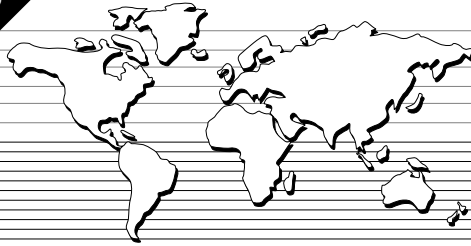




U.S. Department of the Treasury  
Office of Foreign Assets Control



# BURMA

## What You Need To Know About U.S. Sanctions Against Burma (Myanmar)

### An overview of the Burmese Sanctions Regulations Title 31 Part 537 of the U.S. Code of Federal Regulations

The President has issued the following Executive Order with respect to Burma effective 12:01am Eastern Daylight Time on Tuesday, July 29, 2003:

#### BLOCKING PROPERTY OF THE GOVERNMENT OF BURMA AND PROHIBITING CERTAIN TRANSACTIONS

"By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), the Burmese Freedom and Democracy Act of 2003 (July 28, 2003), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the Government of Burma's continued repression of the democratic opposition in Burma and with respect to the national emergency declared in Executive Order 13047 of May 20, 1997;

I, GEORGE W. BUSH, President of the United States of America, hereby order:

Section 1. Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), the Trade Sanctions Reform and Export Enhancement Act of 2000 (Title IX, Public Law 106-387) (TSRA), or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons 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of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

- (a) the persons listed in the Annex attached to and made a part of this order; and
- (b) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State,
  - (i) to be a senior official of the Government of Burma, the State Peace and Development Council of Burma, the Union Solidarity and Development Association of Burma, or any successor entity to any of the foregoing; or
  - (ii) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

Sec. 2. Except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)), the TSRA, or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, the following are prohibited:

- (a) the exportation or reexportation, directly or indirectly, to Burma of any financial services either (i) from the United States or (ii) by a United States person, wherever located; and
- (b) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this order if performed by a United States person or within the United States;

Sec. 3. Beginning 30 days after the effective date of this order, and except to the extent provided in section 8 of this order and in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to 30 days after the effective date of this order, the importation into the United States of any article that is a product of Burma is hereby prohibited.

- Sec. 4.
- (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.
  - (b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 5. For purposes of this order:

- (a) the term 'person' means an individual or entity;
- (b) the term 'entity' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;
- (c) the term 'United States person' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and
- (d) the term 'Government of Burma' means the Government of Burma (sometimes referred to as Myanmar), its agencies, instrumentalities and controlled entities, and the Central Bank of Burma.

Sec. 6. I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by or to persons whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13047, and hereby prohibit such donations as provided by section 1 of this order.

Sec. 7. For those persons whose property and interests in property are blocked pursuant to section 1 of this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13047, there need be no prior notice of a listing or determination made pursuant to this order.

Sec. 8. Determining that such a waiver is in the national interest of the United States, I hereby waive the prohibitions described in section 3 of the Burmese Freedom and Democracy Act of 2003 with respect to any and all articles that are a product of Burma to the extent that prohibiting the importation of such articles would conflict with the international obligations of the United States under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, the United Nations Headquarters Agreement, and other legal instruments providing equivalent privileges and immunities.

Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and sections 3(a) and 4 of the Burmese Freedom and Democracy Act of 2003, other than the authority to make the determinations and certification to Congress that Burma has met the conditions described in 3(a)(3) of the Act, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. The Secretary of State is authorized to exercise the functions and authorities conferred upon the President by section 3(b) of the Burmese Freedom and Democracy Act of 2003 and to redelegate these functions and authorities consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 10. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to determine, subsequent to the issuance of this order, that circumstances no longer warrant inclusion of a person in the Annex to this order and that the property and interests in property of that person are therefore no longer blocked pursuant to section 1 of this order.

Sec. 11. Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under 31 C.F.R. chapter V, except as expressly terminated, modified, or suspended by or pursuant to this order.

Sec. 12. Sections 1 through 7 of Executive Order 13047 are hereby revoked to the extent they are inconsistent with this order. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under Executive Order 13047, not inconsistent with section 3 of this order and not revoked administratively, shall remain in full force and effect under this order until amended, modified, or terminated by proper authority. The revocation of any provision of Executive Order 13047 pursuant to this section shall not affect any violation of any rules, regulations, orders, licenses, or other forms of administrative action under that order during the period that such provision of that order was in effect.

Sec. 13. All provisions of this order other than section 3 shall not apply to any activity, or any transaction incident to an activity, undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that was entered into by a United States person with the Government of Burma or a nongovernmental entity in Burma prior to 12:01 a.m. eastern daylight time on May 21, 1997.

Sec. 14. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 15. This order is effective on 12:01 a.m. eastern daylight time on July 29, 2003.

Sec. 16. This order shall be transmitted to the Congress and published in the *Federal Register*.

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**ANNEX IN OFAC'S TRADITIONAL FORMAT** without the a.k.a.s listed as separate entries:

MYANMA ECONOMIC BANK (a.k.a. MYANMAR ECONOMIC BANK), 1-19 Sule Pagoda Road, Pabedan T/S, Yangon, Myanmar [BURMA]

MYANMA FOREIGN TRADE BANK (a.k.a. MYANMAR FOREIGN TRADE BANK), P.O. Box 203, 80-86 Maha Bandoola Garden Street, Kyauktada T/S, Yangon, Myanmar; SWIFT/BIC: FOTMMMM1 [BURMA]

MYANMA INVESTMENT AND COMMERCIAL BANK (a.k.a. MICB; a.k.a. MYANMAR INVESTMENT AND COMMERCIAL BANK), 170/176 Bo Aung Kyaw Street, Botataung Township, Yangon, Myanmar; SWIFT/BIC: MYANMMMM1 [BURMA]

STATE PEACE AND DEVELOPMENT COUNCIL OF BURMA [BURMA]

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## PROGRAM AS PREVIOUSLY SUMMARIZED:

■ **INTRODUCTION** - On May 20, 1997, in response to the Burmese Government's large scale repression of and violence against the Democratic opposition, President Clinton issued Executive Order No. 13047 declaring a national emergency with respect to Burma. The order, issued under the authority § 570(b) of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1997 (Public Law 104-208) (the "Act") and the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) ("IEEPA"), prohibits new investment in Burma by U.S. persons, and their facilitation of new investment in Burma by foreign persons. The summary which follows is intended as a broad overview of the Regulations.

