

MYANMAR/BURMA SANCTIONS

by The Swedish Club and Reed Smith LLP
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U.S. Sanctions

Overview

On 11 February 2021, President Biden signed Executive Order 14014, “Blocking Property with Respect to the Situation in Burma,” (EO 14014) authorizing sanctions against foreign persons deemed to have played a critical role in the military coup that overthrew Myanmar’s democratically elected government on 1 February 2021.¹ The Executive Order authorizes sanctions on persons determined to be operating in the defense sector of the Myanmar economy, or any additional sector subsequently identified by the U.S. Treasury Department, in consultation with the Secretary of State.

Under EO 14014, the U.S. Department of Treasury’s Office of Foreign Assets Control (OFAC) has added over 40 individuals, including persons who were leaders, officials, or members of the current Government of Myanmar, their spouses or adult children, and 17 entities to its Specially Designated Nationals (SDN) List. These sanctioned persons include, but are not limited to, the entities in the chart found on page 3 of this guidance.

What do these sanctions mean?

U.S. persons are prohibited from engaging in virtually all transactions with the sanctioned persons, unless authorized by OFAC. “U.S. person” means U.S. citizens and permanent residents, entities organized under the laws of the United States and their foreign branches and persons physically located in the United States regardless of citizenship. Moreover, U.S. dollars cannot be used to transact with these sanctioned persons, even by non-U.S. persons.

Additionally, non-U.S. persons will risk sanctions if they “materially assist, sponsor, provide financial, material, or technological support, or goods or services” to any person sanctioned under EO 14014.

These sanctions also apply to entities owned 50 percent or more by the sanctioned persons. Accordingly, Members should verify that any business connected with Myanmar does not involve any of the designated persons or their subsidiaries.

Export Controls

The United States has tightened its controls on the export and reexport of defense articles and certain dual use items (e.g. sensitive technologies) to the Ministry of Defense, Ministry of Home Affairs, armed forces, and security services of Burma. It has also added a number of government-owned entities to the Entity List, which means it is prohibited to export, reexport or transfer U.S. goods to them. Accordingly, members carrying U.S. goods to Myanmar should ensure that an export control evaluation has been conducted.

¹ While the U.S. refers to it as Burma, this note uses the name “Myanmar” for consistency.

European Union and United Kingdom Sanctions

Overview

The UK and EU have closely followed the sanctions approach of the U.S. with regard to Myanmar.

The relevant UK regulations related to sanctions against Myanmar are the recently introduced Myanmar (Sanctions) Regulations 2021 and the UK's Global Human Rights Sanctions Regulation. Respectively, the relevant applicable EU regulation is Council Regulation (EU) No 401/2013.

Who do the EU and UK Sanctions apply to?

The scope of the EU and UK sanctions regimes are very similar in their application. In particular, both apply:

- (a) within the territory of the EU and the UK, including their airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State/the UK;
- (c) to any person inside or outside the territory of the EU/UK, who is a national of a Member State;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State/the UK; and
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the EU/UK.

This will include Owners, Managers, Operators, Charterers and even vessels which are registered, incorporated, constituted or do business in whole or in part within the EU/UK.

The sanctions do not apply to non-EU / non-UK companies. However, if those companies take any action that is in breach of sanctions, associated EU/UK companies and employees who are EU /UK citizens may face penalties under the EU and UK regimes.

In addition, non-EU/non-UK companies may face sanctions in respect of any business they conduct that is done in whole or in part within the EU/UK. The sanctions would be limited to that particular business, and would not extend to exclusively non-EU/non-UK business carried out by those companies.

Prohibitions

Pursuant to the applicable UK and EU sanctions regimes relating to Myanmar, a number of individuals and entities are listed. Those more closely connected with the Shipping industry are set out in the table on page 3.

Under both sanctions regimes, it is prohibited to provide funds or economic resources to any listed entities or any entities which sanctioned entities directly or indirectly own or control 50 percent or more of.

The effect of these prohibitions mean that all funds and economic resources belonging to, owned, held or controlled by listed parties must be frozen. In addition, no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of listed parties. These provisions have a very wide scope, and are intended to go beyond affecting only the funds and economic resources

of listed parties. Indirect payments, such as payment to a non-listed party who then pays the money to a listed party, are prohibited.

Therefore, Members should conduct thorough investigations to determine whether any party involved in a transaction is designated. If so, there is a risk that involvement in the transaction will amount to sanctionable conduct, even if the listed party is not a direct contractual counterpart.

Other EU and UK restrictive measures against Myanmar are also in place and include an embargo on arms and equipment that can be used for internal repression, an export ban on dual-use goods for use by the military and border guard police, export restrictions on equipment for monitoring communications that could be used for internal repression, and a prohibition on military training for and military cooperation with the Tatmadaw.

Table of U.S., UK and EU sanctioned entities related to Myanmar most relevant to the Shipping industry²

| Entity | U.S. Sanctions | UK Sanctions | EU Sanctions |
|---|----------------|--------------|--------------|
| Myanmar Economic Holdings Public Company Ltd | YES | YES | YES |
| Myanmar Economic Corporation Limited | YES | YES | YES |
| Myanmar Gems Enterprise | YES | YES | YES |
| Myanmar Pearl Enterprise | YES | YES | NO |
| Myanmar Timber Enterprise | YES | YES | YES |
| State Administration Council | YES | YES | NO |
| Forest Products Joint Venture Corporation Limited | NO | NO | YES |
| Myanmar Ruby Enterprise | YES | NO | NO |
| Myanmar Imperial jade Co | YES | NO | NO |
| Cancri Co | YES | NO | NO |

A complete list of all parties designated by the EU regime can be found here.

A complete list of all parties designated by the UK regime can be found here.

A complete list of all parties designated by the U.S. regime can be found here.

² This table was populated on 5 July 2021.

Disclaimer: This Member Alert is intended to provide only general guidance and information pertaining to the issues identified and commented upon herein. The content of this Alert is not intended to be, and should not be treated as being final and binding legal advice. If Members consider they are likely to or in fact have encountered problems or difficulties as discussed in this Alert, they are asked to contact the Club and obtain further legal advice relevant to their specific circumstances.