of employees. Three companies expanded their workforces in that time, by eight and sixty percent, respectively, and one company that did not begin operations until January 2020 expanded by 129 percent. The other companies have a workload of about 70 percent. Half of the companies responding said they hire workers on a per diem basis. Six companies said they rely on day laborers more than 95 percent of the time. On average, this means that 30 percent of the current workforce at the responding garment companies are day laborers. Further, no correlation to company size, structure or age can be observed here. No company has yet been filled with orders longer than the end of 2022: 28 percent until the end of Q1, another 22 percent until the end of Q2, another 39 percent until the end of Q3, and the remaining 28 percent until December 2022.

To assess the extent to which the export-oriented local companies already meet LkSG requirements, they were asked about certificates, how they ensure compliance with sustainability requirements, whether employees have formed unions, and whether a grievance procedure is in place. Two companies indicated that they are not certified at all. Eighty-five percent of the companies have undergone an amfori BSCI audit, while none have undergone the BEPI or ZDHC MRSL audits. Two companies meet OEKO-TEX standards, according to audits. One company is ISO 9000 certified, and another is ISO 45001 certified. Half of the companies ensure compliance with sustainability requirements through third-party audits, 25 percent through audits and on-site inspections by the sourcing company, and 15 percent through self-reporting.



Third-party audits are conducted by TÜV Rheinland, for example. 35 percent of the companies state that they prepare an annual report on social responsibility. In 20 percent of the companies, there is an employee representative appointed by the other employees. In the absence of an institutionalized trade union, employee representatives represent between 50 and 100 percent of the total workforce, according to company data. 85 percent of the responding companies state that they have installed a complaints management system. The majority of these are suggestion boxes (85 percent), but there are also e-mail addresses (35 percent) and hotlines (25 percent) installed.

About 70 percent of responding companies say they receive support from MGMA in their export efforts. 30 percent also receive assistance from ILO and 15 percent from SMART Myanmar. 70 percent of the companies state that they want to expand their business, and of these, all also want to expand their business with European brands.

## 9 Analysis

MGMA strives to bring the topics of sustainability, labor, and environmental standards closer to its members. The goal is for "Made in Myanmar" clothing to become synonymous with ethical and sustainable clothing production. MGMA is aware that listed topics are becoming increasingly important for more and more international companies and that in the future, proof of compliance with the standards will be increasingly required. The association is currently attempting to tackle the issue with the Code of Conduct, the self-assessment VLCA and is subsequently offering advice on improving the situation with regard to the weak points that have been identified. However, MGMA's concept does not meet the requirements of the German LkSG. A Code of Conduct will be required to be signed by the local companies. But similar as the VLCA, these tools only take the ILO core labor standards into account, but do not list other components of the law. The association suggests revising the MGMA evaluation concept together with the representatives of the delegation and to consider the required German law contents, standards, and conventions. A similar approach was also suggested by ILO Thailand, which offered support and expressed great interest in cooperation.

Due to international initiatives, there have been already trainings, standards and audits introduced to Myanmar associations and some companies. However, most individual companies are not fully aware of what the international standards include. Even though, training materials, code of conducts, posters are also available in Burmese language, these tools are more known by the local associations. But as there have already been projects and trainings conducted, it is not necessary to start completely from scratch for the LkSG. A guidance is needed that indicates the requirements of the Act and how these can be achieved.

Many programs and initiatives have been funded by development partners and companies. It is crucial for being sustainable, that these must be supported continuously by sustained access to markets also in difficult times. Also, local companies must appreciate their benefits, and they must be continually updated to meet current standards requirements. Due to the current political situation, several initiatives have reached a limit of activities that can be conducted. Unfortunately for the market, some projects and initiatives had a funding stop by the donors due to political reasoning.

The interviews showed that large German companies are already well prepared for the LkSG. They already use existing audits and initiatives and also have their own departments dealing with corporate social responsibility. SME do not yet have these capacities and are not yet prepared for the enforcement of the LkSG. In the discussion held, German association representatives called for support with regard to standardized risk analyses and uniformly designed documentation templates, which at the same time can also offer added value in the comparability of suppliers.