Criminal penalties for violating the Burmese Sanctions Regulations range up to 10 years in jail, \$500,000 in corporate, and \$250,000 in individual fines. In addition, civil penalties of up to \$11,000 per violation may be imposed administratively.

■ **NEW INVESTMENT** - The sanctions prohibit new investment in Burma (Myanmar) by U.S. persons on or after May 21, 1997, unless such investment is pursuant to an agreement in place prior to May 21, 1997. A number of criteria are used to determine whether or not a specific activity is "grandfathered." Factors taken into account include the clarity of the scope of the agreement, the degree of specificity with which the activity is described, and the extent to which the terms of the agreement are legally enforceable. U.S. persons with pre-effective date agreements for the economic development of resources located in Burma should contact the Office of Foreign Assets Control for a determination as to whether or not their project is

exempted from the sanctions.

New investment in Burma is defined as a contract with the Government of Burma or a nongovernmental entity in Burma for the development of resources (including natural, agricultural, commercial, financial, industrial and human resources) located in Burma. The prohibition includes purchasing a share of ownership (an equity interest) in a project or entering into an agreement which provides for a participation in royalties, earnings, and profits from the economic development of resources located in Burma. The Executive order also prohibits a U.S. company from entering into a contract which provides for the general supervision and guarantee of another person's performance of an agreement for the economic development of resources located in Burma.

Some examples of prohibited new investment are as follows:

- ✓ A U.S. company wishes to build a new factory in Burma where its products will be produced. This is likely to involve an agreement for the development of industrial, commercial, and human resources located in Burma and is prohibited.
- ✓ A U.S. contractor has been asked by a foreign oil company to be the general contractor for its oil exploration project in Burma. The U.S. company would not only supervise the sub-contractors, but also guarantee their performance. This activity is considered new investment and is prohibited.
- ✓ A U.S. sub-contractor has been asked to perform a service - 2 - for the general contractor in the previous example, but will have no supervisory functions. The sub-contractor is merely

providing a service and its activities in Burma are *not* prohibited.

- ✓ A U.S. company has been asked by a European company to provide ongoing technical support for its factory in Burma. The contract calls for the U.S. company to be paid a percentage of the profits generated by the Burmese factory. This is a prohibited new investment in Burma.

■ **FACILITATION** - A U.S. person is prohibited from approving, aiding or supporting a foreign person's investment in Burma, if the foreign person's activity would constitute prohibited new investment if engaged in by a U.S. person. Exception: While contracting to sell to a foreign person a U.S. person's equity or income interest in a development project in Burma constitutes facilitation of that foreign person's investment in Burma, such a divestiture is authorized by general license to proceed. If the transaction is valued at more than \$10,000, a report must be filed for statistical purposes with the Office of Foreign Assets Control, within ten business days of the signing of such an agreement.

Examples of prohibited facilitation of a foreign person's new investment in Burma follow:

- ✓ The foreign subsidiary of a U.S. company wishes to bid on a project to develop a coal mine in Burma. The U.S. parent cannot approve, supervise, or otherwise be involved in the foreign subsidiary's negotiations with regard to this project.
- ✓ A U.S. oil company holds a pre-effective date contract to develop a Burmese oil field. It wishes to sell its rights under the contract to a foreign company. It is authorized to sell an interest without prior authorization from OFAC, but if the agreement is valued at more than \$10,000, the seller must file a report with OFAC within ten days of the signing of the agreement.

■ **INVESTMENT IN THIRD COUNTRY COMPANIES** - U.S. persons are prohibited from purchasing shares in a third-country company where the company's profits are predominantly derived from the company's economic development of resources located in Burma. If a person holds shares in an entity that subsequently engages exclusively or predominantly in the economic development of resources in Burma, or subsequently derives its income exclusively or predominantly from such activity, the U.S. person is not required to relinquish its shares, but may not purchase additional shares. If the U.S. person sells off shares valued at more than \$10,000, the seller must file a report with OFAC for statistical purposes within ten days of the sale.

If you have information regarding possible violations of any of these regulations, please call the Treasury Department's Office of Foreign Assets Control at 202/622-2430. Your call will be handled confidentially.

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This document is explanatory only and does not have the force of law. The Executive Orders and implementing Burmese Sanctions Regulations (31 CFR Part 537) contain the legally binding provisions governing the sanctions against Burma described above. This document does not supplement or modify the Executive Orders or 31 CFR Part 537.

The Office of Foreign Assets Control also administers sanctions programs involving Libya, Cuba, North Korea, Iran, Iraq, Syria, Sudan, Liberia, Sierra Leone, Zimbabwe, certain targets in the Western Balkans, highly enriched uranium transactions, designated terrorists and international narcotics traffickers, Foreign Terrorist Organizations, and designated foreign persons who have engaged in activities relating to the proliferation of weapons of mass destruction. For additional information about these programs or about the Burmese sanctions program, please contact the:

**OFFICE OF FOREIGN ASSETS CONTROL**  
U.S. Department of the Treasury  
Washington, D.C. 20220  
202/622-2520

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