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BURMA

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CALL FOR FATF TO MAINTAIN BURMA'S NCCT STATUS

The Financial Action Task Force (FATF) must renew Burma's placement on the Non-Cooperative Country or Territory (NCCT) list. Despite the regime's recent showcase closing of two banks, the SPDC has not taken significant action against money laundering.

The November 2004 removal of FATF counter-measures against the regime as a result of 'improvements' in the SPDC's money laundering standards bolsters the false perception that the generals are actively combating money-laundering.

The removal of the counter measures overlooked flaws in the SPDC's anti-money laundering mechanisms, as well as failings in the 2004 Mutual Assistance Law. The SPDC's approach to money laundering remains sub-par and a threat to regional economies and global efforts to combat money laundering.

The parallel closures of the Asia Wealth Bank and Mayflower Bank are also deceptive as indicators of genuine reform. The SPDC did not attribute their closures to money laundering, instead citing "failure to comply with banking regulations."

Neither have the banks, their owners or clientele been charged with offences under the 2002 Money Laundering Law.¹ Closing the banks was merely an attempt to convince the international community that the SPDC is "tough on money laundering" in the lead up to the next meeting of the FATF in June.

Removing the counter measures HAS decreased international pressure on the SPDC: the Japanese financial services agency withdrew domestic procedures against Burma after the counter measures were removed.²

The closure of the Asia Wealth Bank must also be viewed in the context of its close ties with recently deposed Gen Khin Nyunt. Police Colonel Sit Aye, head of Burma's Financial Intelligence Unit told the Myanmar Times in mid March that of 3,000 cases of suspected money laundering in the past 15 months, none were found to involve money laundering.³ Asia Wealth Bank and Mayflower Bank have been under investigation since December 2003: two cases in a year and a half should not be considered adequate progress.

Pol Col Sit Aye also said the Financial Intelligence Unit was careful to ensure their investigations didn't "affect business transactions or the economy of the country."⁴ Not the makings of an anti-money laundering tsar.

The pending elevation of China from observer to a full member of the FATF may present greater challenges in the future to reinstate Burma as a NCCT.

Even if Burma has now, at least on paper, met some of the conditions of the FATF, there is little evidence the country's political leadership has the will and capability to enforce those new laws.

1 AP (1 Apr 05) Myanmar finance ministry closes two private banks

2 Japan Financial Services Agency (15 Feb 05) History of Major-Development in Anti-Money Laundering

3 Myanmar Times (7-13 Mar 05) Government to implement anti-money laundering laws

4 Myanmar Times (4-10 Oct 04) Plea on Money Laundering

FINANCIAL ACTION TASK FORCE (FATF): BURMA A COUNTRY OF CONCERN FOR MONEY LAUNDERING

The Financial Action Task Force on Money Laundering (FATF) is an inter-governmental organization that works to combat money laundering and terrorist financing. It was created by the G-7 Summit in Paris in 1989 and operates under the auspices of the Organization for Economic Cooperation and Development and has 31 country members, plus the European Commission and the Gulf Cooperation Council.⁵

In 2001, Burma was designated a Non-Cooperative Country or Territory (NCCT) by the Financial Action Task Force. NCCT designations are imposed in cases where there are major deficiencies in a country's anti-money laundering regime. The FATF recommends that financial institutions pay special attention to their business relations and transactions with persons or companies from NCCT countries.

