

MYANMAR BRIDGE PARTNERS

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Counterparty Diligence

*— a brief on how compliance
actually gets done.*

An operational account of the counterparty intake, beneficial ownership tracing, supply-chain verification, and documentation discipline that make commercial activity in sanctioned environments defensible. Prepared by Myanmar Bridge Partners.

P R E F A C E

On the objection this brief addresses

The first brief in this series described, among other things, how foreign capital typically fails in Myanmar. One of the failure patterns identified was treating sanctions compliance as a checkbox exercise rather than an operating architecture. The claim was asserted; it was not demonstrated. A sophisticated reader of that brief, closing its final page, had reasonable cause to ask: what does the alternative actually look like in practice?

This brief attempts an answer. It describes the counterparty diligence, beneficial ownership tracing, supply-chain verification, and documentation disciplines that a seriously operated platform in a sanctioned environment actually maintains — not as theoretical best practice, but as the specific operational work required to make commercial activity defensible in the event of regulatory inquiry. It is written for readers who understand that compliance is not the subject of a separate department but the architecture within which the commerce occurs.

The worked example throughout is Myanmar, for reasons obvious from the platform's focus. The methodology generalises. The same disciplines, with specific variations for each regulatory environment, apply to commercial activity touching Russia, Venezuela, Iran-adjacent supply chains, sanctioned-adjacent Chinese sectors, and any other jurisdiction where U.S. sanctions authority and commercial opportunity coexist. A reader whose present interest is not Myanmar but who faces analogous conditions elsewhere should find the structural analysis transferrable; only the specific designations and regulatory authorities change.

Nothing in this brief constitutes legal advice. The disciplines described are operational disciplines; the legal work that accompanies them is conducted by qualified specialist counsel in every instance, as the brief itself will reiterate. Names of specific counterparties, operating partners, service providers, and venture structures are withheld throughout, consistent with the platform's standing governance.

I

The framework as practitioners encounter it

United States sanctions law is administered principally by the Department of the Treasury's Office of Foreign Assets Control, known universally by its acronym as OFAC. The Department of Commerce's Bureau of Industry and Security, or BIS, administers parallel export control regimes. Several other authorities — the Department of State, the Department of Justice, the Federal Reserve, and state-level banking regulators — intersect the field at specific points. The body of law produced by these authorities is extensive and evolving. A practitioner who intends to operate commercial ventures touching sanctioned jurisdictions does not attempt to know this law in the manner a specialist sanctions attorney knows it; the practitioner instead develops a working understanding sufficient to identify when specialist counsel is required and to operate the compliance disciplines that sit upstream of legal questions.

The designations that matter operationally

The most immediately relevant list is the Specially Designated Nationals and Blocked Persons List, invariably called the SDN List. A U.S. person — which includes a U.S. corporation, a U.S. resident, and any person present on U.S. soil — is prohibited from transacting with any party on the SDN List. The prohibition is broad, extends to indirect transactions, and carries strict liability in most respects. For Myanmar-related activity, the SDN List currently includes senior leadership of the State Administration Council, the Myanma Economic Holdings Limited and Myanmar Economic Corporation conglomerates and their identified subsidiaries, specific financial institutions, and an expanding roster of arms suppliers and regime-linked individuals.¹ Beyond the SDN List, BIS maintains an Entity List restricting export, reexport, and transfer of goods and technology; a Denied Persons List; and a Military End User List. The European Union, the United Kingdom, Canada, and Australia maintain parallel regimes whose designations overlap with but are not identical to the United States lists.

A disciplined compliance posture treats all of these lists as operative simultaneously. The practical implication is that every counterparty is screened against each list that applies to any jurisdiction in which the venture has connections — not only U.S. lists, but those of banking partners, shipping

¹U.S. Department of the Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List. The Burma Sanctions program, administered under Executive Order 14014 and subsequent actions, has expanded substantially since February 2021. Readers should consult current OFAC materials for the authoritative list.

insurers, and downstream customers. A supply chain that clears U.S. SDN screening but touches a party designated by the United Kingdom will produce compliance exposure when the goods reach a British buyer or pass through a British port.

The fifty percent rule, and why it matters

OFAC's fifty percent rule, articulated in guidance, provides that any entity owned fifty percent or more — directly or indirectly, individually or in the aggregate — by one or more blocked persons is itself treated as blocked, whether or not it appears on the SDN List.² The operational consequence is substantial. An ostensibly independent Myanmar supplier whose ownership traces, through three intermediate holding companies, to a fifty-one percent stake held by a designated individual is itself sanctioned by operation of the rule — even though no public list carries its name. The diligence required to identify such an exposure is not screening against a list; it is beneficial ownership tracing.

