

Burma Opens for Business, but Companies Must Look Before They Leap

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Export Controls and Sanctions Alert

On October 7, 2016, the President issued an [Executive Order](#) terminating the national emergency with respect to Burma as well as the Burmese Sanctions Regulations (BSR). President Obama had previously [announced](#) his intentions to do so in mid-September, during a meeting in Washington, D.C., with State Counsellor Daw Aung San Suu Kyi.

In the Executive Order, the President cited a number of factors supporting the termination of sanctions, including:

- Burma's substantial advances to promote democracy;
- Historic elections in November 2015 that resulted in the former opposition party, the National League for Democracy, winning a majority of seats in the national parliament and the formation of a democratically elected, civilian-led government;
- The release of many political prisoners; and
- Greater enjoyment of human rights and fundamental freedoms, including freedom of expression and freedom of association and peaceful assembly.

Companies should review these changes to sanctions carefully as certain individuals and entities in Burma remain on OFAC's Specially Designated Nationals List (SDN List) for other reasons (e.g. narcotics trafficking), such as Yangon Airways Company, Limited, Hong Pang General Trading Company, Limited, and Tet Kham Construction Company, Limited. In addition, the Financial Crimes Enforcement Network (FinCEN) issued exemptive relief to its Section 311 measures imposed against Burma; the relief allows U.S. financial institutions to maintain correspondent accounts for Burmese institutions, so long as they conduct appropriate due diligence on such accounts.

Sanctions Termination

In addition to terminating the BSR, the President waived financial and blocking sanctions in the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008. As a result of the Executive Order:

- All SDNs designated as [BURMA] only have been removed (but some Burmese SDNs remain designated for narcotics trafficking or other reasons);

- All property blocked under the BSR is now unblocked;
- The ban on importation into the US of Burmese-origin jadeite and rubies has been revoked;
- All OFAC sanctions regarding banking or financial transactions with Burma are no longer in effect;
- Compliance with the State Department's Responsible Investing Reporting Requirements is now voluntary, not mandatory.

Financial Sector Restrictions Largely Lifted

In addition to OFAC, FinCEN has provided **exceptive relief** to the PATRIOT Act Section 311 measures imposed against Burma due to the agency's 2003 finding that Burma is a country of primary money laundering concern. U.S. financial institutions may now open correspondent accounts for Burmese banking institutions, subject to completing due diligence as specified under FinCEN regulations.

Remaining Restrictions

As noted above, a number of Burmese entities and individuals remain on OFAC's SDN List, primarily for narcotics trafficking, as well as two North Korean individuals **linked** to that country's weapons of mass destruction program. Companies considering re-entering Burma should ensure that they have policies and procedures in place to screen transactions for SDNs and other restricted parties.

FinCEN also noted remaining concerns regarding Burma's progress on money laundering, narcotics trafficking, and corruption issues. Companies should assess potential risks under U.S. anti-money laundering and anti-corruption regulations before engaging in transactions with Burmese parties or maintaining such correspondent accounts with Burmese banking institutions.

Most items listed on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) require an export license from the Commerce Department's Bureau of Industry and Security (BIS) for export or re-export to Burma, as the Executive Order makes no changes to the EAR's licensing requirements with respect to Burma.

Exports of defense articles and services to Burma remain subject to a U.S. arms embargo, and the State Department's Directorate of Defense Trade Controls (DDTC) maintains a policy of denial with respect to such requests.

Hogan Lovells continues to monitor the latest developments in economic sanctions and export controls. Please contact us if you have any questions.

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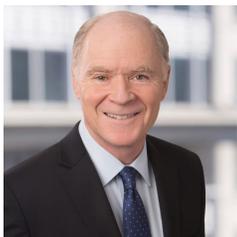
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