

Executive Order 13310 prohibits broadly the provision of financial services to Burma from the United States or by a U.S. person, subject to limited exceptions.<sup>4</sup> Since the President signed the Order, however, Treasury has issued several licenses to permit transactions with Burma for certain specified purposes. For example, Treasury issued licenses authorizing transactions for the conduct of the official business of the United States Government, the United Nations, the World Bank, and the International Monetary Fund, and non-commercial personal remittances of up to \$300 per household per quarter. The exemptions and licenses reflect the judgment of the United States that certain transactions are necessary and appropriate, even within the framework of this sanctions regime.

#### *D. The Proposed Section 311 Special Measures*

The proposed imposition of Section 311 special measures reinforces the existing restrictions on transactions with Burma that are outlined above. Although they are similar in their effect, the proposed Section 311 special measures differ in certain respects and serve distinct policy goals. First, the proposed Section 311 special measures are potentially broader than the existing sanctions in at least one respect—they would apply to all foreign branches of Burmese financial institutions. Second, the purposes served by the Section 311 action differ markedly from the purposes of the economic sanctions described above. This action under Section 311 is premised on the Secretary's determination that Burma poses an unacceptable risk of money laundering and other financial crimes, due to its failure to implement an effective anti-money laundering regime. The goals of this action include protecting the U.S. financial system and encouraging Burma to make the necessary changes to its anti-money laundering regime. The existing sanctions pursuant to Executive Order 13310, on the other hand, were imposed for different reasons, in particular to take additional steps with respect to the government of Burma's continued repression of the democratic opposition.

These underlying purposes for the designation of Burma fuel another intended consequence, namely, to encourage other jurisdictions and financial institutions to take similar

steps to cut off Burma from the international financial system due to the unacceptable risk of money laundering. In addition to stemming the flow of illicit funds from Burma into the United States, the act of naming Burma publicly and formally denying them access to the U.S. financial system is an important statement to the rest of the world about the need for caution in financial dealings with Burma and the need for reform.

Next, this action fulfills an important role of the United States in supporting the multilateral effort to encourage Burma to implement effective anti-money laundering controls. The FATF has called on all members to impose additional countermeasures as a result of Burma's failure to address its money laundering deficiencies. The assessment of Section 311 special measures, premised squarely on the absence of money laundering controls, fulfills this obligation in a way that the existing sanctions cannot.

Finally, the proposed Section 311 special measures incorporate the exemptions from, and licenses issued pursuant to, Executive Order 13310. Thus, U.S. financial institutions may maintain otherwise prohibited correspondent account relationships so long as the maintenance of such accounts is not prohibited by E.O. 13310 and provided that the only transactions conducted on behalf of Burmese financial institutions are those that are otherwise permissible under the existing sanctions regime. The policy of allowing certain transactions under the Executive Order should not be undermined by Section 311 special measures. However, Burma has been designated under Section 311 of the Act due to inadequate anti-money laundering controls, and the fact that the overarching purpose for a transaction is permissible under the Executive Order does not itself reduce the risk of money laundering. Therefore, while the exemptions and licenses are incorporated into the proposed Section 311 special measures, U.S. financial institutions processing such transactions must still conduct enhanced scrutiny to guard against the flow of illicit proceeds.

#### **II. Designation of Burma as a Jurisdiction of Primary Money Laundering Concern**

Based upon a review and analysis of relevant information, consultations with relevant agencies and departments, and a consideration of the factors outlined above, the Secretary has determined that Burma is a jurisdiction of primary money laundering concern. See the

notice published elsewhere in this separate part.

The Secretary has found Burma to be a jurisdiction of primary money laundering concern due to a number of factors, including: (1) Inadequate anti-money laundering controls; and (2) lack of cooperation with U.S. law enforcement agencies in criminal matters.

As provided by Section 311, the Secretary also considered the following:

##### *1. Evidence That Organized Criminal Groups, International Terrorists, or Both, Have Transacted Business in That Jurisdiction*

As set forth in the accompanying Section 311 designation of the two Burmese banks, Myanmar Mayflower Bank and Asia Wealth Bank,<sup>5</sup> the Secretary has information that specific financial institutions within Burma are essentially controlled by and used to facilitate money laundering for organized drug trafficking organizations such as the United Wa State Army<sup>6</sup> and members of the Kokang ethnic group. The Burmese government has failed to take any regulatory or enforcement action against these financial institutions, despite their well-known criminal links. Additionally, there is evidence of activity within Burma involving the counterfeiting of U.S. currency. This activity is believed to be linked to Burmese government officials, and the Burmese government has failed to cooperate with U.S. law enforcement on the matter.

##### *2. The Extent to Which That Jurisdiction or Financial Institutions Operating in That Jurisdiction Offer Bank Secrecy or Special Regulatory Advantages to Non-Residents or Nondomiciliaries of That Jurisdiction*

There are no explicit secrecy provisions within Burmese law. Burma does not have an offshore sector catering to foreign investors or depositors, and the Burmese anti-money laundering law contains customer identification and recordkeeping requirements. However, as noted above, this law cannot be enforced absent implementing regulations, which Burma has failed to issue. Thus, as a practical matter, the laws that would give rise to effective anti-money laundering controls and transparency are unenforceable.

<sup>5</sup> See the notice published in today's edition of the **Federal Register**.

<sup>6</sup> The United States as designated the United Wa State Army as significant narcotics traffickers under the Foreign Narcotics Kingpin Designation Act (the "Kingpin Act"), 21 U.S.C. 1901–1908, 8 U.S.C. 1182.

<sup>4</sup> For example, the prohibition does not extend to transactions relating to certain contracts entered into prior to May 21, 1997. See Executive Order 13310, § 13.