At that time, Burma had not criminalized money laundering except in relation to drug trafficking. There were also no legal requirements to maintain financial records or report suspicious financial or asset transactions. FATF also reported "significant obstacles to international co-operation by judicial authorities".⁶

A year later on 17 June 2002, the Burmese junta enacted the Control of Money Laundering Law (CMLL), criminalizing money laundering. The law however lacked implementation measures, and did not contain any provision for international cooperation against money laundering.⁷

On 3 November 2003, FAT-F called for the imposition of additional counter measures against Burma, citing the failure to establish a framework for international cooperation against money laundering and the lack of enforcement mechanisms in its existing regulations. The NCCT designation also prompted the US Treasury to apply counter measures against two banks in Burma for being primary concern for money laundering. (See Burma Briefing Vol. 1 p. 68)

After the Mutual Assistance in Criminal Matters Law was implemented in Burma, which provides for bilateral or international cooperation on criminal matters, in October 2004, FATF recommended the removal of these counter measures. Burma remains on the NCCT list until the Burmese regime can demonstrate that it effectively implemented the legislation.⁸

Given overarching inefficiencies in the Mutual Assistance law, the failure to implement the 2002 Counter Money Laundering Law, and the lack of political will, it is essential that the counter measures remain in place.

DECISION MAKING AT FATF

FATF policies are addressed during Plenary meetings, held three times each year. Decisions are made by consensus on the basis of papers prepared by the Secretariat or based on written or oral reports from delegations.⁹

5 See www.fatf-gafi.org

6 FATF (21 Jun 01) Review to Identify Non-Cooperative Countries and Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures; available online: www1.oecd.org/fatf

7 FATF (20 Jun 03) Annual Review of Non Cooperative Countries and Territories

8 AFP (22 Oct 04) Money-laundering task force withdraws counter-measures on Myanmar, Nauru; FINTRAC Advisory (29 Oct 04) Financial Action Task Force (FATF) withdraws countermeasures with respect to Myanmar and Nauru

9 see FATF website: http://www1.oecd.org/fatf/AboutFATF_en.htm#Decision-Making

WHO'S WHO IN MONEY LAUNDERING CONTROL

Burma

Central Control Board. In Burma, the Central Control Board is the central body that deals with anti-money laundering initiatives. In addition to “Ministers or Deputy Members Ministers of relevant Ministries,” it is made up of:

Minister Chairman Ministry of Home Affairs	Maj-Gen Maung Oo
Minister Deputy Chairman Ministry of Finance & Revenue	Col. Hla Thein Swe
Deputy Attorney General	Dr Tun Shin
Deputy Chief Justice Member	U Than Oo
Governor of the Central Bank Member of Myanmar	U Kyaw Kyaw Maung
Director General Member Department of Settlements & Land Records	U Win Gyi
Police Director General Secretary Myanmar Police Force	Brig Gen Khin Yi
Director General Joint Secretary Bureau of Special Investigation	U Tun Hla Aung

BLACKLISTED: Maj Gen Maung Oo, Col Hla Thein Swe, Brig Gen Khin Yi are on the EU’s Visa Ban List. Why then, would a board they head be lauded by the international community as leading the SPDC’s efforts on countering money laundering?

CCB A FARCE

With the formation of the CCB contingent on **ministerial positions**, long term planning and security of tenure are not its strong points. Moreover, ministerial positions are granted to cronies and close allies of the regime. There is strong evidence that officials in the Burmese regime directly and indirectly benefit from money laundering.

Most of the SPDC’s money laundering mechanisms were undermined by the 2004 purge of Military Intelligence, which altered the CCB’s membership. This practice, alongside the junta’s paranoid tendency to continually purge upper level posts, does not bode well for the Board’s ability to carry out its duties. Continuity of practices, as well as long-term institutional knowledge and international connections are undermined by the SPDC’s desire to remain in control. Unfortunately, political survival and not financial integrity will be the key objectives of the CCB members.

THE US AT FATF

The US is represented at FATF primarily by the Office of Terrorism and Financial Intelligence (TFI) in the Department of Treasury. According to the Department of Treasury, members of the TFI chair the US delegation to FATF, which also includes members of the Departments of State and Justice, the National Security Council and federal financial regulators.¹⁰

10 see US Department of Treasury website: http://www.treas.gov/offices/enforcement/usg_and_fatf.shtml

CONTINUING DEFICIENCIES

“Simply, whatever Burma’s laws say, the country, its political leadership and leading financial institutions, cannot be trusted on the issue of money laundering.”¹¹

Laws

There are continuing deficiencies in the SPDC backed laws on money laundering.

