

26 October 2023

Dear Sirs and Madams:

Since the Myanmar (Burma) military began an attempted coup in 2021, it has engaged in widespread, systematic crimes against humanity and war crimes against the people of Myanmar, violating countless international human rights and humanitarian norms and threatening to destabilize the broader region.

We are writing to you because your institution has reportedly held correspondent accounts in one or more Myanmar financial institutions now under the control of the military junta: the Myanma Foreign Trade Bank (MFTB), Myanma Investment and Commercial Bank (MICB), Innwa Bank Limited, Myawaddy Bank Limited, and/or Asia Green Development (AGD) Bank.

In 2021, the United States, the European Union, and the United Kingdom sanctioned Innwa Bank Limited and Myawaddy Bank Limited, which are owned by military conglomerates.¹ In March 2022, the United States sanctioned AGD Bank, a crony bank that supports the military.²

In June 2023, the United States announced sanctions on MFTB and MICB with a waiver allowing some continued transactions until 5 August for the purpose of winding down business relationships.³ This is an important step towards cutting off the junta's access to foreign currency, and one which we hope will soon be followed by the European Union, the United Kingdom, and other governments.

In August 2023, the United States issued the following statement: "Following the expiration of [General License] 5 on August 5 at 12:01 a.m. (EST), the United States will continue to carefully monitor compliance and scrutinize transactions with an MFTB or MICB nexus to counter evasion or other behavior that contravenes the intent of these designations and U.S. policy. We will pursue enforcement actions as appropriate."⁴

¹ These banks were designated as part of sanctions against Myanmar Economic Holdings Ltd. (MEHL) and Myanmar Economic Corporation (MEC). See e.g., Reuters, "The Myanmar military conglomerates sanctioned by U.S. and Britain," 25 Mar. 2021, <https://www.reuters.com/article/us-myanmar-politics-military-sanctions-f-idUSKBN2BH26I>.

² U.S. Department of Treasury, Office of Foreign Assets Control, "Specially Designated Nationals List Update," 25 Mar. 2022, <https://ofac.treasury.gov/recent-actions/20220325>.

³ U.S. Department of State, Press Statement, 21 June 2023, "Sanctioning Two State-Owned Banks and the Ministry of Defense for the Burma Military Regime's Atrocities," <https://www.state.gov/sanctioning-two-state-owned-banks-and-the-ministry-of-defense-for-the-burma-military-regimes-atrocities>.

⁴ U.S. Department of State, Press Statement, 4 Aug. 2023, "Transactions with Sanctioned Burmese Banks Must Be Wound Down by August 5, 2023," <https://www.state.gov/transactions-with-sanctioned-burmese-banks-must-be-wound-down-by-august-5-2023>.

Financial services and investments can be a form of complicity in gross human rights abuses that occur in crisis areas. We note that both the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct⁵ and the United Nations Guiding Principles on Business and Human Rights⁶ – leading international standards that apply to the commercial banking industry – call for heightened due diligence in situations involving crisis as is present in Myanmar. The UN Guiding Principles call for businesses to treat the risk of “contributing to gross human rights abuses as a legal compliance issue wherever they operate.”⁷ Such a risk is present in any transaction that enables the Myanmar military to access funding as it commits war crimes and crimes against humanity, and drives Myanmar deeper into a humanitarian crisis.

In addition, we note that continuing relationships with these banks would raise significant concerns for banks implementing the Wolfsberg Group Correspondent Banking Due Diligence Questionnaire Guidance,⁸ particularly with respect to the activities both banks are reported to have undertaken that led to their being designated by the United States, even beyond their status as sanctioned entities.

Without heightened due diligence, your institution risks helping the junta engage in money laundering, sanctions evasion, or other illicit financial activities, leading to potential exposure for your institution. Accordingly, we call on your financial institution to implement U.S. sanctions and cease processing transactions for or with a nexus to MFTB and MICB. We will support U.S. efforts to monitor compliance with sanctions and identify transactions with an MFTB or MICB nexus and make our findings public.

MFTB’s and MICB’s status as state-owned enterprises that are government agencies rather than independent companies⁹ means any relationship you have with them raises additional concerns. It would mean your institution is handling accounts and transactions in the name of the Government of Myanmar in a situation where the junta claims to be, but does not have status as, the legitimate government. Notably, the international community has broadly refused to recognize the junta as the legitimate government. The

⁵ OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, 2023, Chp. IV, commentary para. 45., <https://mneguidelines.oecd.org/mneguidelines>.

⁶ UN Guiding Principles on Business and Human Rights, 2011, para. 23 commentary, <https://www.ohchr.org/en/publications/reference-publications/guiding-principles-business-and-human-rights>.

⁷ UN Guiding Principles, para. 23 commentary.

⁸ Wolfsberg Group Correspondent Banking Due Diligence Questionnaire (CBDDQ) Guidance, Feb. 2023, <https://db.wolfsberg-group.org/assets/1869c58a-7b5e-4750-ae67-519badeab82d/CBDDQ%20Guidance%20v2.0.pdf>.

⁹ MFTB and MICB are not incorporated companies in contrast to, for example, Innwa Bank, which can be found on the Myanmar companies register, Myanmar Companies Online, <https://www.myco.dica.gov.mm>.

