

§ 537.204

Burma if the President determines and notifies specified committees of Congress that to do so is in the national interest of the United States. Therefore, the Office of Foreign Assets Control will not issue licenses authorizing transactions prohibited under this section in the absence of such a waiver process. The President's waiver functions and authorities under section 3(b) have been delegated to the Secretary of State.

§ 537.204 Prohibited new investment in Burma.

Except as otherwise authorized, new investment, as defined in § 537.311, in Burma by U.S. persons is prohibited.

NOTE TO § 537.204: Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (*Public Law 104-208*) provides that the prohibition contained in this section may be waived, temporarily or permanently, by the President if he determines and certifies to Congress that the application of this sanction would be contrary to the national interests of the United States. Licenses are thus not available for purposes of authorizing transactions prohibited under this section in the absence of such a waiver determination and certification to Congress.

§ 537.205 Prohibited facilitation.

(a) Except as otherwise authorized, U.S. persons, wherever located, are prohibited from approving, financing, facilitating, or guaranteeing a transaction by a person who is a foreign person where the transaction would be prohibited if performed by a U.S. person or within the United States.

(b) With respect to new investment in Burma, the prohibition against facilitation does not include the entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology unless such contract includes any of the activities described in § 537.311(a)(2), (3) or (4).

NOTE TO § 537.205: This section's prohibitions include, but are not limited to, the approval, financing, facilitation, or guarantee of transactions prohibited by either section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Pub. L. 104-208), or the Burmese Freedom and Democracy Act of 2003 (Pub. L. 108-61). The prohibitions of these two statutes may be waived by the President upon the making of certain determinations and notification to Congress. Therefore, the Office of Foreign Assets Control will not issue licenses authorizing the approval, financing, facilitation, or guarantee of the

31 CFR Ch. V (7-1-08 Edition)

transactions prohibited by these statutes in the absence of such waivers.

§ 537.206 Evasions; attempts; conspiracies.

(a) Any transaction by a U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this part is prohibited.

NOTE TO § 537.206: See § 537.303 for a definition of the term *effective date*.

§ 537.207 Effect of transfers violating the provisions of this part.

(a) Any transfer after July 28, 2003, that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 537.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before July 29, 2003 shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 537.201(a), unless the person with whom such property is held or maintained, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706), this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

NOTE TO PARAGRAPH (d) OF § 537.207: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Except to the extent otherwise provided by law or unless licensed pur-

suant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, at or since 12:01 a.m. eastern daylight time, July 29, 2003, there existed an interest of a person whose property or interests in property are blocked pursuant to § 537.201(a).

§ 537.208 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 537.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 537.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are