

# Myanmar Sanctions: Unlike Anything You Know About

Rudyard Kipling's description of the land of Burma in 1898 aptly describes the landscape of US sanctions on the country 115 years later. Those sanctions, imposed since 1988, have been lifted, suspended, and waived over the last year in a systematic effort to reward the country for its political reforms. However, the sanctions were not revoked or removed, significant conditions and exceptions were imposed, the number of Burmese individuals and entities included on the list of Specially Designated Nationals (SDN) has been expanded, and the country remains the fifth most corrupt country in the world. Accordingly, while the easing of restrictions creates new opportunities, U.S. persons must approach Myanmar with care, understanding that the sanctions and risks that remain are unlike any other that you know about. But, so too may be the rewards.

## What sanctions and risks remain?

### Restrictions on Banks

On February 22, 2013, restrictions on the provision of financial services to Myanmar were eased through the issuance of General License No. 19 by the Office of Foreign Assets Control (OFAC). This General License authorizes US Persons to conduct transactions with four major Burmese banks and to allow those banks access to the US financial system. This increases the ability of US companies and US non-governmental organizations to do business in Myanmar. For example, US persons may now hold accounts and engage in trade finance transactions with the four named

banks, among other business relationships that OFAC previously prohibited.

While the banks remain SDN listed, and Ayeryarwady Bank was actually added to the SDN list on February 22, the impact of these designations is largely negated by the authorizations in General License No. 19. The General License covers Myanma Economic Bank, Myanma Investment and Commercial Bank, Asia Green Development Bank, and Ayeyarwady Bank.

Transactions with other SDN banks in Myanmar, such as Innwa Bank, Myawaddy Bank, and Myanma Foreign Trade Bank generally still are prohibited, with the exception of funds transfers authorized by OFAC's General License No. 16, discussed below. OFAC did not provide an

## Key issues

- US persons can conduct transactions with four major Burmese banks and those banks may access the US financial system
- US persons may invest in Myanmar, subject to State Department reporting requirements
- US persons may export financial services to Myanmar
- Imports from Myanmar (except of jade and rubies) into the US are permitted
- The SDN list has been expanded and remains a trade impediment for US persons

explanation for the exclusion of these other Burmese banks from General License No. 19.

## Investments

New investments in Myanmar were permitted beginning in July 2012 with the issuance by OFAC of General License No. 17, which lifted but did not revoke the 1997 prohibition on such investments. General License No. 17 permits US persons to enter into a contract that includes the economic development of resources located in Burma; enter into a contract providing for the general supervision and guarantee of another person's performance of a contract that includes the economic development of resources located in Burma; purchase a share of ownership, including an equity interest, in the economic development of resources located in Burma; and enter into a contract providing for the participation in royalties, earnings or profits in the economic development of resources located in Burma.

The General License, however, does not cover investment under an agreement with the Burmese Ministry of Defense or other armed groups in Myanmar, or entities in which the foregoing hold a 50% or greater interest. It also requires US persons to comply with State Department reporting requirements. US persons must notify State of any investment with Myanma Oil and Gas Enterprise within 60 days and must provide detailed reports on all aggregate investments over \$500,000 in Myanmar annually. The reports must cover human rights, workers rights, anti-corruption and environmental policies and procedures, including their operations and supply chain in Myanmar, as well as arrangements with security service providers, land acquisitions, and annual payments exceeding \$10,000 to government

and state-owned entities. The reports will be made public by State to promote transparency and responsible investment.

## Financial Services

Also in July 2012, OFAC issued General License No. 16, which authorized the exportation or reexportation of financial services to Myanmar from the United States or by US persons which had been prohibited since 2003. Permitted services include the transfer of funds, and the provision of insurance, investment or brokerage services (including but not limited to brokering or trading services regarding securities, debt, commodities, options or foreign exchange); banking; loans, guarantees, letters of credit or other extensions of credit; the service of selling or redeeming travelers checks, money orders and stored value; and money remittance services.

General License No. 16 kept in place the prohibition on the provision of financial services to persons on the SDN List, with the exception of funds transfers to or from an account of an SDN bank where the US person did not hold an account with such bank.

Under the General License, financial services may be provided to the Burmese Ministry of Defense or other armed groups, or entities in which they hold a 50% or greater interest unless in connection with the provision of security services. Until the latter is defined, financial services to these entities are still effectively banned.

## SDN List

The broad prohibitions against engaging in transactions involving Burmese individuals or entities on the SDN List continue, including entities in which a blocked party owns a 50%

or greater interest. In July 2012, an Executive Order expanded the SDN List to include persons found to be threatening the peace, security, or stability of Burma. The more than 100 listed individuals and entities, which include senior Burmese government officials, financial institutions, mining companies and other private companies, control substantial portions of the Burmese economy and financial system. The SDN List was expanded in November to include seven new entities, including front companies owned or controlled by persons associated with the former Burmese military regime. The breadth of the list continues to stymie US companies in their efforts to do business in Myanmar.

## Imports

In November 2012, the ban on imports from Myanmar was suspended by General License No. 18. In September, Congress had renewed the legal basis for the ban on imports, but through the General License, President Obama, in consultation with Congress, waived the ban. The suspension does not apply to rubies and jade which would require legislative action to repeal the Tom Lantos Block Burmese JADE Act of 2008. Nor does it apply to imports by persons who remain on the SDN list.

## Money Laundering

Also remaining in place is the 2003 designation of Burma by the Secretary of the Treasury as a jurisdiction of primary money laundering concern and the follow-on application in 2004 of a "special measure" against Burma under Section 311 of the USA PATRIOT Act. Pursuant to the special measure, US financial institutions are prohibited from maintaining a correspondent account for any Burmese bank,

except for permitted activities. The lifting of sanctions against the four banks in February 2013 allows these banks to establish correspondent accounts.

## Conclusion

It is important to understand that the six federal laws and five Executive Orders which impose sanctions on Myanmar remain in place, allowing considerable leverage should the government of Myanmar backslide on the current reforms. US persons considering engaging with Myanmar should take into account the threat of sanction reinstatement, the broad coverage of the SDN List, the continuing corruption risk, and the onerous reporting requirements on certain investments.

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[Burma/Myanmar Sanctions Update \(July 2012\)](#)

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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