- The laws give the Central Control Board power to set the limit for “transactions of a suspicious nature.” The CCB designated that transactions over 100 million kyat (approx US\$ 100,000) must be reported. This figure is irresponsible and ineffective. It is astronomically higher than the Financial Action Task Force’s recommended figure of \$10,000.¹² This figure is even more concerning, considering the first step of money laundering usually involves breaking large sums of money into smaller denominations. It not only undermines counter money laundering initiatives, but also makes Burma a target country for prospective money launderers.
- The Control of Money Laundering Law (CMLL) designates a number of offences to which money laundering claims will apply. These offences do not include fraud, official bribery, the misappropriation of public funds, or prostitution: all of which are central to money laundering. Moreover, they are all offences SPDC officials would benefit from: evidence that Burma’s anti-money laundering efforts are being held hostage to SPDC corruption.
- The law does not prohibit financial institutions from warning customers when information about them is being reported to the authorities.
- The laws themselves go no way to address the culture of corruption that sustains money laundering. Addressing Money laundering requires strong banking and financial services. In turn, the integrity of banking and financial services depends on high legal, professional and ethical standards. Under the SPDC, however, there are no such standards and so there is no financial integrity. Peter Gutter, a legal advisor to the Burma Lawyers Council says funds from criminal activity can easily be processed through Burmese institutions, either because its employees and directors are corrupt or because the institution itself turns a blind eye to the criminal nature of such funds. “Hence, Burma’s financial institutions have become part of the criminal network itself.”¹³

Therefore, without a concerted effort to overhaul the legal system, as well as the laws governing money laundering control, the SPDC’s response to the issue of money laundering will fail.

Poor Implementation

The SPDC has shown it has no intention of implementing the laws. Since 2002, no charges have been brought under the CMLL. Police Colonel Sit Aye, head of Burma’s Financial Intelligence Unit told the Myanmar Times in March 2005 that in 3,000 cases of suspected money laundering over the past 15 months, none were found to involve money laundering.¹⁴ This is highly unlikely given that Burma is well known for money laundering, specifically in association with narcotics trafficking. Further, in comparison to the United States, 1,789 cases

11 Burma Economic Watch (Nov 2004) Some Further Developments in Burma’s Financial Sector

12 AUSTRAC (2005) FATF on Money Laundering

13 Legal Issues on Burma Journal (Dec 01) Law and Money Laundering in Burma

14 Myanmar Times (7-13 Mar 05) Government to implement anti-money laundering laws

of money laundering were investigated during Financial Year 2004: of those prosecution was recommended in 1,515 cases.¹⁵

Asia Wealth Bank and Mayflower Bank have also been under investigation since December 2003. They were reportedly first placed under investigation in June 2002, but the investigation body was not formed until December 2003.¹⁶ This lethargy, and superficial dedication to money laundering, is typical of the SPDC's approach to the counter money laundering regime. The investigation body was only formed in December 2003 after the counter-measures were imposed against the SPDC. This pressure needs to be maintained in order for continued improvement to take place.

Despite Col Sit Aye's promise that 3,000 cases were investigated, only one investigation body was reported, for the Asia Wealth Bank and the Mayflower Bank. Under the CMLL, each case is meant to have an individual investigation body.¹⁷

The Mutual Assistance in Criminal Matters Law has also been ignored by the SPDC. The January 2005 indictment of 8 senior leaders from the UWSA was highlighted by the lack of "mutual assistance" from the SPDC. The United States lauded cooperation between US and Thai authorities, but appears to have been stonewalled by the Burmese.¹⁸

National Budget Records

A key to countering money laundering is effective audit of the national budget and financial records. Since 1998, the SPDC stopped publishing its national budget records. Prior to that, huge inconsistencies were found in the national budget records: without an independent audit of national records, there is no independent way to monitor money laundering efforts.

