

International Trade Alert

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OFAC Issues General Licenses Authorizing Investment and Exports of Financial Services to Burma

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Eagerly awaited changes to U.S. financial and investment sanctions on Burma have finally arrived. U.S. businesses are now able to engage in new investment in Burma and provide financial services for the first time since the United States implemented sanctions against the country fifteen years ago. The U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) issued General License Nos. 16 and 17 on July 11, 2012, which amend the Burmese Sanctions Regulations (BSR) (31 C.F.R. Part 537) and now authorize certain long-restricted activities. Important compliance and reporting obligations for U.S. companies remain, however. In looking toward potential opportunities, U.S. companies must vet business partners and investments carefully, and consider numerous corporate governance matters raised by new Reporting Requirements associated with the changes.

As Venable [previously reported](#), the United States initiated its sanctions program in 1997 in response to the Government of Burma's large-scale repression of democratic opposition. The issuance of these General Licenses constitutes the latest step in the Obama Administration's efforts to ease U.S. sanctions against Burma in recognition of the Government's progress toward political reform. In April 2012, OFAC issued General License 14-C, which permitted the provision of financial services to Burma, but only with respect to designated not-for-profit activities. The new General Licenses include the most expansive authorizations to date; however, the authorized activities are still subject to certain limitations.

- **General License No. 16** authorizes the export and reexport of "financial services," as defined at 31 C.F.R. §537.305, to Burma, directly or indirectly, from the United States or by a U.S. person wherever located. The authorizations in General License Nos. 14-C and 15 are included in and replaced by General License No. 16.
- **General License No. 17** authorizes "new investment" in Burma, as defined at 31 C.F.R. §537.311, by U.S. persons. Notably, "new investment" includes, among other items, the "economic development of resources located in Burma."

Significantly, both General License Nos. 16 and 17 are subject to limitations.

- Both restrict activities with the Burmese Ministry of Defense, including the Office of Procurement; any state or non-state armed group; or any entity in which any of the foregoing own a fifty percent or greater interest. The restriction is consistent with Secretary Clinton's announcement that the U.S. would continue to maintain the arms embargo against Burma currently implemented by the U.S. Department of State.
- U.S. persons will also remain prohibited from engaging with blocked persons, including any Specially Designated National (SDN) as designated by OFAC, as well as any entities controlled fifty percent or more by an SDN.

Reporting Requirements. The U.S. Department of State also announced new reporting requirements, unique to Burma, for any U.S. person or entity who engages in new investment in Burma that exceeds an aggregate of US\$500,000 pursuant to General License No. 17. For investments exceeding the threshold value, an annual report is required, which will be made public, regarding the U.S. person's: operations in Burma; policies and procedures related to worker's rights, anti-corruption, and the environment for the Burmese operations; any arrangements with security service providers; details regarding any property acquisition; and any payments exceeding US\$10,000 to a governmental entity in Burma.

As part of this annual report, U.S. persons are also required to submit certain information that will remain "private" to include: a company contact, information regarding certain communications with the armed forces of Burma and/or any other armed groups, and risks identified in conjunction with due diligence on human rights, worker's rights, and/or environmental policies and procedures.

“Investment Notification” is also required regarding new investment in Burma that involves an agreement with Myanma Oil and Gas Enterprise (MOGE). Such notification must be provided to the Department of State within 60 days of the new investment.

Importantly, the Reporting Requirements will be subject to a notice and comment period, which is also expected in the coming days. Formatting and additional details on “Reporting Requirements for Responsible Investment in Burma,” can be found by [clicking here](#).

New Executive Order. In keeping with the United States’ measured approach towards Burma, the General Licenses were issued together with a new Executive Order granting the U.S. Government the authority to impose additional blocking sanctions on persons designated by OFAC who:

- Have engaged in acts that directly or indirectly threaten the peace, security, or stability of Burma, such as actions that have the purpose or effect of undermining or obstructing the political reform process or the peace process with ethnic minorities in Burma;
- Are responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or have participated in, the commission of human rights abuses in Burma; to have, directly or indirectly, imported, exported, reexported, sold or supplied arms or related material from North Korea or the Government of North Korea to Burma or the Government of Burma;
- Are a senior official of an entity that has engaged in the foregoing acts; or,
- Have materially assisted any of the foregoing acts, or a person whose property and interests in property are blocked pursuant to the order; or to be owned or controlled by, or to have acted for or on behalf of, such a person.

Close monitoring of the SDN List in the coming weeks and months will be important. Please also recall that Burma currently remains designated as a “jurisdiction of primary money laundering concern” under Section 311 of the USA PATRIOT Act of 2001, but continue to watch as changes are anticipated.

Contact any attorneys in Venable’s [International Trade and Customs Group](#) for additional details on how your company might benefit from the new OFAC General Licenses, as well as due diligence steps to consider prior to engaging in new investment or exports of financial services to Burma.