

Client Alert

Latham & Watkins
Finance Department

Reporting Requirements for Responsible Investment in Burma/Myanmar

On July 11, 2012, the US Treasury Department's Office of Foreign Assets Control (OFAC) issued two general licenses allowing new US investment in Burma/Myanmar for the first time since 1997, and permitting the exportation of a broad array of financial services to Burma/Myanmar. This *Client Alert* discusses OFAC General Licenses Nos. 16 and 17, certain continued restrictions on business activity in Burma/Myanmar, and new recordkeeping obligations that will apply to US persons making new investments in Burma/Myanmar.

Combined with recent actions taken by the Burma/Myanmar Government to attract foreign investment, also discussed in this *Client Alert*, and other international efforts to remove sanctions, the OFAC licenses will likely help make Burma/Myanmar more attractive to foreign investors.

The OFAC Licenses

After the April 2012 parliamentary by-elections in Burma/Myanmar, US Secretary of State Hillary Rodham Clinton announced that the US Government would reconsider its ban on the export of US financial services and investment in Burma/Myanmar. On July 11, 2012, OFAC announced the results of the US Government's internal review of US sanctions. In issuing General Licenses 16 and 17, OFAC effectively removed substantial restrictions on new investments in, and financial services exports to, Burma/Myanmar.

The two General Licenses provide as follows:

General License 16

- Broadly authorizes the export of financial services to Burma by US persons.
- Does not, however, permit the export or reexport of financial services in connection with the provision of security services to the Burmese Ministry of Defense, any state or non-state armed group, or any entity in which any of the foregoing owns a 50 percent or greater interest.
- Does not authorize exports/reexports of financial services to persons designated as Specially Designated Nationals (SDN) pursuant to certain previous Executive Orders. Transfers of funds involving accounts of financial institutions blocked pursuant to these Executive Orders, however, are authorized, provided that the account is not on the books of a US financial institution.
- Replaces and supersedes General License 14-C, which more narrowly authorized the export of financial services in support of humanitarian activities, and General License 15, which authorized personal remittances.

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General License 17

- Broadly authorizes new investments in Burma by US persons.
- Similar to General License 16, does not permit new investments undertaken pursuant to an agreement with the Ministry of Defense, any state or non-state armed group, or any entity in which any of the foregoing owns a 50 percent or greater interest.
- Also does not authorize transactions with persons designated as SDNs pursuant to certain previous Executive Orders.
- Requires that US persons engaging in new investments in Burma pursuant to this General License comply with new reporting requirements set forth by the US Department of State.

Lifting sanctions by means of these two General Licenses allows the US Government to maintain sanctions on the Ministry of Defense and certain military groups and other entities in Burma/Myanmar. Indeed, in addition to the new OFAC General Licenses, the Obama Administration issued a new Executive Order targeting persons threatening the peace, security, or stability of Burma/Myanmar. Pursuant to this and a prior Executive Order, OFAC has designated Burma/Myanmar's Directorate of Defense Industries and Innwa Bank as SDNs. Any US person making new investments or exporting financial services to Burma/Myanmar must avoid involvement with these entities and other SDNs absent OFAC authorization.

New Reporting Requirements

As noted above, General License 17 requires that a US person seeking to make new investments in Burma/Myanmar comply with new reporting requirements administered by the US Department of State. On August 6, 2012, the State Department issued its 60-day Federal Register Notice of Request for Public Comments on its proposed Reporting Requirements on Responsible Investment in Burma.

As proposed, these reporting requirements include the following elements:

- They will apply to any US person (both individuals and entities) engaging in new investment in Burma pursuant to General License 17 whose aggregate new investment exceeds \$500,000, or if the investment is pursuant to an agreement entered into with the Myanmar Oil and Gas Enterprise (MOGE).
- Individuals or entities undertaking a new investment pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, entered into with MOGE must notify the State Department within 60 days of any such new investment.
- Investors engaging in new investments in excess of \$500,000 will be required to file reports with the State Department on an annual basis. Reports will include information regarding policies and procedures with respect to human rights, workers' rights, environmental stewardship, land acquisitions, arrangements with security service providers, and aggregate annual payments exceeding \$10,000 to any Burmese government entities, including state-owned enterprises.

Changes in Burma/Myanmar

The lifting of US sanctions comes at a time when the laws and practices governing investments in Burma/Myanmar are undergoing rapid changes. The Burmese/Myanmar Government has taken steps to ask for and receive financial and technical assistance and training in a number of key areas, including foreign exchange controls, banking and investment law reform, and trade facilitation. According to new investment laws, foreigners will no longer need a local partner to invest in Burma/Myanmar. Foreigners can now either fully own companies or establish joint ventures with citizens of Burma/Myanmar or government entities, and may be granted a five-year tax holiday from the start of commercial operations.

Burma/Myanmar's new investment regulations and its plans to float its currency — together with the lifting of sanctions by US and European governments — could make foreign investment opportunities much more enticing and plentiful.

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