

# Burma/Myanmar Sanctions Update

More than 3 months after the Obama Administration first announced that it would ease US economic sanctions against Myanmar, the necessary implementing measures have now occurred. They create substantial new opportunities for US financial and economic activity in Myanmar but also establish an extensive and burdensome reporting regime for US investors in that country.

On July 11, 2012, the US Treasury Department's Office of Foreign Assets Control ("**OFAC**") issued two new General Licenses to the Burmese Sanctions Regulations ("**BSR**") authorizing the provision of previously-prohibited financial services to Myanmar and new investment in Myanmar, subject to certain limitations and a continuing prohibition on US dealings with Specially Designated Nationals of Burma ("**SDNs**"). President Obama also issued a new Executive Order on July 11, 2012, "Blocking Property or Persons Threatening the Peace, Security, or Stability of Burma" (the "**Executive Order**"), under which additional SDN designations will be made.

Following the April 1, 2012 parliamentary by-elections in Myanmar, the US State Department ("**State**") announced the Obama Administration's plans for a substantial reduction in the scope of US economic sanctions against Myanmar in response to its progress toward political and economic reforms. Neither then nor now, however, has State suggested that the United States would completely suspend the US sanctions in the manner that other western countries have done.<sup>1</sup> In addition, the new US approach involves an extraordinary degree of transparency in regard to the reporting requirements imposed by State on US investors in Myanmar.

## Export or Reexport of Financial Services to Burma/Myanmar

OFAC's new General License 16 authorizes the "exportation or reexportation of financial services to Burma" from the United States or by US Persons, including the transfer of funds to Myanmar and the provision of other financial services, such as insurance, investment, banking, credit, and money remittance services to Myanmar. OFAC's sanctions had generally prohibited the provision of such services since the issuance of Executive Order 13310 in July 2003. However, in connection with the provision of security services, General License 16 does not authorize financial services to the Burmese Ministry of Defense, or other armed groups in Myanmar, or entities in which

### Contacts

**David DiBari**

Partner

T: +1 202 912 5098

E: david.dibari

@cliffordchance.com

**George Kleinfeld**

Partner

T: +1 202 912 5126

E: george.kleinfeld

@cliffordchance.com

**Ali Burney**

Associate

T: +1 202 912 5012

E: ali.burney

@cliffordchance.com

**Jacqueline Landells**

Associate

T: +1 202 912 5061

E: jacqueline.landells

@cliffordchance.com

<sup>1</sup> For further information on the lifting or suspension of international sanctions by other western countries please see our April 2012 briefing note, available at [http://www.cliffordchance.com/publicationviews/publications/2012/04/come\\_you\\_back\\_tomandalay.html](http://www.cliffordchance.com/publicationviews/publications/2012/04/come_you_back_tomandalay.html).

the foregoing hold a 50% or greater interest. Further, the provision of financial services to SDNs of Burma remains prohibited, except for funds transfers to or from accounts of Burmese SDN banks other than accounts of those banks on the books of a US bank.

In view of the scope of the remaining restrictions on certain financial services, we anticipate that at least initially, US banks will continue to filter transaction messages for geographic references to Myanmar as well as to SDNs in order to review filtering "hits" manually for the possibility of a prohibited element. We also note that the US Treasury Department's Financial Crimes Enforcement Network has not lifted its longstanding designation of Myanmar as a jurisdiction of primary money laundering concern.

## New Investment in Burma/Myanmar

General License 17 authorizes previously-prohibited new investment by US Persons in Myanmar, as long as such investment does not occur under an agreement with the Burmese Ministry of Defense or other armed groups in Myanmar. General License 17 also requires US Persons, as a condition of investing in Myanmar, to comply with reporting requirements imposed by State as summarized at [www.HumanRights.gov/BurmaResponsibleInvestment](http://www.HumanRights.gov/BurmaResponsibleInvestment). Specifically, US Person investors in projects involving Myanmar Oil and Gas Enterprise (MOGE) will have to notify State within 60 days of such an investment, and all US Persons whose aggregate investments in Myanmar exceed USD 500,000 will have to submit detailed annual reports on those investments. The reports, which State plans to release publicly, will need to cover, among other things, human rights, workers' rights, anti-corruption and environmental policies and procedures as they relate to operations and the supply chain in Myanmar; arrangements with security service providers; land acquisitions; and annual payments exceeding USD 10,000 to Myanmar Government entities, including state-owned enterprises. State has explained: "The purpose of the public report is to promote greater transparency and encourage civil society to partner with our companies toward responsible investment. The above reporting requirements apply to any new investment, whatever corporate form it might take."

## Import Ban on Products of Burma/Myanmar

BSR section 537.203 prohibits the import of Burmese origin products into the United States. The new General Licenses do not address this prohibition, thereby leaving the prohibition in place.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

Clifford Chance, 31 West 52nd Street, New York, NY 10019-6131, USA  
© Clifford Chance US LLP 2012  
Clifford Chance US LLP

[www.cliffordchance.com](http://www.cliffordchance.com)