



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, the President issued Executive Order 13047 (E.O. 13047) determining that the Government of Burma has committed large-scale repression of the democratic opposition in Burma and declaring a national emergency with respect to the actions and policies of the Government of Burma. E.O. 13047, 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 President signed into law the Burmese Freedom and Democracy Act of 2003 (BFDA) to restrict the financial resources of Burma's ruling military junta. The BFDA requires the President to ban the importation into the United States of products of Burma. To implement the BFDA and 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 (E.O. 13310) on July 28, 2003. E.O. 13310 blocks all property and interests in property of the persons listed in its Annex and of certain persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to meet the criteria set forth in E.O. 13310 (as described in the next section). E.O. 13310 also prohibits 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, wherever located.

On October 18, 2007, the President issued Executive Order 13448 (E.O. 13448) expanding the scope of the national emergency declared in E.O. 13047 and blocking all property and interests in property of the persons listed in its Annex and of certain persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to meet the criteria set forth in E.O. 13448 (as described in the next section).

On April 30, 2008, the President issued Executive Order 13464 (E.O. 13464) to take additional steps with respect to the national emergency declared in E.O. 13047 and expanded in

E.O. 13448. E.O. 13464 blocks all property and interests in property of the persons listed in its Annex and of certain persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to meet the criteria set forth in E.O. 13464 (as described in the next section).

On July 29, 2008, the President signed into law the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Public Law 110-286) (JADE Act) which, among other things, imposes mandatory blocking sanctions on certain categories of persons enumerated in the JADE Act (as described in the next section), prohibits the importation of jadeite and rubies mined or extracted from Burma (and of articles of jewelry containing such jadeite and rubies), and establishes conditions for the importation of jadeite and rubies mined or extracted from a country other than Burma (and of articles of jewelry containing such jadeite and rubies).

The Department of the Treasury's Burmese Sanctions Regulations, 31 CFR part 537 (the BSR), implement E.O. 13047, E.O. 13310, and the BFDA. The Department of the Treasury will be amending the BSR to implement E.O. 13448, E.O. 13464, and the JADE Act.

Any person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, a violation of any license, order, regulation, or prohibition of the BSR, E.O. 13448, E.O. 13464, or the blocking provisions of the JADE Act shall, upon conviction, be fined not more than \$1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both. A civil penalty of \$250,000, or twice the amount of the transaction, whichever is greater, may be assessed for each violation. Articles that are imported into the United States in violation of any prohibition of the JADE Act shall be subject to all applicable seizure and forfeiture laws and criminal and civil laws of the United States to the same extent as any other violation of the customs laws of the United States.

■ **BLOCKING OF PROPERTY** - E.O. 13310, E.O. 13448, and E.O. 13464 each block property and interests in property of the persons listed in the Annexes to these Executive orders. In addition, these Executive orders authorize the blocking of property and interests in property of any person determined by

the Secretary of the Treasury, after consultation with the Secretary of State: (i) to be a senior official of the Government of Burma, the State Peace and Development Council of Burma (the SPDC), the Union Solidarity and Development Association of Burma (the USDA), or any successor entity to any of the foregoing; (ii) to be responsible for, or to have participated in, human rights abuses related to political repression in Burma; (iii) to be engaged, or to have engaged, in activities facilitating public corruption by senior officials of the Government of Burma; (iv) to be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to E.O. 13310 or E.O. 13448; (v) to be owned or controlled by, directly or indirectly, the Government of Burma or an official or officials of the Government of Burma; (vi) to have materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of, the Government of Burma, the SPDC, the USDA, any successor entity to any of the foregoing, any senior official of any of the foregoing, or any person whose property and interests in property are blocked pursuant to E.O. 13310, E.O. 13448, or E.O. 13464; or (vii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13310, E.O. 13448, or E.O. 13464.

The Department of the Treasury's Office of Foreign Assets Control (OFAC) publishes and frequently updates a list of such persons whose property and interests in property are blocked (blocked persons), called the Specially Designated Nationals and Blocked Persons List (SDN List). The SDN List includes persons named in the Annexes to E.O. 13310, E.O. 13448, and E.O. 13464, and certain persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to meet the criteria set forth in E.O. 13310, E.O. 13448, or E.O. 13464. With certain exceptions, U.S. persons are prohibited from dealing with persons listed on OFAC's SDN List, and all property in which any blocked person has an interest is blocked if it is in the United States or in the possession or control of a U.S. person, wherever located. A blocked person is considered to have an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50% or greater interest. The property and interests in property of such an entity are blocked regardless of whether the entity itself is listed in the Annex to an Executive order or otherwise placed on OFAC's SDN List.

In addition, the JADE Act blocks property and interests in property of: (i) former and present leaders of the SPDC, the Burmese military, or the USDA; (ii) officials of the SPDC, the Burmese military, or the USDA involved in the repression of peaceful political activity or in other gross violations of human rights in Burma or in the commission of other human rights abuses, including any current or former officials of the security services and judicial institutions of the SPDC; (iii) any other Burmese persons who provide substantial economic and political support for the SPDC, the Burmese military, or the USDA; and (iv) the immediate family members of any person described in categories (i)-(iii). With certain exceptions, U.S. persons are prohibited from dealing with such persons, and all property in which any blocked person has an interest is blocked if it is in the United States or in the possession or control of a U.S. person, wherever located.

