

AND NOW THERE ARE THREE: THE FINANCIAL ACTION TASK FORCE ADDS MYANMAR TO ITS "BLACKLIST" OF HIGH-RISK JURISDICTIONS

On October 21, 2022, the Financial Action Task Force ("**FATF**") elevated Myanmar to its short list of high-risk countries having "significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation," joining Iran and North Korea, often referred to as the "blacklist." In doing so, FATF urges all jurisdictions to apply enhanced due diligence on transactions involving Myanmar.

BACKGROUND

FATF is an inter-governmental body established by the Group of Seven ("**G-7**") that serves as the global money laundering and terrorist financing watchdog. It sets international standards to ensure a coordinated global response to prevent organized crime, corruption, and terrorism. To do so, FATF seeks to ensure that countries implement its standards for thwarting these illicit activities and holds countries to account if they do not comply. FATF is known for maintaining a list of jurisdictions with significantly deficient anti-money laundering ("**AML**") and combating the financing of terrorism ("**CFT**") and the financing of proliferation regimes and a "greylist" for jurisdictions that have deficiencies and require increased monitoring.

In February 2020, FATF [placed](#) Myanmar on its greylist based on numerous money laundering and terrorist financing vulnerabilities, ranging from drug production and arms trafficking to political corruption. As a result, FATF pushed Myanmar to implement an action plan to strengthen the effectiveness of its AML/CFT regime. In June 2022, FATF urged Myanmar to quickly comply with this action plan, and, as noted, FATF ultimately [downgraded](#) Myanmar to its blacklist due to Myanmar's lack of progress, advising the country that it will remain on the list until it completes the full action plan for addressing its AML/CFT deficiencies.

IMPACT ON COMPANIES DOING BUSINESS IN MYANMAR

When FATF added Myanmar to its blacklist, it called for its members and other jurisdictions to apply enhanced due diligence. For example, enhanced due

diligence measures under FATF's [international standards on combating money laundering](#) include:

- Obtaining additional identifying information on the customer;
- Seeking additional information on the nature of the business relationship;
- Verifying the source of funds or the source of wealth of the customer;
- Receiving senior management approval for the business relationship;
- Obtaining information on the reasons for intended transactions;
- Requiring the first payment to be carried out through an account in the customer's name with a bank subject to similar standards; and
- Conducting enhanced monitoring of the business relationship, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.

FATF also noted that "when applying enhanced due diligence measures, countries should ensure that flows of funds for humanitarian assistance, legitimate NPO activity and remittances are not disrupted."

Myanmar [responded](#) to FATF's action by promising improvements and downplaying the impact of the blacklisting on the country's business environment. It noted that FATF did not call for countermeasures against Myanmar like it had for Iran and North Korea. The Central Bank of Myanmar also [argued](#) that its latest action plan would adequately address the FATF's concerns, highlighting that the country was able to move off the blacklist in 2016 and thus had experience meeting the FATF's standards.

US economic sanctions against Myanmar remain dynamic, and it is unclear whether the Biden Administration, which has pledged to help restore Myanmar's democratic transition, will react to this blacklisting with further actions. On October 31, 2022, US Treasury's Financial Crimes Enforcement Network ("**FinCEN**") per its normal practice of providing a follow-up announcement after such FATF actions, noted the FATF designation (including the fact that it did not call for specific counter measures) and advised US financial institutions to continue to consult existing FinCEN regulations and US Department of Treasury Office of Foreign Assets Control ("**OFAC**") guidance on engaging with financial transactions in Myanmar, as well as a US Government advisory for businesses concerning human rights abuses (which we wrote about [here](#)). Thus, while US sanctions and export controls against Myanmar remain dynamic, the Biden Administration appears to be approaching the implementation of further sanctions judiciously.

WHAT'S NEXT?

FATF's recent Myanmar blacklisting increases compliance risks for companies investing or doing business in Myanmar. Companies operating in Myanmar or financial institutions processing payments with possible links to Myanmar, should promptly review and consider whether risk-based updates to their existing compliance programs are appropriate. Clifford Chance has experts on internal compliance as well as export controls and sanctions who can help companies navigate this process.

CONTACTS

Michelle Williams
Partner

T +1 202 912 5011
E michelle.williams
@cliffordchance.com

David DiBari
Partner

T +1 202 912 5098
E david.dibari
@cliffordchance.com

Renée Latour
Partner

T +1 202 912 5509
E renee.latour
@cliffordchance.com

Vasu Muthyala
Partner

T +65 6661 2051
E vasu.muthyala
@cliffordchance.com

Jamal El-Hindi
Counsel

T +1 202 912 5167
E jamal.elHindi
@cliffordchance.com

MJ Shin
Associate

T +1 202 912 5908
E mj.shin
@cliffordchance.com

David Harris
Law Clerk

T +1 202 912 5918
E david.harris
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 2001 K Street NW,
Washington, DC 20006-1001, USA

© Clifford Chance 2022

Clifford Chance US LLP

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Delhi •
Dubai • Düsseldorf • Frankfurt • Hong Kong •
Istanbul • London • Luxembourg • Madrid •
Milan • Munich • Newcastle • New York • Paris
• Perth • Prague • Rome • São Paulo •
Shanghai • Singapore • Sydney • Tokyo •
Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement
with Abuhimed Alsheikh Alhagbani Law Firm
in Riyadh.

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.