

# ClientAlert

## International Trade

July 2012

### US Eases Burmese Sanctions on New Investment and Exportation of Financial Services

On May 17, 2012, the Obama Administration announced that it would begin the process of suspending sanctions against Burma. On July 11, 2012, the Administration issued two general licenses authorizing both the exportation of financial services to Burma and new investment by US persons in Burma, subject to certain limitations and reporting requirements. The Administration simultaneously issued a new Executive Order, which blocks the property and interests in property of individuals and entities found to be a threat to the peace, security and stability of Burma.

The Administration notes that apart from these modifications, the sanctions regime against Burma will remain in effect in order to provide the US Government with leverage to reinstate full sanctions should political progress in Burma stall. Further, the general licenses expressly do not authorize investments or financial services involving the Burmese Ministry of Defense, state or non-state armed groups, or entities owned by the foregoing, or transactions with, directly or indirectly, blocked persons, which include both individuals and entities listed on the Specially Designated Nationals List ("SDN List"), as well as any entities 50 percent or more owned by a Specially Designated National ("SDN").

#### General Licenses and US State Department Reporting Requirements

On July 11, 2012, OFAC issued General License No. 16 ("GL 16")<sup>1</sup> and General License No. 17 ("GL 17")<sup>2</sup>, easing restrictions on, respectively, the exportation of financial services to Burma and new investment in Burma.

Subject to a number of exceptions, GL 16 broadly authorizes the direct or indirect exportation or reexportation of financial services from the United States or by US persons to Burma. GL 16 expressly does not authorize the exportation of financial services, in connection with the provision of security services, to the Burmese Ministry of Defense, state or non-state armed groups (including the military), or entities in which any of the foregoing owns a 50 percent or greater interest. GL 16 also does not authorize the exportation of financial services to any person blocked under the Burmese sanctions, although the transfer of funds to or from an account of a blocked financial institution is authorized provided that the account is not on the books of a financial institution that is a US person.



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GL 17 authorizes new investment by US persons in Burma, subject to the same limitations outlined in GL 16 on engaging with the Burmese Ministry of Defense and blocked persons. GL 17 also requires US persons engaging in new investment in Burma to report to the US Department of State in compliance with the requirements set forth in the "Reporting Requirements on Responsible Investment in Burma" ("Reporting Requirements").<sup>3</sup> These Reporting Requirements, which are designed to increase transparency and encourage responsible investment, mandate that US persons engaged in new investment in Burma (1) notify the Department of State in writing within 60 days of undertaking a new investment pursuant to an agreement with Myanmar Oil and Gas Enterprise ("MOGE") (the "MOGE Investment Notification"), and (2) submit two versions of an annual report, one for the US Government and another that will be publicly available, providing specific information regarding their aggregate investment in Burma if any investment in Burma exceeds US\$500,000 (the "Annual Reporting Requirement"). The Annual Reports will be due on April 1 of each year. These questions cover a broad range of topics that includes, among others, information regarding policies and procedures with respect to human rights, workers' rights, land acquisitions, arrangements with security service providers and aggregate annual payments exceeding US\$10,000 to Burmese government entities.

### **Executive Order 13619: Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma (July 11, 2012)**

President Obama also issued a new Executive Order<sup>4</sup> that allows the US Government to sanction individuals or entities that threaten the peace, security or stability of Burma, including those who undermine or obstruct the political reform process or the ongoing peace process with ethnic minorities, those who are responsible for or complicit in the commission of human rights abuses in Burma, and those who have directly or indirectly imported, exported, reexported, sold, or supplied arms or related materiel

from North Korea to Burma. The Executive Order also authorizes sanctions against senior officials of entities that are determined to have engaged in any of the aforementioned acts, as well as against any individual or entity that is found to have materially assisted, sponsored or provided financial, material or technological support for, or goods or services to or in support of, the aforementioned acts or any blocked person. In addition, any person found to be owned or controlled by, or to have acted or purported to act for or on behalf of, any person blocked pursuant to the Executive Order may also be sanctioned. Such sanctions would sever access for these individuals or entities to the US financial system by blocking all property and interests in property of these individuals or entities that are in or hereafter come into the United States or into the possession or control of a US person, including any foreign branch.

### **Specially Designated Nationals List Additions**

OFAC also announced that, pursuant to the Administration's May directive to review and modify the SDN List, two names will be added to the list. These designated entities are the Directorate of Defence Industries (also known as "Ka Pa Sa" and "DDI") and Innwa Bank Ltd. Transactions by US persons with these entities are prohibited and their property and interests in property in the United States or in the possession or control of US persons is blocked.

### **Conclusion**

The actions described above authorize significant Burma-related transactions by US persons. As noted, however, significant restrictions and conditions continue to apply, particularly the prohibition on dealings with blocked parties. Involvement in Burma-related business will require careful attention to continuing compliance and reporting obligations. Companies pursuing investment and business opportunities in Burma should ensure they have adequate compliance programs in place.

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1 A copy of *General License No. 16: Authorizing the Exportation or Reexportation of Financial Services to Burma (July 11, 2012)* may be viewed [here](#).

2 A copy of *General License No. 17: Authorizing New Investment in Burma (July 11, 2012)* may be viewed [here](#).

3 The Reporting Requirements, which are available [here](#), are subject to public notice and comment.

4 A copy of *Executive Order 13619: Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma (July 11, 2012)* may be viewed [here](#).

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