■ **NO IMPORTATION OF PRODUCTS OF BURMA** - With certain exceptions, goods of Burmese origin, pursuant to rules

of origin of U.S. Customs and Border Protection, may not be imported into the United States.

The JADE Act amended the BFDA to prohibit, with certain exceptions, the importation into the United States of jadeite mined or extracted from Burma, rubies mined or extracted from Burma, or articles of jewelry containing such jadeite or rubies. The BFDA, as amended by the JADE Act, defines articles of jewelry to include articles of jewelry classifiable under heading 7113 of the Harmonized Tariff Schedule of the United States (HTS) that contain jadeite or rubies and articles of jadeite or rubies classifiable under heading 7116 of the HTS.

In addition, the JADE Act amended the BFDA to establish certain conditions for the importation into the United States of jadeite mined or extracted from a country other than Burma, rubies mined or extracted from a country other than Burma, or articles of jewelry containing such jadeite or rubies.

■ **EXPORTATION OF GOODS AND NON-FINANCIAL SERVICES TO BURMA** - There is no general prohibition on the exportation of goods and services other than financial services to Burma. However, other restrictions may affect these transactions, such as the prohibition on the exportation of financial services to Burma, the blocking of the property and interests in property of certain persons in Burma, and the prohibition on new investment in Burma.

■ **EXPORTATION OF FINANCIAL SERVICES TO BURMA** - With certain exceptions, the exportation or reexportation of financial services to Burma is prohibited. The term exportation or reexportation of financial services to Burma is defined broadly to mean: (i) the transfer of funds, directly or indirectly, from the United States or by a U.S. person, wherever located, to Burma; or (ii) 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.

Although there are limited exceptions to the ban on the exportation of financial services, 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 an individual ordinarily resident in Burma, provided that the individual is not a blocked person and further provided that each transaction processed through the account is of a personal nature and not for use in supporting or operating a business, is not otherwise prohibited, and does not involve a transfer directly or indirectly to Burma or for the benefit of individuals ordinarily resident in Burma unless authorized pursuant to General License No. 15 (as described in the next section).

■ **TRANSFER OF PERSONAL REMITTANCES TO/FROM BURMA** - Pursuant to General License No. 15, certain noncommercial, personal remittances to Burma are authorized. U.S. depository institutions, U.S. registered brokers or dealers in securities, and U.S. registered money transmitters are authorized to process transfers of funds to or from Burma or for or on behalf of an individual ordinarily resident in Burma in cases in which the transfer involves a noncommercial,

personal remittance, provided that the transfer is not by, to, or through a person whose property and interests in property are blocked. Such transfers of funds are authorized even though they may involve transfers to or from an account of a financial institution whose property and interests in property are blocked, provided that the account is not on the books of a financial institution that is a U.S. person. Noncommercial, personal remittances do not include charitable donations to or for the benefit of any entity or funds transfers for use in supporting or operating a business. However, U.S. persons may make charitable donations to nongovernmental organizations in support of certain activities in Burma, provided that the donations are made pursuant to Amended General License No. 14-B (as described in the next section).

■ **NGO ACTIVITY IN BURMA** - Pursuant to Amended General License No. 14-B, the exportation and reexportation of financial services to Burma in support of not-for-profit humanitarian or religious activities in Burma are authorized, provided that the exportation or reexportation is not, directly or indirectly, to the Government of Burma, and the exportation or reexportation is not to or for the benefit of any person whose property and interests in property are blocked.

In certain situations and on a case-by-case basis, OFAC issues specific licenses to export or reexport financial services not authorized by Amended General License No. 14-B to nongovernmental organizations in Burma. OFAC's Licensing Division may be contacted at (202) 622-2480.

■ **NEW INVESTMENT** - The BSR 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 that date. A number of criteria are used to determine whether or not a specific activity is "grandfathered," including 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. Grandfathered activities are not exempt from the importation prohibitions described above.

New investment in Burma is defined as a contract with the Government of Burma or a nongovernmental entity in Burma that includes the economic 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. The BSR also prohibit a U.S. person from entering into a contract that provides for the general supervision and guarantee of another person's performance of a contract 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 may contact OFAC for a determination as to whether or not their activity is grandfathered.

■ **FACILITATION** - With certain exceptions, U.S. persons are prohibited from approving, financing, facilitating, or guaranteeing a foreign person's transaction, including its investment in Burma, if the foreign person's activity would be prohibited if performed by a U.S. person or within the United States. 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 with OFAC for statistical purposes within ten business days of the signing of such an agreement.

The following are examples of prohibited facilitation of a foreign person's new investment in Burma:

* 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, guarantee, or otherwise be involved in the foreign subsidiary's investment in 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 business 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 its 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 shares valued at more than \$10,000, the seller must file a report with OFAC for statistical purposes within ten business days of the sale.

If you have information regarding a possible violation of these sanctions, please contact OFAC's Enforcement Division 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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