

## *U.S. Announces “Conditional Suspension” of Sanctions Against Burma – With Strings*

BY SCOTT M. FLICKER AND DEVON E. WINKLES

On July 11, 2012, the Obama Administration formally eased economic sanctions against Burma (Myanmar), making way for U.S. investment in the resource-rich country. Notably, in a nod to critics of the policy, the Administration has imposed new reporting requirements for those companies that increase activity in Burma. Moreover, some restrictions on trade with Burma remain in place.

The response is expected to be rapid and significant, with several well-known U.S. companies announcing or planning to announce major new initiatives in Burma.

### **New Investment Permitted**

Reflecting recent political reforms by the military-led government in Myanmar, the United States had already taken steps to relax sanctions by issuing “general licenses” (essentially standing authorizations) authorizing increased economic activities. In May, President Obama announced that his Administration would permit broad-based investments across all industry sectors, and this latest action is aimed at implementing that policy. New General License 16 authorizes previously-restricted exportation of financial services to Burma, and new General License 17 authorizes new investment by U.S. persons, in all sectors of the economy, except entities owned by the Burmese armed forces and Ministry of Defense. However, some new requirements and limitations have been adopted. Particularly, U.S. companies with more than \$500,000 in aggregate new investment will be required to file an annual report disclosing their procedures on human rights, land acquisitions, the environment and payments to Burmese government entities. Additionally, companies must notify the State Department within 60 days of investing with the Myanmar Oil and Gas Enterprise.

The decision to permit new investment in all sectors, including oil and gas, represents a divergence from the position staked out by Nobel Price-winning activist and politician Aung San Suu Kyi, who supports socially responsible investment in Burma but has warned about the lack of transparency in Burma’s oil and gas contracts. Human Rights Watch, one organization that cautioned against lifting sanctions, announced that it was disappointed that the Obama Administration is permitting investment in the oil and gas sector.

The European Union and other countries have similarly relaxed Burmese sanctions. On May 14, the EU gave legal effect to its April 23 agreement to suspend most EU sanctions against Burma, although the arms embargo and restriction on equipment that can be used for internal repression remain in place. Canada has also removed sanctions relating to exports, imports, financial services and

investment, and Australia eased sanctions by lifting the travel and financial bans of many Burmese government officials.

## Other Limits Remain in Place

Calling its action a “conditional suspension,” the Obama Administration has made clear that it has eased but not lifted Burmese sanctions entirely. The Burmese Sanctions Regulations (“BSR”) have not been repealed and other prohibitions, such as the ban on imports of Burmese-origin products and services and the block on property of specially designated nationals (“SDNs”), remain in effect.

## U.S. Investors Preparing to Act

Even prior to the July 11 announcement, U.S. companies had begun preparing to move in to the Burmese market. Most prominently, on June 14 Coca-Cola announced that it will begin selling its products in Burma, after a 60-year absence, once the U.S. officially lifted the ban on new investment. Coca-Cola has stated that it will abide by ethical standards, including not paying bribes, and will respect human rights in Burma. The announcement faced a generally warm reception, as Coca-Cola successfully cast the investment as bringing American ideals, as well as dollars, to Burma. In addition, the Coca-Cola Foundation announced plans to make social and economic investments in Burma with \$3 million grants, particularly focused on women in Burma. Coca-Cola’s commitment has been viewed as a “vote of confidence” in investing in Burma.

Other U.S. companies are expected to make similar announcements. According to press accounts, General Electric is reportedly talking to the Burmese government on possible infrastructure projects and opportunities in the healthcare and energy sectors. Ford Asia has also indicated that it will move to invest in Burma, although it has not stated any specific plans or a timeline for doing so. Notably, representatives of British companies including BP, Shell, and others traveled to Burma on July 9 to discuss possible investments. Some potential investors had indicated that they will not invest in Burma until the Burmese government passes a foreign investment law with adequate provisions on expropriation, local ownership requirements and repatriation.

## Conclusion

The political environment surrounding economic activity in Burma is rapidly thawing. This formal easing of sanctions by the Obama Administration likely will lead to significant investment in the Burmese economy from the U.S. and other countries. Although some human rights groups have opposed any easing of U.S. sanctions against Burma, many of these groups will alter their strategy regarding investment in Burma to support socially responsible investment while policing investment that is nontransparent or encourages human rights abuses. As Secretary of State Clinton stated in her May 17 announcement of the plan to ease sanctions, the message to U.S. companies is to “invest in Burma and do it responsibly.”

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*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:*

### Washington, DC

Scott M. Flicker  
1.202.551.1726  
scotthamilton@paulhastings.com

Hamilton Loeb  
1.202.551.1711  
hamiltonloeb@paulhastings.com

Charles A. Patrizia  
1.202.551.1710  
charlespatrizia@paulhastings.com