Analyzing the survey shows that 85 percent of the export-oriented Myanmar supplier companies do not work on their maximum capacity. Increasingly, they are relying on daily workers. The planning horizon is relatively short for the majority of companies. They do not have a planning certainty beyond 2022, and mostly even shorter. Employers therefore have to weigh the amount of workforce they need to produce at mass capacity in the near future again and to overcome temporary shortages of orders. Regarding audits, the local companies responding the survey follow the amfori BSCI standards and thus the ILO core conventions. They do not follow amfori's environmental or chemical guidelines. 75 percent of the supplier companies responded that they undergo audits by either third parties or the sourcing companies. Trade unions, as established institutions, are predominantly not to be found. However, some employees have appointed a representative. According to the companies own statements, grievance mechanisms are widely implemented in the supplier factories of larger European brands. However, the German brands indicate that the complaint systems do not provide protection for the employees. Either comments are ignored or, in the worst case, the people who complain are negatively confronted.

## 10 Interpretation

Based on projections, it can be assumed that approximately 100 to 150 textile companies already meet the LkSG standards to a certain extent. These companies are already working for large European brands and are thus subject to their audits and labor requirements. Conversely, this means that around 75 to 85 percent (450 to 500 companies) of the local companies are not yet familiar with the standards and requirements of the German LkSG or do not or only partially comply with them. Should these companies be interested in contract manufacturing for German or European companies in the future, they will be at a considerable competitive disadvantage and will have to reckon with not qualifying as a sustainable supplier. Particularly in view of the current difficult economic situation and the precarious political situation, a further competitive disadvantage - such as non-compliance with the German LkSG - could cost thousands of jobs and result in the departure or relocation of an entire sector.

With regard to the LkSG requirements, the amfori BSCI audit complies with the core standards of the ILO, i.e., part of the obligation. This is already established in many companies. However, compliance with environmental and chemical guidelines is fundamentally lacking. Only 75 percent of supplier companies state that they undergo audits either by third parties or by the purchasing companies. While approaches to a complaints mechanism are widespread, the extent to which they are effective, or whether complaints are acted upon, needs to be examined. It is also important to check to what extent the self-reporting in the questionnaire about trade unions corresponds to reality.

For Myanmar companies, new tools are needed which can support them in their effort in meeting the LkSG requirements and harmonizing already undertaken efforts in regard to labor compliance and social performance as well as business reputation by meeting the expectations of customers and stakeholders. The MGMA Code of Conduct serve as a means of others for the prevention of risks. International brands already require from their suppliers to sign Code of Conducts. The strong enforcement by the association this must be emphasized positively. It shows the strong grip MGMA has on its members and the eager of the companies to adjust to international standards. However, the MGMA Code of Conduct focusses on the ILO core conventions and does not fulfil the demands of the more extensive LkSG. The VLCA is a means for risk monitoring. Also, this tool only covers parts of the requirements and is thus not sufficient for German buyers. The analysis and evaluations are not guided by strict guidelines and therefore bring a subjective factor into it. Here, an adaptation to the German requirements in terms of content and form is required.

There are a large number of initiatives and international organizations that used to and are still supporting the young Myanmar garment sector. Many have in common the guiding principle of promoting social standards. They build, for example, on the ILO Core Principles, amfori BSCI or Heightened Human Rights Risks. So far, most of the individual projects have been well funded and supported by international partners. Many of these projects are limited to a duration of three to six years. With the changing political situation, it is unclear whether the projects will be extended and whether the implementers will remain in the country. Some organizations have already taken their experts out. For over a year now, the organizations have also been prevented from physically operating by the pandemic and the unsafe environment.

For local companies, this multitude of offers by initiatives and organizations provides irritation. For them, it is hardly apparent which requirements they have to fulfill for which buyer groups and which initiative works according to which standards. The Myanmar companies therefore rely on the cooperation of their buyers with the local organizations or on the recommendations of MGMA to receive a suitable training. The same goes with auditing and certificates.

To fulfil the LkSG requirements, local companies would have to undergo firstly an audit service designed to provide a robust assessment of a company's performance, identify non-compliance or deficiencies in compliance with the LkSG standards, and measure performance against its standards. Following they would have to puzzle together which initiative covers the deficiencies. As there is no all-embracing offer to fulfil the LkSG requirements. Thus, a tool bringing the aspects of LkGS together is needed. It can both enhance the industry's understanding of responsible corporate behavior and prepare specifically. As the above-mentioned survey by MGMA proved that the need is existing and already understood and in the interest of the entire garment business community in Myanmar. As the local companies will have to annually prove their compliance, the means will have to be based at a fixed institution to guarantee lasting.

