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# Myanmar Updates: **Sanctions on Myanmar**

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# I. Meaning and Types of Sanctions

# Meaning of Sanction

The term “**sanction**” has a number of different legal meanings, depending on the context and/or circumstances in which it is being used. “Sanction” can be used to describe tacit or explicit approval, but can also be used to describe disapproval.

# Meaning of Sanction

For international matters, the word often refers to measures taken by a nation or a group of nations to coerce another nation to comply with expected conduct or behavior. These may include diplomatic measures (e.g., severing diplomatic ties), economic measures (e.g., restricting trade), or military measures (e.g., the imposition of a “no fly zone”).

# Meaning of Sanction

For purposes of this presentation, “**sanction**” refers to any measure or action of a diplomatic, economic, or military nature taken by a nation (usually, the United States) or a group of nations to coerce Myanmar to comply with expected conduct or behavior.

# Forms of Sanction

- **Sanction under International Law**

e.g. Sanction imposed by the UN

- **National Sanction**

- Embedded Sanction: national sanction adopting UN sanction
- Supplementary/Mixed Sanction: sanction adopting UN sanction + additional measures
- **Autonomous Sanction: independent sanction without adopting UN sanction**



# Types of Sanction

There are several types of sanctions.

- **Economic sanctions\*** – typically a ban on trade, possibly limited to certain sectors such as armaments, or with certain exceptions (such as food and medicine), trade barriers such as increased fees in certain economic sectors such as food, weapons, pharmaceuticals, etc.;
- **Diplomatic sanctions** – the reduction or removal of diplomatic ties, such as embassies, termination of cooperation, breaking all diplomatic bounds such as country's embassies, councils, and joint cultural events.
- **Military sanctions** – military intervention
- **Sport sanctions** – preventing one country's people and teams from competing in international events.
- **Travelling sanctions** - Various restrictions on travel from a comprehensive ban for all nationals of a country, a ban on travel to rebel-held territory within a country, to an aviation ban on all flights into or out of a country, etc.

\* Economic sanctions are distinguished from trade sanctions, which are applied for purely economic reasons, and typically take the form of tariffs or similar measures, rather than bans on trade.

# Types of Economic Sanction

An economic sanction can be exercised in several ways. These include:

- **Tariffs** – Taxes imposed on goods imported from another country.
- **Quotas** – A limit on how many goods can be either imported from another country or sent to that country.
- **Embargoes** – A trade restriction that prevents a country from trading with another. For example, a government can prevent its citizens or businesses from providing goods or services to another country.
  - general import restriction
  - specific import restriction)
- **Non-Tariff Barriers (NTBs)** – These are non-tariff restrictions on imported goods and can include licensing and packaging requirements, product standards and other requirements that are not specifically a tax.
- **Asset freezes or seizures** – Preventing assets owned by a country or individual from being sold or moved.

# Types of Economic Sanction

There are also other types of sanctions previously imposed by several countries. These include:

- **Restriction on Financial Services** – Restricting on transferring funds or making funds or economic resources available, directly or indirectly, to that person or entity for specific type of financial sanction with a stated objective, one of which is the prevention of terrorist financing.
  - restrictions on access to capital markets
  - directions to cease banking relationships and activities
  - requirement of notification / authorization prior to payment made
  - denying safe haven)
- **Investment Ban** – Banning its citizens and citizen-controlled companies to invest in or with the target
  - direction to cease all business
  - new investment ban
- **Assistance Ban** – Voting against the extension of any loan, financial or technical assistance to the target.

# Levels of Economic Sanction

Economic sanctions, especially imposed by the USA, can be categorized in four levels.

- **Primary Sanctions**
  - **Targeted Sanction**
    - List-based blocking sanctions (Specially Designated Nationals List: SDN)
    - Sectoral Sanction (Sectoral Sanction Identification: SSI)  
e.g. four sectors of the Russian Economy (financial, energy, defence, oil)
  - **Comprehensive Sanction (jurisdiction)**  
e.g. Iran, Syria, North Korea, Crimea region  
(the Correspondent Account or Payable-Through Account Sanction: CAPTA)
- **Secondary Sanctions**  
(Foreign Sanctions Evaders List: FSE)
- **Cyber Sanctions**

## II. Impact to Business in Myanmar

# Impact to Business in Myanmar

Economic sanctions may cause any of the following impacts to the business:-

## In general

- Financing cost (Interest, F/X, Inflation, Availability, etc.)
- Suspension of the GSP

## Compliance

- Lost of opportunity to trade or joint business with the targets
- Delayed certain types of transaction
- Cost of due diligence and KYC process

## Non-compliance

- Offences/Penalty
- Seizure / Blockage of the assets in the related Transaction
- Secondary Sanction
- Reputation

## Persons who may help you to identify the target

- Relevant Embassies
- International Banks
- Law firms

### **III. Recent Movements related to Sanctions on Myanmar**

# 1. UN Sanction



# UN Sanction

United Nations Security Council (UNSC)



United Nations General Assembly



# UN Sanction - UNSC

Article 41 of the UN Charter - the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures.....

