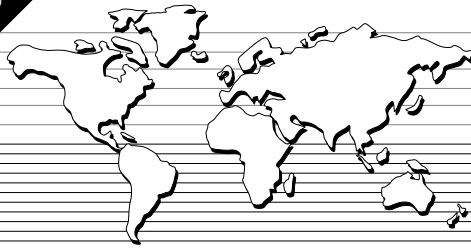




U.S. Department of the Treasury
Office of Foreign Assets Control



BURMA

What You Need To Know About U.S. Sanctions Against Burma (Myanmar)

An overview of the Burmese Sanctions Regulations Title 31 Part 537 of the U.S. Code of Federal Regulations

■ **INTRODUCTION** - On May 20, 1997, in response to the Burmese Government's large scale repression of, and violence against, the Democratic opposition, President Clinton issued Executive Order 13047 declaring a national emergency with respect to these actions and policies of the Government of Burma. The order, issued under the authority of section 570(b) of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1997 (Public Law 104-208) and the International Emergency Economic Powers Act (50 U.S.C. 1701-1706)(IEEPA), prohibits new investment in Burma by U.S. persons and U.S. persons' facilitation of new investment in Burma by foreign persons.

On July 28, 2003, the Burmese Freedom and Democracy Act of 2003 (BFDA) was signed into law, to restrict the financial resources of Burma's ruling military junta, the State Peace and Development Council (SPDC). The BFDA requires the President to ban the importation into the United States of products of Burma, beginning 30 days after the date of enactment of the BFDA, as well as to consider blocking the assets of certain SPDC members and taking steps to prevent further financial or technical assistance to Burma until certain conditions are met.

To implement the BFDA and to take additional steps with respect to the Government of Burma's continued repression of the democratic opposition in Burma, the President issued Executive Order 13310 (the Order) on July 28, 2003. The Order blocks all property and interests in property of the persons listed in the Annex to the Order and of certain persons determined, at a future point, by the Secretary of the Treasury, in consultation with the Secretary of State, to meet the criteria set forth in the Order. It also bans the importation into the United States of products of Burma and the exportation or reexportation to Burma of financial services from the United States or by U.S. persons. Like the previous executive order, it exempts from its blocking and financial service prohibitions any transactions pursuant to pre-May 21, 1997 agreements between a U.S. person and any entity in Burma.

The Department of the Treasury's Burmese Sanctions Regulations, 31 C.F.R. Part 537 (the BSR), were issued initially to implement Executive Order 13047. To implement Executive Order 13310 and the BFDA, these regulations were extensively amended and reissued in their entirety.

Criminal penalties for willful violations of the BSR, or of any license, rule or regulation issued under it, include \$50,000 in fines for a corporation or individual, or up to 10 years imprisonment for an individual, or both. Fines for criminal violations may be increased to \$500,000 for corporations and \$250,000 for individual pursuant to 18 U.S.C 3571. Civil penalties of up to \$11,000 per violation may be imposed administratively.

■ **BLOCKING OF PROPERTY** - Executive Order 13310 blocks property and property interests of persons listed in the Annex to the order and of persons that are designated by the U.S. Treasury Department as being a senior official of the Government of Burma, of the State Peace and Development Council of Burma, of the Union Solidarity and Development Association of Burma or of any successor to the foregoing. The Executive Order also gives the Treasury Department the authority to designate individuals or entities that are owned or controlled by, or acting for or on behalf of, any of those officials or groups. Generally, no U.S. person can have any dealings with persons listed in, or designated by the Treasury under, Executive Order 13310, and all property in which any listed or designated person has an interest is blocked if it is in the United States or in the possession or control of a U.S. person.

Three of the four entities listed in the annex to Executive Order 13310 are the banks in Burma that conduct international transactions. Some dealings with these banks are authorized if the transactions are necessary to conduct otherwise authorized transactions. In no case, however, can a blocked account of one of these financial institutions on the books of a U.S. bank be used to transfer the funds. All authorized transactions must be conducted through an account of one of these banks on the books of a non-U.S. bank.

■ **NO IMPORTATION OF PRODUCTS OF BURMA** - Generally speaking, Burmese origin goods may not be imported into the United States. There are a few limited exceptions, such as the importation of household goods by a person who had lived in Burma, certain diplomatic imports, and informational materials.

■ **EXPORTATION OF GOODS AND NON-FINANCIAL SERVICES TO BURMA** - There is no prohibition on the exportation of goods and services other than financial services to Burma. You do

need to be aware of how some of the other prohibitions may affect these transactions, however. For example, in light of the prohibition on the exportation of financial services to Burma, and the blocking of the property of certain individuals and entities in Burma, you can only be paid from an account maintained on the books of a non-U.S. bank. You also need to be aware of the prohibitions on new investment in Burma.

■ **EXPORTATION OF FINANCIAL SERVICES TO BURMA** - Generally speaking, the exportation of financial services to Burma is prohibited. The term exportation or reexportation of financial services to Burma is defined broadly to mean (1) the transfer of funds, directly or indirectly, from the United States or by a U.S. person, wherever located, to Burma, and (2) the provision, directly or indirectly, to persons in Burma of insurance services, investment or brokerage services, banking services, money remittance services; loans, guarantees, letters of credit or other extensions of credit; or the service of selling or redeeming traveler's checks, money orders and stored value. This defined term is unique to the Burma sanctions program.

There are limited exceptions to the ban on the exportation of financial services. For example, payments can be made for certain licensed or exempt transactions, such as diplomatic payments and payments for goods exported to Burma. Under no circumstances can payments be made from blocked accounts on the books of a U.S. bank.