However, the interviews also showed that Myanmar companies are currently facing problems on many fronts due to the political situation and the resulting economic crisis. They have to ensure the safety of their employees in a heightened risk environment, maintain cash flow to pay for supplies and salaries, respond to inputs not arriving on time due to restricted border crossings with China, etc., to name just a few challenges. Statements from the association indicate that companies currently have other priorities than preparing for tighter regulation of a single country. Therefore, both the awareness of the urgency and relevance of the preparation and cooperation for the LkSG must be increased. In addition, it must be made as easy as possible for the already trained Myanmar suppliers to prove their LkSG compliance and for companies that want to work with German brands in the future, there must be simple steps to show which training modules and measures they need to become LkSG compliant.

Also, the relevance of the LkSG obligations will rise increasingly. At the level of the EU, a similar supply chain law is currently being formulated which is expected to be more stringent. The EU directive is expected to have a broader scope and more far-reaching obligations for companies. A tool that covers the requirements of the German supply chain act thus should also already cover the demands of the European law to ensure that it does not become redundant and duplicate structures.

From the German side, large German companies with over 3,000 employees have already established extensive standards and norms with their suppliers in Myanmar for some time. Thus, compared to adjacent countries, Myanmar has a good image when it comes to employee safety. Images like in Bangladesh, where buildings have collapsed, do not exist in Myanmar. Internal or external audits used to be also regularly carried out by Myanmar suppliers for European brands. A major challenge for companies and associations is the fact that there will be no detailed implementing regulation for the law and that, among other things, no templates for the required due diligence documentation have yet been published by the responsible

authority. No framework of requirements has been published for the required risk analysis either. German companies have to define this for themselves, which under certain circumstances may represent a risk of misinterpretation of the law and thus a violation of the law. This is especially time consuming and risk prone for German SME which do not have large capacities for CSR activities and trainings and are less experienced in sourcing from developing countries. Thus, it would be helpful for them to have a clear guidance and templates about the adherence to the LkSG and more preferably to be presented to suppliers who are verifiable suitable.

## 11 Recommendations for action

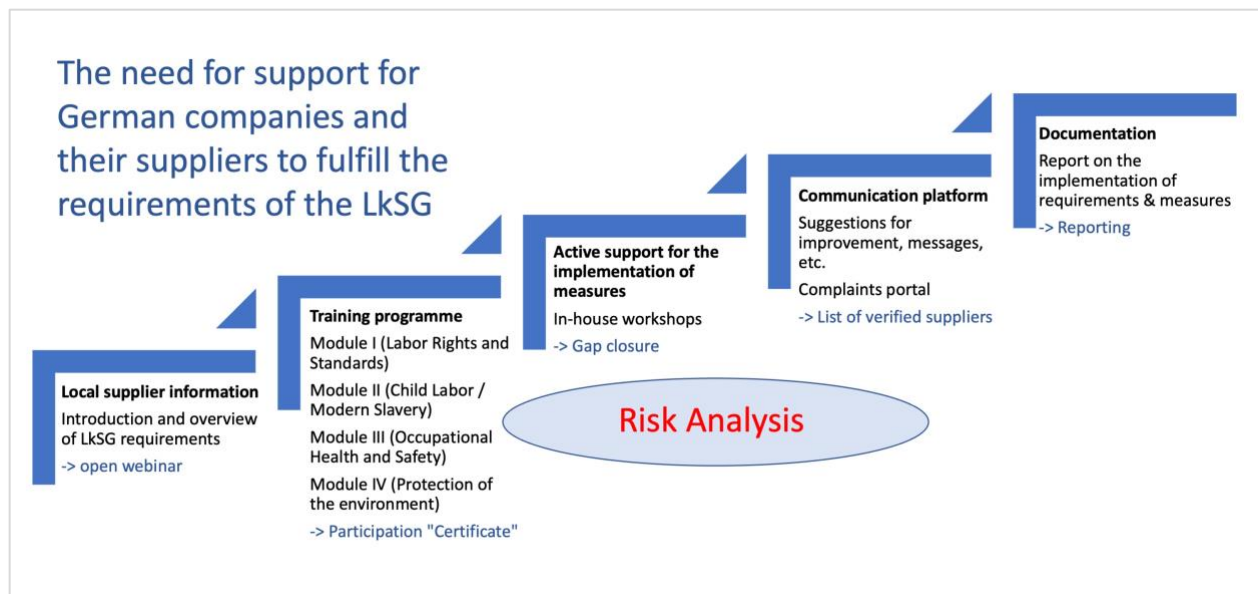
In summary, part of the Myanmar garment sector that is already working with German buyers is already well prepared. It is estimated that 15 percent of the suppliers belong to this group. This means, that 85 percent of the suppliers are not yet prepared for the introduction of the LkSG. It has to be considered that this study can only represent a small fraction of the overall situation and mainly give a picture of the better prepared local companies as they, as suppliers of large European brands, already receive good support. However, it is the other companies that want to position themselves for German or European buyers that lack a support system.

