OFAC Publishes Updated Frequently Asked Questions Regarding Burma Sanctions

Department of Treasury
Office of Foreign Assets Control

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Question (Q) 1: What recent steps has the United States taken to ease U.S. economic and trade sanctions against Burma?

Answer (A): In May 2012, President Obama announced that the United States would begin to ease certain financial and investment sanctions on Burma in response to historic reforms in that country.

On July 11, 2012, the Administration took steps to broadly authorize the exportation of U.S. financial services to Burma by issuing General License No. 16 (Burma GL 16), and to permit the first new U.S. investment in Burma in nearly 15 years by issuing General License No. 17 (Burma GL 17).

On November 16, 2012, the Administration took another step toward normalizing our economic relationship with Burma by issuing General License No. 18 (Burma GL 18) to broadly authorize the importation of Burmese-origin goods, except jadeite and rubies, into the United States for the first time in almost a decade.

On February 22, 2013, General License No. 19 (Burma GL 19) was issued to authorize U.S. persons (both individuals and entities) to conduct most transactions - including opening and maintaining accounts and conducting a range of other financial services - with four of Burma's major blocked financial institutions: Asia Green Development Bank, Ayeyarwady Bank, Myanmar Economic Bank, and Myanmar Investment and Commercial Bank. This license was issued to address limitations that apply to blocked financial institutions; U.S. persons may engage in transactions with any non-blocked financial institution in Burma.

On August 6, 2013, in light of the expiration of the ban on the importation of Burmese-origin goods contained in the Burmese Freedom and Democracy Act of 2003 (BFDA), the President issued Executive Order 13651 (EO 13651) revoking the provisions of Executive Order 13310 (EO 13310) that implemented the BFDA's ban on importing Burmese-origin goods. However, due to continuing concerns, including with respect to labor and human rights in specific sectors, EO 13651 reinstates the prohibition on the importation into the United States of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma that was originally imposed by the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (JADE Act), which amended the BFDA. As a result of the revocation in EO 13651 of the general prohibition in EO 13310 on importing Burmese-origin goods, imports of such goods, other than jadeite or rubies, are no longer prohibited and no longer require an OFAC license. Accordingly Burma GL 18, which had authorized such imports, has been removed from OFAC's Website.

Q2: What U.S. economic and financial sanctions remain on Burma?

A: Except as licensed or otherwise authorized, U.S. persons generally remain prohibited from dealing with blocked persons, including persons on OFAC's Specially Designated Nationals and Blocked Persons list (SDN list), as well as any entities 50 percent or more owned by such persons, which are blocked by operation of law regardless of whether the entities themselves are listed.
Burma GL 16 does not authorize, in connection with the provision of security services, the exportation of financial services to the Burmese Ministry of Defense, state or non-state armed groups (which includes the military), or entities owned 50 percent or more by any of the foregoing. Burma GL 17 does not authorize new investment undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, with the Burmese Ministry of Defense, state or non-state armed groups (which includes the military), or entities owned 50 percent or more by any of the foregoing.

Executive Order 13651 prohibits the importation into the United States of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma.

Q3: Which banks in Burma are available to U.S. persons?

A: U.S. persons (both individuals and entities) may engage in transactions with any non-blocked Burmese bank. This includes transferring funds to or from, opening and maintaining an account at, and entering into a new investment with a non-blocked Burmese bank, subject to the requirements of any applicable general or specific licenses.

Additionally, pursuant to the authorization in Burma GL 19, U.S. persons may conduct most transactions - including opening and maintaining accounts and conducting a range of other financial services - with the following four blocked Burmese banks: Asia Green Development Bank, Ayeyarwady Bank, Myanmar Economic Bank, and Myanmar Investment and Commercial Bank.

However, U.S. persons generally remain prohibited from dealing with other blocked banks, including Myanmar Foreign Trade Bank, Myawaddy Bank, and Innwa Bank, with the exception of funds transfers pursuant to Burma GL 16 to or from these banks. Funds transfers cannot go directly to or from U.S. financial institutions and these blocked banks, and U.S. financial institutions are also prohibited from opening correspondent accounts with these blocked banks. Therefore, in order to comply with Burma GL 16, funds transfers between U.S. financial institutions and these blocked banks must be routed through a third country.

