

President Obama Terminates U.S. Sanctions on Burma

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client advisory

On October 7, 2016, President Obama issued an Executive Order terminating the Burma sanctions. This Executive Order implements the President's September 14, 2016 announcement of the intention to lift the sanctions.

The lifting of sanctions is comprehensive. The White House terminated the national emergency with respect to Burma and revoked the executive orders that were the basis for the sanctions. The Treasury Department Office of Foreign Assets Control ("OFAC") Burma Sanctions Regulations ("BSR") no longer have effect, and OFAC has removed all parties from the Specially Designated Nationals ("SDN") list who were listed under the Burma sanctions program. In parallel, Treasury's Financial Crimes Enforcement Network ("FinCEN") issued an administrative exception to the USA Patriot Act authorizing U.S. financial institutions to maintain correspondent accounts with Burmese banks.

OFAC Action

OFAC announced its intention to formally remove the BSR (31 C.F.R. Part 537) from the Code of Federal Regulations, effective immediately. In concert with the Executive Order, OFAC removed all persons from the SDN list that had been designated under the "[BURMA]" sanctions program tag. Further, OFAC removed Burma as a program option on its web-based screening tool, the Sanctions List Search. The impact of the SDN removals means that all property of persons formerly designated under the Burma sanctions is now unblocked and can be released, transferred or otherwise dealt in. Furthermore, U.S. persons are no longer prohibited from engaging in transactions with these parties from this point forward. (However, OFAC noted that any enforcement investigations and activities relating to violations occurring while the sanctions were in effect are not impacted.)

As a cautionary note, there continue to be a number of SDNs located in Burma subject to sanctions under OFAC's other sanction regimes (e.g., Foreign Narcotics Kingpin Sanctions Regulations). U.S. persons continue to be prohibited from transactions with entities sanctioned under one of OFAC's other sanctions regimes.

In addition to the lifting of the BSR and the unblocking of SDNs, the new policy now permits the importation of Burmese-origin jadeite and rubies, as well as jewelry made with these items. See, Termination of Emergency with Respect to the Actions and Policies of the Government of Burma, Oct. 7, 2016 (revoking Executive Order 13651, Aug. 6, 2013).

Finally, U.S. persons engaging in "new investment" in Burma are no longer required to file public reports with the U.S. State Department regarding human rights practices, although they may continue to do so voluntarily. See, Termination of Emergency with Respect to the Actions and Policies of the

Government of Burma, Oct. 7, 2016 (revoking Executive Order 13047, May 20, 1997).

FinCEN Action

In 2003, pursuant to Section 311 of the USA PATRIOT Act, FinCEN designated Burma as a jurisdiction of primary money laundering concern. This designation restricted the ability of U.S. financial institutions to maintain correspondent accounts with Burmese financial institutions. FinCEN's Burma rule contained an exception to this designation for any activities authorized by OFAC, and over the past few years OFAC had issued general licenses authorizing certain transactions in recognition of the political progress in Burma -- the effect of which was to authorize U.S. banks to maintain correspondent accounts with Burma. In light of the withdrawal of the BSR and the corresponding removal of those general licenses, FinCEN issued "exceptive relief" to continue to give effect to the authorization for the maintenance of correspondent accounts.

In its October 7 action, FinCEN issued an exception to its Burma rule for U.S. correspondent accounts, provided that Burmese accounts on the other side are subject to the enhanced due diligence obligations under Section 312 of the USA PATRIOT Act. The operational effect of this exemption is to preserve the status quo for U.S. banks. FinCEN has stated that it still has concerns with respect to Burma's banking system, and one can expect that FinCEN will require broader reform before lifting its designation against Burma.

Conclusion

The complete lifting of Burma sanctions means more opportunities for doing business in Burma. However, it is still important to screen all parties, as some Burmese parties remain on the SDN list under other sanctions programs. Further, heightened due diligence and know-your-customer practices will continue to be an important part of any company's operations in Burma, as the U.S. government continues to recognize Burma as having significant problems with corruption, lack of transparency, money-laundering, and drug trafficking.

For more information, please contact:

F. Amanda DeBusk, *Partner*
+1 (202) 721-4790
amanda.debusk@hugheshubbard.com

Melissa Duffy, *Partner*
+1 (202) 721-4689
melissa.duffy@hugheshubbard.com

Michael A. Grant, *Associate*
+1 (202) 721-4623
michael.grant@hugheshubbard.com

Tyler Grove, *Associate*
+1 (202) 721-4625
tyler.grove@hugheshubbard.com

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Hughes Hubbard & Reed

Hughes Hubbard & Reed LLP
A New York Limited Liability Partnership | One Battery Park Plaza
New York, New York 10004-1482 | +1 212-837-6000

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