REPORT CARD

US Companies Investing in Burma

U.S. CAMPAIGN FOR BURMA

Summer 2014
uscampaignforburma.org
The Report Card of US Companies Investing in Burma is an evaluative tool that measures the due diligence reports and accountability efforts of US companies in accordance with the US Reporting Requirements on Responsible Investment in Burma.
# Table of Contents

Report Card ......................................................................................................................................................... 2

Why Grade US Companies Investing in Burma? ............................................................................................... 3

What are the US Responsible Investment Reporting Requirements? ............................................................... 4

Company Profiles .................................................................................................................................................. 5
  Capital Group Companies .................................................................................................................................. 5
  Hercules Offshore ............................................................................................................................................... 6
  Crowley Marine .................................................................................................................................................. 7
  Coca-Cola .......................................................................................................................................................... 8
  Western Union .................................................................................................................................................... 9
  Clipper Holdings ............................................................................................................................................... 10

Grading System .................................................................................................................................................... 11
  Compliance ....................................................................................................................................................... 12
  Policies and Procedures .................................................................................................................................... 14
  Risks .................................................................................................................................................................. 16
  Stewardship ..................................................................................................................................................... 17

Risk Categorizations .......................................................................................................................................... 18

Acknowledgements ............................................................................................................................................... 20
The Report Card will be updated as new investors submit reports and the above investors update their reports.

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Why Grade US Companies Investing in Burma?

Since July 2012, the US Government has allowed US companies to make new investments in Burma. In order to ensure that new investments support US foreign policy goals, companies investing over $500,000, or investing in the oil/gas sector, are required to submit their policies and procedures related to human rights, worker rights, the environment, anti-corruption, security service provision, land acquisition, revenue transparency, and military communications to the US State Department under the 2013 Reporting Requirements for Responsible Investment in Burma.

US Campaign for Burma is committed to ensuring that US investment promotes a transparent and reformed business environment in Burma that prioritizes human, labor, and environmental rights, due diligence, safeguards, and community engagement. The Report Card of Companies Investing in Burma gives investors, civil society, and government actors the information they need to ascertain if US companies are complying with the Reporting Requirements and responsibly stewarding their investments on the ground in Burma.

Responsible US investment has the potential to further the US policy goal to support “the establishment of a peaceful, prosperous, and democratic state that respects human rights and the rule of law.” ¹ The Report Card encourages investors to make forthright disclosures, manage risks, commit to responsible stewardship and transparency, and engage with civil society.

The Report Card categorizes US companies as “Responsible,” “Questionable,” or “Irresponsible” based on their compliance with the Reporting Requirements and their activities on the ground. The Report Card in its first edition scores only those companies that have submitted reports under the Reporting Requirements. Our goal is for every US company to earn a “Responsible” designation, and to model responsible business practices that give the people of Burma the information and power they need to monitor investments in their country.

What are the US Responsible Investment Reporting Requirements?

The US Administration issued General License No. 17 (GL 17) in July 2012 authorizing new investment in Burma in response to the Burmese government’s reforms geared toward building a modern market-based economy. Due to continuing human rights abuses and corruption, GL 17 requires that US persons engaging in new investment in Burma report to the State Department in compliance with the Reporting Requirements on Responsible Investment in Burma.

The Responsible Investment Reporting Requirements mandate that persons investing over $500,000 in Burma, or any amount in the Myanma Oil and Gas Enterprise (MOGE), submit public and private reports on their policies and procedures. Companies’ public reports are posted on the US Embassy Rangoon website.²

Through these reports, the US Administration aims to evaluate the impacts of US investment and ensure that investment is in line with US foreign policy goals in Burma to promote human rights, democracy, and reform, and to provide the transparency that civil society groups need in order to encourage responsible investment.

Company Profiles

**Capital Group Companies, Inc. - Irresponsible Investor**
Los Angeles, CA
Reports Submitted July 1-2, 2013, April 30, 2014

Capital Group Companies, Inc. ("Capital") submitted four reports, all of which are grossly inadequate. Capital failed to meet basic standards for full and accurate disclosure, appearing to have failed to conduct due diligence to uncover the actual and potential impacts of its investments in Burma.

