

(i) Shares of ownership, including an equity interest, in the economic development of resources located in Burma; or

(ii) Participation in royalties, earnings, or profits in the economic development of resources located in Burma.

(b) *Examples:* The following examples are based upon the assumption that neither § 537.204(a) nor § 537.204(b) applies.

(1) A U.S. person may market goods or services in Burma through a sales representative or sales agent, or through a U.S. person or subsidiary established and operating in Burma before May 21, 1997, or through any established foreign (including Burmese) distributorship. The U.S. person may not, however, establish and operate a new business, branch, office or showroom in Burma to market such goods or services or facilitate the establishment of a new foreign entity to do so. This would constitute the development of a commercial resource.

(2) A U.S. person may rent, lease or purchase space in existing buildings in connection with the continued operation of a business in operation prior to the effective date. It may change locations, modify and renovate existing space and upgrade machinery or equipment. Unless pursuant to a pre-effective date agreement or the exercise of specific rights under such agreement, however, the U.S. person may not expand its business operations by opening additional stores, branches, offices or showrooms beyond the number that were in existence immediately prior to May 21, 1997. The U.S. person may not construct a new commercial building to house its business as this would constitute the economic development of land and commercial resources in Burma.

(3) A U.S. person involved in exempt activities may hire and train Burmese employees to carry out such activities. The employment of personnel in Burma under these circumstances is considered the purchase of employment services which is exempt from prohibition under § 537.204. Any training incidental to the performance of the employee's services is likewise exempt. For example, a U.S. person engaged in the sale of copy machines may hire and train a

Burmese employee to carry out activities pursuant to such sales, including office support personnel, personnel to provide after-sale service and maintenance in accordance with the terms of a purchase or lease agreement, sales representatives and supervisory personnel. A U.S. person may not, however, open a business after the effective date, the purpose of which is the sale of vocational skills training in the maintenance of copy machines, as this would constitute the economic development of human resources in Burma.

(4) Contracts for the purchase or sale of services incident to the registration and renewal of patents, trademarks and copyrights are not prohibited by this part.

(5) A U.S. bank is allowed to provide trade financing as a service either to the Government of Burma or to non-governmental entities in Burma, but cannot provide them loans earmarked for economic development of resources in Burma if loan repayment is secured by the project. A U.S. bank can provide development project financing as a service, so long as the financing instruments are not convertible into equity, and do not provide for participation, including as collateral or security, in royalties, earnings, or profits in the economic development of resources located in Burma.

§ 537.409 Approval or other facilitation of a foreign person's investment.

(a) The prohibition contained in § 537.202 against approval or other facilitation of a foreign person's investment in Burma bars any action by a U.S. person that assists or supports a foreign person's activity that would constitute prohibited new investment under § 537.201 if engaged in by a U.S. person. This facilitation prohibition is subject to the exemption for trade in goods, services and technology set forth in § 537.204.

(b) *Examples:* (1) A U.S. corporation is prohibited from brokering, financing, guaranteeing, or approving the entry by any foreign person, including a foreign affiliate, into a contract for the development of, e.g., a natural gas field, a tourist hotel complex, or a rubber plantation in Burma, unless pursuant to the affiliate's exercise of rights

under an agreement entered into prior to the effective date. An independent U.S. contractor, however, may perform brokerage, financing, or guarantee services if under a service contract meeting the conditions of § 537.204.

(2) The sale to a foreign person of a U.S. person's equity or income interest in a development project in Burma constitutes facilitation of that foreign person's investment in Burma, unless pursuant to a pre-effective date agreement. Such a sale, however, is authorized by general license under § 537.504.

(3) A U.S. national or permanent resident alien employed in Burma or in a third country by a foreign person may participate in any decision-making role in an activity by the foreign person that includes economic development of resources located in Burma as exempt employment services pursuant to § 537.204, unless such services are undertaken pursuant to a post-effective date agreement between the foreign person and the Government of Burma or a nongovernmental entity in Burma and:

(i) involve the general supervision and guarantee of the foreign person's performance of a contract for the economic development of resources located in Burma, or

(ii) where the individual U.S. person's compensation is provided for, in whole or in part, from shares of ownership in the development project or participation in royalties, earnings, or profits in the development project.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 537.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see subpart C of part 501 of this chapter.

§ 537.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, un-

less specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 537.503 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

§ 537.504 Divestiture of U.S. person's equity investment in Burma.

Notwithstanding the prohibition in § 537.202 against the facilitation by a U.S. person of a foreign person's investment, all transactions related to the divestiture or transfer to a foreign person of a U.S. person's share of ownership including an equity interest in the economic development of resources located in Burma are authorized. U.S. persons participating in such transactions valued at more than \$10,000 are