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**From:** ita.mcmahon@cfs.coop  
**Sent:** Thursday, September 27, 2012 11:21 AM  
**To:** BurmaPRA  
**Subject:** Reporting Requirements for Responsible Investment in Burma - consultation response attached  
**Attachments:** TCAM response to Burma reporting requirements SENT 270912.pdf  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Sir/Madam,

Please find attached our response to the consultation on reporting requirements in Burma. I'd be grateful if you could acknowledge receipt of this email and attachment.

If you have any questions or points of clarification, please do not hesitate to get in touch.

Kind regards,

Ita

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Responsible Investment Analyst

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(See attached file: TCAM response to Burma reporting requirements SENT 270912.pdf)

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27<sup>th</sup> September 2012

U.S. Department of State, DRL/EAP  
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2201 C Street, N.W.  
Washington, DC 20520

Dear Sir/Madam,

**[Public Notice 7971] 60-Day Notice of Proposed Information Collection:  
Reporting Requirements for Responsible Investment in Burma**

The Co-operative Asset Management is a UK-based investor with \$30 billion in assets under management and holdings in over 500 US companies. We welcome the opportunity to comment on the proposed introduction of a reporting requirement for new investment in Burma and we set out our response below.

As a signatory to the United Nations Principles for Responsible Investment (UNPRI), The Co-operative Asset Management is committed to ensuring that investee companies act in a socially and environmentally responsible manner. In our view, the introduction of a reporting requirement for new investment in Burma is positive step in fostering responsible corporate behaviour in a market where societal checks and balances – a functioning judicial system, a free press, a buoyant civil society – are largely absent.

Mandated reporting also sets an important benchmark internationally for other governments keen to promote responsible operations in Burma among global companies headquartered within their jurisdictions; we will be encouraging officials at UK and EU level to follow the US lead.

Finally, it is worth noting the benefits of this initiative to the growing numbers of asset owners and managers committed to responsible investment.<sup>1</sup> For example, at The Co-operative Asset Management we place great emphasis on analysing the environmental and social risks of prospective holdings prior to investment; once invested we engage companies to press for improved management of material impacts. Mandated reporting will help the investment community to better assess corporate management of social and environmental issues in Burma; moreover it will provide a consistent set of information from multiple companies, enabling us to compare approaches and focus efforts on laggard companies.

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<sup>1</sup> Indeed given that the combined assets under management of signatories to the UN PRI are now worth over \$32 trillion, responsible investment is entering the mainstream. See: *UN Principles for Responsible Investment Annual Report 2012*.  
<http://www.unpri.org/files/Annual%20report%202012.pdf>. Accessed 27<sup>th</sup> September 2012.

Turning to the specific consultation questions, we provide comments below on the following:

- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used
- Enhance the quality, utility, and clarity of the information to be collected

**1. Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.**

We do not foresee the reporting requirement placing a significant additional burden on businesses. In our view, the current estimate of 21 hours of resource time is reasonable. US firms operating in Burma will face considerable pressure from a range of stakeholders to demonstrate that they are upholding high social, environmental and corporate governance standards. Companies are likely to have compiled the kind of information included in reporting requirements as part of their ongoing communication with stakeholders (sustainability reporting, stakeholder events, investor road shows, etc) so the additional burden of reporting to government will be minimal. More importantly, the requirements will serve to compel those companies that are weak on corporate responsibility or reporting, but that nevertheless transact business of sufficient size to be in scope, to meet minimum standards.

**2. Enhance the quality, utility, and clarity of the information to be collected.**

Below we set out some recommended amendments to the reporting requirements to improve the quality, utility, and clarity of the information.

**a) Disclosures on risk mitigation should be included in the public report:** as investors, evaluating risk and understanding risk mitigation strategies is essential to analysing a business fully. This includes social and environmental risk. As such, we recommend making question 11 a public disclosure. Public disclosure on risk is not a new concept for US corporations. Form 10-K of a corporate annual report includes a requirement to report on the company's most material risks; reporting publicly on social and environmental risks in Burma should be seen simply as an extension of this. In our view this is a relatively straightforward amendment to make to the reporting requirements.