Capital refused to answer essential questions about human rights due diligence policies and procedures, arguing that it has no responsibility to answer because its investments are “passive.” But the Reporting Requirements require disclosures regardless of the nature of an investment, the percentage equity stake held, or whether the investor has operations in Burma.

Capital’s significant investments in Yoma Strategic Holdings Ltd. ("Yoma") are particularly concerning. Yoma is a powerful actor in Burma's high-risk plantation agriculture and real estate sectors, which are rife with human rights abuses, including environmental destruction, forced displacement, land confiscation, political detentions, and labor abuses. US officials previously recommended financially sanctioning Yoma on the US Treasury’s Specially Designated Persons (SDN) List due to their substantial economic and political support for Burma’s military regime.

**Action:** Capital should immediately submit comprehensive, high-quality reports, carefully assessing its investments in Yoma and in Burma.

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4. See US State Department, Responsible Investment Reporting Requirements Frequently Asked Questions, Sep. 23, 2013, at http://www.humanrights.gov/2013/09/23/responsible-investment-reporting-requirements-frequently-asked-questions/ (stating under Question 4 that “The Reporting Requirements do not limit disclosure obligations based on the form of an investment or the percentage equity stake held (even when, for example, other stakeholders are non-U.S. persons), or based on whether the investor itself has operations in Burma”).

Hercules Offshore, Inc. - Irresponsible Investor
Houston, TX
Report Submitted July 1, 2013

Hercules Offshore, Inc. ("Hercules") explained in its report how its due diligence procedures included its local Burmese supplier. But Hercules declined to identify its local supplier, making it nearly impossible for the US Government and civil society to monitor Hercules' investment. Hercules should disclose the names of its local suppliers, partners, subsidiaries, and subcontractors.

Hercules did submit summaries of its policies and procedures, but it did not discuss conducting due diligence on the association between Myanma Oil and Gas Enterprise (MOGE) and PTTEP International Limited, Hercules' customer. PTTEP International Limited, a Thai company operating the Yadana Gas Project, has been marred by serious human rights abuses since the early 1990s.

Moreover, Hercules is involved in the high-risk offshore oil and gas sector. Investors in this sector are required to operate in cooperation with the state-owned MOGE. MOGE has been a main source of funding for the abusive Burmese military and has a long record of corruption and committing human rights violations against ethnic minorities. Given that MOGE does not transparently report on its revenue streams, Hercules cannot determine the human rights impact of its investment. Hercules is thus incurring significant risk without being fully transparent.

It is concerning that Hercules did not mention that its offshore activity is in the waters near Rakhine State where the Burmese Navy has a heavy presence and where Rohingya refugees are fleeing by boat. Hercules appeared to have failed to conduct human rights due diligence to identify the potential impacts of its investment and policies for managing activity off the coast of Rakhine State.

Note: Hercules is no longer active in Burma as of September 2013 (approximate).

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Crowley Marine Services, Inc. - Irresponsible Investor
Jacksonville, FL
Report Submitted July 1, 2013

Crowley Marine Services (“Crowley”) failed to meet basic standards for full and accurate disclosure, declining to answer essential questions about its due diligence policies and procedures. This indicates that Crowley failed to conduct due diligence to uncover the actual and potential impacts of its investments in Burma. Crowley stated only that the company “maintains” policies, without explaining, describing, or attaching them to the report. Crowley also failed to explain why it marked some sections “N/A.”

Moreover, Crowley is involved in the high-risk offshore oil and gas sector. Through its investment, Crowley is involved with PTTEP International Limited, a Thai company operating the Yadana Gas Project that has been marred by serious human rights abuses since the early 1990s. Investors in the oil and gas sector are required to operate in cooperation with the state-owned Myanma Oil and Gas Enterprise (MOGE). MOGE has been a main source of funding for the abusive Burmese military and has a long record of corruption and committing human rights violations against ethnic minorities. Given that MOGE does not transparently report on its revenue streams, Crowley cannot determine the human rights impact of its investment. Crowley is thus incurring significant risk without being transparent.

