

# Burma (Myanmar) Sanctions

On May 18, 2016, the U.S. government took further steps to ease its sanctions against Burma (Myanmar), although stopping short of totally lifting the sanctions. The U.S. Treasury Department, Office of Foreign Assets Control ("OFAC") lifted sanctions against several banks and state-owned businesses. OFAC also eased restrictions to make it easier for U.S. persons to live and work in Myanmar. In addition, the State Department announced that it is working to raise the size of an investment that will trigger investment reporting requirements - from \$500,000 to \$5 million.

At the same time, as part of the effort to support further change in Myanmar, the U.S. added companies owned by blocked parties to the list of prohibited parties and renewed the presidential declaration of a national emergency with respect to Myanmar, which is the basis for sanctions.

Below is a brief summary of the changes, followed by a discussion of sanctions remaining in effect and their impact of companies operating in Myanmar. For more information, see OFAC Press Release, "**Publication of Burma General Licenses, Burma Removals, and Burma Designations,**" May 17, 2016.

## Summary of Changes:

### **Relaxation of Sanctions:**

- **Banks.** OFAC removed three banks from its list of sanctioned parties, i.e., Specially Designated Nationals ("SDNs"), and added two others that remain on the SDN list to a general license authorizing U.S. persons to engage in most transactions with them (but not new investment). For businesses, it is safer to do business with banks that are not listed rather than those that are on the list but given a waiver through a general license.
  - o Those removed from the SDN list are: Myanma Economic Bank, Myanma Investment and Commercial Bank, and Myanmar Foreign Trade Bank. See OFAC Press Release
  - o Those remaining on the SDN list, but added to a general license (previously General License 19) now incorporated in the Burmese Sanctions Regulations, are: Innwa Bank and Myawaddy Bank. See 31 CFR § 537.531.
  - o As a practical effect, the removal of Myanma Economic Bank's SDN status also resulted in the removal of sanctions from the Yangon Stock Exchange, which is publicly reported to be 51% owned by the bank.
- **State-Owned Companies.** OFAC removed the following entities from its SDN list: Cooperative Export Import Enterprise, Myanmar Gem Enterprise, Myanmar Timber Enterprise, Myanmar Pearl Enterprise, No. 1 Mining Enterprise, No. 2 Mining Enterprise, No. 3 Mining Enterprise. See OFAC Press Release.
- **U.S. Persons Residing in Burma.** OFAC added a new general license to its regulations, permitting U.S. persons residing in Burma to pay for rent and other living expenses and for the acquisition of goods or services for personal use. 31 C.F.R. § 537.525. However, the employment of an SDN by a U.S. person is still prohibited.
- **Trade Related Transactions.** OFAC extended indefinitely an authorization allowing transactions ordinarily incident to exports to or from Myanmar. The practical impact of this authorization is to enable the payment of port fees, shipping and handling charges, and other incidental transactions in ports and other infrastructure owned or controlled by SDNs. The authorization also has been expanded to allow transactions incident to the movement of goods within Burma, such as transport from a warehouse in Burma for further distribution to retail outlets in Burma. The authorization previously was in General License 20 and with these changes is now incorporated in the Regulations at 31 C.F.R. § 537.532.

### **New Sanctions Imposed:**

- OFAC added to the SDN list six companies that are owned 50 percent or more by Steven Law or Asia World Co. Ltd., both of which already were on the SDN list. The designated entities are: Asia Mega Link Services Co., Ltd.; Global World Insurance Company Limited; Green Asia Services Co. Ltd.; Pioneer Aerodrome Services Co., Ltd.; and Shwe Nar Wah Company Limited.

### **Sanctions Remaining in Effect:**

- U.S. persons remain prohibited, in connection with the provision of security services, from exporting financial services to the Ministry of Defense, including state or non-state armed groups.
- U.S. persons cannot enter into new investments with (a) the Ministry of Defense and other state or non-state armed groups, or (b) SDNs (including the banks that remain designated but that are eligible for other transactions under the general license).
- The State Department's "Reporting Requirements on Responsible Investment in Burma," still apply to U.S. persons engaging in new investments in Burma if the investment of \$500,000, although the State Department plans to move the threshold to \$5,000,000 in the coming weeks. Reporting is also required for any new investment involving Myanmar Oil and Gas Enterprise ("MOGE").
- Sanctions prohibit the importation into the United States of any jadeite or rubies mined or extracted from Myanmar and any jewelry made from Myanmar jadeite or rubies.

### **Impact on U.S. Companies Operating in Myanmar:**

Companies that have, or are contemplating, operations in Myanmar need to remain vigilant in two areas: (1) third party screening and due diligence, and (2) tracking, and reporting when necessary, any new investments in Myanmar.

While these recent changes have made it easier to do business with Myanmar, the U.S. government still maintains restrictions on certain transactions involving the Myanmar military, or other paramilitary type groups, as well as any dealings with SDNs. U.S. persons may not directly or indirectly engage in prohibited transactions, including providing financing, approvals, or other facilitation for such transactions even if conducted by non-U.S. persons.

U.S. companies also should carefully review existing or proposed transactions in Myanmar to evaluate whether they might meet the regulatory definition of new investment and thus trigger possible reporting requirements. For companies that determine they are engaging in new investment, it is important to implement a system for tracking the investment so that any necessary reporting is timely filed once the monetary thresholds are reached.

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