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Myanmar Law Updates **July** 2013

The Securities And Futures Commission Of Hong Kong Issues Circular Reiterating Statement By The Financial Action Task Force Identifying Myanmar As A "High Risk" Jurisdiction

On 2 July 2013, the Securities and Futures Commission of Hong Kong (**SFC**) issued a circular [archived copy] to licensed corporations and associated entities in relation to anti-money laundering / counter-terrorist financing (**Circular**). The Circular includes a reiteration of a statement [archived copy] issued by The Financial Action Task Force (**FATF**) on 21 June 2013. FATF is the global standard setting body for anti-money laundering and combating the financing of terrorism (**AML/CFT**). Hong Kong has been a member of FATF since 1991. It is also a member of the affiliated Asia Pacific Group on Money Laundering (**APG**).

The FATF statement identifies Myanmar as being among twelve jurisdictions that, in FATF's view, have strategic deficiencies in their AML/CFT regimes. The other jurisdictions are Ecuador, Ethiopia, Indonesia, Kenya, Pakistan, Sao Tomé and Principe, Syria, Tanzania, Turkey, Vietnam and Yemen. In the statement FATF calls on its members and other jurisdictions to apply counter-measures to protect the international financial system from on-going and substantial money laundering and terrorist financing risks emanating from the jurisdictions identified.

In relation to Myanmar the FATF statement notes that:-

"Myanmar has taken steps towards improving its AML/CFT regime. However, despite Myanmar's high-level political commitment to work with the FATF and APG to address its strategic AML/CFT deficiencies, Myanmar has not made sufficient progress in implementing its action plan, and certain strategic AML/CFT deficiencies remain. Myanmar should continue to work on implementing its action plan to address these deficiencies, including by: (1) adequately criminalising 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. The FATF encourages Myanmar to address the remaining deficiencies and continue the process of implementing its action plan."

It remains to be seen what, if any, effect the FATF statement and the SFC Circular will have on investment from Hong Kong in Myanmar. The statement comes at a time when Myanmar is actively trying to attract foreign investment. On 28 June 2013, Hong Kong Financial Secretary John Tsang met with Myanmar President Thein Sein and other top officials in Nay Pyi Taw. During the visit Mr. Tsang announced that Myanmar and Hong Kong had agreed to explore the possibility of entering into a bilateral Investment Promotion and Protection Agreement.

In April 2012, Hong Kong introduced new AML/CFT financing requirements for SFC licensed corporations (**AML Ordinance**). The AML Ordinance gives supervisory and enforcement powers to four regulatory authorities including the SFC and the Hong Kong Monetary Authority. It also prescribes criminal sanctions for non-compliance with statutory requirements. In 2012 Hong Kong found itself the focus of unwanted attention when U.S. regulators handed down huge fines to HSBC Holdings and Standard Chartered for violations of U.S. and international AML/CFT controls. Both banks maintain a prominent presence in Hong Kong and are listed on the Stock Exchange of Hong Kong Limited.

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