

**FEDERAL RESERVE BANK
OF NEW YORK**

Fiscal Agent of the United States

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FOREIGN ASSETS CONTROL REGULATIONS
General License for Certain Development Projects in Vietnam

*To All Banks, and Others Concerned,
in the Second Federal Reserve District:*

The Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") has amended the Foreign Assets Control Regulations, 31 CFR Part 500, to permit participation by persons subject to U.S. jurisdiction in certain development projects in Vietnam, and to permit certain bank transactions, effective December 23, 1993. Printed below and on the following pages is an excerpt from the *Federal Register* of December 28, 1993, which contains the official notice of this action.

Questions on this matter should be directed to OFAC, as indicated in the notice.

GEORGE W. RYAN,
Vice President.

Office of Foreign Assets Control

31 CFR Part 500

**Foreign Assets Control Regulations;
Participation in International
Institutions' Development Projects in
Vietnam**

AGENCY: Office of Foreign Assets
Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: This rule amends the Foreign Assets Control Regulations to announce the availability of a general license permitting participation by persons subject to U.S. jurisdiction in development projects in Vietnam formally proposed, approved, executed, funded or sponsored by an international institution listed in a new appendix A to the regulations, subject to certain registration and reporting requirements. Specific licenses may be issued to permit co-financing of or lending to such development projects. A further

general license is added to permit banking institutions subject to U.S. jurisdiction to process transactions of the named international institutions with respect to Vietnam.
EFFECTIVE DATE: December 23, 1993.
FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480), Dennis P. Wood, Chief of Compliance Programs (tel.: 202/622-2490), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the *Federal Register*. By modem dial 202/512-1387 or call 202/512-1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

In support of the President's decision of September 13, 1993, to recognize the recent steps taken by the Vietnamese government and encourage further progress on achieving the fullest possible accounting on U.S. prisoner of war and missing in action cases from the Vietnam war, the Office of Foreign Assets Control ("FAC") is amending the Foreign Assets Control Regulations, 31 CFR part 500 (the "FACR"), to add § 500.576, which generally authorizes the participation by persons subject to U.S. jurisdiction in development projects in Vietnam formally proposed or approved for execution, funding or sponsorship by certain international institutions, such as the International Bank for Reconstruction and Development (the "World Bank"), the Asian Development Bank, the United Nations Development Program, and the World Health Organization. A list of qualified international institutions appears in new appendix A to the FACR.

Once a project (or a feasibility study for a project) has been formally proposed or approved by a qualified international institution for execution, funding or sponsorship by that institution (hereinafter referred to as a "Qualified Project"), persons subject to U.S. jurisdiction may, upon registration with FAC, provide both goods and services in relation to the Qualified Project, as contractors, subcontractors, or suppliers of related goods or services. An initial registration and annual reports are required to be filed with FAC with respect to the authorized transactions, as provided in § 500.576(d) and (e). No specific funding level on the part of qualified international institutions is required. This authorization also permits equity participation with qualified international institutions in Qualified Projects, as well as equity participation by persons subject to U.S. jurisdiction in entities in Vietnam, such as joint venture corporations, established exclusively to participate in Qualified Projects. Co-financing of or lending to Qualified Projects in Vietnam may be authorized by specific license on a case-by-case basis. Certain preparatory

transactions may be undertaken by persons subject to U.S. jurisdiction with respect to proposed projects under specific licenses issued pursuant to FACR § 500.574, concerning executory contracts in which Vietnam or a Vietnamese national has an interest.

The authorization in § 500.576 does not permit performance of contracts or participation in development projects or feasibility studies for development projects prior to the formal proposal or approval of the projects or studies by a qualified international institution. Such participation is prohibited unless otherwise authorized, for example, by § 500.574 with respect to certain executory contracts in which Vietnam or a Vietnamese national has an interest. Section 500.413 is added to provide examples interpreting the scope of the authorization contained in this section.