One indication that the SPDC benefits directly from money laundering and narcotics was highlighted in an International Monetary Fund study which showed that large expenditures were unaccounted for. SPDC (then-SLORC) Foreign Exchange reserves for the period 1991 – 1993 were US\$ 300; yet in that same period, the SLORC purchased arms valued at US\$ 1.2 billion.¹⁹

Taking steps to improve the country's budget recording mechanisms, in a transparent manner, would be a step towards convincing the international community they were acting on money laundering. Until this takes place, there is no hope that money launderers can be monitored.

Bank Closures

The closure of the Asia Wealth Bank and the Mayflower bank do not imply changes in the SPDC's approach to money laundering. The closures of the banks instead appear to be a response to pressure from the United States cloaked in alleged offences under the "Financial Institutions of Myanmar Law." On 31 March, the Ministry of Finance and Revenue announced that their banking licenses had been revoked because banking regulations were not "strictly followed." The revocation of licenses for financial institutions is set out in the "Financial Institutions of Myanmar Law,"²⁰ and not in the Control of Money Laundering Law. Penalties for money laundering offences, as outlined in the Control of Money Laundering Law include fines and/or imprisonment, not the revocation of licenses.

15 IRS (2004) Statistical Data – Money Laundering Enforcement. Available online: <http://www.irs.gov/compliance/enforcement/article/0,,id=113002,00.html>

16 Mizzima (2 Jan 04) Money Laundering: a dilemma for Burma's junta

17 See Chapter V in the Control of Money Laundering Rules: Formation of the Investigation Body and Functions and Duties thereof

18 US State Department (Jan 05) Charges enable law enforcement agencies to restrict group's activities

19 Asia Times (15 Aug 2002) Yangon's anti-drug spin

20 see Chapter 7 of the Financial Institutions of Myanmar Law (1990)

Aik Htun, the President of the Asia Wealth Bank, long suspected of drug connections, has not been charged with any offence under the Control of Money Laundering Law. In Burma it is easy and routine to simply rename the business and proceed with business as usual.

When announcing the closures, the Finance Ministers made a particular point of avoiding allegations of money laundering.²¹ This is a clear indication that the SPDC pays only lip service to its anti-money laundering efforts.

Gems

The SPDC's bi-annual gem auctions are widely suspected as being a key element of money laundering activities inside Burma. The gem fairs offer the perfect opportunity for drug traders, or other criminals, to transform money, gained from criminal activity, into assets or legal currency. In 2002, the Bangkok Post reported that the United Wa State Army, the largest criminal narcotics syndicate in the world, used the gem auction to launder approximately US\$ 3 million.²² The report said they laundered their money by paying traders up to 10% more than the original cost.

Hsiao Haw, who handles money laundering operations for Pao Yuchang and Wei Hsueh-kang (of the Wa) is also regularly seen at the gems fairs. "Every time the generals hold their bi-annual gems emporium in Rangoon, you can bet Hsiao Haw's there," one businessman revealed.²³

The gem auctions also double as a money making scheme for the SPDC, meaning they have a vested interest in maintaining the fairs, and therefore maintaining money laundering. In March 2003, the SPDC scored a huge US\$ 23.32 million from the March fair; in total, they have earned a total of US\$ 413.94 million from its gem emporiums, according to official statistics.²⁴ Exactly *how much* they have gained from money laundering is less clear.

These bi-annual gems fairs continue, without additional restrictions, or attempts at accountability. If the SPDC were serious about money laundering control, rather than attempting to utilize money laundering efforts to garner international support, gems emporiums would be a first target.

Drugs

Narcotics production and trafficking are also clear indications of the presence of money laundering. The United States State Department has said "there is reason to believe that money laundering in Burma and the return of narcotics profits laundered elsewhere are significant factors in the overall Burmese economy... Political and economic constraints on legal capital inflows magnify the importance of narcotics-derived funds in the economy."²⁵

Although much public attention has been given to the SPDC's drug eradication efforts, there has been little substantive progress. Burma remains the number two producer of heroin in the world and the leading producer of amphetamine type stimulants (ATS) in Asia, which has reached a crisis level for many Asian countries. Major narcotics producers and traffickers in Burma are making markets transfers from opium to ATS, which is perhaps more responsible for the reduction in poppy acreage in Burma rather than the so-called 'goodwill' efforts flaunted by the SPDC.