The fifty percent rule is why counterparty intake cannot end at name-match screening. A supplier whose SDN check comes back clean may nevertheless be an entity that the U.S. person is prohibited from transacting with. The work of establishing whether this is the case is laborious, jurisdiction-specific, and rarely conclusive on the basis of public records alone. It is nevertheless the work on which defensibility rests.

General and specific licenses

OFAC publishes general licenses that authorize classes of transactions which would otherwise be prohibited — humanitarian shipments of certain goods, personal remittances within stated limits, emergency medical activity, certain journalistic activity, and similar categories. A general license is self-executing in the sense that a qualifying transaction does not require application; the party relying on the license, however, must document that the transaction falls within its scope and retain that documentation in the event of later inquiry. A specific license, by contrast, is obtained by written application to OFAC for a transaction that does not fall within any general license. Specific licenses are reviewed case by case, can take months to adjudicate, and are granted or denied at OFAC's discretion.

A platform operating in a sanctioned environment maintains current familiarity with the general licenses applicable to its activities, structures its

²OFAC, Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property Are Blocked (Aug. 13, 2014), articulating the fifty percent rule and its aggregation provisions.

commercial arrangements to fall within those licenses where possible, and treats the specific license process as a planning horizon rather than a reactive tool. Commercial deals that would require a specific license not yet obtained are deals that cannot close on any realistic schedule.

Counterparty intake cannot end at name-match screening. The fifty percent rule is why.

II

Counterparty intake and beneficial ownership

Every commercial relationship a platform enters — supplier, customer, banking partner, logistics provider, distributor, operating employee in a decision-making capacity, advisor with access to operational information — is a counterparty for compliance purposes. The intake discipline is the sequence of work performed before that relationship is allowed to commence. It is not a formality; it is the first, and in many cases the only, opportunity to identify exposures that will otherwise accumulate invisibly over the life of the venture.

The structural elements of a defensible intake

A disciplined intake captures, at minimum, the legal name of the counterparty in every jurisdiction in which it operates, the registration number and registry of incorporation, the registered address, the jurisdiction of tax domicile, the names and identifying information of the directors or equivalent managers, the names and identifying information of the ultimate beneficial owners to a threshold of twenty-five percent ownership or lower, and the full address history where the counterparty's registered office has been located within the previous five years.

Each of these data points is then screened against the relevant sanctions lists — SDN, Entity List, EU consolidated, UK OFSI, Canadian SEMA, and any others applicable. The screening is conducted using commercial compliance software whose databases are updated continuously; the output is preserved as a dated, stamped record, not merely noted. The screening is then supplemented by adverse media search for each identified party — press reports, regulatory enforcement notices, legal proceedings, and the like — which may reveal concerns not yet reflected in any list.

The work to this point, conducted competently, produces a file that demonstrates: the platform identified the counterparty; identified its ownership to regulatory thresholds; screened ownership and management against applicable lists; identified no listed parties; and identified no adverse media of significance. This file is the beginning of the intake record, not its end.

Beneficial ownership tracing in practice

The complication of beneficial ownership in the relevant jurisdictions is that the registry disclosures on which Western compliance typically relies are in many cases incomplete, outdated, or structurally permissive of concealment. A Myanmar company registry, even when current, may list nominal shareholders

who are not the beneficial owners. An intermediate Hong Kong or Singaporean holding company may list a corporate shareholder whose own beneficial ownership is opaque. A Cayman Islands entity may disclose only a registered agent. The compliance work of establishing beneficial ownership, in these conditions, is not registry lookup; it is triangulation across multiple sources — registry disclosures, commercial relationship records, banking information available to counterparties, regulatory filings in markets where the entity or its principals have additional activity, and direct disclosure by the counterparty itself under contractual obligation to do so.

The disciplined platform writes beneficial ownership disclosure into the commercial contract. The counterparty represents, as a contractual warranty, that its beneficial ownership is as disclosed in a schedule to the agreement, that no listed party holds any direct or indirect ownership interest of any size, that the counterparty will notify the platform of any change in ownership within a stated period, and that breach of these representations constitutes a basis for termination without liability. These warranties do not substitute for independent diligence; they create the obligation under which the counterparty is expected to produce the information the platform has independently confirmed. A counterparty unwilling to provide written beneficial ownership disclosure is a counterparty the platform does not engage.