It is concerning that Crowley did not mention that its offshore activity is in the waters near Rakhine State where the Burmese Navy has a heavy presence and where Rohingya refugees are fleeing by boat. Crowley appeared to have failed to conduct human rights due diligence to identify the potential impacts of its investment and policies for managing activity off the coast of Rakhine State.

Note: Crowley is no longer active in Burma as of March 2013 (approximate).

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The Coca-Cola Company - Responsible Investor
Atlanta, GA
Report Submitted December 12, 2013

The Coca-Cola Company ("Coke") submitted a thorough report detailing most of its due diligence processes and providing copies and summaries of its policies and procedures. Coke elected to publicly publish all of its findings, rather than withhold some information for a confidential report to the government.

Coke revealed both successes and areas for improvement in its business conduct. This transparency gives civil society and other stakeholders the information they need to monitor Coke’s investment. In future reports, Coke should provide updates on these challenges, including more details on its wastewater treatment issues.

The policies and procedures that Coke did submit are satisfactory. However, Coke’s reporting of policies and procedures were incomplete in two areas:

1) Coke’s due diligence procedures on property acquisition are insufficient. They do not explain due diligence on assuming Grant Land subleases. Moreover, Coke did not submit policies and procedures explicitly pertaining to land issues. When asked, Coke provided more information on its land due diligence, but in future reports, Coke should forthrightly detail its lease and land acquisition processes.

2) Coke did not comprehensively explain how it selected Pinya Manufacturing Co., Ltd. as its local partner and its related due diligence processes.

Action: Coke should specifically explain its background due diligence on “Pinya.” Coke should submit more comprehensive information on its subleases, land due diligence, and land policies.

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The Western Union Company - Questionable Investor
Englewood, CO
Report Submitted January 30, 2014

The Western Union Company ("Western Union") submitted a report referencing most its due diligence processes and its policies and procedures. Western Union identified all of its partner banks in Burma.

While Western Union reported comprehensive policies, it also implied that these policies do not apply to employees of its Burmese agents. This leaves Western Union at risk of negative ethics, compliance, and corruption impacts.

Western Union contracts with Ayeyarwady Bank, which is sanctioned on the US Specially Designated Nationals (SDN) List. In 2013, the US Administration inexplicably waived (but did not remove) the bank from the list. US-sanctioned tycoon Zaw Zaw owns Ayeyarwady Bank. Responsible investors contracting with Burmese cronies and their enterprises must be exceedingly cautious, regardless of whether the US has waived sanctions. Western Union did not report on how it undertook due diligence to manage the actual or potential impacts of its contract with Ayeyarwady Bank.

Action: Western Union should disclose more information on its decision to contract with Ayeyarwady Bank and its efforts to mitigate associated risks. Western Union should also systematically train partners on ethics, compliance, and anti-corruption, and explain efforts to mitigate associated risks.

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* US Campaign for Burma is contacting Western Union for more information on whether its policies and trainings on ethics, compliance, and anti-corruption apply to its Burmese agents. Western Union’s grade may change based on this information.

** Not applicable given the nature of Western Union’s activities in Burma.

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Clipper Holdings Ltd. - Questionable Investor
Report submitted from Hong Kong office
Report Submitted May 8, 2014

Clipper Holdings Ltd. (‘Clipper’) submitted a report including summaries of its policies and procedures and commitments to apply its global policies to its subsidiaries, suppliers, and partners. Clipper also explained its core commitment to its employees, customers, and community in Burma.

Clipper declined to identify its local partners and suppliers, making it nearly impossible for the US Government and civil society to monitor Clipper’s investment. In addition, a few areas of disclosure and due diligence in Clipper’s report were vague, including:

1) Clipper did not submit the names of its local partners and suppliers or detail how it conducts due diligence on local partners and suppliers.

2) Clipper did not submit comprehensive information on its security service provider, deeming pertinent questions “Not applicable.” Because Clipper has identified that it has a security service provider, all following security provision questions are applicable.

