
United States Reforms Burma Sanctions

by Christopher R. Wall and Aaron R. Hutman

The United States implemented the long-anticipated reform of its sanctions program for Burma (also known as Myanmar) on July 11, 2012. General Licenses 16 and 17 were added to the Burmese Sanctions Regulations, 31 CFR Part 537, allowing previously prohibited financial transactions involving Burma and new investment in all sectors (including natural resources), subject to certain restrictions. However, in a ground-breaking approach, the United States is implementing a public reporting regime for investments over \$500,000 to promote transparency and encourage responsible business conduct. Many parts of the U.S. sanctions regime for Burma remain in place, including restrictions on transactions with specially designated nationals (SDNs) and the Burmese military. Imports to the United States from Burma are still prohibited and “Special Measures” relating to banks for anti-money laundering purposes continue, although they do not apply to transactions authorized by the general license permitting exports of financial services. Thus, while these reforms present new opportunities for U.S. and multi-national companies, a complicated sanctions regime and new reporting requirements remain in place and companies should proceed cautiously.

Following a number of signs that Burma may be entering a new era, the United States has now joined the European Union, United Kingdom, Canada and Australia in reforming its sanctions regime for the long-isolated Southeast Asian nation. Recognizing that reforms are at a “fragile” stage, the Obama Administration and Congressional leaders from both parties developed a consensus to reform U.S. Burma sanctions on a step-by-step basis. Since Secretary of State Hillary Clinton’s May 17, 2012 announcement that the United States would pursue reform, the Administration has attempted to strike a balance between geopolitical, economic and human-rights interests in establishing the specific elements of this reform. The delay in implementing the U.S. reforms had confused many observers unfamiliar with the process.

The current state of U.S. Burma policy is addressed below, including: (1) the July 11, 2012 reforms, (2) remaining elements of the sanctions regime, and (3) continuing anti-money laundering special measures.

(1) July 11, 2012 reforms

General Licenses. The Treasury Department's Office of Foreign Assets Control (OFAC), which implements U.S. sanctions policies, issued two General Licenses to allow activities otherwise prohibited under the Burmese Sanctions Regulations:

General License 16 authorizes the exportation and reexportation of financial services to Burma. Previously, the prohibition relating to financial services, which is broadly defined to cover most financial transactions, had made economic activity in Burma impractical for many companies even when the underlying activity was not directly sanctioned.

General License 17 authorizes new investment in Burma by U.S. persons (companies, organizations and individuals) for the first time since 1997. Since new investment is now permitted, the facilitation of new investment is permitted as well.

Neither General License authorizes transactions with the Burmese Ministry of Defense, including the Office of Procurement; any other state or non-state armed group in conflict with the Burmese government; or any entity in which any of the foregoing own a 50 percent or greater interest. The General Licenses do not authorize transactions with any SDNs and do not authorize the release of any blocked account.

Reporting Requirements for Investment. The United States introduced innovative reporting requirements as part of the sanctions reforms, designed to encourage investors to act responsibly in Burma and encourage partnership with civil society and local stakeholders. For investments under General License 17 that exceed \$500,000, companies or individuals will be required to make annual reports to the U.S. State Department on their activities. Furthering transparency, non-business-confidential versions of these reports will be made available for public review. Proposed report components include:

Public Components

- Human rights and worker rights, including interaction and communication with local stakeholders
- Anti-corruption policies and procedures
- Environmental policies and procedures
- Arrangements with security service providers
- Property acquisition – lease or purchase and information relating to the impact of the acquisition
- Payments to elements of the Burma government for each agency/entity exceeding a total of \$10,000

Government-only Components

- Communications with the Burmese Military
- Due diligence and risk mitigation steps relating to human/worker rights and environmental issues

The precise reporting requirements will be open to public comment pursuant to a forthcoming Federal Register notice. See www.humanrights.gov/2012/07/11/burmaresponsibleinvestment/ for further information on the proposed reporting system.

In addition to the annual report, any investment pursuant to an agreement (or exercise of rights under an agreement) with the Myanmar Oil and Gas Enterprise (MOGE) must be notified to the State Department in

writing within sixty days. This includes all investment and is not subject to the \$500,000 minimum for annual reporting.

New Executive Order Expanding Authority to Block Individuals and Entities. Simultaneously with the issuance of the General Licenses, President Obama also issued an Executive Order on July 11, 2012 titled "Blocking Property of Persons Threatening the Peace, Security or Stability of Burma," which authorizes the Secretary of Treasury, in consultation with the Secretary of State, to block individuals or entities found to have engaged in behavior destabilizing to Burma or its political reform, caused human rights abuses, or facilitated trade with North Korea and related parties/entities. The Administration has indicated its intent to facilitate U.S. economic engagement with good actors while refining and potentially expanding sanctions on individuals and entities viewed as bad actors in Burma. In this regard, the White House announced the designation of Burma's Directorate of Defense Industries (for business with North Korea) and Innwa Bank (indirectly owned/controlled by the Ministry of Defense).

(2) Continuing U.S. Sanctions on Burma

The July 11, 2012 reforms still leave substantial portions of the sanctions regime in effect and, depending on the progress of political and economic change in Burma, these reforms could be reversed and the General Licenses revoked. Several statutes, five executive orders and the Burmese Sanctions Regulations remain in place. As noted above, restrictions on dealing with the military establishment and sanctioned Burmese entities or individuals remain in place, so all transactions must still be screened against OFAC's SDN List. Imports from Burma to the United States remain prohibited by statute with special restrictions on certain precious gems including jadeites and rubies.

(3) Anti-Money Laundering Special Measures for Burma

The Treasury Department's Financial Crimes Enforcement Network (FinCEN) instituted Special Measures against Burma and two financial institutions (Myanmar Mayflower Bank and Asia Wealth Bank) in 2004 under the anti-money laundering provisions of the USA PATRIOT Act. The Special Measures, reflected in 31 CFR § 103, restrict covered financial institutions from maintaining certain banking relationships with financial institutions in Burma (or banks acting on behalf of banks in Burma) and with the two listed banks generally. The Special Measures on Burma are linked to the OFAC Burma sanctions in that banking relationships and transactions are permitted to the extent they are exempt from or licensed pursuant to Executive Order 13310, which was the basis for the prohibition on financial services. Financial transactions authorized by General License 16 are subject to this provision and should thus be allowed even if they involve otherwise prohibited accounts. Transactions involving financial institutions that have been named SDNs, however, continue to be prohibited.

U.S. sanctions reform for Burma presents opportunities for companies and individuals in the United States and around the world. With a complex mix of sanctions still in place and detailed new reporting requirements for investment, companies should remain cautious and obtain guidance on sanctions, anti-corruption and anti-money laundering issues as they engage in this opening market.

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