What the intake file looks like, structurally

Without entering into specifics that would constitute consulting in document form, the intake file for a counterparty in a sanctioned environment contains — at a structural level — the identifying information captured at intake, the screening output from each list consulted, the adverse media review, the beneficial ownership analysis with underlying documents, the specialist counsel opinion where ambiguity required one, the contractual warranties obtained, the signed and dated approval of the intake by the platform's designated compliance officer, and a review calendar indicating when re-screening is next required. The file is retained in an organised archive, dated and versioned, such that in the event of inquiry it can be produced with a clear record of what was known, when, and on what basis the relationship was approved.

A counterparty unwilling to provide written beneficial ownership disclosure is a counterparty the platform does not engage.

III

The problem with nominal registries

Public ownership registries are, in Western commercial environments, the default source of truth for establishing who owns what. A search of the Delaware Division of Corporations, the Companies House registry in the United Kingdom, or similar authorities produces authoritative, timely information on corporate ownership, and compliance work that relies on such sources is ordinarily sufficient. This default breaks down in the jurisdictions in which sanctioned environments typically operate, and the break is the largest single source of inadvertent compliance exposure the platform observes among otherwise careful operators.

Specific failures of the registry default

The Myanmar Directorate of Investment and Company Administration, known as DICA, maintains a company registry whose public records capture the registered shareholders of Myanmar companies. The registry does not, however, capture beneficial ownership where nominal and beneficial ownership diverge. It is lawful in Myanmar for shares to be held by a nominee on behalf of an undisclosed beneficial owner; the registry records the nominee. A compliance check that stops at the DICA record has established who holds legal title to the shares, not who owns the company in the economic sense that sanctions law cares about.

The same pattern recurs, with local variations, across many of the jurisdictions in which sanctioned-environment commerce occurs. Hong Kong permits bearer share arrangements for certain older entities and permits corporate directorships whose ultimate principals are not public. The British Virgin Islands and similar offshore centers require beneficial ownership disclosure to registry authorities but not to the public; the disclosures, when they exist, are often to stated thresholds that exclude smaller but material interests. The United Arab Emirates free zones, increasingly used as holding jurisdictions for activity elsewhere, produce registry records whose beneficial ownership disclosures are of recent vintage and uneven reliability.

What this means for diligence work

The practical consequence is that beneficial ownership in the jurisdictions that matter is ordinarily established through work that does not rely on any single registry as authoritative. The sources consulted include the registry records themselves, taken as indicative rather than conclusive; commercial databases

that aggregate beneficial ownership disclosures across multiple jurisdictions, with the acknowledgment that their data is only as good as their sources; banking counterparties' own know-your-customer work, where accessible; the counterparty's own contractual disclosures under warranty; and, in cases of particular ambiguity, direct investigation through locally qualified parties whose work is reduced to a written record.

The disciplined platform does not treat any of these sources as definitive on its own. The defensibility of the diligence rests on the triangulation — the demonstration, through contemporaneous records, that multiple independent sources were consulted, that their conclusions were compared, that discrepancies were investigated, and that the final determination of beneficial ownership reflected the best available evidence at the time. When the determination is wrong despite this work, as it occasionally will be, the record of the diligence is itself the defense.

IV

Rolling re-screening

Counterparty intake, however carefully conducted, captures a moment-in-time view. Ownership changes. Lists expand. Counterparties whose names did not appear on sanctions lists at intake may be designated weeks or months later. Counterparties who were independent at intake may be acquired in whole or in part by parties who are, or become, sanctioned. A compliance posture that treats intake as the only diligence event is a posture whose defensibility decays continuously from the day of intake forward.

The cadence that actually works

The disciplined approach establishes a re-screening cadence from the moment the counterparty relationship commences. At minimum, every active counterparty is re-screened annually against the same lists consulted at intake. Any counterparty with known changes — new ownership, new jurisdictional footprint, significant operational changes, or any regulatory development affecting its sector — is re-screened at the point the change is known rather than at the next scheduled interval. Counterparties operating in sectors under active sanctions expansion are re-screened more frequently, at cadences determined by the specific risk profile.

Each re-screening produces a dated, retained record analogous to the intake record — the screening output, the review of any new adverse media, any additional beneficial ownership verification where warranted, and the approval of continued relationship by the designated compliance officer. The cumulative effect, over the life of a multi-year venture, is a compliance record that demonstrates not a single intake event but a continuous discipline. The difference matters profoundly in the event of inquiry. A regulator examining a venture that has undergone three years of annual re-screening is examining a venture whose operator has demonstrably taken ongoing responsibility for its compliance posture. A regulator examining a venture with one intake file and no subsequent re-screening is examining a venture whose operator took compliance seriously at the start and then stopped.

