

# KIRKLAND ALERT

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## U.S. Department of the Treasury Again Relaxes Burmese Sanctions

The U.S. government recently authorized transactions that enable U.S. companies to expand trade and other business with Burma (aka Myanmar), while also announcing new sanctions targeting specific Burmese companies. The U.S. government continues to use its sanctions policy to “incentivize further democratic reforms” in Burma while also maintaining pressure on targeted parties and particularly the military. With the new announcements made on Tuesday, May 17, 2016, the U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”) amended its regulations to: (i) support U.S. trade with Burma; (ii) facilitate the movement of goods within Burma; (iii) allow certain transactions related to U.S. individuals residing in Burma to support authorized business; and (iv) allow most transactions involving financial institutions currently designated under U.S. Burma sanctions. In addition, several state-owned enterprises and state-owned banks were removed from sanctions. Few sanctions restrictions now remain related to banks in Burma. At the same time, sanctions were imposed on several companies owned by Steven Law or Asia World Co. Ltd. (“Asia World”), both of which were already sanctioned.

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### OFAC Sanctions Changes At-A-Glance

OFAC made several significant revisions to the Burmese Sanctions Regulations (“Regulations”), 31 C.F.R. part 537:

*Exports and imports.* OFAC incorporated the previously issued “General License 20” into the Regulations, which allows transactions “ordinarily incident” to exportations to or from Burma of goods, technology, or non-financial services, provided that the export is not to, from, or on behalf of a party designated on OFAC’s Specially Designated Nationals and Blocked Persons (“SDN”) List.

*Banking services.* Previously, General License 20 authorized most financial transactions with two previously designated Burmese financial institutions, Innwa Bank and Myawaddy Bank. The Regulations, which are viewed as a more stable reflection of OFAC’s policy compared with a General License that can be revoked immediately, now incorporate the same authorizations. In addition, OFAC also removed the following three state-owned financial institutions and seven state-owned businesses in Burma from the SDN List, so that U.S. persons are now authorized to conduct business with these entities:

- Myanmar Economic Bank
- Myanmar Foreign Trade Bank
- Myanmar Investment and Commercial Bank

- Co-Operative Export-Import Enterprise
- Myanmar Gem Enterprise
- Myanmar Pearl Enterprise
- Myanmar Timber Enterprise
- No. 1 Mining Enterprise
- No. 2 Mining Enterprise
- No. 3 Mining Enterprise

*U.S. persons residing in Burma.* OFAC added a general license in its amended Regulations that allows U.S. individuals to conduct most transactions “ordinarily incident” to residing in Burma that the Regulations would otherwise prohibit. This revision adds to the existing exemption in the Regulations allowing U.S. persons to travel to and work in Burma. The revision authorizes U.S. persons to open and maintain bank accounts as well as to conduct a range of other financial services, even with designated financial institutions in Burma. The new changes will enable U.S. persons residing in Burma to more easily conduct authorized business.

*Expansion of certain sanctions.* Sanctions remain, however, particularly targeting individuals and entities who the U.S. government has determined are obstructing political reform in Burma, committing human rights abuses in Burma, or conducting military trade with North Korea. As of May 17, 2016, OFAC has blocked and added to the SDN List the following six companies that are owned 50 percent or more by two current SDNs, Steven Law and Asia World, Ltd.:

- Asia Mega Link Co., Ltd.
- Asia Mega Link Services Co., Ltd.
- Global World Insurance Company Limited
- Green Asia Services Co., Ltd.
- Pioneer Aerodrome Services Co., Ltd.
- Shwe Nar Wah Company Limited

## **U.S. and Non-U.S. Investors Should Proceed With Caution**

All other U.S. sanctions targeting Burma remain in effect and continue to restrict business in significant ways:

- U.S. persons remain generally prohibited, unless authorized or exempt, from dealing with SDNs, or entities 50 percent or more owned by SDNs. Entities controlled by SDNs are at high risk of future designation under U.S. Burma sanctions.
- The Regulations continue to prohibit the import into the United States of certain goods that are viewed as supporting the military and other elements still viewed as acting contrary to democratic reforms in Burma: jadeite and rubies mined in or extracted from Burma, including any articles of jewelry containing such Burma-origin jadeite or rubies.

**Sanctions remain, however, particularly targeting individuals and entities who the U.S. government has determined are obstructing political reform in Burma, committing human rights abuses in Burma, or conducting military trade with North Korea.**

- U.S. persons remain broadly prohibited from exporting or reexporting any financial services in connection with the provision of security services, directly or indirectly, to the Burmese Ministry of Defense, any state or non-state armed group, and any entity owned 50 percent or greater by any such group.
- U.S. persons also remain subject to a reporting requirement for any new investment in Burma. Currently, U.S. persons must report any new investment in Burma exceeding \$500,000 or any investment pursuant to an agreement with the Myanmar Oil and Gas Enterprise (“MOGE”) to the U.S. Department of State. The U.S. Department of State is currently performing administrative review of a proposed increase in the reporting threshold to \$5,000,000; however this change has not yet been formalized or otherwise adopted.

**The continuing relaxation of sanctions creates additional opportunities but also challenges for U.S. and non-U.S. companies pursuing business with Burma, as the “do’s and don’ts” for Burma have become more complex.**

The continuing relaxation of sanctions creates additional opportunities but also challenges for U.S. and non-U.S. companies pursuing business with Burma, as the “do’s and don’ts” for Burma have become more complex. Companies doing business in Burma should closely monitor these and any further developments to ensure compliance — penalties for non-compliance with U.S. Burma and other economic sanctions can be severe.

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