

# **Reporting Requirements on Responsible Investment in Burma**

*Pending OMB Approval as of July 11, 2012*

**Introduction:** This document sets forth for U.S. persons (as defined in 31 C.F.R. § 537.321) engaged in new investment in Burma (as defined in 31 C.F.R. § 537.311) pursuant to OFAC General License No. 17 (“GL-17”) reporting requirements relating to such investment. There are two separate reporting requirements associated with new investment in Burma that must be submitted to the Department of State: (1) a requirement that any U.S. person undertaking new investment pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with Myanmar Oil and Gas Enterprise (MOGE) notify the Department of State of such investment (“MOGE Investment Notification”); and (2) a requirement that any U.S. person whose aggregate investment in Burma exceeds \$500,000 provide information as set forth below (“Annual Reporting Requirement”). The second reporting requirement entails two versions: a version for the U.S. Government and a version that will be released publicly.

## **I. MOGE Investment Notification:**

Any U.S. person that has undertaken a new investment pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with the Myanmar Oil and Gas Enterprise (MOGE) must notify the Department of State in writing at [\[\[email\]\]@state.gov](mailto:[]@state.gov) within 60 days of such a new investment.

## **II. Annual Reporting Requirement**

This reporting requirement addresses key U.S. foreign policy concerns in Burma. Reports are intended to provide information on issues of concern to the U.S. Government and will help the U.S. Government assess the impact and effects of investment permitted under GL-17, including on the political transition in Burma. The reporting requirement shall not give rise to any liability beyond that which exists under U.S. law. U.S. persons may wish to use the format below; however, the report is not required to be submitted in any particular form so long as it provides the requested information.

A U.S. person (hereinafter, the “submitter”) shall submit two versions of this report, as follows:

**U.S. Government Report:** The submitter shall submit one version for use by the U.S. Government (the “U.S. Government Report”), containing all of the information requested below (with the exception of item 2, the “Acknowledgement,” which is necessary only for the Public Report). The U.S. Government will not make public the information contained in the U.S. Government Report except to the extent authorized by law. The U.S. Government Report shall be submitted to [\[\[email\]\]@state.gov](mailto:[]@state.gov).

**Public Report:** The submitter shall also submit a second version of the report, covering only the information requested in items numbered 1 through 8 below. The Department of State will make this version of the report publicly available (the “Public Report”). Public Reports shall be submitted to [\[\[email\]\]@state.gov](mailto:[]@state.gov) [OR UPLOADED AT INTERNET URL for upload].

If the submitter determines in good faith that it considers any information covered by items 1 through 8 provided in the U.S. Government Report to be exempt from disclosure under FOIA Exemption 4, it shall take the following steps:

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- (1) It shall designate by appropriate markings such information in the U.S. Government Report, indicate which information so designated is not included in the Public Report, and provide a detailed explanation for withholding this information.
- (2) The submitter's explanation must specifically identify the reasons why the information is either (a) a trade secret; or (b) commercial or financial information that is privileged or confidential, and must provide any arguments as to why the public release of the information would cause substantial harm to the competitive position of the submitter.
- (3) The submitter shall include in the Public Report an acknowledgement that the submitter understands that the Public Report will be made public, and that the submitter has redacted before submission any information it considers in good faith to be exempt under FOIA Exemption 4.

**Due Date:** Reports are due annually on April 1. Each submitter may report on either a fiscal year basis or a calendar year basis, but should identify the time period covered by each report.

## **Reporting Questions:**

1. **Name:** Name of submitter on whose behalf this report is being filed.
2. **Acknowledgement (For the Public Report Only):** The submitter shall include a signed acknowledgement that the submitter understands that the Public Report will be made public, and that the submitter has redacted before submission any information it considers in good faith to be exempt under FOIA Exemption 4.
3. **Point of Contact:** Provide contact information for public inquiries regarding this report.
4. **Overview of Operations in Burma**
  - a. Name(s) of companies, including all subsidiaries, operating in Burma covered by this report.
  - b. Nature of business in Burma;
  - c. Location(s) of operations in Burma; and
  - d. Approximate maximum number of employees in Burma during the reporting period (broken down by Burmese and non-Burmese employees).
5. **Human Rights, Worker Rights,<sup>1</sup> Anti-Corruption, and Environmental Policies and Procedures:** Provide a concise summary or copies of the following policies and procedures as they relate to the submitter's operations and supply chain in Burma. If the submitter does not have such policies or procedures, please indicate by writing "none," "not applicable," or another appropriate response.

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<sup>1</sup> For further information on human rights principles and practices, please refer to the United Nations Guiding Principles on Business and Human Rights, which contains a list of relevant human rights and labor rights instruments, as well as the State Department Annual Country Report on Human Rights Practices for Burma, available at [www.humanrights.gov](http://www.humanrights.gov).