Q4: Can U.S. financial institutions enter into direct correspondent relationships with Burmese financial institutions that are not blocked?

A: Yes. U.S. financial institutions may enter into direct correspondent relationships with any non-blocked Burmese bank.

As a result of Burma GL 19, U.S. financial institutions also may enter into direct correspondent relationships with the following four blocked Burmese banks: Asia Green Development Bank, Ayeyarwady Bank, Myanmar Economic Bank, and Myanmar Investment and Commercial Bank.

As a result of Burma GL 16 and Burma GL 19, the special measures against Burma imposed under Section 311 of the USA PATRIOT Act no longer apply to the operation of correspondent accounts for those Burmese banking institutions, or to transactions that are conducted through such accounts, provided the transactions are authorized pursuant to the Burmese Sanctions Regulations. This does not affect any obligation of U.S. financial institutions processing such transactions to conduct enhanced due diligence under Section 312 of the USA PATRIOT Act.

U.S. persons generally remain prohibited from dealing with other blocked banks, including Myanmar Foreign Trade Bank, Myawaddy Bank, and Innwa Bank, with the exception of funds transfers made pursuant to Burma GL 16. Because U.S. financial institutions are not permitted to open correspondent relationships with these blocked banks, funds transfers to or from these banks are routed through third countries (see Question 359 for more information).

Q5: Does Burma GL 16 authorize U.S. persons to open accounts at blocked Burmese banks?

A: No. Burma GL 16 does not authorize U.S. persons to open accounts at blocked Burmese banks. However, an exception in Burma GL 16 permits transfers of funds even though they may involve transfers to or from an account of a blocked Burmese financial institution.

Burma GL 19 authorizes most transactions - including opening and maintaining accounts - with the following four blocked Burmese banks: Asia Green Development Bank, Ayeyarwady Bank, Myanmar Investment and Commercial Bank, and Myanmar Economic Bank.
Economic Bank, and Myanmar Investment and Commercial Bank. A U.S. person must obtain a specific license from OFAC in order to open an account at a blocked Burmese financial institution other than those authorized under Burma GL 19.

Q6 Does Burma GL 19 authorize new investment with the four banks?

A: No. Burma GL 19 does not authorize any new investment, including in or with Asia Green Development Bank, Ayeyarwady Bank, Myanmar Economic Bank, or Myanmar Investment and Commercial Bank. "New investment" is defined in 31 C.F.R. § 537.311.

Q7: Does Burma GL 19 unblock property of the four banks?


Q: Is the exportation of financial services to the Burmese Ministry of Defense, state or non-state armed groups, or entities owned 50 percent or more by any of the foregoing only prohibited in connection with the provision of security services?

A: Yes. This limitation on the exportation of financial services is only in connection with the provision of security services.

Q8: What is meant by "any state or non-state armed group"? Does this include private security firms?

A: "Any state or non-state armed group" includes the Burmese military, state-organized militias, and other armed state security forces, as well as non-state armed groups within Burma that are in conflict with or have entered into ceasefires with the Government of Burma. Private security companies are not included within this definition.

Q9: "Any state or non-state armed group" is not limited to armed groups in Burma, but applies globally?

A: The prohibition itself is on the exportation or reexportation of financial services to Burma, not globally. Money cannot be sent to Burma, directly or indirectly, to pay a state or non-state armed group, wherever that group may be located, for the provision of security services.

Q10: What about prohibitions in the JADE Act on dealing with the State Peace and Development Council (SPDC) or any entity owned, controlled, or operated by the SPDC? Is there a chance that we could accidentally do business with the SPDC and be subject to enforcement measures?

A: The State Department has determined that the SPDC no longer exists. In addition, in Executive Order 13651, the President waived the sanctions described in section 5(b) of the JADE Act, including prohibitions applicable to transactions involving the SPDC, or entities owned, controlled, or operated by the SPDC. Accordingly, the financial and blocking sanctions related to the SPDC in section 5(b) of the JADE Act no longer apply.

Q11: Does Burma GL 17 authorize U.S. persons to facilitate new investment by foreign persons?

A: Yes, provided that the facilitated new investment would be authorized if undertaken by a U.S. person.