Action: Clipper should disclose more comprehensive information on its local suppliers and partners, and on due diligence related to suppliers, partners, and security providers.

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* US Campaign for Burma is contacting Clipper for more information on the identities of its partners and suppliers. Clipper’s grade may change based on this information.

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US Companies Investing in Burma
Grading System

US Campaign for Burma is committed to an objective, rigorous, and attainable grading system based on the Reporting Requirements. Companies are evaluated in four categories.

These four grades are averaged to determine whether a company is a responsible, questionable, or irresponsible investor. Companies with failing grades in categories one, three, or four are automatically labeled irresponsible investors.

The Report Card principally draws from the following sources: news monitoring; reports and information collected from government actors, international bodies, companies themselves, and local and international civil society organizations; and company reports submitted under the US Reporting Requirements.

Four Categories:

1. **Compliance**—with the Reporting Requirements, including timeliness, full disclosure of information, and assumption of responsibility for due diligence.

2. **Policies and procedures**—Quality of human rights, worker rights, anti-corruption, and environmental policies and procedures; and quality of security service and property acquisition policies and procedures.

3. **Risks**—Quality of risk identification and mitigation in a company’s investment.

4. **Stewardship** of investment and corporate engagement on the ground.
1. **Compliance**—Compliance with the Reporting Requirements, including timeliness, full disclosure of information, and assumption of responsibility for due diligence.

The Report Card measures the overall depth of companies’ public reports. Full compliance with the Reporting Requirements is imperative for enabling government and civil society groups to engage US companies on their investment policies and procedures and to monitor the Burmese government’s management of revenues from investment. Companies must therefore answer every question fully or explain why unanswered or partially answered questions are irrelevant to the particular investment.

Compliance presumes timeliness (reports submitted by the due date established in the Reporting Requirements) and full disclosure, which should include disclosing the names of Burmese partners, subsidiaries, and subcontractors, explaining the location(s) and nature of business in Burma, and providing required details such as the number of employees in Burma, the location of land use and purchase, etc.

Compliance also presumes that companies assume responsibility for their investments. Failing to assume responsibility for due diligence is an evasion of responsibility for the flow and impact of capital and is in direct opposition to the goals of the Reporting Requirements, which make no distinction between the character of investments. The Reporting Requirements and the international frameworks they make reference to concerning responsible investment, including the US-endorsed Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, demand human rights due diligence from all companies that operate internationally, and apply equally to active and passive investors.

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13 *Id.*, at 3.

14 *Id.*, at 4-5.

15 See, e.g., Netherlands National Contact Point for the OECD Guidelines for Multinational Enterprises, Preliminary Statement on the specific instance notified by Lok Shakti Abhiyan, KTNC Watch, Fair Green and Global Alliance and Forum (Mar. 13, 2013); Norwegian National Contact Point for the OECD Guidelines for Multinational Enterprises, Final Statement, Lok Shakti Abhiyan, Korean Transnational Corporations Watch, Fair Green and Global Alliance and Forum for Environment and Development vs. POSCO (South Korea), ABP/APG (Netherlands) and NBIM (Norway) (May 27, 2013).
**Good** - Fully compliant with the Reporting Requirements.

**Moderate** - Partially compliant with the Reporting Requirements with one major component missing.

**Poor** - Partially compliant with the Reporting Requirements with two major components missing.

**Fail** - Noncompliant/partially compliant with the Reporting Requirements with three or more major components missing.
2. **Policies and Procedures**—Quality of human rights, worker rights, anti-corruption, and environmental policies and procedures; and quality of security service and property acquisition policies and procedures.

In order to enable civil society organizations and the US government to trouble-shoot US companies’ investment relationships and manage problems before they occur, investors are required to provide concise summaries or copies of their policies and procedures related to human and worker rights, corruption, the environment, security service provision, and land acquisition.

If these policies and procedures are vague or inadequate, companies may run an unreasonably high risk of contributing to human rights and other abuses in Burma. Moreover, constructive engagement between government entities, civil society, affected communities, and investors becomes exceptionally difficult without adequate information about policies and procedures.