Exports or reexports to Vietnam of goods and technical data or of the direct products of technical data (regardless of U.S. content), in connection with activities authorized by FAC with respect to Qualified Projects may require additional authorization from the U.S. Department of Commerce pursuant to the Export Administration Regulations, 15 CFR parts 768-799.

The FACR are also amended to add § 500.577, authorizing by general license banking institutions subject to United States jurisdiction to process all transactions of qualified international institutions with respect to Vietnam.

Because the FACR involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

This rule is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act. For this reason, the collection of information contained in FACR § 500.576(c) has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1501-****. Comments concerning the average annual burden and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503, with copies to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220. Any such comments should be

submitted not later than February 28, 1994.

The collection of information in this rule is contained in FACR § 500.576(d) and (e). This information is required by the Office of Foreign Assets Control for compliance and enforcement purposes. This information will be used to determine the identity of organizations availing themselves of the general license in § 500.576, to determine whether persons subject to the FACR are in compliance with applicable requirements, and to determine whether and to what extent enforcement action is appropriate. The likely respondents are businesses.

Estimated total annual reporting and or recordkeeping burden: 600 hours.

The estimated annual burden per respondent/recordkeeper is expected to be 4 hours.

The estimated number of respondents and/or recordkeepers: 150.

Estimated annual frequency of responses: 1.

List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banks, Banking, Blocking of assets, Cambodia, Communist countries, Currency, Exports, Finance, Foreign Claims, Foreign investment, Foreign trade, International organizations, North Korea, Penalties, Reporting and recordkeeping requirements, Securities, Services, Telecommunications, Travel restrictions, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 1-44; E.O. 9193, 3 CFR, 1938-1943 Comp., p. 1174; E.O. 9989, 3 CFR, 1943-1948 Comp., p. 748.

Subpart D—Interpretations

2. Section 500.413 is added to subpart D to read as follows:

§ 500.413 Participation in certain development projects in Vietnam.

The following examples illustrate the scope of the authorization in § 500.576 for dealings in property in which Vietnam or a Vietnamese national has an interest with respect to development projects in Vietnam formally proposed or approved for execution, funding or sponsorship by a qualified international institution listed in appendix A to this part ("Qualified Projects").

Example # 1: The Government of Vietnam ("Vietnam") approaches a U.S. financial

consulting firm (the "U.S. Consulting Firm") for advice on building cement plants in Hanoi and Ho Chi Minh City. The project might be eligible for funding by the Asian Development Bank (the "ADB"), and Vietnam wants the U.S. Consulting Firm's assistance in conducting a feasibility study for submission to the ADB. Since the project has not yet been formally proposed or approved for funding by the ADB, no involvement of the U.S. Consulting Firm is authorized pursuant to § 500.576. However, had the ADB formally proposed the project in its monthly *ADB Business Opportunities* as a project being considered for funding, or had it funded the feasibility study, § 500.576 would authorize the U.S. Consulting Firm's transactions.

Example # 2: Upon ADB approval of funding for the cement plant project, a U.S. company (the "U.S. Company") forms a joint venture with a Vietnamese company to bid on construction of the cement plants in Hanoi and Ho Chi Minh City. The joint venture's bid is successful, and it purchases construction equipment from the United States, financed by a U.S. bank and insured by a U.S. company. Several items are sourced from the United States during construction, including cement equipment, which is covered by a ten-year service and maintenance agreement. The joint venture agreement calls for the continued management and operation of the plants by the U.S. Company after completion, and for the insurance of the plants by a U.S. insurance company. Each of these transactions with respect to the Qualified Project is authorized by § 500.576.

Example # 3: The International Finance Corporation ("IFC") offers equity investment in a Vietnamese company to finance environmental safeguards for drilling operations in offshore oil fields. Various U.S. investors, including venture capital companies, brokerage firms, and investment banks contribute capital and receive shares in the Vietnamese company. This equity investment in a Qualified Project is authorized by § 500.576. The U.S. companies purchasing these shares as part of the IFC-sponsored development project may hold or resell them, including resale to other persons subject to U.S. jurisdiction. Shares acquired by entities not subject to U.S. jurisdiction may not then be purchased or repurchased by a person subject to U.S. jurisdiction.

