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Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB).

You may submit comments by the following method:

- E-mail: [moira\\_submission@omb.eop.gov](mailto:moira_submission@omb.eop.gov). You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

# **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 the Treasury Department’s Office of Foreign Assets Control (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 [MOGEnotification@state.gov](mailto:MOGEnotification@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. The report is not required to be submitted in any particular format 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 [BurmaUSGReport@state.gov](mailto:BurmaUSGReport@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. This version of the report will be made publicly available (the “Public Report”). Public Reports shall be submitted to [BurmaPublicReport@state.gov](mailto:BurmaPublicReport@state.gov).

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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 public disclosure under FOIA Exemption 4, it shall take the following steps:

- (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) For each question (1 through 8) in the Public Report, where the submitter has not included information that the submitter included in the U.S. Government Report, the submitter shall indicate in the Public Report that additional information was not disclosed in the Public Report and indicate the basis for not including such information. For example, the submitter could state that additional information was not disclosed in the Public Report because such information is a trade secret exempt from disclosure under FOIA.
- (4) 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.

### **General guidance for completing U.S. Government and Public Reports:**

If the submitter does not have information to report with respect to one or more of the reporting questions below, please note in response to the question(s) that there is no information to report and include a brief explanation. For example, a submitter could state that it is not providing a summary of its workers' rights policies because it does not have formal policies in place.

The [Appendix](#) provides a list of references to international standards, principles, guidance, and other human rights tools that may be useful for establishing the types of policies and procedures referenced herein.

**Due Date:** Reports are due 180 days after the \$500,000 threshold is reached and thereafter annually on July 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. In each report following the initial report, submitter is to report on any changes or updates for each of the Reporting Questions.

### **Reporting Questions:**

1. **Name:** Name of submitter.

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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 from public disclosure 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, Anti-Corruption, and Environmental Policies and Procedures<sup>1</sup>: 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.
  - 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 that address anti-corruption in Burma;<sup>3</sup>
  - c. Policies and procedures that address community and stakeholder engagement in Burma (if the submitter has undertaken any stakeholder engagement to date, also summarize);<sup>4</sup>
  - d. Policies and procedures that address 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;<sup>5</sup>
  - e. Global corporate social responsibility policies, including those that address human rights, sustainability, worker rights, anti-corruption, and/or the environment; and
  - f. Whether and the extent to which the policies and procedures described in Question 5.a through 5.d are applied to, required of, or otherwise communicated to related

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<sup>1</sup> For further information on human rights principles and practices, see the United Nations Guiding Principles on Business and Human Rights at the Appendix, 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 for a non-exhaustive list of the range of rights at issue, available at [www.humanrights.gov](http://www.humanrights.gov).

<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, IFC Performance Standard 1, and the OECD's Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence found at the Appendix.

<sup>3</sup> For further information on anti-corruption principles and practices, see 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 further guidance on stakeholder consultation see IFC Performance Standard 7 and the Good Practice Handbook for Companies Doing Business in Emerging Markets at the Appendix.

<sup>5</sup> For further guidance on grievance processes see Principles 19, 22, and 31 of the UN Guiding Principles on Business and Human Rights found at the Appendix.

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entities in Burma, including but not limited to subsidiaries, subcontractors, and other business partners.

6. Arrangements with Security Service Providers:<sup>6</sup> Provide the below information regarding any arrangements the submitter has with security service providers.
  - a. Name(s) of security service provider(s);
  - b. Duties and responsibilities of security service provider(s); and
  - c. Whether security service providers are signatories to the International Code of Conduct for Private Security Service Providers<sup>7</sup> and/or whether they have been certified to any private security provider national or international standards; and
  - d. A concise summary of due diligence policies or practices for engaging and utilizing security services providers including those focused on human rights and anti-corruption, e.g. oversight policies and procedures and whether security service providers are subject to third-party auditing.<sup>8</sup>
  
7. Property Acquisition: For any purchase, use, or lease of land or other real property, or rights related thereto, by the submitter (including the submitter's subsidiaries) either (a) valued over \$500,000 or (b) larger than 30 acres of land or other real property, provide the information described below. For the purposes of this section, purchase, use, or lease of adjacent or otherwise related land or other real property shall be treated as a single transaction and must be reported where the cumulative value of the related transactions exceeds \$500,000 or is over 30 acres.<sup>9</sup>
  - a. A concise summary of any policies or procedures used to ascertain land or other real property ownership, use rights, dislocation, resettlement, or other claims;
  - b. The city/state or province where the land or other real property was purchased, used, or leased (e.g., "Myitkyina, Kachin State");
  - c. A concise summary of any policies or procedures, including grievance mechanisms, related to the dislocation or resettlement of people with respect to land or other real property
  - d. Any financial/material arrangements made to compensate previous users/residents of such land or other 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.

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<sup>6</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.

<sup>7</sup> For list of signatories to the International Code of Conduct for Private Security Service Providers see: [http://www.icoc-psp.org/uploads/Signatory\\_Companies\\_-\\_December\\_2012\\_-\\_Composite\\_List\\_SHORT\\_VERSION.pdf](http://www.icoc-psp.org/uploads/Signatory_Companies_-_December_2012_-_Composite_List_SHORT_VERSION.pdf)

<sup>8</sup> For guidance for the extractives industry see the Voluntary Principles on Security and Human Rights found at the Appendix.

<sup>9</sup> For guidance in reporting on this section see IFC Performance Standard 5 found at the Appendix.

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8. **Transparency:** Report total payments made by submitter or on its behalf valued over \$10,000 during the reporting year to each Government of Burma entity and/or any sub-national or administrative governmental entity or non-state group that possesses or claims to possess governmental 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, production-sharing arrangements, and fees.<sup>10</sup> If the submitter's aggregate payments to a particular entity during the reporting year are valued at less than \$10,000, there is no need to report on payments to that entity. If no aggregate payments are valued over \$10,000, 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 but a submitter may include this information in the Public Report if the submitter so chooses.

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:** 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 related to the submitter's investments in Burma?<sup>11</sup> If so, 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. (Note: For frequent / regular meetings on similar topics, the submitter can provide one brief summary of issues discussed with a listing of dates under an appropriate header.)
11. **Risk Prevention and Mitigation:** With regard to human rights, worker rights, anti-corruption, and/or environmental issues, summarize any risks and/or impacts identified, any steps taken to minimize risk and to prevent and mitigate such impacts, and policies and practices on risk prevention and mitigation.

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<sup>10</sup> For guidance for members of the extractives industry, see the Extractives Industry Transparency Initiative found at the Appendix.

<sup>11</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.