**b) Companies with an existing presence in Burma:** in the interests of fairness and to encourage greater transparency, we urge the government to extend the proposed reporting requirements to include all US firms currently operating in Burma, and not just those making new investments. Firms with a long standing presence in the region are perhaps more likely to have succumbed to locally accepted business practices – for example, Myanmar was ranked second from bottom in Transparency International's 2011 Corruption Perceptions Index<sup>2</sup> - and are therefore are potentially at higher risk than new market entrants.

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<sup>2</sup> Corruption Perceptions Index 2011. <http://cpi.transparency.org/cpi2011/results/>. Accessed 27th September 2012.

**c) Myanmar Oil and Gas Enterprise (MOGE) investment notification:** We have long-standing concerns about MOGE and its human rights records, see <http://www.coopinve.myzen.co.uk/downloads/ethical-newsletter.pdf>.

It would greatly benefit investors to have early notification of any partnership that a company has entered into with MOGE. This would enable timely engagement with the investee company to stress the importance of embedding good social and environmental practice from the start of the relationship with MOGE.

As such, we recommend that the requirements include an obligation to notify shareholders (as a minimum), and not just the US government, when a firm enters into partnership with MOGE.

**d) Greater specificity in policy and procedure disclosures (reporting question five):** Firstly, we welcome the reference to the UN Guiding Principles on Business and Human Rights in the reporting requirements. However, we recommend that the US government signposts to a greater number of internationally recognised standards that provide *specific advice on implementing responsible business practices*. This would place a higher expectation on firms operating in Burma apply best practice on the ground. Referenced standards could include, but are not limited to:

- [Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act](#) (Dodd-Frank) and [Extractive Industries Transparency Initiative](#) (EITI);
- [Global Network Initiative](#);
- [Voluntary Principles on Security and Human Rights](#); and
- [1998 International Labor Organization \(ILO\) Declaration on Fundamental Principles and Rights at Work](#), including ILO Core Labor Standards:
  - [Elimination of all forms of forced or compulsory labor](#)
  - [Effective abolition of child labor](#)
  - [Equality of opportunity and treatment](#)
  - [Freedom of association](#)
  - [Right to collective bargaining](#)

Secondly, the proposed requirement to report on policies and procedures is not particularly far reaching. It is very easy to write a policy and procedure. It is far harder, but far more important, to ensure that both are adhered to in the course of day-to-day operations. This is particularly the case when operating in a country like Burma, where legislative and civil society structures are lacking. Question 5 would be strengthened significantly – and offer a greater degree of reassurance to stakeholders that material risks are being managed – if it included a requirement to report performance data related to the implementation of the policies/procedures. Some examples of key performance measures that demonstrate policy implementation are set out below:

- % of sites that have undertaken an environmental impact assessment – and key findings
- % of suppliers trained on anti-corruption measures
- Number of anti-corruption incidents investigated
- % of suppliers screened for human rights risks

The inclusion of performance measures would greatly assist institutional investors' assessment of financial, operational, reputational, regulatory and legal risks associated with any investment in Burma.

**e) Joint ventures, other operating models and in-country partners:** The current reporting requirements do not address alternative operating and ownership models that companies may employ when entering a new market. For example, joint ventures (JVs) can be used to spread investment risk or to capitalise on the knowledge and capabilities of local partners. To date JVs have tended to be excluded from a company's corporate responsibility (CR) reporting (and by implication its CR management) except where a firm has a controlling stake. However, the UN-backed Guiding Principles on Business and Human Rights indicate that it is no longer acceptable for a company to abdicate responsibility for human rights abuses within JVs, franchises or other partner organisations. It makes several references to the business responsibility to "mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts"<sup>3</sup>.

We recommend that the reporting requirements reflect this and include an obligation to report on maintaining environmental and social standards within a joint venture environment. Equally, and again recognising that corporate responsibilities extend beyond direct operations, we advocate extending question 6 in the reporting requirements to include all suppliers, not just security service providers.

**f) Tightening the language on question 6d,** which states: "Any additional information the submitter may wish to disclose about the nature of its policies or practices for engaging security services, e.g., location of engagement, oversight policies and procedures." We warn against the use of the phrase "may wish" as it opens the possibility of a company choosing not to disclose anything. The requirements should instead be encouraging maximum disclosure.

We are grateful for the opportunity to comment on this consultation and we look forward to seeing the revised requirements later in the year.

Kind regards,

Ita McMahon  
Responsible Investment Analyst

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<sup>3</sup> OHCHR, 2011. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework  
<http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>. Accessed 22 June 2012.