



## **MYANMAR (BURMA) SANCTIONS**

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### **UNITED STATES**

#### **Overview**

The U.S. Office of Foreign Assets Control (“**OFAC**”) administers its Burma-Related Sanctions program mainly through Executive Order (“**EO**”) 14014 that was issued on February 11, 2021. The EO is codified in U.S. law as the [Burma Sanctions Regulations](#), found in 31 CFR Part 525.

In pertinent part, pursuant to [EO 14014](#):

**Section 1.** (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) to operate in the defense sector and jet fuel sector of the Burmese economy or any other sector of the Burmese economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State;

(ii) to be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in, any of the following:

(A) actions or policies that undermine democratic processes or institutions in Burma;

(B) actions or policies that threaten the peace, security, or stability of Burma;

(C) actions or policies that prohibit, limit, or penalize the exercise of freedom of expression or assembly by people in Burma, or that limit access to print, online, or broadcast media in Burma; or

(D) the arbitrary detention or torture of any person in Burma or other serious human rights abuse in Burma;

(iii) to be or have been a leader or official of:

(A) the military or security forces of Burma, or any successor entity to any of the foregoing;

(B) the Government of Burma on or after February 2, 2021;

(C) an entity that has, or whose members have, engaged in any activity described in subsection (a)(ii) of this section relating to the leader's or official's tenure; or

(D) an entity whose property and interests in property are blocked pursuant to this order as a result of activities related to the leader's or official's tenure;

(iv) to be a political subdivision, agency, or instrumentality of the Government of Burma;



(v) to be a spouse or adult child of any person whose property and interests in property are blocked pursuant to this order;

(vi) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of any person whose property and interests in property are blocked pursuant to this order; or

(vii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, the military or security forces of Burma or any person whose property and interests in property are blocked pursuant to this order.

The “jet fuel sector” was added to Section 1(a)(i) of the EO through OFAC’s August 23, 2023, determination. This authorizes the imposition of economic sanctions on any non-U.S. person determined to operate in the jet fuel sector of the Burmese economy. Prior to this determination, the original EO only contained the “defense sector.”

A sector determination exposes persons that operate in an identified sector to sanctions risk; however, a sector determination does not automatically impose sanctions on all persons who operate in the sector. Only non-U.S. persons determined, pursuant to EO 14014, by the Secretary of the Treasury in consultation with the Secretary of State, to operate in the jet fuel sector of the Burmese economy are subject to sanctions.

Persons determined to operate in the jet fuel sector of the Burmese economy will be added to the Specially Designated Nationals and Blocked Persons List (“**SDN List**”). OFAC interprets the term “jet fuel sector of the Burmese economy” to include activities related to the importation, exportation, reexportation, sale, supply, or transport, directly or indirectly, of jet fuel in or involving Burma.

For the avoidance of doubt, [OFAC 1133](#) clarifies that OFAC does not intend to target persons for engaging in activities related to *civil* aviation, including the sale, provision, or purchase of jet fuel to or for commercial airlines for air transport to and from Burma. Rather, OFAC intends to target activities for or related to military regime end users in Burma, wherever situated (e.g. jet fuel used for military resupply aircraft, state-owned aircraft used by members of the military regime, and combat vehicles, including jets and attack helicopters, used in both offensive and defensive military operations inside Burma).

### **What do these sanctions mean?**

U.S. persons are prohibited from engaging in virtually any transaction with an SDN, unless authorized by OFAC. The term “U.S. person” means any United States citizen, permanent resident alien (*i.e.* Green Card holder), entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person physically present (even temporarily) in the United States. 31 CFR § 525.313.

Non-U.S. persons using U.S. dollars are also effectively bound by the same restrictions as U.S. persons. For example, a non-U.S. person cannot use U.S. dollars in a transaction involving an SDN. Additionally, even when there is no such U.S. nexus, OFAC may theoretically pursue secondary sanctions on a non-U.S. person if OFAC determines the non-U.S. person to have provided “material” support to the SDN.

Pursuant to the OFAC 50 Percent Rule, the blocking sanctions also extend to an entity that is 50%-owned by an SDN (or aggregately multiple SDNs). In the context of the Burma sanctions, it



is all the more important that Members are cognizant of this and verify that any business connected with Burma does not involve any SDNs or SDN-owned companies.