As pointed out in the interviews, it is advised to support the local textile industry in implementing the supplier requirements of the German LkSG. The measures shown in the graphic below are considered necessary and advocated by the association representatives. All in all, the support activities for local garment companies to abide by the Act has to include a concept for a risk analysis in the field of human and environmental rights in the textile industry as well as the creation of documentation standards and measures for risk elimination.

However, in the very next step, in order to support the German SME and local companies, preparing tasks have to be undertaken. It must be clarified which certificates and audits cover the contents of the LkSG and also, based on the law and the conventions referred to therein, a risk analysis with a questionnaire must be derived. It is necessary to find out if and which certificates cover which components of the law's requirements. So far, no final statement is possible here.

### Local supplier information

To raise awareness for the Myanmar garment industry, local suppliers need to be introduced to the LkSG requirements and presented to what they can do to abide by it. Therefore, information events on the LkSG and explanation of the requirements to suppliers need to be set up. This can be done in an open webinar. It will be important to find the right target group. Both directors and managers of companies already supplying to German brands and companies that do not supply yet to Germany need to be aware of the enforced regulations. Also, regional brand offices and international organizations in Myanmar conducting trainings on social responsibility in the garment sector require more information and need so be aware of the issue.



Graphic: Delegation of German Industry and Commerce in Myanmar

## Training programme

As so far, currently there is no audit or training available on the Myanmar market which covers the entire requirements of the LkSG. Thus, the next task should be to check the content of the standards available on the market and to compare them with the conventions required by the LkSG. The contribution of the delegation could be to make a recommendation from several available certificates and set up trainings, with which the local companies can be considered as LkSG compliant. Cooperation is advisable with existing programs to set up training and education measures on labor standards and norms, child labor/modern slavery as well as occupational and environmental safety. Participants should receive certificates to provide prove to buyers that they did preventive measures and are informed about the individual modules of the LkSG.

## Risk analysis

The core of the measurements to be developed will a digital tool for risk analysis considering the LkSG. Myanmar suppliers can assist and accommodate foreign buyers in conducting the risk analysis. By joining the digital platform, existing certificates, Code of Conducts and verified standard compliance can be uploaded to one central location. This could facilitate a quick and reliable supplier verification assessment for SME from a distance, but it does not substitute a proper audit. The assessment should be based on the legal requirements and specifications of the LkSG. A proof with sufficient documentation and evidence, a questionnaire or a checklist can verify the fulfillment of obligations in terms of the LkSG and serve as evidence for the German buyers for the fulfillment of due diligence obligations. Otherwise, it can be used to determine where there is a need to catch up and where gaps can be closed preventively with targeted training.

## Active support for the implementation of measurements

Following, the risk analyses, local companies need support in closing the identified gaps. Here local companies need consultation on the development and implementation of measures as prevention or correction of deficiencies for compliance with standards and norms. Cooperation should be established with local partners and experts, for example in the field of auditing, company representatives and topic experts. In Myanmar, these are in particular MGMA, AVE, ILO, Myanmar Center for Responsible Business,

SMART Myanmar, TÜV and UNDP. It was also suggested that regional associations (e.g., Greater Mandalay) be supported, as they would have an even greater deficit in terms of sustainability and international standards. To ensure completeness of existing standards and certificates (VLCA, amfori and ILO) shall be integrated and used.

