

CLIENT UPDATE

EU AND US AMEND BURMESE SANCTIONS

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The European Union and United States have both taken steps to lift economic and trade sanctions applicable to dealings with Burma. These steps are likely to be a welcome development for E.U. and U.S.-based businesses interested in participating and investing in Burma's opening markets.

EUROPEAN UNION

On April 22, 2013, the European Union lifted all sanctions on Burma with the exception of an arms embargo.¹ This follows a suspension of most sanctions in May 2012.

The European Union first adopted sanctions against Burma in 1990, after the country's military junta refused to accept the results of the 1990 Burmese elections. While the sanctions initially only imposed an arms embargo, they were expanded over time to cover various military and policing activities, economic activities (particularly relating to natural resources), and asset freezes and investment bans relating to entities or persons connected to the Burmese Government (the "E.U. Sanctions").

On May 14, 2012, the E.U. Sanctions — with the exception of the arms embargo and a ban on the importation of equipment that could

¹ Council Conclusion 8691/13.

be used for internal repression — were suspended until April 13, 2013. This suspension allowed E.U. firms to re-commence most economic activities relating to Burma and lifted asset freezes and investment bans affecting more than 1,400 Burmese entities and persons. The recent E.U. decision makes these suspensions permanent, though there is some minor uncertainty as to whether activities related to the arms embargo, such as import of equipment that could be used for internal repression, will remain in force.

UNITED STATES

The United States at one time had a fairly robust scheme of sanctions against Burma, which, among other things, prohibited (i) funds transfers and the exportation of financial services to Burma from the U.S. or by U.S. persons; (ii) importation of Burmese goods into the United States; and (iii) new U.S. investments in Burma.² Today, however, U.S. sanctions against Burma are principally limited to targeting certain individuals and entities that are on the Specially Designated Nationals (“SDN”) list maintained by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) and banning the importation of rubies and jade originating in Burma. Exportation and re-exportation of military-use and other controlled items to Burma also remains subject to regulation.³

Though the United States has not removed the Burmese Sanctions Regulations from the books, OFAC, in consultation with the U.S. State Department, has issued so-called “general licenses” that authorize nearly all transactions with Burma that would otherwise be prohibited by the regulations.⁴ Important exceptions to the general licenses include transactions with persons on the SDN list, the Burmese military and state or non-state armed groups. Subject to these limitations, the General Licenses permit:

- the exportation or re-exportation of financial services, including funds transfers, to Burma from the United States or by U.S. persons;
- new investment in Burma by U.S. persons, subject to annual reporting requirements;

² See 31 C.F.R. Part 537 (Burmese Sanctions Regulations).

³ See Export Administration Regulations, 15 C.F.R. Parts 730-774; International Traffic in Arms Regulations, 22 C.F.R. Parts 120-130.

⁴ OFAC, Burmese Sanctions Regulations, General License No. 16: Authorizing the Exportation or Reexportation of Financial Services to Burma (July 11, 2012); General License No. 17: Authorizing New Investment in Burma (July 11, 2012); General License No. 18: Authorizing the Importation of Products of Burma (Nov. 16, 2012); General License No. 19: General License with Respect to Asia Green Development Bank, Ayeyarwady Bank, Myanmar Economic Bank, and Myanmar Investment and Commercial Bank (Feb. 22, 2013); available at <http://www.treasury.gov/resource-center/sanctions/Programs/pages/burma.aspx>

- the importation of Burmese products into the United States, other than rubies and jadeite; and
- certain types of transactions involving four specific Burmese banks, even though those banks are on the SDN list.

On July 11, 2012, at the same time that the first two of these general licenses were issued, President Obama issued Executive Order 13619 (“EO 13619”),⁵ which states that while the Burmese government has “made progress towards political reform in a number of areas,” these reforms are “fragile.” EO 13619 imposes sanctions on Burmese entities and individuals that engage in, or materially assist or support:

- acts that threaten the peace, security or stability of Burma;
- the commission of human rights abuses in Burma; and
- transactions in arms or related material from North Korea or the Government of North Korea to Burma or the Burmese government.

Persons designated under these provisions are listed on OFAC’s SDN list and generally are excluded from all transactions with U.S. companies and individuals.

Taken together, EO 13619 and the General Licenses signal that the United States seeks to promote new trade with and investment in Burma, while maintaining sanctions against entities and activities associated with human rights abuses in Burma and its North Korean weapons trade.

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Please do not hesitate to contact us with any questions.

April 30, 2013

⁵ Executive Order 13619, Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma, 77 Fed. Reg. 41,243 (July 13, 2012).