STATUTORY INSTRUMENTS

2004 No. 3333

OVERSEAS TERRITORIES

The Burma (Restrictive Measures) (Overseas Territories) (Amendment) Order 2004

Made - - - -	*16th December 2004*
Laid before Parliament	*10th January 2005*
Coming into force - -	*11th January 2005*

At the Court at Buckingham Palace, the 16th day of December 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833(**a**), the British Settlements Acts 1887 and 1945(**b**), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, commencement and extent

1.—(1) This Order may be cited as the Burma (Restrictive Measures) (Overseas Territories) (Amendment) Order 2004 and shall come into force on 11th January 2005.

(2) In this Order, "the principal Order" means the Burma (Restrictive Measures) (Overseas Territories) Order 2004(**c**).

(3) This Order shall extend to the territories listed in Schedule 1 to the principal Order.

Amendments to principal Order

2.—(1) Article 1(2) of the principal Order is amended by replacing "Articles 3, 4, 5, 7, 8 and 9" in the first line with "Articles 3, 4, 5, 7, 8, 8a and 9".

(2) Article 2(1) of the principal Order is amended by:

(a) inserting, in the appropriate place in alphabetical order, the following definitions:

(**a**) 1833 c. 85.
(**b**) 1887 c. 54 and 1945 c.7.
(**c**) S.I. 2004/1979.

"the European Community" means the customs territory of the European Community as defined in article 3(3) of Council Regulation (EEC) No 2913/92 of 12th November 1992(**a**);

"Gazette" means the official gazette of a Territory or any other form in which official information is normally made available in that Territory;

"listed Burmese state-owned enterprise" means any enterprise as is listed in Annex IV (as modified from time to time) to "the Regulation";

"the Regulation" means Council Regulation (EC) No. 798/2004 of 26 April 2004(**b**) concerning certain restrictive measures in respect of Burma, as amended from time to time.

(3) Article 2(4) of the principal Order is amended by inserting after the words "For the purposes of identifying", the words "a "listed Burmese state-owned enterprise" or" and by inserting after the words "the names and other particulars of such", the words "listed Burmese state-owned enterprises and".

(4) After article 2(4) of the principal Order, this following new subsection is inserted:

"(5) Except where this Order provides otherwise, expressions used in the Regulation which are also used in this Order have the same meaning in this Order as they have in the Regulation.".

(5) After article 2 of the principal Order, the following new article is inserted:

"**European Community matters**

2a. The Governor shall make available to persons in the Territory, in such manner as he may think fit the text of the Regulation, together with the text of any amending Council Regulations, whether those Regulations were made before or after the coming into force of this Order.".

(6) The heading above article 7 of the principal Order is amended by replacing "OR ECONOMIC RESOURCES" with ", ECONOMIC RESOURCES OR INVESTMENT".

(7) After article 8 of the principal Order, the following new article is inserted:

"**Prohibition on investment in Burmese state-owned enterprises**

8a.—(1) Subject to the provisions of this Order, Article 8a of the Regulation shall have effect in the Territory, as if the Territory were a Member State of the European Community and the Regulation were a law of the Territory, so as to prohibit:

(a) the granting of any financial loan or credit to the listed Burmese state-owned enterprises, or the acquisition of bonds, certificates of deposit, warrants or debentures issued by those enterprises; and

(b) the acquisition or extension of a participation in the listed Burmese state-owned enterprises, including the acquisition in full of such enterprises and the acquisition of shares and securities of a participating nature.

(2) Any person who commits a breach of any prohibition in paragraph (1) is guilty of an offence.

(3) Paragraph (1) shall be without prejudice to the execution of trade contracts for the supply of goods or services on usual commercial payment conditions and the usual supplementary agreements in connection with the execution of these contracts such as export credit insurances, as provided by Article 8a(3) of the Regulation.

(**a**) OJ No L 302, 19.10.92, p1 as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ No L 236, 23.9.2003, p33).

(**b**) OJ No L 125, 28.4.2004, p. 4, as amended by Council Regulation (EC) No 1853/2004 of 25 October 2004 (OJ No L 323, 26.10.2004, p.11) and as amended from time to time.

(4) The provisions of paragraph 1(a) shall be without prejudice to the execution of an obligation arising from contracts or agreements concluded before 25 October 2004, as provided by Article 8a(4) of the Regulation.

(5) The prohibition in paragraph 1(b) shall not prevent the extension of a participation in a listed Burmese state-owned enterprise, if such extension is compulsory under an agreement concluded with the listed Burmese state-owned enterprise concerned before 25 October 2004, provided that the Governor, the United Kingdom Treasury and the European Commission shall be informed prior to any such transaction.".

(8) The heading above article 9 of the principal Order is amended by replacing "article 7 or 8(9)" with "article 7, 8a or 8(9)".

(9) Article 9 of the principal Order is amended by replacing "article 7 or 8(9)" with "article 7, 8a(2) or 8(9)".

(10) The first line of article 10 of the principal Order is amended by inserting "an" immediately before "offence".

(11) Article 10(1)(a)(i) of the principal Order is amended by inserting "or a listed Burmese state-owned enterprise" immediately after "listed person".

(12) Article 10(1)(a)(ii) of the principal Order is amended by replacing "article 7, 8(9) or 12(2)" with "article 7, 8a(2), 8(9) or 12(2)".

(13) Article 10(2)(a) of the principal Order is amended by inserting in the first line the words "or a listed Burmese state-owned enterprise" after "a listed person" and by replacing "article 7, 8(9) or 12(2)" with "article 7, 8a(2), 8(9) or 12(2)".

(14) Article 19(1) of the principal Order is amended by inserting "8a(2)," after "7,".

(15) Sub-paragraph 1(1) of Schedule 2 to the principal Order is amended by inserting "8a(2)," after "7," in the second line.

(16) The paragraphs in Schedule 3 to the principal Order are renumbered so as to commence at the number "1" rather than "10".

(17) The paragraphs in Schedule 4 to the principal Order are renumbered so as to commence at the number "1" rather than "42".

(18) Sub-paragraph 1(3) (as so renumbered) of Schedule 4 to the principal Order is replaced with the following:

"(3) Where a person is convicted of an offence under paragraph 5 of this Schedule of failing to furnish or produce a document when requested so to do, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or provide the document.".

(19) Paragraph 4 (as so renumbered) of Schedule 4 to the principal Order is amended by replacing the words "any copy of an extract" in the second line with the words "any copy or extract".

A.K. Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Burma (Restrictive Measures) (Overseas Territories) Order (SI 2004/1979) (the principal Order) to give effect to further restrictive measures in respect of Burma agreed by the European Union in Common Position 2004/740/CFSP (25 October 2004). Council Regulation (EC) No. 798/2004 of 26 April 2004 (the Regulation), as amended by Council Regulation (EC) No 1853/2004 of 25 October 2004, implements these measures in EU Member States and this Order extends them to the British overseas territories listed in Schedule 1 to the principal Order. The measures consist of a ban, with certain exemptions, on new investment in listed Burmese state-owned enterprises.

This Order also makes minor amendments to the principal Order to correct various errors.

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