Automated screening and its limits

Commercial compliance software can perform automated re-screening at configurable intervals, alerting the platform when any change in the relevant lists affects a counterparty of record. This automation is genuinely valuable and is used by the disciplined platform as a core tool. It is not, however, a substitute for

the periodic human review that the re-screening cadence contemplates. Automated alerts identify designations and list changes; they do not identify the subtler patterns — a counterparty's change in operational jurisdiction, a shift in its supply chain, the emergence of adverse media in local-language sources that commercial databases index incompletely — that periodic human review captures. The disciplined platform operates both the automation and the human review, not one or the other.

The difference between a single intake file and three years of annual re-screening is the difference between a venture whose operator took compliance seriously at the start and one that took it seriously throughout.

V Supply-chain tracing

For any venture that moves physical goods — agricultural exports, consumer products, manufactured goods — the counterparty diligence that stops at the direct buyer and seller is inadequate to the compliance burden the venture carries. The goods themselves have a supply chain. Their origin, processing, warehousing, inland logistics, export clearance, carriage, and destination handling each involve additional counterparties whose compliance status matters. A specialty coffee shipment from Chin State to a Michigan roaster, to take an illustrative example, may involve the smallholder farm, the village-level cooperative, the regional processor, the in-country warehouser, the customs broker, the inland trucker, the consolidator at the port of export, the shipping line, the port of transit, and the U.S. customs broker at the port of entry — ten distinct parties, any one of which introduces compliance exposure if not cleared.

What tracing to origin actually requires

The platform's practice is that supply chains for every commercial shipment are traced to origin and documented before the shipment is authorised. The origin of an agricultural consignment is the specific farm or cooperative where the goods were produced; the origin of a manufactured good is the specific facility where it was made. At each intermediate stage — processing, warehousing, logistics — the platform identifies the party, conducts an abbreviated counterparty screening on that party, and records the identification and clearance. The documentation is maintained by the venture's operating leadership with a standard template, not outsourced to a third party whose work would lack the operational knowledge that origin tracing actually requires.

The work is labour-intensive. It takes hours to days to complete for a new supply chain and is repeated, in abbreviated form, for each subsequent shipment through the same chain. The cost of this work is a real operating cost of the venture; it is budgeted explicitly and staffed as a continuing function rather than absorbed informally. The disciplined platform treats supply-chain tracing as infrastructure, not overhead — the function that makes the commerce possible, not a cost to be minimised.

Why outsourcing this work seldom succeeds

A pattern observed across foreign capital operating in sanctioned environments is the outsourcing of supply-chain tracing to third-party providers — typically in-country consultancies, accounting firms with local offices, or

specialised diligence firms. These arrangements produce reports that satisfy the form of the requirement. They frequently do not satisfy its substance. The outsourced party lacks operational exposure to the supply chain; its report is produced against a scope of work defined by the engaging party and is adequate to that scope; what it does not discover is what the engaging party did not know to ask. The difference between a supply-chain trace produced by a party with commercial skin in the game and one produced for a fee is, reliably, the difference between a trace that holds under inquiry and one that does not. The disciplined platform does not outsource this function.

VI Specialist sanctions counsel

Sanctions law is a specialty practice area. It is not a competence of general corporate counsel, however capable, and it is not a competence most commercial lawyers acquire in the course of general practice. The lawyers who practise in this area have built their expertise over years, typically through some combination of government service at OFAC or similar authorities, practice at law firms with established sanctions groups, and continuous engagement with a case flow that keeps their judgment calibrated to current agency thinking. The difference between specialist and non-specialist counsel on a sanctions question is material and is worth the cost differential involved.

When to engage, and what to engage for

The disciplined platform engages specialist sanctions counsel at specific junctures. The first is formation: before any commercial activity touching sanctioned jurisdictions is undertaken, specialist counsel reviews the contemplated structure, the counterparty profile, the transaction mechanics, and the documentary framework, and produces a written opinion addressing the sanctions posture of the venture. The second is at the point of any counterparty intake where ambiguity exists — ownership that cannot be definitively traced, a party whose status is disputed, a transaction that may or may not fall within a general license. The third is on a periodic basis, independent of specific transactions, for a compliance program review — an examination of the disciplines as operating in practice, with recommendations for improvements.