UN Special Rapporteur on the situation of human rights in Myanmar has also found that the junta does not meet the criteria for a recognized government under international law.¹⁰ A 2022 report by the Special Advisory Council for Myanmar (SAC-M) also concluded that the junta had effective control of only 17% of Myanmar's territories.¹¹

Additionally, we note that transactions with the Myanma Economic Bank (MEB) warrant heightened due diligence, especially after reports that the junta has used MEB accounts to circumvent sanctions.¹²

We request that your institution responds to the following questions. We will post this letter, along with your response, on the website of the Business and Human Rights Resource Centre, www.business-humanrights.org.

- What steps has your institution taken to prevent sanctioned members of the junta and sanctioned entities under the de facto control of the junta from accessing accounts held at your institution?
- What is your institution's policy with respect to accounts for any unsanctioned individuals or entities known or suspected by your institution to have assisted the junta in sanctions evasion?
- Has your institution implemented safeguards to avoid participating in or facilitating the junta's efforts to circumvent sanctions? Please note that common junta sanctions evasion tactics include channeling funds through non-sanctioned individuals and entities and converting funds to different currencies.
- What measures has your institution taken to implement the United States' August 2023 determination that allows for sanctions to be imposed on any foreign

¹⁰ UN Special Rapporteur on the situation of human rights in Myanmar, *Illegal and Illegitimate: Examining the Myanmar military's claim as the Government of Myanmar and the international response*, 31 Jan. 2023, UN Doc. A/HRC/52/CRP.2, <https://www.ohchr.org/sites/default/files/documents/countries/mm/2023-01-27/crp-sr-myanmar-2023-01-31.pdf> In particular, the UN Special Rapporteur for the Situation of Human Rights in Myanmar has stated that the fact that the junta remains unrecognized as the government has "critical legal and political ramifications" including the "the right to access and sell state property, including accessing foreign exchange reserves."

¹¹ Special Advisory Council for Myanmar, *Briefing Paper: Effective Control in Myanmar*, Sept. 2022, <https://specialadvisorycouncil.org/wp-content/uploads/2022/09/SAC-M-Briefing-Paper-Effective-Control-in-Myanmar-ENGLISH-1.pdf>.

¹² Myanmar Now, "Myanmar regime opens bogus bank accounts to bypass Western sanctions on MOGE," 6 July 2023, <https://myanmar-now.org/en/news/myanmar-regime-opens-bogus-bank-accounts-to-bypass-western-sanctions-on-moge>.

individual or entity determined to operate in the jet fuel sector of the Burmese economy?¹³

- How has your institution integrated the United States' January 2022 business advisory on Burma into its due diligence procedures?¹⁴
- What measures are being implemented to ensure that humanitarian aid and access is being received in Myanmar and that civilians are able to access banking services and to safeguard against de-risking?

Finally, we note that the enhanced due diligence process referred to in both the UN Guiding Principles and the OECD Guidelines includes an expectation that your institution consult with relevant stakeholders such as civil society organizations. It is our belief that a coordinated effort among governments, the private sector, and civil society is necessary to place sufficient pressure on the Myanmar military to end its failed coup attempt, while preventing de-risking and ensuring that the Myanmar population has continued access to humanitarian aid.

We look forward to further communication with you on this important matter. Please share all correspondence with Simon Billenness and Alyson Chadwick at No Business With Genocide at simon.billenness@nobusinesswithgenocide.org and alyson.chadwick@nobusinesswithgenocide.org.

Respectfully,

Action Committee for Democracy Development (Coalition of 14 grassroots networks)
Association of Human Rights Defenders and Promoters
Athan - Freedom of Expression Activist Organization
Blood Money Campaign
Burmese Women's Union
EarthRights International
Equality Myanmar
Future Light Center
Future Thanlwin
Generation Wave
Grass-root People

¹³ U.S. Department of Treasury, Press Statement, "Treasury Expands Burma-Related Sanctions and Designates Additional Jet Fuel Suppliers in Burma," 23 Aug. 2023, <https://home.treasury.gov/news/press-releases/jy1701>.

¹⁴ U.S. Department of State, Press Statement, "Business Advisory for Burma," 26 Jan. 2022, <https://www.state.gov/business-advisory-for-burma>.

Human Rights Educators Network
Human Rights Foundation of Monland
India For Myanmar
Karen Peace Support Network
Karenni National Women's Organization
Keng Tung Youth
Metta Campaign
Myanmar People Alliance (Shan State)
Network for Human Rights Documentation - Burma (ND-Burma)
No Business With Genocide Coalition
Progressive Voice
Save and Care Organization for Ethnic Women at Border Areas
Shan MATA
Sisters 2 Sisters
Southern Youth Development Organization
Ta'ang Women's Organization
Tanintharyi MATA
Thailand for Burma
The Sentry

Please note: We have sent this letter to the following financial institutions:

ANZ Bank
Bangkok Bank Public Company Ltd.
Bank of America
Bank of China
Barclays
BIDV (Vietnam)
BNP Paribas
BPCE Group
Crédit Agricole
Credit Suisse
DBS Bank
Deutsche Bank
DZ Bank
E. Sun Commercial Bank Ltd.
HSBC
Industrial & Commercial Bank of China
Kasikornbank
Krungthai Bank

Maybank
Mega International Commercial Bank Co., Ltd.
Mitsubishi UFJ Financial Group (MUFG)
Mizuho Financial Group/Mizuho Bank Ltd.
Morgan Stanley
OCBC Bank
Royal Bank of Canada
Shinhan Bank
Siam Commercial Bank
Société Générale
Standard Chartered Bank
State Bank of India
Sumitomo Mitsui Banking Corporation
Toronto-Dominion Bank
UBS
United Overseas Bank