On January 26, 2022, the U.S. government issued a business advisory (“**Advisory**”) to inform the public of the heightened risks associated with doing business in Burma. According to the Advisory, the specific entities and sectors of greatest concern include:

- State-owned enterprises
- Gems and precious metals
- Real-estate and construction projects
- Arms, military equipment, and related activity

These entities and sectors have been identified as primary industries providing economic resources for Burma’s military regime that is the target of EO 14014.

The Advisory additionally notes that there is heavy involvement by state and military entities in the oil and gas, mining, postal, energy, and transportation and logistics sectors worldwide. It is understood Burma’s junta-controlled state-owned enterprises (SOEs) also play a dominant role in these sectors of the economy.

The largest of these SOEs are in the natural resources sector and include but are not limited to: Myanma Oil and Gas Enterprise (“**MOGE**”); Myanmar Mining Enterprises (“**MME**”); Myanma Gems Enterprise (“**MGE**”); and Myanma Timber Enterprise (“**MTE**”). Reports also indicate that the state-owned Myanma Posts and Telecommunications (“**MPT**”) actively collaborates with the regime’s surveillance program. MGE and MTE were designated by OFAC under Executive Order (E.O.) 14014 in April 2021.

The Advisory also notes that the military controls a large portion of the gems and precious metal sector through two military holding companies, Myanma Economic Holdings Limited (“**MEHL**”) and Myanmar Economic Corporation (“**MEC**”), and their numerous subsidiaries. MEHL and MEC are currently SDNs – as well as Myanma Gems Enterprise (“**MGE**”) and Myanmar Pearl Enterprise (“**MPE**”).

Hence, given that the target of EO 14014 is the military junta and the entities it owns/controls, proper due diligence of the ownership chain and control vis-à-vis Burmese counterparties become key. Finally, given the increasing OFAC focus, it is advised that anyone supplying jet fuel to individuals or entities in Burma exercise extreme caution to ensure jet fuel is provided only for use in *civil* aviation and not to military regime users.

### **Export Controls**

In addition to the sanctions administered by OFAC, Burma is also subject to certain export controls that are administered by the U.S. Department of Commerce Bureau of Industry and Security (“**BIS**”). Per the BIS [Commerce Country Chart](#), Burma is controlled for the following reasons:

- Chemical & Biological Weapons (CB)
- Nuclear Non-Proliferation (NP)



- National Security (NS)
- Missile Tech (MT)
- Regional Stability (RS)
- Crime Control (CC)

Practically, this means that U.S.-origin items controlled for the above reasons would require an export license if destined to Burma (or is being transferred within Burma). This applies even if the end-use/user is civilian. Per Export Administration Regulations (“**EAR**”), a foreign-made item that incorporates more than 25% U.S.-origin controlled content is also considered “U.S. origin” for Burma and would likewise require a license from BIS. 15 CFR § 734.4.

Being categorized under “Country Group D:5” in [Supplement No. 1 to Part 740](#) of the EAR, Burma is also subject to an arms embargo. This means that, in the following cases, the 25% *de minimis* U.S. content is not needed in order to trigger a BIS license obligation:

- 6A002, 6A003, or 6A993.a (having a maximum frame rate equal to or less than 9 Hz) in foreign-made military commodities to Country Group D:5
- .a - .x of 9x515 or “600 series” items to Country Group D:5

In March of 2021, the BIS additionally added Burma to “Country Group D:1,” which resulted in a more restrictive review of license applications for exports/re-exports involving items subject to the EAR to any end-user in Burma. The BIS action also rendered end-users in Burma ineligible for / subject to further restriction regarding the use of license exceptions Shipments of Limited Value (LVS), Shipments to Group B Countries (GBS), and Technology and Software under Restriction (TSR).

Finally, a BIS license would be needed if the exporter has knowledge that the item is intended, entirely or in part, for a military end-use/user (“**MEU**”) in Burma. 15 CFR § 744.21. The license obligation would similarly be triggered if there is any knowledge of a military intelligence end-use/user (“**MIEU**”). 15 CFR § 744.22. BIS currently reviews such license applications under a presumption of denial. What constitutes MEU and MIEU are defined in the relevant subparagraphs of the respective regulations.

## **EUROPEAN UNION AND UNITED KINGDOM**

### **Overview**

The EU and the UK have closely followed the sanctions approach of the U.S. (and each other) regarding Myanmar. The relevant EU sanctions legislation on Myanmar is Council Regulation (EU) No 401/2013, and for the UK it is The Myanmar (Sanctions) Regulations 2021.