Example # 4: (a) An Indonesian company (the "Contractor") is a successful bidder on a Qualified Project, and hires a U.S. law firm to represent it in contract negotiations with Vietnam to build a fish processing and canning facility in Vietnam funded by the World Bank. The law firm may represent the Contractor throughout the course of the project pursuant to § 500.576, once the project has been formally proposed or approved for funding by the World Bank.

(b) Once the Qualified Project is underway, the Contractor purchases equipment manufactured in France by a French company. The long-term servicing of the equipment, however, will be provided by the French company's U.S. subsidiary. The service

transactions are authorized pursuant to § 500.576.

(c) After the processing facility is completed, Vietnam hires a U.S. marketing firm to develop marketing strategies for the product worldwide. It further asks the marketing firm to execute the strategies it devises and to represent the product in South-East Asia, including the domestic market in Vietnam. The marketing firm in turn would hire the brokerage services of a U.S. citizen domiciled in Thailand for the sale of the product to that country. These transactions are outside the scope of § 500.576, and violate § 500.201, because they are not directly incident to the Qualified Project funded by the World Bank.

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

3. Section 500.576 is added to subpart E to read as follows:

§ 500.576 Authorization of transactions concerning certain development projects in Vietnam.

(a) All transactions by persons subject to U.S. jurisdiction in connection with participation in development projects in Vietnam formally proposed or approved for execution, funding or sponsorship by the international institutions listed in appendix A to this part ("Qualified Projects") are authorized. For purposes of this section, Qualified Projects include investment projects, structural adjustment lending, sector adjustment lending, International Monetary Fund balance-of-payments support, and general development assistance including grants, technical assistance, and loans.

(b) Persons subject to U.S. jurisdiction may provide both goods and services to any party contracting to participate in a Qualified Project pursuant to the authorization contained in this section.

(1) Services may include financial, legal, consulting, insurance, shipping and other services.

(2) Persons subject to U.S. jurisdiction may participate in Qualified Projects as suppliers, contractors, or subcontractors, and through joint ventures with third-country nationals and Vietnamese nationals.

(3) Persons subject to U.S. jurisdiction may finance, or guarantee the performance of, activities of U.S. participants in a Qualified Project; co-financing of or lending to the Qualified Project itself by a person subject to U.S. jurisdiction may be authorized by specific license pursuant to § 500.801. Illustrative examples of transactions covered by this section are set forth in § 500.413.

(c) Except as otherwise authorized, persons subject to U.S. jurisdiction may not participate in development projects in Vietnam that are bilaterally funded and administered, or in projects or feasibility studies prior to formal proposal or approval by a qualified international institution for its involvement in the project or study. If a qualified international institution formally proposes but thereafter rejects, terminates, or abandons a project, the project shall no longer constitute a Qualified Project for purposes of this section. Except as otherwise specifically authorized pursuant to this part, persons subject to U.S. jurisdiction may not enter into any new commitments with respect to the project after the date of such rejection, termination, or abandonment. In addition, this section does not authorize:

(1) the importation of Vietnamese-origin goods into the United States, except as required to honor service or warranty contracts associated with Qualified Projects;

(2) offshore transactions of persons subject to U.S. jurisdiction involving the sale of Vietnamese-origin goods between Vietnam and third countries, or among third countries;

(3) flights into or out of Vietnam by aircraft owned or controlled by persons subject to U.S. jurisdiction, except when such persons transport, on aircraft they own, only passengers or cargo associated with a Qualified Project in which such persons are participating pursuant to this section;

(4) the use in Vietnam of credit cards issued by a U.S. banking institution; or

(5) a debit to a blocked account.

