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Singapore-listed ETC's legal review encourages Myanmar sanctions evasion

JFM calls on SGX to delist ETC unless it ends all business with military junta

A legal compliance review of Emerging Towns & Cities Singapore (ETC) released on Friday outlines steps for the company to evade sanctions and continue its business with the Myanmar army's Quarter Master General Office.

ETC commissioned Kelvin Chia Partnership (KCP) for the review in response to regulatory actions taken by Singapore Exchange regulators in February 2021.

Regulatory actions followed *Justice For Myanmar's* publication of an investigation into ETC's business with the Quarter Master General Office for the Golden City real estate development.

Justice For Myanmar's investigation found that ETC's payments to the Quartermaster General Office, which purchases weapons, finances the military's international crimes.

The ETC legal review's executive summary outlines steps for the company to avoid being caught by unilateral sanctions, advising the company to ensure that its businesses, shareholders, management and staff, are not US or UK persons; that those persons do not own any property or have financial interests in the US, UK or EU; and that the company does not do any sales or other business activities in the US, UK or EU.

The legal review also advises ETC to use third-party independent contractors to keep an arms length if the company or its customers need to import and install any equipment or machinery from the US, UK or EU for use in Golden City.

The review states that conclusions regarding potential sanctions enforcement are contingent on payments to the Myanmar army being made in kyat, although the lease agreement with the army and the land lease account is in US dollars.

This advice may encourage ETC to increase measures to evade sanctions, continue its business with the Myanmar army and attempt to resume trading in Singapore, while financing ongoing war crimes and crimes against humanity in Myanmar.

ETC, its directors, shareholders and subsidiaries have continued links to jurisdictions that have imposed targeted sanctions on the Myanmar military in response to its coup attempt.

The subsidiary ETC uses to channel investment into Myanmar, Uni Global Power, has four shareholders that are entities registered in the British Virgin Islands, a UK overseas territory with sanctions in place on the Myanmar military. These entities include Asiabiz Services Limited, whose sole shareholder is ETC director Zhu Xiaolin, D3 Capital Limited, whose sole shareholders are immediate family members of ETC director Teo Cheng Kwee, and Consortium Investments Limited, fully owned by ETC's Senior Vice President and Regional General Manager for Myanmar, Lai Xuejun.

While the legal review's executive summary does not directly address Uni Global Power's shareholders in relation to their legal status in the British Virgin Islands, it notes that "there is a continuing risk that the activities of Minority Shareholders may be imputed to the Company or GL, first, upon the broad exercise by relevant authorities of their broad discretion to enforce relevant sanctions regulations and second, by virtue of the minority rights in favour of the Minority Shareholders, and UGP's minority shareholders indirect rights to block shareholders' resolutions".

ETC's legal review warns the company that "particular care should be exercised by the Company and GL in its financial dealings, specifically with banks and financial institutions" and notes continued legal risks from its relationships with banks that have transacted the company's funds with US banks.

ETC's creditors include E.SUN Commercial Bank of Taiwan, Industrial and Commercial Bank of China (ICBC) and the Myanmar crony owned Kanbawza Bank, which are named in the legal review's executive summary.

The company also remains in a "strategic collaboration" with Yoma Bank to finance Myanmar buyers of apartments in Golden City. Yoma Bank's shareholders include the Norwegian development finance institution, Norfund, and the International Finance Corporation (IFC) of the World Bank Group, based in jurisdictions with sanctions against the Myanmar military. Yoma Bank and Golden City were jointly advertising discounted financing for local buyers as recently as November 2022.

The review warns against the use of goods, services and technology of US, UK or EU origin – presumably to avoid sanctions – in the maintenance and upkeep of machinery and equipment used in the Golden City complex. This suggests that the company's business with Jardine Schindler, a joint venture of Schindler Group of Switzerland, may also be implicated in sanctions breaches. As of 2015, there were 27 Schindler elevators installed in Golden City, yet Switzerland has sanctions in place against the Myanmar military.

