LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

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Dear Readers,

Welcome to a new edition of our newsletter.

What the FATF blacklisting means

As has been widely reported, the Financial Action Task Force ("**FATF**") put Myanmar back on its blacklist on 21 October 2022. In this newsletter, we want to take a look at what this will mean in practice. We will come to the conclusion that unlike what some other analysts are predicting, this blacklisting will probably not impact the business environment much beyond the many difficulties encountered already.

1. What is the FATF?

In its own words, the FATF is "a policy-making body" that "works to generate the necessary political will to bring about national legislative and regulatory reforms" in the areas of money laundering and terrorism financing. It was set up in 1989 at the initiative of the G7 and currently has 37 countries and other jurisdictions as well as the European Commission and the Gulf Cooperation Council as members.

The FATF is not a legislator or a supervisory authority for banks and may therefore in theory only make non-binding recommendations. Nevertheless, businesses domiciled in or doing commerce with countries that are being pointed out by the FATF as having deficiencies in their regulatory framework may face hurdles obtaining international banking services as banks, to varying degrees, incorporate the FATF recommendations in their risk analysis.

2. The FATF's blacklist and greylist

The FATF maintains a blacklist (officially called "High-Risk Jurisdictions Subject to a Call for Action") and a greylist (officially called "Jurisdictions under Increased Monitoring").

The FATF put Myanmar back on its blacklist on 21 October 2022. Also blacklisted are Iran and North Korea.

Myanmar was already blacklisted from June 2001 to October 2006 and from October 2011 to February 2016.

Furthermore, Myanmar was on the greylist from February to October 2016 and again from February 2020 until now.

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3. What does the FATF want its members and non-members and Myanmar to do?

(a) Enhanced due diligence

The FATF calls on its members and urges all other jurisdictions to oblige their financial institutions to apply enhanced due diligence to business relations and transactions with Myanmar.

Enhanced due diligence measures include obtaining additional information on the customer, obtaining information on the source of funds and source of wealth of the customer, and enhanced monitoring of the business relationship. Please find the long version of what an enhanced due diligence exercise might entail in the annex to this newsletter.

Whether FATF members and/or non-members will indeed oblige their financial institutions to apply Myanmar-specific due diligence (in addition to rules that are already on the books in some member jurisdictions, in particular compliance with sanctions) remains to be seen. Furthermore, it appears that most foreign banks are already undertaking a ton of scrutiny before executing a Myanmar-related transaction (if they agree to execute it at all), so it is not entirely obvious to see what could be enhanced.

Of note, the FATF has not called on members and non-members to take counter-measures against Myanmar (differently from the cases of Iran and North Korea).

On the whole, we therefore do not think that the FATF's call for enhanced due diligence will significantly impact financial transactions with Myanmar beyond the difficulties encountered by businesses already.

(b) Action plan in Myanmar

When Myanmar was greylisted in February 2020, the then civilian government committed to address strategic deficiencies until September 2021. The FATF requests Myanmar (by which it now probably means the SAC and/or the Central Bank under the SAC) to "continue to work on implementing its action plan to address these deficiencies"; please find the measures that the FATF wants Myanmar to take in the annex to this newsletter.

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Observers will have to decide for themselves whether they think that this is a good idea in the current situation.

4. Impact of the FATF's blacklisting

While certainly not nice, we do not think that the FATF's blacklisting will impact Myanmar's business environment much beyond the many difficulties and obstacles that exist already. Myanmar was blacklisted before and greylisted until now, and this did not seem to have impacted the flow of money into and out of the country. Rather, the flow of money was hampered by other factors, in particular government policy and international sanctions.

On the whole, we think that

- foreign banks that never handled Myanmar-related transactions, and those that stopped handling Myanmar-related transactions, will continue their hands-off approach;
- foreign banks that have so far handled Myanmar-related transactions will continue to serve their customers, but may request more paperwork;
- money transfers through unofficial channels will continue; and
- as always when there are bad news, the black market prices for USD and gold will be high for a while, but the FATF effect will eventually wear off.

We hope that you have found this information useful.

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ANNEX 1: ENHANCED DUE DILIGENCE

The FATF says in its Interpretative Note to Recommendation 19 that “the enhanced due diligence measures that could be undertaken by financial institutions include those measures set out in paragraph 20 of the Interpretive Note to Recommendation 10, and any other measures that have a similar effect in mitigating risks.

Paragraph 20 of the Interpretive Note to Recommendation 10 reads:

Enhanced CDD measures

20. Financial institutions should examine, as far as reasonably possible, the background and purpose of all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose. Where the risks of money laundering or terrorist financing are higher, financial institutions should be required to conduct enhanced CDD measures, consistent with the risks identified. In particular, they should increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear unusual or suspicious. Examples of enhanced CDD measures that could be applied for higher-risk business relationships include:

- *Obtaining additional information on the customer (e.g. occupation, volume of assets, information available through public databases, internet, etc.), and updating more regularly the identification data of customer and beneficial owner.*
- *Obtaining additional information on the intended nature of the business relationship.*
- *Obtaining information on the source of funds or source of wealth of the customer.*
- *Obtaining information on the reasons for intended or performed transactions.*
- *Obtaining the approval of senior management to commence or continue the business relationship.*

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- *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.*

- *Requiring the first payment to be carried out through an account in the customer's name with a bank subject to similar CDD standards.*

ANNEX 2: ACTION PLAN IN MYANMAR

In its "Call for Action" from 21 October 2022, the FATF states among others with respect to Myanmar:

> *In February 2020, Myanmar committed to address its strategic deficiencies. Myanmar's action plan expired in September 2021. […]*
>
> *Myanmar should continue to work on implementing its action plan to address these deficiencies, including by: (1) demonstrating an improved understanding of ML [money laundering] risks in key areas; (2) demonstrating that on-site/offsite inspections are risk-based, and hundi operators are registered and supervised; (3) demonstrating enhanced use of financial intelligence in LEA [law enforcement agencies] investigations, and increasing operational analysis and disseminations by the FIU [financial intelligence unit]; (4) ensuring that ML [money laundering] is investigated/prosecuted in line with risks; (5) demonstrating investigation of transnational ML [money laundering] cases with international cooperation; (6) demonstrating an increase in the freezing/seizing and confiscation of criminal proceeds, instrumentalities, and/or property of equivalent value; (7) managing seized assets to preserve the value of seized goods until confiscation; and (8) demonstrating implementation of targeted financial sanctions related to PF [proliferation financing]. […]*

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About Lincoln Legal Services (Myanmar) Limited

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

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