Example: A Vietnamese highway project feasibility study financed by a third-country development agency is not a Qualified Project for purposes of this section. However, the feasibility study would be a Qualified Project, notwithstanding the bilateral funding, if the International Development Association had formally proposed the highway project as one under consideration for funding in its *Monthly Operational Summary of World Bank and IDA Proposed Projects*.

(d) Within 10 business days after entering into an agreement for goods, services, financing, investment, or other participation in or related to a Qualified Project, the person(s) subject to U.S. jurisdiction entering into the agreement must register with the Office of Foreign Assets Control, Compliance Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220. The registration shall reference the fact that the agreement was entered into pursuant to 31 CFR 500.576(a), and shall provide:

(1) the name, address, telephone and facsimile numbers, and nationality of the person(s) subject to U.S. jurisdiction;

(2) if the reporting party is not an individual, the name, address, telephone and facsimile numbers of the individual to contact for further information,

(3) the name of the international institution listed in appendix A formally proposing, approving, executing, funding, or sponsoring the project;

(4) the name and a brief description of the project in Vietnam (with any contract, project, request for bid, or other identifying number);

(5) a brief description of the activity covered by the agreement, and the contract value; and

(6) if the reporting party is a subcontractor, the prime contractor's name, address, and nationality, and those of all intermediate subcontractors. Registration is not required of agencies of the Federal Government participating in Qualified Projects.

(e) Upon registration meeting the requirements of paragraph (d) of this section, the Office of Foreign Assets Control will assign a registration number to the contract involved. This number should be referenced in all funds transfers and other banking transactions that take place through banks subject to U.S. jurisdiction, and in all U.S. export documents, in connection with the Qualified Project in Vietnam in order to avoid the blocking of such funds and to facilitate export transactions.

(f) Annual reports must be filed with the Office of Foreign Assets Control on the anniversary of the issuance of a contract registration number, briefly describing the status of the project and any material changes in the information originally provided.

Note to § 500.576: Exports or reexports to Vietnam of goods and technical data, or of the direct products of technical data (regardless of U.S. content), in connection with activities licensed by FAC may require authorization from the U.S. Department of Commerce pursuant to the Export Administration Regulations, 15 CFR parts 768-799.

4. Section 500.577 is added to subpart E read as follows:

§ 500.577 Authorization of bank transactions with respect to Vietnam by certain international organizations.

All transactions by banking institutions subject to U.S. jurisdiction incidental to the processing of transactions of the international institutions identified in appendix A

with reference to Vietnam are authorized.

Example: A transfer to Vietnam or a Vietnamese national of funds from the U.S. account of a qualified international institution listed in appendix A to this part, for a program, rent or salary payment, is not blocked under this part.

5. Appendix A is added to the end of part 500 read as follows:

Appendix A to Part 500—Qualifying International Institutions

- Asian Development Bank (ADB)
- Food and Agricultural Organization (FAO)
- International Bank for Reconstruction and Development (IBRD, the "World Bank")
- International Civil Aviation Organization (ICAO)
- International Development Association (IDA)
- International Finance Corporation (IFC)
- International Fund for Agricultural Development (IFAD)
- International Labor Organization (ILO)
- International Maritime Organization (IMO)
- International Monetary Fund (IMF)
- Multilateral Investment Guarantee Association (MIGA)
- UN Capital Development Fund (UNCDF)
- UN Children's Fund (UNICEF)
- UN Development Fund for Women (UNDFW)
- UN Development Program (UNDP)
- UN Economic & Social Commission for Asian and the Pacific (UNESCAP)
- UN Education, Scientific and Cultural Organization (UNESCO)
- UN Environment Program (UNEP)
- UN Food Program (UNFP)
- UN Industrial Development Organization (UNIDO)
- UN International Drug Control Program (UNIDCP)
- UN Population Fund (UNPF)
- World Health Organization (WHO)
- World Meteorological Organization (WMO)

Dated: December 17, 1993.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.

Approved: December 20, 1993.

John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

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