Consistent with Burma GL 17, U.S. persons may approve, finance, facilitate, or guarantee new investment by foreign persons provided such new investment is not pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that (a) is entered into with the Burmese Ministry of Defense, state or non-state armed groups (which includes the military), or entities owned 50 percent or more by any of the foregoing, or (b) involves a transaction, directly or indirectly, with any person blocked under the Burma sanctions program.

Q12: Does Burma GL 17 authorize investment in a third-country company whose main business activity is in Burma?

A: Yes, provided that the third-country company's activities in Burma would not be prohibited if that third-country company were a U.S. person.
Q13 Who needs to report on their activities in Burma?

A: Any U.S. person (both individuals and entities) engaging in new investment in Burma whose aggregate new investment, over any period, exceeds $500,000 must provide to the State Department the information set forth in the State Department's "Reporting Requirements on Responsible Investment in Burma" (available at www.HumanRights.gov/BurmaResponsibleInvestment). These reports are due 180 days after the $500,000 threshold is reached and thereafter annually on July 1.

Whether specific activities constitute "new investment" is dependent on the facts and circumstances of each particular situation. U.S. persons considering new investment in Burma should examine any proposed agreement or contract in light of the definition of "new investment" in 31 C.F.R. § 537.311. If investors are uncertain about whether their activities constitute new investment in Burma, we suggest erring on the side of caution and reporting to the State Department.

In addition, any U.S. person that has undertaken any new investment pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with the Myanmar Oil and Gas Enterprise (MOGE) must notify the State Department within 60 days of such a new investment.

Q14: Is the $500,000 threshold an annual threshold, or do you accumulate investments over several years, with reporting triggered when you finally reach $500,000?

A: The annual report is required of any U.S. person engaging in new investment in Burma once that person's aggregate new investment, over any period, exceeds $500,000.

Q15 What happens if you sell all or part of your investment?

A: The annual report would no longer be required if a person's aggregate new investment fell below $500,000.

Q16: Does leasing office space constitute a new investment if the office is used for sales of goods or services?

A: Whether specific activities constitute "new investment" is dependent on the facts and circumstances of each particular situation. U.S. persons considering new investment in Burma should examine any proposed agreement or contract in light of the definition of "new investment" in 31 C.F.R. § 537.311. Regardless, new investment in Burma by U.S. persons is now authorized, subject to the limitations and requirements described in Burma GL 17.

An annual report is required of any U.S. person engaging in new investment in Burma once that person's aggregate new investment, over any period, exceeds $500,000.

If investors are uncertain about whether their activities constitute new investment in Burma, we suggest erring on the side of caution and reporting in compliance with the requirements set forth in the State Department's "Reporting Requirements on Responsible Investment in Burma" (available at www.HumanRights.gov/BurmaResponsibleInvestment).

Q17: Are U.S. persons who are employed by or otherwise work for foreign persons engaged in new investment subject to the Reporting Requirements?

A: No, the Reporting Requirements are required only of U.S. persons engaging in new investment in Burma. U.S. persons facilitating new investment by foreign persons are not subject to these Reporting Requirements.

Q18: If a Burmese Government minister is an SDN, how does that impact the ministry he leads?

A: A government ministry is not blocked solely because the minister heading it is an SDN. U.S. persons should, however, be cautious in dealings with the ministry to ensure that they are not, for example, entering into any contracts that are signed by the SDN.

Q19: What are the plans to update the SDN list for Burma?
A: Listings and any potential delistings under our Burma authorities will be pursued as appropriate to meet changing conditions in Burma.

An SDN may seek to be delisted, including based on evidence that the circumstances resulting in the designation no longer apply, by submitting a written request to OFAC. OFAC investigates and assesses such requests on a case-by-case basis, taking into consideration the facts and circumstances specific to each individual or entity, as reflected in the evidence presented and other information available to OFAC. The procedures governing delisting from the SDN list are outlined in 31 C.F.R. § 501.807.

Q20 Can U.S. persons sell goods or services to Burmese persons who are not on the SDN list or blocked?

A: Yes. Other than the exportation of financial services to Burma, now broadly authorized by Burma GL 16, there has never been a general prohibition on the exportation of goods, technology, or services to Burma, and transactions ordinarily incident to such exportations are authorized, subject to certain limitations in the general license.

However, except as licensed or otherwise authorized, U.S. persons generally remain prohibited from dealing with blocked persons, including persons on the SDN list, as well as any entities 50 percent or more owned by such persons.