

CLIENT ALERT

Burma Sanctions: First Major Sanctions Action From the Biden Administration Marks Return to the Past

February 12, 2021

AUTHORS

Britt Mosman | David Mortlock | William J. Stellmach | Michael J. Gottlieb
Nikki M. Cronin | Ahmad El-Gamal

In its first major sanctions action, the Biden administration has responded to the military coup in Burma by issuing a new Executive Order (“EO”) on February 11, 2021, “[Blocking Property with Respect to the Situation in Burma](#).” The EO relaunches a sanctions regime for Burma by authorizing blocking sanctions against leaders of the Burmese military and government as well as persons operating in the Burmese defense sector or engaged in certain targeted activities. The Department of Treasury’s Office of Foreign Assets Control (“OFAC”) complemented the issuance of the EO by concurrently designating ten individuals and three entities connected to the military apparatus responsible for the coup.

President Obama terminated a national emergency and corresponding sanctions regime for Burma in 2016. However, President Biden has not merely reactivated the prior sanctions program, but rather has created new and far-reaching designation criteria for a targeted sanctions program, authorizing OFAC to potentially impose restrictions on U.S. persons doing business with Burmese government and military institutions and officials.

Burma Sanctions: First Major Sanctions Action From the Biden Administration Marks Return to the Past

Blocking Sanctions. Citing the Burmese military's overthrow of the democratically elected civilian government of Burma, and the unjust arrest and detainment of democratically elected government leaders, politicians, human rights defenders, journalists, and religious leaders, the EO declares a national emergency in response to the situation in Burma. It orders the blocking of all property and interests in property within U.S. jurisdiction of any foreign person determined by the Secretary of Treasury, in consultation with the Secretary of State, to:

- operate in the defense 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;
- be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in, any of the following:
 - actions or policies that undermine democratic processes or institutions in Burma;
 - actions or policies that threaten the peace, security, or stability of Burma;
 - 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
 - the arbitrary detention or torture of any person in Burma or other serious human rights abuse in Burma;
- be or have been a leader or official of:
 - the military or security forces of Burma, or any successor entity to any of the foregoing;
 - the Government of Burma on or after February 2, 2021;
 - an entity that has, or whose members have, engaged in any activity described above relating to the leader's or official's tenure; or
 - an entity whose property and interests in property are blocked pursuant to the EO as a result of activities related to the leader's or official's tenure;
- be a political subdivision, agency, or instrumentality of the Government of Burma; or
- be a spouse or adult child of any person whose property and interests in property are blocked pursuant to the EO.

Burma Sanctions: First Major Sanctions Action From the Biden Administration Marks Return to the Past

Consistent with authorities in other OFAC-administered sanctions programs, the EO also authorizes blocking sanctions against foreign persons determined to (i) 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 the EO, and (ii) have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of any person blocked pursuant to the EO. Additionally, the EO bars entry into the United States of persons blocked pursuant to the order.

OFAC Designations. [OFAC designated](#) ten current and former military officials responsible for the coup or associated with the Burmese military regime and three Burmese entities involved in the Burmese gem trade. These individuals and entities were added to OFAC's Specially Designated Nationals and Blocked Persons List. As a result, all property and interests in property of the persons designated today, and of any entities owned 50 percent or more by today's designees, are blocked, and U.S. persons are generally prohibited from dealing with them.

Commerce Department. In conjunction with the publication of the EO, the Department of Commerce's Bureau of Industry and Security ("BIS") placed a series of immediate export restrictions on sensitive items to select Burmese government departments and agencies. Specifically, BIS will apply a presumption of denial for items that require a license for export and re-export to Burma's Ministry of Defense, Ministry of Home Affairs, armed forces, and security services. BIS also suspended license exceptions previously available for exporting certain items to Burma including Shipments to Country Group B countries (GBS) and Technology and Software under restriction (TSR). The Department of Commerce [press release](#) also notes that BIS will assess additional actions including Entity List additions, adding Burma to the list of countries subject to the Export Administration Regulations' military end use and end user (MEU) and military intelligence end use and end user (MIEU) restrictions, and downgrading Burma's Country Group status in the EAR.

Going Forward. The latest Burma-related sanctions imposed by the Biden administration follow the gradual easing of U.S. sanctions on Burma over the past decade based on Burma's progress toward democracy, which culminated in the termination of the Burmese sanctions program by President Obama in 2016. Although the EO is less restrictive than the prior Burmese sanctions program was at its peak, the EO includes various authorizations that could be exercised by the Treasury Department to quickly escalate sanctions against Burma should Burma's military not change course, potentially eclipsing the prior U.S. sanctions regime on Burma. Indeed, the Treasury Department cautioned in the [press release](#) accompanying its Burmese-related designations that "the Burmese military will find that today's sanctions are just the first" if there is more violence against peaceful protestors.

Burma Sanctions: First Major Sanctions Action From the Biden Administration Marks Return to the Past

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Britt Mosman

202 303 1057

bmosman@willkie.com

David Mortlock

202 303 1136

dmortlock@willkie.com

William J. Stellmach

202 303 1130

wstellmach@willkie.com

Michael J. Gottlieb

202 303 1442

mgottlieb@willkie.com

Nikki M. Cronin

202 303 1203

ncronin@willkie.com

Ahmad El-Gamal

202 303 1142

ael-gamal@willkie.com

Copyright © 2021 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This alert may be considered advertising under applicable state laws.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Palo Alto, San Francisco, Chicago, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.