■ **OPERATION OF ACCOUNTS FOR INDIVIDUALS IN BURMA** U.S. financial institutions can operate accounts for individuals in Burma, provided that the individual is not a blocked party, the account is used solely for personal transactions that are not otherwise prohibited, and no transfers are made from the account directly or indirectly to Burma or for the benefit of individuals ordinarily resident in Burma unless authorized by section 537.517 of the BSR.

■ **TRANSFER OF PERSONAL REMITTANCES TO/FROM BURMA** - Pursuant to section 537.517 of the BSR, U.S. banks, U.S. registered broker-dealers and U.S. registered money transmitters are authorized to send non-commercial, personal remittances to or from Burma or for or on behalf of an individual ordinarily resident in Burma, provided that the funds are not being sent by, to or on behalf of a blocked party. Total remittances may not exceed \$300.00 per Burmese household in any consecutive three-month period. These transfers may not involve a blocked account on the books of a U.S. bank. Noncommercial, personal remittances do not include charitable donations to or for the benefit of an entity or funds transfers for use in supporting or operating a business. U.S. persons, however, may make charitable donations to nongovernmental organizations in Burma that are authorized to operate pursuant to section 537.523 of the BSR (see next item), provided that the donations are made pursuant to section 537.523 and the terms of the authorization.

■ **NGO ACTIVITY IN BURMA** - OFAC issues licenses to nongovernmental organizations to engage in humanitarian or religious activities in Burma that would otherwise be prohibited. Any NGO interested in obtaining such a license should refer to section 537.523 of the BSR, or contact OFAC's Licensing Division at 202/622-2480.

■ **NEW INVESTMENT** - The sanctions prohibit new investment in Burma by U.S. persons on or after May 21, 1997, unless such

investment is pursuant to an agreement in place prior to May 21, 1997. A number of criteria are used to determine whether or not a specific activity is "grandfathered." Factors taken into account include the clarity of the scope of the agreement, the degree of specificity with which the activity is described, and the extent to which the terms of the agreement are legally enforceable.

New investment in Burma is defined as a contract with the Government of Burma or a nongovernmental entity in Burma for the development of resources (including natural, agricultural, commercial, financial, industrial and human resources) located in Burma. The prohibition includes purchasing a share of ownership (an equity interest) in a project or entering into an agreement that provides for a participation in royalties, earnings, or profits from the economic development of resources located in Burma. Executive Order 13047 and the BSR also prohibit a U.S. company from entering into a contract that provides for the general supervision and guarantee of another person's performance of an agreement for the economic development of resources located in Burma.

U.S. persons with pre-May 21, 1997 agreements for the economic development of resources located in Burma should contact the Department of the Treasury's Office of Foreign Assets Control for a determination as to whether or not their project is exempt from the sanctions.

■ **FACILITATION** - A U.S. person is prohibited from approving, aiding or supporting a foreign person's investment in Burma, if the foreign person's activity would constitute prohibited new investment if engaged in by a U.S. person. Exception: Although contracting to sell to a foreign person a U.S. person's equity or income interest in a development project in Burma constitutes facilitation of that foreign person's investment in Burma, such a divestiture is authorized by general license. If the transaction is valued at more than \$10,000, a report must be filed for statistical purposes with the Office of Foreign Assets Control within ten business days of the signing of such an agreement.

Examples of prohibited facilitation of a foreign person's new investment in Burma follow:

* The foreign subsidiary of a U.S. company wishes to bid on a project to develop a coal mine in Burma. The U.S. parent cannot approve, supervise, or otherwise be involved in the foreign subsidiary's negotiations with regard to this project.

* A U.S. oil company holds a pre-May 21, 1997 contract to develop a Burmese oil field. It wishes to sell its rights under the contract to a foreign company. It is authorized to sell an interest without prior authorization from OFAC, but if the agreement is valued at more than \$10,000, the seller must file a report with OFAC within ten days of the signing of the agreement.

■ **INVESTMENT IN THIRD COUNTRY COMPANIES** - U.S. persons are prohibited from purchasing shares in a third-country company if the company's profits are predominantly derived from the company's economic development of resources located in Burma. If a person holds shares in an entity that subsequently engages exclusively or predominantly in the economic development of resources in Burma, or subsequently derives its income exclusively or predominantly from such activity, the U.S. person is not required to relinquish its shares,

but may not purchase additional shares. If the U.S. person sells off shares valued at more than \$10,000, the seller must file a report with OFAC for statistical purposes within ten days of the sale.

If you have information regarding possible violations of these regulations, please call the Treasury Department's Office of Foreign Assets Control at 202/622-2430. Your call will be handled confidentially.

This document is explanatory only and does not have the force of law. The Executive Orders and implementing Burmese Sanctions Regulations (31 CFR Part 537) contain the legally binding provisions governing the sanctions against Burma described above. This document does not supplement or modify the Executive Orders or 31 CFR Part 537.

The Office of Foreign Assets Control also administers sanctions programs involving, Cuba, North Korea, Iran, Iraq, Syria, Sudan, Zimbabwe, Liberia, certain targets in the Western Balkans, highly enriched uranium transactions, diamond trading, designated terrorists and international narcotics traffickers, Foreign Terrorist Organizations, and designated foreign persons who have engaged in activities relating to the proliferation of weapons of mass destruction. For additional information about these programs or about the Burmese sanctions program, please contact the:

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