“A-worthy” policies and procedures must specifically apply to the company’s investment in Burma and must demonstrate proper due diligence and an understanding of possible human rights challenges that may arise and a means of addressing such challenges. Companies are expected to consult with broadly accepted international frameworks such as the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights to ensure that submitted policies and procedures align with international standards for proper due diligence.

Companies through their policies and procedures are expected to prevent and mitigate human rights abuses that may occur as a result of their business relationships. Proper due diligence also thus necessitates that companies select responsible partners, subsidiaries, and subcontractors.

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16 *Id.,* at 3-4.
17 *Id.,* at 4.
18 *Id.,* at 4-5.
20 See OECD Guidelines for Multinational Enterprises Ch. IV (3); United Nations, Guiding Principles on Business and Human Rights, Principle 13(b).
Good – Submission of high-quality policies and procedures demonstrating due diligence for the company’s specific investment in Burma for Question 5 (related to human and worker rights, anti-corruption, and the environment) and, if relevant, Questions 6 d) (related to security service providers) and 7 a), c) (related to property acquisition). In the case of irrelevant sections of Question 5 (e.g. “5 a”), the company has given a reasonable explanation for irrelevancy.

Moderate – Submission of high-quality policies and procedures in all but one relevant section, where that section has lower quality policies and procedures or is incomplete with no satisfactory explanation for non-submission.

Poor – Submission of high-quality policies and procedures in all but two relevant sections, where those two sections have lower quality policies and procedures or are incomplete with no satisfactory explanation for non-submission.

Fail – Failure to submit policies and procedures, or submission of thoroughly low-quality policies and procedures that do not apply to the company’s investment in Burma.
3. **Risks** – *Quality of risk mitigation in a company’s investment.*

Companies should minimize the risk of conflict, rights violations, and corruption, all of which cause harm to the people of Burma, inhibit the reform of business practices in the country, and could make a company liable for abuses. Companies should identify, mitigate, and strategically address potential risks and impacts by undertaking vigilant due diligence and implementing necessary risk assessments and safeguards. *(See Risk Categorization on page 17 for definitions of low, medium, and high-risk sectors and partners, subsidiaries, and subcontractors (“partners”).)*

Engagement with high-risk sectors and/or partners could undermine US efforts to promote a stable and peaceful Burma and has the potential to exacerbate abuses. Companies should transparently abide by high-quality policies and procedures, and use their financial influence to promote reform in the Burmese business environment.

Payments made to government actors perpetuating rights abuses and/or corrupt business practices also increase the risk of human rights violations and may constitute an irresponsible wielding of financial influence.

- **Good** - Companies that demonstrate proper due diligence, policies, and procedures engaged in any sector with low or medium-risk partners. These companies have identified potential risks and impacts and have undertaken proper steps to mitigate these risks and impacts.

- **Moderate** - Companies that demonstrate proper due diligence, policies, and procedures engaged in any sector with high-risk partners.

- **Poor** - Companies that do not demonstrate proper due diligence, policies, and procedures engaged in any low or medium-risk sector with low or medium-risk partners; and/or companies making indiscriminate payments to government entities with a history of rights abuses; and/or companies that do not reveal the identity of their partners but are operating in low or medium-risk sectors and commit to proper due diligence of their partners.

- **Fail** - Companies that do not demonstrate proper due diligence, policies, and procedures engaged with any of the following: MOGE; high-risk partners; high-risk sectors; illegal and/or sanctioned activity.
4. **Stewardship** - *Stewardship of investment and corporate engagement on the ground.*

Companies control the actual impact of US investment and US policy goals toward Burma through how they steward their investments on the ground. Companies should thus take ownership of their investments and prioritize social responsibility through positive corporate engagement, which includes:

1) Consultations and community partnerships (e.g. working with local communities and/or the Burmese public by using civil society consultations to guide investment decisions and offer community-guided programs, outreach services, trainings, etc.).

