

CLIENT ALERT

As U.S. Eases Burma/Myanmar Sanctions, Many Challenges Remain for U.S. Business, Including Money Laundering and Corruption Risks

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President Obama's historic visit to Burma/Myanmar on November 19, 2012 marks an important milepost in that country's path toward a more open society, and recognizes economic and other reforms in that country. In advance of the President's visit, on November 16, 2012, the Secretaries of the Treasury and State eased the ban on imports of Burmese-origin goods. This action is part of a gradual unwinding of once-expansive U.S. sanctions targeting the Government of Burma, and follows on the July 2012 authorizations for new investment in, and exports of financial services to, Burma. The easing of U.S. sanctions greatly opens up the potential for trade between the United States and Burma. While U.S. companies may be considering entering the long-closed Burmese market, they should not do so without first extensively evaluating a range of business and compliance risks. This Alert focuses particularly on money laundering and corruption risks that a U.S. company will have to navigate when doing business in Burma.

U.S. Government-Identified Risks

The U.S. Government has flagged some of the money laundering and corruption risks for U.S. businesses. First, in the reporting requirements arising out of the general license for new investment in Burma, the Department of State requires U.S. businesses, meeting the \$500,000/year investment threshold, to report on compliance programs for social responsibility including human rights, workers rights, anti-corruption, and environmental protection.¹ Other sources also identify money laundering and corruption in Burma as high-risk. For example, the Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") continues to identify the Burmese financial sector as subject to Special Measures because of the risk for money laundering.² As a result, U.S. financial institutions have been prohibited from establishing, maintaining, administering or managing correspondent accounts for or on behalf of Burmese banks. FinCEN determined that the Special Measures were appropriate because, in relevant part, Burma had no effective anti-money laundering controls in place and the Financial Actions Task Force ("FATF"), an international anti-money laundering organization, had identified Burma as a Non-Cooperative Country or Territory.³ In October 2012, the FATF continued to identify Burma as a problematic jurisdiction, but acknowledged progress and laid out a path for removal from the list:

Myanmar should work on implementing its action plan to address these deficiencies, including by: (1) adequately criminalizing terrorist financing; (2) establishing and implementing adequate procedures to identify and freeze terrorist assets; (3) further strengthening the extradition framework in relation to terrorist financing; (4) ensuring a fully operational and effectively functioning Financial Intelligence Unit; (5) enhancing financial transparency; and (6) strengthening customer due diligence measures.⁴

The State Department's International Narcotics Control Strategy Report ("INCSR") also identified Burma as high risk for money laundering and corruption.⁵ The INCSR specifically flags Burma's "prolific drug production and lack of transparency" as reasons why the nation is attractive for domestic money laundering. State also acknowledged that, "[w]hile [Burma's] underdeveloped

economy is not adequate as a destination to harbor funds, the low risk of enforcement and prosecution makes it appealing to the criminal underground." State's INCSR also flagged as problematic the fact that the government of Burma dominates the economy, and state-owned enterprises and military holding companies control a substantial portion of Burma's resources.⁶ This risk is also identified in Transparency International's 2011 Corruption Perception Index, which ranks Burma 180 out of 182 countries for corruption risk.⁷

Gearing Up a Compliance Plan for Doing Business in Burma

Although the U.S. Government is using the prospect of U.S. investment in Burma to further encourage Burma's reforms, U.S. regulators and law enforcement will no doubt enforce the Foreign Corrupt Practices Act ("FCPA") and U.S. Anti-Money Laundering ("AML") statutes with vigor. The Department of Justice ("DOJ") and the Securities and Exchange Commission ("SEC") recently reiterated their commitment to aggressive enforcement of the FCPA in their joint publication of *A Resource Guide to the Foreign Corrupt Practices Act* on November 14, 2012. Accordingly, U.S. businesses must ensure that their anti-corruption and AML compliance programs are up to the task of navigating the high-risk waters of the Burmese business environment. High-risk transactions for corruption and money laundering include:

- Transactions utilizing local agents or brokers;
- Business ventures with state-owned enterprises;
- Transactions involving the development of Burmese natural resources;
- Transactions with former military or political leaders;
- Transactions involving Burmese financial institutions; and, among others,
- Transactions rumored to be linked, or distantly related to persons on Office of Foreign Assets Control's ("OFAC") Specially Designated Nationals List.

To mitigate these and other risks, U.S. businesses interested in entering the Burmese market should :

- Critically review and update existing anti-corruption and AML compliance programs;
- Carefully vet and conduct due diligence on local partners;
- Work closely with the U.S. Embassy in Burma (eager to help U.S. businesses, although resources are initially going to be limited);
- Engage with NGO's experienced in Burma to enhance due diligence and business intelligence;
- Establish record-keeping and transparency requirements with local partners (including training, written compliance, and, when available, audit rights);
- Engage, where appropriate, with third-party due diligence investigators to verify customer due diligence;
- Seek assistance from the State Department's Burma Desk in Washington, D.C., in appropriate circumstances.

These steps should be part of a comprehensive compliance strategy focused on the unique challenges of doing business in the emerging Burmese market. Crowell & Moring's White Collar and Regulatory Enforcement and International Trade Groups are poised to provide guidance on conducting business in Burma and other in high-risk jurisdictions in cost-effective ways that mitigate these risks.

¹See "[OFAC Authorizes Exports of Financial Services to and New Investment in Burma](#)," Crowell & Moring Client Alert, July 12, 2012.

² 69 Fed. Reg. 70 (April 12, 2004) 19093.

³ *Id.*

⁴ See FATF Public Statement, October 19, 2012, High Risk and Non-Cooperative Jurisdictions, available at <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/fatfpublicstatement-19october2012.html#Myanmar>.

⁵ See International Narcotics Control Strategy Report 2012, available at <http://www.state.gov/j/inl/rls/nrcrpt/2012/>.

⁶ *Id.*

⁷ See <http://cpi.transparency.org/cpi2011/results/#CountryResults>.

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