### **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/UK, including their airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of the EU/UK;



- (c) to any person inside or outside the territory of the EU/UK, who is a national;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of the EU/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 default position, however, is that the EU/UK sanctions regimes do not apply to non-EU/non-UK companies. Nonetheless, if those companies take any action that is in breach of sanctions, associated EU/UK companies or employees who are EU/UK nationals may face penalties under their respective regimes.

While non-EU/non-UK companies could theoretically be exposed to sanctions in respect of the business they conduct within EU/UK territory, any such sanction would be limited to that particular business and would not extend to the business carried out by those companies that do not have any EU/UK nexus.

### **Prohibitions**

Pursuant to the applicable EU and UK sanctions regimes relating to Myanmar, a number of individuals and entities have been designated. Those more closely connected with the shipping industry have been listed at the final page of this document. Under both sanctions regimes, it is prohibited to provide funds or economic resources to designated parties or parties that are owned by designated parties by more than 50%.<sup>1</sup>

In addition, in certain circumstances, the EU/UK authorities have the ability to deem that despite the lack of a majority ownership, a designated party nonetheless exercises such a significant level of “control” over an entity that the sanctions of that party nonetheless extends to the entity.

The key consideration in this regard is whether the designated party is able to and effectively asserts a “decisive influence” over the conduct of entity. Some of the criteria in this regard are:

- the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity;
- using all or part of the assets of a legal person or entity;
- sharing jointly and severally the financial liabilities of a legal person or entity, or guaranteeing them;

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<sup>1</sup> Please note the EU sanctions regime allows for “aggregation,” such that the EU 50 Percent Rule is also triggered if the shareholding of multiple designated parties (who individually only have minority shareholding) cumulated together meets the 50%+ threshold. In contrast, the UK sanctions regime does not employ aggregation, and the UK 50 Percent Rule is only triggered if a single designated party (by itself) constitutes the majority shareholding.



- having influence as regards corporate strategy, operational policy, business plans, investment, capacity, provision of finance, human resources and legal matters;
- putting in place or maintaining mechanisms to monitor the commercial conduct of the legal person or entity;
- other indicia such as sharing a business address or using the same name which could cause third parties to have the impression that the two entities are in fact part of the same undertaking.

If a party is sanctioned (either through direct designation or by way of ownership/control), the practical effect of this is all funds and economic resources belonging to, owned, held or controlled by that party must be frozen. In addition, no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of such parties. These provisions are interpreted broadly in practice. Indirect payments, such as payments made to a non-sanctioned party who then transfers the funds to the sanctioned party, are likewise prohibited.

Therefore, Members should conduct thorough investigations to determine whether any party involved in a transaction is sanctioned. If so, there is a risk that involvement in the transaction will amount to sanctionable conduct, even if the sanctioned party is not a direct contractual counterpart. In addition, a heightened level of due diligence must be exercised as to jet fuel cargo, as on a practical level it might not be possible to mitigate against the possibility that such cargo could be diverted to military end-users.

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.

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The sanctions landscape against Myanmar continues to evolve. For convenience, we have prepared a table below that illustrate some of the prominent entities that are currently sanctioned. Please note that this is a non-exhaustive list. For due diligence purposes we strongly suggest that the official [OFAC SDN List](#), [EU Sanctions List](#), and the [UK Sanctions List](#) are consulted – as these websites are updated on a continuous basis.



**Table of U.S., UK and EU sanctioned entities of potential pertinence to shipping**

<b>Entity</b>	<b>U.S. Sanctions</b>	<b>UK Sanctions</b>	<b>EU Sanctions</b>
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	YES
Forest Products Joint Venture Corporation Limited	YES	YES	YES
Myanmar Ruby Enterprise	YES	YES	YES
Myanmar Imperial Jade Co. Ltd	YES	YES	YES
Cancri Co	YES	YES	YES
Myanmar Oil and Gas Enterprise	NO	NO	YES
Myanmar Mining Enterprise (No. 1 and No. 2)	YES	NO	YES
Asia Sun Group	YES	YES	YES
Cargo Link Petroleum Logistics Co. Ltd	YES	YES	YES
Shoon Energy Pte Ltd	YES	YES	NO

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