Each engagement produces a written product — an opinion letter, a memorandum, or a program review — that is retained in the compliance archive. The written product is itself the value of the engagement; a verbal consultation, however informed, produces no record adequate to defend the venture later. The disciplined platform pays for written work product and retains it; it does not settle for confirmatory conversations.

What specialist counsel is worth

The cost of specialist sanctions counsel is not trivial. Hourly rates run in the upper range of commercial legal practice; a formation opinion for a new venture can be a five-figure engagement; program review can be similar. The disciplined platform treats these costs as non-negotiable elements of the venture's operating model. The alternative — proceeding without specialist opinion, or relying on general counsel for specialised judgment — produces a venture whose

compliance posture is, on examination, indefensible. The saving is illusory; the cost arrives later, in the form of enforcement exposure, transaction blockage, or the inability to produce an adequate record when one is demanded. The disciplined platform pays for good counsel, uses it appropriately, and does not substitute economy for adequacy in the one area where economy cannot be afforded.

VII

Contemporaneous documentation

The discipline on which all the preceding disciplines ultimately rest is contemporaneous documentation. The intake file, the screening output, the beneficial ownership analysis, the counsel opinion, the supply-chain trace, the re-screening record, the compliance officer's approval — each is dated, signed, and retained at the time the action was taken, not reconstructed later when the record is demanded. This is the architecture that makes the commerce defensible. It is also the architecture whose absence reduces an otherwise careful compliance posture to an undemonstrable one.

Why contemporaneous is the operative word

A regulator, a bank, a counterparty's counsel, or any other party examining a venture's compliance record is not evaluating whether compliance work was done. That question is partially decidable without records; one can see the outcomes. The examining party is evaluating whether compliance work was documented at the time, by whom, with what basis, and with what verification. A record reconstructed three years after the fact, however accurate its reconstruction, is not contemporaneous and does not carry the same evidentiary weight. The examining party, in practice, treats reconstructed records with substantial scepticism because reconstructed records are, in effect, the party's present account of what it claims to have known earlier. The contemporaneous record is, in effect, what it did know.

The disciplined platform therefore builds the documentation discipline into the operating rhythm of the venture from the first day. The compliance officer is an actual person with an actual role, not a theoretical designation. The intake files are opened at the time of intake and closed only upon retirement of the counterparty relationship. The re-screening calendar is maintained, not merely planned. The counsel opinions are commissioned when the compliance officer identifies the need, not when an inquiry arrives. The archive is organised, dated, and retrievable. Each element takes ordinary operating effort; the aggregate produces a compliance record of a quality that no reconstructive project could produce later.

The record as the asset

The observation that closes this brief, because it is the observation that closed the corresponding section of its predecessor: the compliance record is frequently the only asset that makes the venture defensible. Commercial value may come

and go. Operating conditions may improve or deteriorate. Counterparty relationships may succeed or fail. What persists across all of these — what the platform carries with it through the life of each venture and carries with it out of each venture at exit — is the documented evidence of the disciplines under which the commerce was conducted. In an environment where the absence of such evidence is catastrophic and the presence of it is routine, the commerce occurs within the compliance architecture, not around it. The architecture is the thing. This brief has attempted to describe, at a structural level, what the architecture looks like when it is built to that standard.

The architecture is the thing. The commerce occurs within it, not around it.

M Y A N M A R B R I D G E P A R T N E R S

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Confidential inquiries may be directed to the platform through myanmarbridgepartners.com. This is the second brief in a series; the first, on Myanmar market access broadly, is available at the same address.

COLOPHON

About this brief

Counterparty Diligence: A Brief on How Compliance Actually Gets Done is the second in a series of briefs produced by Myanmar Bridge Partners LLC. The platform publishes briefs periodically on subjects at the intersection of United States regulatory conditions and commercial opportunity in markets where ordinary commercial infrastructure operates under constraint.

This brief is published as a public document. It does not constitute legal, tax, or investment advice, and is not a substitute for the engagement of qualified specialist counsel on specific matters. Information presented is believed to be accurate as of the publication date but is not warranted. Sanctions designations, general licenses, and related authorities change continuously; readers should consult current OFAC, BIS, and parallel jurisdictional guidance for any authoritative determination.

The platform withholds specific identification of counterparties, operating partners, legal advisors, and active ventures in all public materials, consistent with its governance framework. Inquiries from parties considering specific engagements, or from practitioners interested in comparing notes on compliance architecture across jurisdictions, should be directed to the platform through confidential channel.

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