

ALERTS

US Eases Sanctions on Burma

May 31, 2016

On May 17, 2016, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") announced significant amendments to the Burmese Sanctions Regulations, 31 C.F.R. part 537 ("BSR"), and updated the Specially Designated Nationals and Blocked Persons ("SDN") List. These changes are intended to support investment and trade in Burma (also known as Myanmar), and follow Burma's peaceful and competitive elections in November 2015 and the subsequent political transition in April 2016. As a result of the new and expanded general licenses, remaining U.S. economic and financial sanctions targeting Burma are now more narrowly focused on transactions with the approximately 100 persons on the SDN List, as well as any entity owned in the aggregate, directly or indirectly, 50 percent or more by one or more such persons. Accordingly, while the relaxation of U.S. sanctions creates new opportunities for companies to do business in Burma, those companies should continue to exercise caution to ensure compliance with U.S. law.

Financial Institutions in Burma

OFAC's delisting actions and regulatory amendments now authorize most transactions with Burmese financial institutions. Indeed, only a few restrictions remain related to banks in Burma. U.S. persons now may engage in transactions with non-blocked Burmese banks. The permitted transactions include transferring funds to or from, opening and maintaining an account, and entering into new investment (as defined by 31 C.F.R. § 537.311) with such banks, subject to certain requirements, including potential reporting requirements. Further, OFAC expanded a general license to allow *most* transactions — including opening and

maintaining accounts and conducting a range of other financial services — with the four Burmese banks that remain on the SDN List: Asia Green Development Bank, Ayeyarwady Bank, Innwa Bank and Myawaddy Bank. However, the regulations do not authorize new investment in those four blocked banks or the exportation of financial services to the Burmese Ministry of Defense or any state or non-state armed group in connection with the provision of security services. Concurrently, OFAC removed Myanmar Economic Bank and Myanmar Investment and Commercial Bank from the SDN List.

Further, the special measures against Burma imposed under Section 311 of the USA PATRIOT Act do not apply to the operation of correspondent accounts for Burmese banking institutions, or to transactions that are conducted through such accounts. U.S. financial institutions processing such transactions remain obligated to conduct enhanced due diligence under Section 312 of the USA PATRIOT Act.

Trade-Related Transactions

To facilitate commerce into and throughout Burma, and to bolster longer-term trade and commercial opportunities for U.S. and Burmese exporters, OFAC extended indefinitely General License 20. This general license authorizes transactions “ordinarily incident” to the exportation of goods, technology or non-financial services to or from Burma involving blocked persons and SDN-owned entities. For example, U.S. companies, including financial institutions, may participate in trade finance transactions and pay port fees as well as shipping and handling charges associated with sending goods to or from Burma. However, transactions to, from, or on behalf of an SDN, or entities majority owned by SDNs are not authorized.

These amendments do not impact the prohibition on the importation into the United States of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma.

Personal Transactions by U.S. Persons

To make it easier for U.S. persons to reside and work in Burma, OFAC added a general license to the BSR to allow U.S. persons residing in Burma to pay rent and other living expenses and buy goods and services for personal use that would otherwise be prohibited under the BSR. U.S.

persons may not, however, engage in transactions related to employment by a person on the SDN List.

Additions to the SDN List

To incentivize further democratic reforms and maintain pressure on targeted individuals and entities and the military, OFAC added six companies to the SDN List that are owned 50 percent or more by Steven Law or Asia World Co. Ltd., persons who remain on the SDN List. These actions demonstrate that the Obama Administration will maintain targeted sanctions against specific individuals and entities in Burma.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the following attorneys: *Betty Santangelo, Gary Stein, Peter H. White, Seetha Ramachandran, Michael P. Court and Matthew J. Moses.*

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