Without the prosecution of high-level narcotics producers and traffickers, anti-money laundering efforts in Burma will remain limited.

21 AP (1 Apr 05) Myanmar finance ministry closes two private banks

22 Bangkok Post (4 Nov 02) Wa launder proceeds at gems auction

23 Shan Herald Agency for News (9 Jun 04) Enter Bao's son-in-law

24 Xinhua (24 Mar 03) Myanmar fetches 23 mln dlrs from gem sale

25 US Department of State (2000) International Narcotics Control Strategy Report

The Property Boom: Financed by Money Laundering

“Proceeds of drug trafficking have become a critical component of the economic composition, funneling profits...into commercial enterprises throughout both the country and the region, intertwining criminal proceeds with legitimate infrastructure and economic development.”²⁶

Money laundering from the drug trade is said to finance virtually all major developments in Burma.

- As recently as 2004, the SPDC granted Kanbawza Bank, widely suspected to be a front for laundering drug profits, the right to finance a condominium boom in Rangoon.²⁷
- **Kanbawza Bank** is controlled by Aung Ko Win (aka Saya Kyaung), who is also part of a conglomerate that includes the “Billion Group” mining and gem concern. The Myanmar Billion Group Co also controls cultivation of vast land plots in central Burma.²⁸
- **“Hong Pang Group of Companies** was founded in 1998 by the United Wa State Army (UWSA), which is described by the US Government as the "world's largest armed narcotics-trafficking organization." Its leader Wei Hsueh Kang is designated by the United States a "drug kingpin," and the US Government is offering a \$2 million reward for information leading to the arrest of Wei.

Hong Pang owns an industrial zone in Sagaing Division where it produces textiles and garments, electronic goods, wires and cables, telephone wires, fluorescent lamps, frames for lamps, chokes, fans, switches, gas lighters, and video discs. The company is also involved in agricultural produce, agriculture and livestock breeding, gem mining, trading and construction.”²⁹

- A US State Department Report in 1997 said 15% of foreign investment in Burma is directed through a company called **Asia World**, which is owned by relatives of Luo Xinghan, known in the 70’s as Burma’s ‘Opium King’.³⁰
- **Asia World’s** contributions include: a deepwater port in Rangoon; the Leo Express bus line to northern Burma; and a US\$33 million toll highway from the heart of Burma’s opium cultivating region to the Chinese border.³¹
- **Aik Htun**, President of the notorious **Asia Wealth Bank**, is also Managing Director of **Olympic Construction Company**. In cooperation with the SPDC Housing Development Agency, Olympic Construction Co has built Wisaya Plaza, Myaing Haywin Housing, Kanthaya Plaza and Olympic Tower in Rangoon.³²

This government dependency on the continuation of money laundering creates an unstable nexus between government and crime that is damaging to the entire region.

26 Joyce, Brian. Dynamics and Deficiencies of Anti-Money Laundering Efforts in Myanmar. Journal of Money Laundering Control, 6 (1), 2002.

27 Irrawaddy (Apr 04) Burmese Banking: The Yangon Laundromat’s Burnout Explained

28 The New Light of Myanmar (15 Jun 99) Secretary-2 inspects reclamation of fallow and virgin lands in Magway Division

29 US Campaign for Burma (28 Apr 05) Honor the 60th Birthday of Aung San Suu Kyi: Boycott the Products of Hong Pang Companies

30 Asian Survey (May-Jun 1999) Transnational Crime, Drugs and Security in East Asia

31 Irrawaddy (2000) Burmese Tycoons

32 Irrawaddy (2000) Burmese Tycoons