

New US Reporting Requirements for responsible investment in Myanmar

US sanctions against Myanmar have been eased but with new opportunities come new obligations. All US Persons making significant new investments in Myanmar will be required to report annually on a range of responsible investment criteria, including steps taken to mitigate risks relating to corruption, land acquisitions, human rights and security.

On 11 July 2012, more than three months after the US first announced that it would ease economic sanctions, the Office of Foreign Assets Control (OFAC) finally introduced measures allowing US Persons to pursue new investment opportunities in Myanmar (which the US government continues to refer to as Burma).

All US Persons making significant investments in Myanmar will be required to adhere to a reporting regime intended to encourage responsible investor conduct.

This briefing focuses on the new Reporting Requirements. For further information on the current US sanctions position, including with respect to financial services, please see our previous [client briefing](#) dated 12 July 2012.

Reporting Requirements

All US Persons making new investments in Myanmar pursuant to General License 17 to the Burmese Sanctions Regulations (BSR) and whose aggregate investment in Myanmar exceeds US\$500,000 must submit an annual report to the US State Department. For these purposes, US Persons means all entities organised under US law, all persons in the United States, and any US citizens or US green card holders globally.

The Reporting Requirements were published on 11 July 2012, are subject to public comment for a period of 60 days and are available [online](#). Based on the current guidance, in addition to certain administrative details, investors must include in their report:

1. Details of the investor's operations in Myanmar including names of all relevant companies and subsidiaries, the nature and location of business operations and details regarding the number and nationality of employees.
2. A summary or copies of the investor's policies and procedures relating to environmental and social risk assessment, anti-corruption, community and stakeholder engagement, mechanisms for hearing grievances from employees and local communities and corporate social responsibility. If no such policies or procedures exist this must be stated in the report.
3. Details of any arrangements with security service providers including whether such providers are signatories to the International Code of Conduct for Private Security Service Providers.
4. For any purchase or lease of land or other real property involving expenditure in excess of US\$500,000 or relating to more than 30 acres of land information regarding the policies or procedures used to ascertain land ownership, use rights, dislocation, resettlement or other claims as well as any arrangements made to compensate previous users or occupiers of the property in question. The report must also disclose the location of any property purchased or leased by the investor and any information of which the investor is aware related to any involuntary resettlement or dislocation of people that occurred in relation to such property.
5. Details of the total payments made in a reporting year to any governmental entity and/or any sub-national or administrative entity that possesses or claims to possess authority over the investor's new investment activities in Myanmar, where such payments (in aggregate) exceed US\$10,000 (including a breakdown by category such as royalties, tax obligations and fees).

6. Details of any communications the investor has had with military forces in Myanmar, including state-organised militias and non-state armed groups.
7. Details of risks or adverse impacts identified in due diligence undertaken by the investor and relating to human rights, workers rights or the environment. The report should also summarise steps taken by the investor to mitigate such risks or impacts. If no due diligence was undertaken this must be stated in the report.

The report is due on 1 April each year. Two versions of the report must be provided, one of which shall be made public. The public version of the report is not required to contain information regarding communications with the military or risks and adverse impacts identified by the investor (see items six and seven above).

If an investor determines in good faith that any information should also be exempt from disclosure to the public under Exemption 4 of the Freedom of Information Act (trade secrets and commercial or financial information obtained from a person that is privileged or confidential), the investor may identify such information in the government report and provide a detailed explanation as to why it believes the exemption is applicable.

Separate notification requirement relating to Myanmar Oil and Gas Enterprise

A US Person who undertakes investment pursuant to an agreement that is entered into with Myanmar Oil and Gas Enterprise (MOGE), or pursuant to the exercise of rights under such an agreement, must notify the US State Department of such investment within 60 days of the investment.

Failure to Comply

US Persons engaging in new investment in Myanmar pursuant to General License 17 to the Burmese Sanctions Regulations (BSR) must comply with the Reporting Requirements to the extent applicable. Failure to comply may be regarded as a violation.

Significant penalties may be imposed for violations of the BSR. Civil violations may result in fines of up to US\$250,000 or twice the value of the transaction in question (whichever is greater) for each violation. Criminal violations may result in fines up to US\$1,000,000 or up to 20 years imprisonment for an individual, or both.

Impact on non-US Persons

US Persons that invest indirectly in Myanmar will have to consider the extent to which the legality of such investment depends upon General License 17 and therefore whether the Reporting Requirements might apply. The definition of "new investment" in the BSR is very broad and includes "entry into a contract providing for the participation in royalties, earnings, or profits in the economic development of resources located in Burma, without regard to the form of the participation". In addition, the BSR contain an anti-evasion provision that might expose US Persons and non-US persons to risk in the event that OFAC concludes that they have attempted to disguise the involvement of a US Person in a "new investment" for purposes of circumventing the Reporting Requirements.

Because of the serious penalties associated with violations of US sanctions, and pending clarification of the scope of the new reporting requirements, many US investors are likely to adopt a cautious approach. This means that non-US Persons investing in Myanmar and who seek funding from, or who deal with US Persons or entities, in relation to new investments in Myanmar may be required by counterparties to provide information sufficient for the relevant US Person or entity to assess the potential applicability of the Reporting Requirements and if necessary to file reports with the State Department.

While other governments have not imposed similar requirements on investors, when the EU eased sanctions on Myanmar it also indicated an expectation that EU investors should comply with international standards including the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

Due to ongoing concerns regarding corruption, the human rights record of the Myanmar government and concerns regarding the government's ability to regulate properly the environmental and social impacts of new investment projects, all new investors should expect their operations to be subject to close scrutiny by foreign governments, multilateral organisations and non-governmental organisations (NGOs).

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