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Myanmar Extends Anti-Corruption Law to Private Transactions

In a development that appears to have received no public attention, Myanmar recently amended the definition of “corruption” in its Anti-Corruption Law, with the result extending the prohibition of corrupt acts to all persons—not just government officials as had previously been the case.

The Anti-Corruption Law was enacted in 2013 to address acts of corruption by public servants, government officials, and public office holders, with punishments for violators including up to 15 years in prison and fines. It is the primary tool for prosecuting acts of corruption in Myanmar. The Penal Code acts as an additional tool for certain specific instances of corruption, and contains a number of anti-corruption provisions relating to the conduct of public servants, prohibiting them from accepting or soliciting a benefit for the exercise or non-exercise of their duties, and relating to persons providing benefits to induce or reward others in the exercise of their electoral rights.

The Anti-Corruption Law also established the Anti-Corruption Commission—the government agency tasked with investigating and prosecuting violations of that law on its own initiative, or at the request of the president or parliament, or in response to complaints made by any person. Under the 4th Amendment to the Anti-Corruption Law, enacted on June 21, 2018, the Anti-Corruption Commission is also empowered to order private organizations to establish codes of business ethics and anti-bribery and corruption policies. The Anti-Corruption Commission has also been given the authority to determine that a person has a general reputation of being corrupt, and initiate investigations, based on *prima facie* evidence that they have committed a corrupt act.

The focus of discussion about this most recent amendment has been on the expanded powers of the Anti-Corruption Commission and the new corruption criteria for a person who has the “general repute” of being corrupt. However, the definition of corruption has also been changed slightly, with very significant effect.

Originally, the definition of “corruption” for which persons could be punished under the Anti - Corruption law applied to “an authoritative person,” which was defined as a public servant or government official (emphasis added):”

“the direct or indirect abuse of one’s position as an authoritative person in order to perform an act, refrain from performing a lawful act, [etc.]... such as by giving, accepting, receiving, attempting to receive, offering, pledging ... a benefit from a person concerned for himself or any other person or organization.”

The underlined wording has been replaced with “any person” by the 4th Amendment, and corruption can now occur by “other means,” so that now acts by any person, not only government officials, may be prosecuted as acts of corruption(emphasis added):”

“The direct or indirect abuse of his position or other means by any person in order to perform an act, refrain from performing a lawful act, [etc.]...such as by giving, receiving, accepting ... a benefit from a person...”

Although we have not seen this discussed elsewhere, we think this change in the definition of corruption means that private acts of corruption (that is, acts of corruption between private parties) are now punishable under the Anti-Corruption Law as amended by the 4th Amendment. We have read of one case where this revised definition may have been applied by a township court which found a lawyer guilty of corruption for obtaining excessive legal fees. This case is being followed with great interest by the legal community in Myanmar.

The Anti-Corruption Law provides punishment only for the recipient of the unlawful benefit, not the person providing the benefit. However, in an appropriate case the giver can be prosecuted for abetting the offense, with the same potential punishment.

The implications of this expansion of the definition of bribery and corruption to include private transactions are not yet clear. We do know that Myanmar ranks at the wrong end of the scale of every international corruption ranking, and this is seen by the government as a significant impediment to foreign investment. At this stage of the country’s development, foreign investment is highly desirable in both the public and private sectors, so naturally the Myanmar government wants to be seen as addressing the corruption problem. This expansion of the Anti-Corruption Law is but one of four formal governmental anti-corruption instruments that the Myanmar government has issued in the last two years, and the reforms are likely to continue. 🇲🇲