### Communication platform

Another means should be introduction of an inclusive, low-threshold complaint management system in the factories of local suppliers. This could be an integrated part of the before mentioned digital tool as it belongs to the preventive measures demanded by the law. The proposed digital platform can provide a communication platform for complaints, suggestions for improvement, and further messages. This shall be set up to guarantee anonymity and a low-threshold handling to make sure that all employees are willing and able to use it if needed.

### Documentation

It will be important for German buyers and especially SME, to have developed standardized reporting and documentation templates that are sufficient for the annual report on the actual and potential negative impacts of their business activities on human rights and the environment and submit it to BAFA. The German buyers will have to report from Myanmar in specific about the implementation of a risk management, risk analysis, preventive measures and in cases remedial measures. Myanmar companies will have to upload certain documents needed and receive a report which will comply to the LkSG as approved by BAFA. German SME will gain security from the fact that Myanmar companies are already far steps ahead and can prove their LkSG compliance in a sufficient way. This will make the Myanmar market much more attractive for German companies.

There are many advantages for local suppliers using a digital solution as proposed. One advantage is the inclusion in a company directory, where local companies can store their master data and certificates. They also could gain access to a resource hub with online training, training videos, evaluation templates and reports, documents, and tools. The companies themselves can conduct a self-assessment and thus evaluate their own risk analysis. The risk analysis and the results need to be adequately documented for the German buyers and measures are recommended for score improvement. Suppliers can also release their risk analysis for direct inquiry and thus make it available to potential buyers. A complaint management can also be incorporated.

In order to bring trust on both the German and Myanmar side, the six support modules should be implemented by a partner who is already known and firmly established on sides in the business community in both countries. To ensure the sustainability, the partner should not be in the country on a temporary project basis but should be a permanent office with self-financing structures. The Delegation of German Industry and Commerce in Myanmar brings with it the prerequisites and, with its organizational background, is an expert in the field of business development, consultation, and training. Thus, the delegation is a very suitable implementer of the here developed tools and contact point regarding the LkSG.

In conclusion, the feasibility study has identified six means which are necessary to prepare Myanmar suppliers for the introduction of the Supply Chain Act. The modules are specific information events, trainings, a risk analyses tool, in-house workshops, a complaint management, and reporting templates. These means cover prevention as well as reduction and avoidance of human rights and environmental risks as demanded in the LkSG. These activities will enable Myanmar garment suppliers to qualify as LkSG-compliant and should make the local garment industry more attractive for German and European buyers and thus increase local business opportunities. These measurements target particularly Myanmar

suppliers who have not yet been working with German or European buyers but wishing to do so and suppliers already working with German brands but want to extend their business.



## Annexes

### Annex 1: Conversation and interview partners for the collection of information within the framework of the feasibility study

Adidas, Myanmar regional office

amfori, Hong Kong

Anita Damenwäsche GmbH, production site Myanmar

Foreign Trade Association of the German Retail Trade (AVE), Berlin

Bär GmbH, shoe manufacturer, Bietingheim-Bissingen

Brugger Magnetsysteme GmbH, Hardt

C&A, regional office Myanmar

DEE GmbH, special textiles, Böhmenkirch

Association of German Chambers of Industry and Commerce, Berlin

EuroCham Myanmar, Garment Working Group, Myanmar

General Association of the German Mesh Industry e.V., Stuttgart

H&M, Regional Office Myanmar

Chamber of Industry and Commerce, Reutlingen

Chamber of Industry and Commerce, Stuttgart

Chamber of Industry and Commerce, Düsseldorf

International Labor Organization (ILO) Myanmar, Yangon

International Labour Organization (ILO) Thailand, Bangkok

IPoint Systems GmbH, management consultancy, Reutlingen

KIK Textiles and Non-Food GmbH, Bönen

Myanmar Garment Manufacturers Association, Yangon

Peter Hahn GmbH, fashion & home textiles, Winterbach

SEQUA gGmbH, Bonn

VDMA e.V., Frankfurt

ZVEI e.V., Frankfurt

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