

US Further Eases Burma Sanctions

Skadden

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If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Jamie L. Boucher

Washington, D.C.
202.371.7369
jamie.boucher@skadden.com

William J. Sweet, Jr.

Washington, D.C.
202.371.7030
william.sweet@skadden.com

Eytan J. Fisch

Washington, D.C.
202.371.7314
eytan.fisch@skadden.com

Katherine Nakazono

Washington, D.C.
202.371.7361
katherine.nakazono@skadden.com

Joseph M. Sandman

Washington, D.C.
202.371.7355
joseph.sandman@skadden.com

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1440 New York Avenue, N.W.
Washington, D.C. 20005
202.371.7000

Four Times Square
New York, NY 10036
212.735.3000

skadden.com

In response to Burma's peaceful and competitive elections in November 2015, on May 18, 2016, the Department of the Treasury's Office of Foreign Assets Control (OFAC) further eased U.S. sanctions against Burma (Myanmar). These changes to the Burmese Sanctions Regulations (BSR) are the latest in a series of efforts by the U.S. government to incentivize the democratic reforms occurring in Burma, as announced by President Barack Obama in May 2012. Since 2012, OFAC has issued several general licenses to ease certain sanctions on Burma, including authorizing the exportation of U.S. financial services to Burma, permitting new U.S. investment in Burma and authorizing the importation of most Burmese-origin goods.

The changes that went into effect on May 18, 2016, seek to promote economic growth in Burma, support further political reforms, and maintain pressure on targeted individuals and entities and the Burmese military. Specifically, OFAC issued regulatory amendments authorizing certain trade-related transactions, most transactions involving Burma's sanctioned financial institutions and certain transactions related to U.S. persons residing in Burma. OFAC also removed 10 state-owned enterprises from the Specially Designated Nationals and Blocked Persons List (SDN List) and identified several entities as owned 50 percent or more by persons that remain on the SDN List.

Despite these changes, some U.S. sanctions on Burma remain in place. Numerous entities in Burma are owned by persons on the SDN List. Any entity that is 50 percent or more owned, whether individually or in the aggregate, directly or indirectly, by one or more persons on the SDN List also is subject to the same sanctions, even if the entity is not itself listed. Similarly, restrictions remain on certain dealings with the Burmese Ministry of Defense and state or nonstate armed groups, including the military. Companies should therefore continue to act with caution in business dealings that involve Burma to ensure they know with whom they are dealing. OFAC is expected to enforce all of the restrictions that remain in place.

Key changes implemented by the regulatory amendments are highlighted below.

Trade-Related Transactions

OFAC added General License Number 20, which was issued in December 2015 for a six-month period, to the BSR and removed the time limitation. This general license authorizes certain transactions ordinarily incident to exports to or from Burma that are otherwise prohibited because they involve a blocked individual or entity. OFAC also expanded the general license to authorize transactions ordinarily incident to the movement of goods within Burma, provided the goods are not being sent to, from or on behalf of certain persons whose property and interests in property are blocked. OFAC intends for the authorizations to facilitate commerce with and within Burma, including expanding trade opportunities for U.S. and Burmese exporters.

Banking-Related Transactions

Under the recent changes to the BSR, few restrictions remain related to banks in Burma. OFAC has expanded the authorization that was first issued under General License Number 19 and later included in the BSR, permitting most transactions, including opening and maintaining accounts, involving certain major Burmese financial institutions included on the SDN List. The general license currently authorizes most transactions involving Asia Green Development Bank, Ayeyarwady Bank, Innwa Bank and Myawaddy Bank. The general license does not authorize any new investment in or with the four financial institutions. It does, however, authorize the operation of correspondent accounts for Burmese banking institutions and transactions that are conducted through

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such accounts, despite the special measures against Burma imposed under Section 311 of the Patriot Act.

In addition, OFAC has removed three state-owned financial institutions — Myanmar Economic Bank (MEB), Myanmar Investment and Commercial Bank (MICB), and Myanmar Foreign Trade Bank — from the SDN List. MEB and MICB had previously been among the banks included in the general license. However, with their delisting, they are no longer subject to sanctions, and the general license authorization is therefore no longer necessary. As a result, OFAC has removed these two banks from the general license authorization.

Transactions Related to US Persons Residing in Burma

OFAC has authorized most transactions related to U.S. persons residing in Burma, including payment of living expenses and acquisition of goods or services for personal use. The new general license complements the existing exemption related to travel to or from Burma and will make it easier for U.S. persons to live and work in Burma.

Changes to the SDN List

OFAC has removed seven state-owned enterprises and three state-owned banks from the SDN List, as discussed above. At the same time, OFAC added to the SDN List six companies that are owned 50 percent or more by Steven Law or Asia World Co. Ltd. (Asia World), persons who remain on the SDN List. The entities added to the SDN List were previously subject to sanctions by operation of law given that they are owned 50 percent or more by persons subject to sanctions. The identifications of Steven Law and Asia World entities provide additional clarity for persons seeking to engage with Burma.

Asia World, which is owned by Steven Law, owns the Asia World Port Terminal (AWPT) in Yangon — one of the largest cargo terminals in Burma — among other business operations. The realization that dealing with Asia World, an SDN, was necessary in connection with the export of a substantial percentage of goods to and from Burma was a key driver behind the issuance of General License 20 in December 2015. General License 20

provided an avenue for shippers to transact with AWPT for the limited purpose of delivering cargo and for U.S. banks to process financial transactions involving the companies that use the port facility for exporting goods to and from Burma.

State Department Reporting Requirements

U.S. persons engaging in new investments in Burma that meet certain reporting criteria are required to report their activities in Burma to the State Department. The State Department is taking steps to raise the reporting threshold for a U.S. person's aggregate investment in Burma from \$500,000 to \$5 million. U.S. persons will still have to report any new investment pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with Myanmar Oil and Gas Enterprise. U.S. persons who are facilitating new investment in Burma by foreign persons are not subject to these reporting requirements.

Remaining US Economic and Financial Sanctions on Burma

Except as authorized or exempt, U.S. persons generally remain prohibited from dealing with blocked persons, including persons on the SDN List. Certain additional restrictions remain, including, as noted above, that U.S. persons remain prohibited from making any new investment in Asia Green Development Bank, Ayeyarwady Bank, Innwa Bank and Myawaddy Bank. In addition, the exportation of financial services, in connection with the provision of security services, to the Burmese Ministry of Defense, state or nonstate armed groups (including the Burmese military), or entities owned 50 percent or more by the Ministry of Defense or armed groups remains prohibited. Similarly, new investment undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, with the Burmese Ministry of Defense, state or nonstate armed groups, or entities owned 50 percent or more by the Ministry of Defense or armed groups is not authorized. Finally, 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, remains prohibited.