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U.S. Department of the Treasury Eases Financial and Investment Sanctions on Burma

July 12, 2012

In May 2012, President Obama and Secretary of State Clinton announced that the U.S. Government would ease restrictions on financial services and investment in Burma due to the Burmese government's ongoing reform efforts. On Wednesday, July 11, 2012, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued two General Licenses implementing these changes, which will permit the first new U.S. investment in Burma in nearly 15 years. The U.S. hopes that this measure will promote responsible investment and business operations in Burma, as well as "encourage further change, promote economic development, and contribute to the welfare of the Burmese people." [1]

OFAC administers the Burmese Sanctions Regulations (BSR), 31 C.F.R. Part 537. Prior to the issuance of the General Licenses, the BSR generally permitted the export of goods and services from the United States to Burma, but prohibited: (1) providing "financial services" to Burma, with the exception of certain financial transactions in support of specified not-for-profit activities and noncommercial personal remittances; (2) "new investment" activities that develop the economic resources of Burma; and (3) dealings with persons, organizations or businesses that are Specially Designated Nationals (SDNs).

General License No. 16: Authorizing the Exportation or Reexportation of Financial Services to Burma

General License No. 16 now authorizes the exportation or reexportation of financial services to Burma, with certain exceptions. This new authorization is important for U.S. persons [2] that wish to engage in business in Burma, as the BSR define "financial services" broadly to include the following transactions:

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Practice Areas

Government Contracts
International Trade
Trade Policy and Trade Negotiations

- Loans, guarantees, letters of credit or other extensions of credit to persons or entities in Burma;
- The transfer of funds, directly or indirectly, to Burma;
- The provision, directly or indirectly, to persons in Burma of insurance services, investment or brokerage services, banking services or money remittance services; or
- The service of selling or redeeming traveler's checks, money orders and stored value.^[3]

General License No. 16 does not authorize the exportation or reexportation of financial services to the Burmese Ministry of Defense (including the Office of Procurement), state or non-state armed groups (including the military), or entities in which the foregoing own a 50 percent or greater interest in connection with the provision of security services. It also does not authorize the provision of financial services to a blocked person, including SDNs and entities owned or controlled by an SDN, ^[4] or any debit to a blocked account.

General License No. 17: Authorizing New Investment in Burma

General License No. 17 authorizes new investment activities, permitting U.S. persons to invest and develop markets in Burma. Similar to "financial services," "new investment" is defined broadly in the BSR as an agreement with the Government of Burma or a nongovernmental entity in Burma that includes the economic development of resources (including natural, agricultural, commercial, financial, industrial and human resources) located in Burma and includes any of the following activities:

- "The entry into a contract that includes the economic development of resources located in Burma;"
- Entering into a contract "for the general supervision and guarantee of another person's performance of a contract that includes the economic development of resources located in Burma;"
- Purchasing "a share of ownership, including an equity interest, in the economic development of resources located in Burma;" or
- Participating "in royalties, earnings, or profits in the economic development of resources located in Burma, without regard to the form of the participation."^[5]

Prompted by concerns regarding corruption and the involvement of the military in the Burmese economy, new investment is explicitly prohibited with the Burmese Ministry of Defense (including the Office of Procurement), state or non-state armed groups (including the military), or entities owned by the foregoing. Similar to General License No. 16, the new investment policy continues to ban U.S. persons from dealing with a blocked person.

Notably, this General License requires U.S. persons investing more than \$500,000 in the aggregate in Burma to report their activity to the Department of State annually. ^[6] The reports must include information regarding policies and procedures with respect to human rights, workers' rights, environmental matters and land acquisitions, contracts with security service providers, and aggregate annual payments of \$10,000 or more to government and state-owned entities. A version of each report will be made available to the public. Further, any U.S. person engaging in new investment with the Myanmar Oil and Gas Enterprise (MOGE) must notify the Department of State within 60 days of the new investment.

Also Wednesday, President Obama issued an Executive Order (EO) corresponding with the sanctions policy change. The EO allows the U.S. Government to sanction individuals or entities that "undermine or obstruct" the Burmese political reform or peace processes, including through the continued incarceration of political prisoners, military trade with North Korea and human rights abuses.^[7] Pursuant to this new EO, the President designated the Directorate of Defense Industries (DDI), which engages in missile research and development with the assistance of North Korea, thereby effectively prohibiting U.S. persons from engaging in transactions with this entity.

[1] Press Release, U.S. Department of the Treasury, "Joint Fact Sheet from U.S. Treasury and State Departments: Administration Eases Financial and Investment Sanctions on Burma" (July 11, 2012).

[2] U.S. persons include: (1) U.S. citizens and permanent resident aliens, wherever located; (2) individuals and entities located in the United States, even if they are not U.S. citizens or organized under U.S. law; and (3) legal entities organized under U.S. law, such as corporations and their branches outside of the United States. 31 C.F.R. § 537.321.

[3] *Id.* § 537.305.

[4] General License No. 16 does permit the transfer of funds to or from an account of a financial institution that is blocked under the Burma sanctions program as long as the account is not on the books of a U.S. financial institution.

[5] 31 C.F.R. § 537.311. *See also id.* §§ 537.204, 537.302, and 537.316.

[6] For more information, see the Department of State's "Reporting Requirements on Responsible Investment in Burma," *available at* www.HumanRights.gov/BurmaResponsibleInvestment.

[7] Exec. Order No. 13619 (*Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma*) (July 11, 2012), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2012-07-13/pdf/2012-17264.pdf>.