Exclusion of international law from review

Concerningly, ETC knowingly excluded the serious international legal implications of ETC's business with the Quarter Master General Office in its legal review. These implications were the subject of a legal memo written by Barristers Felicity Gerry QC and Daye Gang and published by Justice For Myanmar in October 2021.

The legal memo found that Singapore has an international legal obligation "to investigate, prevent and cease transactions that amount to wrongful acts", such as transactions from ETC to the Myanmar army, and raised the possibility of reputational and sanctions risks for the SGX, its regulator the Monetary Authority of Singapore, and by extension, the Government of Singapore, should it not prevent continued payments from ETC to the Myanmar army.

The legal memo warned of ETC and SGX's responsibilities under the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and liability under international human rights and humanitarian law.

The legal memo also warned that the legal review then underway did not appear to consider international laws within its scope, inconsistent with the expectations of SGX in its own guidance to listed companies and their sponsors.

According to ETC announcements, the company received comments from SGX RegCo in October 2021 and undertook a follow-on engagement with KCP to address issues raised in the legal memo within the then ongoing legal review.

However, KCP states that they “have not considered as part of the Report the risk of liability under international law, including particularly international human rights law”, noting the exposure of ETC and its shareholders, directors and employees to the company’s business with the Myanmar army’s Quarter Master General Office.

In circumstances where SGX RegCo has told them specifically to respond to the legal memo authored by the barristers Felicity Gerry QC and Daye Gang, it appears evasive that ETC has excluded international law from KCP’s review.

Review legitimises junta

The Myanmar military junta was formed illegally in an attempted coup, and is a terrorist organisation under Myanmar law and as defined in international law. The National Unity Government (NUG), which is the legitimate government of Myanmar, based on a popular mandate from the people of Myanmar through the 2020 election, designated the Myanmar military as a terrorist organisation under Section 3 of Myanmar’s Counter Terrorism Law on June 7, 2021.

However, ETC’s legal review states that the Myanmar military has not been designated a terrorist organisation under Myanmar’s Counter Terrorism Law and, therefore concludes that lease payments to the Quarter Master General Office do not amount to terrorist financing. The review could only adopt this conclusion if the laws accepted to be the laws of Myanmar are those of the junta rather than those of the NUG. The people of Myanmar exercised their right to choose their own government, a right protected under international law, and the legal review has chosen to recognise the laws of an illegally installed occupier.

Justice For Myanmar asked ETC why its liability under international law was excluded from the review, why the review advised on sanctions evasion and why the review chooses to adopt junta law over NUG law, thereby recognising the illegal junta as the government of Myanmar. ETC did not respond.

Justice For Myanmar spokesperson Yadanar Maung says: “ETC’s legal review is a bad faith attempt to resume business as usual with the Myanmar army, which is waging a war of terror against the people of Myanmar.

“ETC’s review encourages the evasion of sanctions on the Quarter Master General Office, while continuing its payments that help finance the bombs and jet fuel the military needs for its ongoing war crimes and crimes against humanity.

“Shockingly, ETC has omitted discussion of its liability under international criminal law, presumably because it knows the result will further outline the company’s complicity with the Myanmar military’s international crimes. This is unacceptable.

“As Barristers Felicity Gerry QC and Daye Gang have demonstrated, SGX and the Singaporean government may be liable under international law for ETC’s continued business with the Myanmar army.

“We urge SGX RegCo and the Government of Singapore to delist ETC unless the company ends all direct and indirect business links with the Myanmar military junta, and prevent its payments to the Myanmar army.”

More information:

Read JFM’s original report on ETC Singapore [here](#)

Read the legal memo on the international legal issues arising for SGX from its listing of ETC Singapore [here](#)

Justice For Myanmar, a group of covert activists campaigning for justice and accountability for the people of Myanmar, is calling for an end to military business and for federal democracy and a sustainable peace.

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