

US issues Cambodia business advisory

November 24, 2021

In an unusual joint notice regarding a country that is not generally subject to US sanctions, on November 10, 2021, the US State Department, Treasury Department, and Commerce Department issued a “Cambodia Business Advisory on High-Risk Investments and Interactions” (the “Advisory”).

The Advisory flags potentially significant reputational, economic and legal risks of doing business in Cambodia, and calls for “appropriate” due diligence to mitigate these risks. The Advisory does not itself impose sanctions or other trade restrictions on Cambodia, although it was issued in parallel with the imposition of sanctions on two senior Cambodian military officials under the Global Magnitsky program for their “involvement in significant corruption.” Nonetheless, the Advisory directs US companies to proceed with enhanced caution when doing business with individuals and entities in Cambodia and outlines a series of potential penalties, including sanctions that companies need to consider with respect to their activities in Cambodia. The Advisory specifically identifies the financial, real estate, casino, infrastructure, manufacturing, and timber sectors as areas of risk exposure for US companies.

This Alert notes the Advisory’s broad coverage, highlights the risk categories it identifies, and discusses implications important to affected businesses and activity involving Cambodia.

Broad coverage

The Advisory is directed to “U.S. businesses” and “U.S. companies,” though it does not define either term and is not legally binding. In context, however, it seems clear that the risks the Advisory highlights and the potential penalties it cites could apply to a broad range of US businesses and investors across sectors, including in particular those involved in financial institutions and funds, real estate, manufacturing, infrastructure, and timber. The risks and penalties also could apply to non-US businesses too, including, for example, some of the trade-related controls that apply to exports and reexports of US-origin items by non-US companies. Additionally, as discussed below, the Advisory constitutes notice of the heightened risks associated with doing business involving Cambodia, and this signals that regulators will have correspondingly heightened expectations around the scope and nature of due diligence.

Risk categories

Corruption and illicit finance

The Advisory notes that “[c]orruption in Cambodia is endemic and widespread,” citing studies from the World Economic Forum and Transparency International. It details how limited regulatory and judicial oversight, a cash-based dollarized economy, and a lack of transparency coupled with the rapid growth of the financial, real estate, casino, and

infrastructure development sectors have created a landscape that allows corrupt actors to operate with de facto impunity.

Human trafficking, conservation crimes, illicit narcotics

The Advisory also highlights risks relating to human trafficking, conservation crimes, and illicit narcotics. Specifically, the Advisory notes that traffickers (individuals or businesses) often force children to work in brick kilns, rubber plantations, and other industries. There is also a significant concern about sex trafficking in tourist areas and around casinos. Notably, the Advisory focuses on the rapid expansion of debt through microloans that have rendered people more vulnerable to traffickers' illicit schemes. The concerns regarding illegal logging and wildlife trafficking remain significant, specifically around rosewood and ivory. Cambodia is also a production and transit point for synthetic methamphetamine.

Trade compliance

While less prominently featured than the other categories of risk identified in the Advisory, businesses with activity in Cambodia should not overlook the trade compliance risks noted therein. Specifically, the Advisory notes "proliferation finance risks related to North Korea" associated with Cambodia, and cites a specific example of a prior sanctions action linking illicit activity in Cambodia to the DPRK's weapons proliferation efforts. In addition, the Advisory notes that the US Commerce Department's Bureau of Industry and Security ("BIS") maintains export licensing requirements relating to human rights abuses and military or military-intelligence end-uses and end-users.

Two key implications of the advisory

Increased diligence expectations

US regulatory and enforcement agencies – including those charged with enforcing or overseeing compliance with US export controls, sanctions, anticorruption, and anti-money laundering laws and regulations – all emphasize the importance of risk-based compliance programs. The Advisory places US companies and other organizations on notice of the risks in these and other areas.

Companies engaged in business in or involving Cambodia should review their compliance processes to ensure that they adequately address these risks. Such compliance processes will necessarily involve due diligence, and the Advisory specifically notes that businesses operating in, sourcing from, or connected to Cambodia, "should apply appropriate due diligence policies and procedures."

Affected businesses should review current compliance policies and due diligence processes and efforts to determine if they are adequate. This could include, for example, mapping supply chain and other trade-related connections to Cambodia, conducting a strategic risk assessment, and developing a plan to mitigate, remediate or eliminate the risks.

Foreshadowing future actions in the US and globally

Businesses would be wise to consider the Advisory as a prelude to enforcement. A similar business advisory regarding human rights abuses in Xinjiang, China was followed with a variety of sanctions and Withhold Release Orders that blocked the importation into the United States of goods from specific companies and on entire economic sectors (cotton and tomatoes). This Advisory might also be a signal of future government enforcement actions, greater trade controls involving Cambodia, and more critical treatment of Cambodia in US government reporting and the associated increase in reputational risks.

Additionally, the Advisory might also foreshadow similar or counterpart measures from allied governments. For

example, following the Xinjiang business advisory, Canada, the United Kingdom, Australia, and the European Union have all either blocked the importation of certain goods from Xinjiang or publicly stated that they will. Accordingly, it would be wise for businesses in those countries to consider the impact of a similar business advisory and follow-up on enforcement options regarding their commercial relationship with Cambodia.

Bottom line

In the last several years, we have seen both an increased focus on Environment, Social and Corporate Governance (ESG) considerations, and bi-partisan and consistent support for greater transparency and diligence around corruption, environmental degradation, and human rights abuses. We have also seen an increasingly expansive view and use of US laws and trade-related authorities to advance these efforts.

With little evidence to suggest this trend will abate, businesses should take action now to identify and address these types of risks. Accordingly, any business operating or investing in Cambodia, or with a supply chain or customer base involving Cambodia, should consider whether further due diligence or monitoring of their operations would be prudent and whether it should take additional compliance steps to provide assurances about the integrity of their operations, business partners, and financial arrangements.

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