

United States Takes First Step in Liberalizing Sanctions on Burma

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On April 17, 2012, the Department of the Treasury's Office of Foreign Assets Control (OFAC) released new General License 14-C, which authorizes financial transactions under specified circumstances in support of humanitarian, religious, and nonprofit activities in Burma. This is the first formal step in a process which may eventually unwind the U.S. sanctions on Burma.

Landmark elections in Burma (also known as Myanmar) on April 1, 2012 brought Nobel laureate Aung San Suu Kyi to parliament. President Thein Sein has promised reforms and Western leaders are planning to liberalize sanctions gradually in response.

In a statement on Burma made on April 4, Secretary of State Hillary Clinton announced, among other things, that the United States would take measures to enable "private organizations in the United States to pursue a broad range of nonprofit activities from democracy building to health and education," and would begin "the process of a targeted easing of our ban on the export of U.S. financial services and investment as part of a broader effort to help accelerate economic modernization and political reform." The new General License represents an important first step toward these goals.

Burma has been subject to a broad sanctions regime since 1997. The following activities are prohibited under the Burmese Sanctions Regulations at 31 C.F.R. § 537:

- New investment in Burma by U.S. persons.
- Provision of financial services from the U.S. or by U.S. persons/companies, wherever located (including the transfer of funds to Burma, directly or indirectly).
- Imports of products from Burma.
- Investment in third-country companies where the company's profits are predominantly derived from economic development of resources located in Burma.
- Transactions with Burmese entities and individuals that have been placed on OFAC's List of Specially Designated Nationals.

Although not a complete embargo, these prohibitions have made doing business in Burma highly impractical.

The new General License, 14-C, significantly expands permissible humanitarian activities by U.S. persons. Specifically, the new General License authorizes financial services in support of nonprofit activities relating to:

- (1) Projects to meet basic human needs in Burma (disaster relief, medicine, clean water);
- (2) Democracy building and good governance in Burma;
- (3) Educational activities in Burma (access to education, education reform, etc.);
- (4) Sporting activities in Burma, including the construction and maintenance of sports facilities open to the Burmese public;
- (5) Non-commercial development projects directly benefiting the Burmese people including agricultural efforts and the construction and maintenance of schools, libraries, medical clinics, hospitals, and other infrastructure necessary to support the aforementioned non-commercial development projects; and
- (6) Religious activities, including the construction and improvement of houses of worship, schools, seminaries, and orphanages.

It is important to note that although paragraph (5) of the General License appears to authorize a variety of infrastructure projects, the export of U.S. financial services is limited to those in support of non-profit activities.

The restrictions on dealing with sanctioned Burmese entities and individuals remains in place, so all transactions must still be screened against OFAC's List of Specially Designated Nationals.

Other countries are also in the process of loosening sanctions on Burma. In a significant step, the European Union voted on April 23, 2012 to suspend most of its Burma sanctions for a year (an arms embargo remains in effect and the sanctions are temporarily suspended, not removed). Australia has announced that it will lift travel and financial sanctions on certain individuals associated with the Burmese government, while maintaining other aspects of its sanctions.

Although Burma may eventually become an attractive location for new investment, it is important to remain aware that the U.S. government has not yet lifted the core aspects of the U.S. embargo and that engaging in transactions that remain prohibited can lead to significant penalties, including imprisonment. Companies should remain cautious and monitor the continuing developments in international policies on Burma.

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