

## CLIENT ALERT

### U.S. Terminates Sanctions Against Burma

Oct.12.2016

On Friday, October 7, 2016, President Obama signed an [Executive Order](#) (EO) for the “Termination of Emergency with Respect to the Actions and Policies of the Government of Burma.” This EO is the promised follow-up to the President’s [announcement](#) last month that the U.S. would end its sanctions on Burma. This major policy shift also included a [Presidential Proclamation](#) on September 14, 2016, which restored preferential treatment for Burma as a beneficiary developing country under the Generalized System of Preferences (GSP) program. See Crowell & Moring’s [previous alert](#) for more information.

The EO was issued as a result of Burma’s recent advances in promoting democracy, releasing political prisoners and an overall increase in fundamental freedoms since the Burmese November 2015 elections. The EO effectively (i) terminates the national emergency declared in E.O. 13047; (ii) revokes Executive Orders 13047, 13310, 13448, 13464, 13619 and 13651; and (iii) waives financial and blocking sanctions in the Tom Lantos Block Burmese Jade Act of 2008 (JADE Act).

The main effects of the EO implementing the termination of the Burma Sanctions Program are summarized below:

- **Unblocking of property and interests in property blocked pursuant to the Burmese Sanctions Regulations (BSR).**
- **Removal of SDNs.** The EO has resulted in the removal from the Office of Foreign Assets Control’s (OFAC) Specially Designated Nationals and Blocked Persons List (SDN List) all individuals and entities that were blocked pursuant to the BSR. The Administration maintains the designation of individuals and entities that have been blocked pursuant to sanctions authorities other than the BSR, for example those blocked under counter-narcotics sanctions. In our [previous alert](#), we noted that OFAC had identified a few persons designated under the BSR, in particular Steven Law, a Burmese tycoon and the owner of Asia World, as being involved not only in support for the anti-democratic former military regime in Burma, but also in drug trafficking. OFAC now has removed both Steven Law and Asia World from the SDN list. It remains unclear whether OFAC intends to re-designate them under counter-narcotics sanctions. If it did, it would need to simultaneously issue a general license to authorize trade through the ports controlled by Asia World.
- **Removal of the Prohibition on Import of Jade and Rubies.** The ban on imports from Burma into the U.S. of Burmese-origin jadeite and rubies, and any jewelry containing them has been removed.
- **Removal of Reporting Obligations:** Companies are no longer required to file reports related to investments in excess of \$5,000,000. The reporting, that had been raised in May from a previous threshold of \$500,000, is now voluntary since the EO entered into force on the 7th.
- **Authorization of Banking or Financial Transactions.** All OFAC-administered restrictions under the Burma Sanctions Program regarding banking or financial transactions with Burma are no longer in effect. OFAC had previously issued general licenses in 2012 and 2013 authorizing certain correspondent account activity with Burmese banks. However, as explained below, the Department of the Treasury’s Financial Crimes Enforcement network (FinCEN) still considers Burma a primary money laundering concern.
- **FinCEN provided exceptive relief under Section 311.** Since 2003, Burma has been considered a jurisdiction of “primary money laundering concern” and subjected to special measures pursuant to Section 311 of the Uniting and Strengthening

America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act, subject to certain exemptions that depended on the BSR for their operation. On October 7, 2016, FinCEN issued broad exceptive relief permitting U.S. financial institutions to maintain correspondent accounts for Burmese banks, provided that U.S. institutions subject such accounts to appropriate due diligence. FinCEN reasoned that Burma had taken substantial steps to address money laundering risks in its jurisdiction, including obtaining its removal from the Financial Action Task Force's list of countries with strategic anti-money laundering (AML) deficiencies. However, FinCEN concluded that many challenges remain for Burma, including endemic corruption and narcotics trafficking, and nascent implementation of helpful AML reforms. Accordingly, despite removing prohibitions on U.S. correspondent banking for Burmese institutions, FinCEN decided to maintain its designation of Burma as a jurisdiction of primary money laundering concern.

OFAC clarified in a newly-issued [Frequently Asked Question \(No. 481\)](#) that it will continue to pursue enforcement actions for apparent violations of the BSR during the time these rules were in effect, regardless of “whether they came to the agency’s attention before or after the Burma Sanctions Program was terminated.”

FinCEN’s decision to retain its designation of Burma as a jurisdiction of primary money laundering concern means that banks entering the Burmese market will face high compliance burdens and elevated enforcement risks, and should build robust systems for enhanced due diligence on transactions there. Many U.S. banks may choose not to operate correspondent accounts for Burma-related business altogether. Companies considering business in Burma should anticipate that U.S. and other banks are likely to want extraordinary transparency into their operations, partners and counterparties, and be prepared to provide such information to retain banking services. A corollary to this is that banks are likely to remain highly concerned about persons formerly listed on OFAC’s SDN List, reckoning that the corruption, narcotics trafficking, money laundering and other negative activities that led to the listing of many of these names may well continue.

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