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- a. Due diligence policies and procedures (including those related to risk and impact assessments) that address operational impacts on human rights, worker rights, and/or the environment in Burma;<sup>2</sup>
  - b. Policies and procedures on anti-corruption in Burma;<sup>3</sup>
  - c. Policies and procedures for community and stakeholder engagement in Burma (if you have undertaken any stakeholder engagement to date, please also summarize);
  - d. Policies and procedures related to hearing grievances from employees and local communities, including whether grievance processes provide access to remedies, and how employees and local communities in Burma are made aware of said processes; and
  - e. Global corporate social responsibility policies, including those related to human rights, sustainability, worker rights, anti-corruption, and/or the environment.
6. Arrangements with Security Service Providers<sup>4</sup>: Please provide the following information regarding any arrangements the submitter has with security service providers. If the submitter does not have any arrangements with security service providers, please indicate by writing “none,” “not applicable,” or another appropriate response.
- a. Name(s) of Security Service Provider(s);
  - b. Duties and Responsibilities of Security Service Provider(s);
  - c. Whether Security Service Providers are signatories to the International Code of Conduct for Private Security Service Providers; and
  - d. Any additional information the submitter may wish to disclose about the nature of its policies or practices for engaging security services, e.g., location of engagement, oversight policies and procedures.
7. Property Acquisition: For any purchase or lease of land or other real property in which the submitter (including the submitter’s subsidiaries) either (a) spent more than \$500,000 to purchase or lease the land or other real property, or to purchase or lease any rights related to the land or other real property, or (b) purchased or leased more than 30 acres of land or real property, please provide the information described below. For the purposes of this section, purchases or leases of adjacent or otherwise related real property shall be treated as a single transaction and must be reported on where the cumulative value of the related transactions exceeds \$500,000. If the submitter has made no property acquisitions above these thresholds or does not have any policies or procedures related to the issues below, please indicate by writing “none,” “not applicable,” or another appropriate response.

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<sup>2</sup> For further information on due diligence, see the OECD Guidelines for Multinational Enterprises (“OECD Guidelines”), particularly Section IV. Human Rights, Section V. Employment and Industrial Relations, and Section VI. Environment.

<sup>3</sup> For further information on anti-corruption principles and practices, please refer to the OECD Guidelines, Section VII. Combating Bribery, Bribe Solicitation and Extortion, and the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance.

<sup>4</sup> For the purposes of this report, the term “Security Service Providers” includes any individual or entity whose business activities include the provision of security services either on its own or on behalf of another. This includes the guarding or protecting (whether armed or unarmed) of individuals, objects, or activities, including by not limited to convoys, facilities, designated sites, property and other places, or any other activity for which the personnel carry or operate a weapon in the performance of their duties.

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- a. A concise summary of any policies or procedures used to ascertain land ownership, use rights, dislocation, resettlement, or other claims;
  - b. The city/state or province where the real property was purchased or leased (e.g., “Myitkyina Kachin State”);
  - c. A concise summary of any policies or procedures in place related to the dislocation or resettlement of people with respect to real property acquired by the submitter;
  - d. Any financial/material arrangements made to compensate previous users/residents of such real property (other than to the lessor/owner), of which the submitter is aware; and
  - e. Any information of which the submitter is aware related to any involuntary resettlement or dislocation of people that occurred on real property purchased or leased by the submitter.
8. **Transparency:** Please report total payments during the reporting year to each Government of Burma entity and/or any sub-national or administrative entity that possesses or claims to possess authority over the submitter’s new investment activities in Burma. Payments to each entity should be reported by each separate payment type, including but not limited to royalties, tax obligations, and fees. If the submitter’s aggregate payments to a particular governmental entity during the reporting year are less than \$10,000, it need not report on payments to that entity. If no aggregate payments to a government entity exceeded \$10,000, please indicate by “none,” “not applicable,” or another appropriate response. This reporting requirement is in addition to any other legally required reporting on payments made to government entities.

**NOTE: Items 9-11 below do not need to be included in the Public Report.**

9. **Point of Contact:** Name and contact information of individual(s) responsible for preparing this report. The U.S. Government may request additional or clarifying information.
10. **Military Communications:** To the best of your knowledge, has the submitter, or any individual from or representing the submitter, had meetings or other communications with the armed forces of Burma and/or other armed groups that were material to the submitter’s investments in Burma?<sup>5</sup> If so, please indicate:
- a. Date(s) of meeting and/or communication;
  - b. Name(s) of individual(s), rank, and group(s) affiliation; and
  - c. Nature of and reason for meeting and/or communication.
11. **Risk Mitigation:** If the submitter conducted due diligence with regard to human rights, worker rights, and/or environmental issues, please summarize any risks and/or impacts identified and any steps taken to mitigate them. If the submitter did not conduct any due diligence with regard to human rights, worker rights, and/or environmental issues, please indicate by writing “none,” “not applicable,” or another appropriate response.

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<sup>5</sup> For the purposes of this report, the term “armed forces” and “armed groups” includes the armed forces of the Government of Burma, state-organized militias, and other armed state security forces, as well as non-state armed groups within Burma that are in conflict with or under ceasefires with the Government of Burma.