2) Political and social advocacy (e.g. using its position as a foreign investor to persuade the Burmese government to adopt concrete corporate social responsibility, accounting, and corporate governance standards, and enforce labor and employment rights; advocating for rights-respecting social reform, etc.).

3) Financial commitments (e.g. developing benefit-sharing agreements, creating significant, high-quality employment opportunities).

Companies that fail to adhere to their policies and procedures in practice; deny employment opportunities to locals; have investments or practices that are responsible for, complicit in, or directly or indirectly connected to human rights abuses or corruption; form any type of partnership with rights-abusing entities; or invest in rights-abusing sectors are not responsibly stewarding their investments.

The Report Card is updated as information becomes available.

- **Good** - Responsible stewardship on levels of consultations and community partnerships, political and social advocacy, and financial commitments.

- **Moderate** - Responsible stewardship on two of the following three: consultations and community partnerships, political and social advocacy, and financial commitments.

- **Poor** - Responsible stewardship on one of the following three: consultations and community partnerships, political and social advocacy, and financial commitments.

- **Fail** - Treatment of investment as “passive” and failure to steward capital; and/or negative impact on local communities or the Burmese public (e.g. having investments, partnerships, or practices that are responsible for, complicit in, or directly or indirectly connected to environmental destruction, forced displacement, offensive legal action, or abuses of worker or human rights, etc.).
Risk Categorizations

- **Low-risk partners, subsidiaries, and subcontractors** are actors that, to the best of our knowledge, have never engaged in medium or high-risk sectors, have no history of corruption or abuses, and have minimal non-transparent engagement with the Burmese government.

- **Medium-risk partners, subsidiaries, and subcontractors** are actors that, to the best of our knowledge, have previously engaged in high-risk sectors but have since withdrawn, previously engaged in abuses but have since conscientiously rectified and redressed these abuses, or non-transparently worked with or provided revenue to government actors/entities but have since ended these activities or made these activities transparent. This designation also includes actors engaged in medium-risk sectors that do not transparently exhibit high-quality due diligence, policies, and procedures.

- **High-risk partners, subsidiaries, and subcontractors** are actors that should be listed on the Specially Designated Nationals (SDN) List of the US Treasury Office of Foreign Assets Control in accordance with Section 1 of Executive Order 13619, but are not listed, due to the US Administration’s lapse in updating the list. This designation also includes actors engaged in high-risk sectors that do not transparently exhibit high-quality due diligence, policies, and procedures, and actors that have non-transparent engagement with the Burmese government.

- **Low-risk sectors** - Sectors with little history or low risk of negative political, social, economic, or environmental effects.

- **Medium-risk sectors** - Sectors with past and ongoing instances of investment being linked to—or high potential risk of investment being linked to—corruption, conflict, and human, land, labor, or environmental rights abuses. These sectors are regulated by weak legal and policy frameworks that do not meet international human rights standards, thereby allowing for or promoting abuses. Companies can responsibly invest in these sectors, but only through cautious, conscientious maneuvering of complex political, social, and legal situations.
  - E.g. Tourism, Telecommunications/ICT, Financial Services & Insurance, Fishing, Manufacturing

- **High-risk sectors** - Sectors with substantial past and continuing instances of investment being linked to severe, systematic, or widespread corruption, conflict, and rights abuses. These sectors are regulated by weak legal and policy frameworks that do not meet international human rights standards, thereby allowing for or promoting abuses. These sectors are extraordinarily difficult to responsibly invest in due to institutionalized abuses.

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laws that are not in line with international human rights standards, and revenue and political corruption.

- E.g. Natural Resources (Energy, Mining, Logging, Etc.), Plantation Agriculture/Agribusiness, Power Production
US Campaign for Burma is a US-based organization dedicated to promoting business transparency and responsible investment in Burma. Through advocacy campaigns and public education, US Campaign for Burma partners with civil society groups, NGOs, private sector and government actors around the world to ensure that international investors pursue policies that assist the promotion of democracy and human rights in Burma.

Questions, feedback, or concerns regarding the Report Card of US Companies Investing in Burma can be sent to info@uscampaignforburma.org.