

PUBLIC SUBMISSION

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Docket: DOS-2012-0046

60-Day Notice of Proposed Information Collection: Reporting Requirements for Responsible Investment in Burma

Comment On: DOS-2012-0046-0001

Agency Information Collection Activities; Proposals, Submissions, and Approvals: Reporting Requirements for Responsible Investment in Burma

Document: DOS-2012-0046-0005

Comment on DOS-2012-0046-0001

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General Comment

See attached file(s)

Attachments

Comment for GL 17

GL-17 is a positive step toward normalizing the relationship between the United States and Burma. However, these are only partial steps on a very complicated and controversial road, and they present some gaps that may prove to adversely affect the people of Burma. By filling these gaps, the Treasury would be in line with recent Whitehouse policy changes that demonstrate that the US Government maintains that human rights protection is non-negotiable, without unduly impacting investment opportunities in an emerging market.

GL-17 is not consistent with Executive Order 13619, signed by President Barack Obama on July 11, 2012, insofar as it fails to adequately recognize the manner in which institutionalized corruption still operates in Burma. Despite the recent advances towards democracy and conflict resolution in Burma, corruption remains entangled with everyday operations. Since Burma's transition to a civil government, CBOs and CSOs have continued to report how rights abusers have learned to obscure the perpetration of abuses and the identity of actors by using proxies or otherwise attenuating the relationship between abusers and victims. For discussion on this trend, please see the reports listed below.

US businesses that conduct business inside Burma will engage with these abuse networks during the tenure of their enterprise. In order for GL-17 to have any practical use to promote the protection of American companies in their activities within Burma, the reporting scheme under GL/17 must be strengthened and its proposed language must include a penalty for noncompliance. One mechanism that can be included, without added cost, is a "name and sham" penalty for when business enterprises fail to comply with GL-17, could commoditize transparency and elevate the reputation of all US investors operating in Burma. Therefore, a balance would be struck between competitive business demands, the national security and emergency concerns underlying Executive Order 13619, shareholder confidence and access to information, and the international obligations of the United States.

Another challenge presented by GL-17 is that its US\$ 500,000 aggregate investment threshold is set too high and will exclude too many enterprises from the reporting requirements. The government of Burma has repeatedly announced its intent to promote small and medium enterprises (SMEs). Using US\$ 500,000, which is 430,000,000 kyat, for a benchmark in a nation like Burma, where civilians are extorted in small amounts like 10,000 kyat, is highly disproportioned to the reality of the human rights condition. US enterprises that fall short of this amount will nevertheless play a role in systemic corruption, especially considering the limited access that foreigners still have to local populations. By requiring more business to report on their activities in Burma, the Treasury would protect transparency for more shareholders, whose investments will carry a real human cost. These shareholders are entitled to such information.

In short, the existing language needs to be strengthened to accurately address the needs of a vulnerable population, and this can be done without imposing unnecessary barriers for business.

Please refer to the following reports:

"Civilian and Military order documents: August 2009 to August 2012," KHRG September 2012 (<http://www.khrg.org/khrg2012/khrg1202.html>)

"Toungoo Interview: Saw H---, April 2011," KHRG September 2012 (<http://www.khrg.org/khrg2012/khrg12b72.html>)

"Papun Situation Update: Dwe Lo Township, February to June 2012," September 2012 (<http://www.khrg.org/khrg2012/khrg12b77.html>)

“The Government Could Have Stopped This,” Human Rights Watch August 2012
(http://www.hrw.org/sites/default/files/reports/burma0812webwcover_0.pdf)

“All the information I've given you, I faced it myself: Rural testimony on abuse in eastern Burma since November 2010” KHRG December 2011
(<http://www.khrg.org/khrg2011/khrg1106.html>)