Since 1966, the Security Council has established 30 sanctions regimes, in Southern Rhodesia, South Africa, the former Yugoslavia (2), Haiti, Iraq (2), Angola, Rwanda, Sierra Leone, Somalia and Eritrea, Eritrea and Ethiopia, Liberia (3), DRC, Côte d'Ivoire, Sudan, Lebanon, DPRK, Iran, Libya (2), Guinea-Bissau, CAR, Yemen, South Sudan and Mali, as well as against ISIL (Da'esh) and Al-Qaida and the Taliban.

Chapter VII of the UN charter allows the Security Council to authorise the use of force “to maintain or restore international peace and security”.

# UN Sanction - UNSC

**UNSC Permanent Members** (with veto rights): US, UK, Russia, China and France

**Current non-permanent members** (2 years term): Estonia, India, Ireland, Kenya, Mexico, Niger, Norway, Saint Vincent and the Grenadines, Tunisia and Vietnam.

A Security Council resolution needs **nine votes in favor** and **no veto from the five permanent** members to pass.  
(a party to a dispute shall abstain from voting)

# UN Sanction - UNSC

## **In February 2021,**

- UN Secretary-General António Guterres pledged to “do everything we can to mobilize all the key actors and international community to put enough pressure on Myanmar to make sure that this coup fails.”
- The UN special rapporteur for Myanmar, Tom Andrews, has repeatedly called for an arms embargo and sanctions.
- Guterres’ special envoy, Christine Schraner Burgener, has also called for targeted sanctions.

# UN Sanction - UNSC

**10 March 2021** – “....the Security Council strongly condemns the violence against peaceful protestors, including against women, youth and children. It expresses deep concern at restrictions on medical personnel, civil society, labour union members, journalists and media workers, and calls for the immediate release of all those detained arbitrarily. The Council calls for the military to exercise utmost restraint and emphasises that it is following the situation closely....”

**As of today, no UN Sanction on Myanmar has been imposed by the UNSC.**

# UN Sanction - UNGA

The General Assembly is the main deliberative organ of the United Nations. It is composed of representatives of all Member States, each of which has one vote.

Decisions on important questions, such as those on peace and security, admission of new Members and budgetary matters, require a two-thirds majority.

Decisions on other questions are reached by a simple majority. These decisions may be adopted without a vote, or with a vote, which may be recorded, non-recorded or by roll-call.

While **the decisions of the General Assembly have no legally binding force** for Governments, they carry the weight of world opinion on major international issues, as well as the moral authority of the world community. The work of the United Nations derives largely from the decisions of the General Assembly, i.e. the will of the majority of the Members, as expressed in resolutions adopted by the General Assembly.

# UN Sanction - UNGA

A draft resolution calling “for an immediate suspension of the direct and indirect supply, sale or transfer of all weapons and munitions to Myanmar” introduced by Liechtenstein supported by 48 countries including EU, USA and UK. However, South Korea is the only country in Asia supporting the non-binding draft resolution.

A 193-member U.N. General Assembly vote on **18<sup>th</sup> May 2021** on such draft **has been postponed**.

It was not immediately known when a vote would be rescheduled. Some diplomats said today that, it had been delayed in a bid to win more support.

## 2. US Sanction

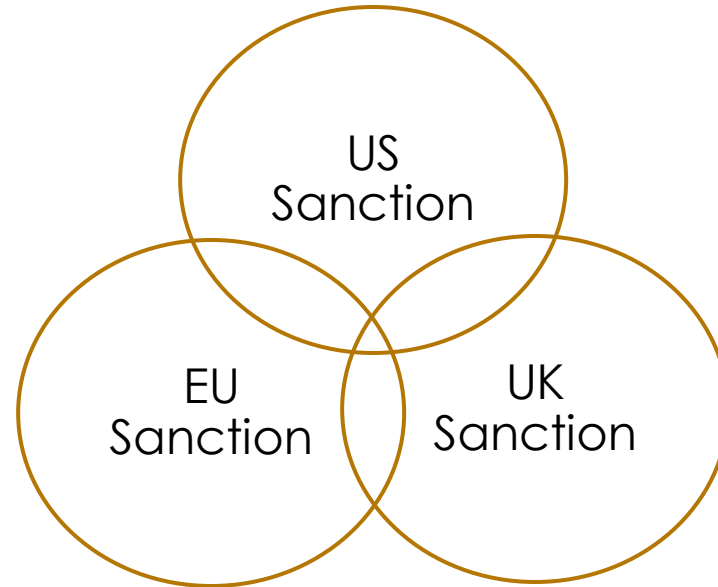


# US Sanction



**EXECUTIVE ORDER 14014** (dated: 10<sup>th</sup> February 2021)  
**Blocking Property With Respect to the Situation in Burma**

# US Sanction



# US Sanction

**EXECUTIVE ORDER 14014** (dated: 10<sup>th</sup> February 2021)  
**Blocking Property With Respect to the Situation in Burma**

(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

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

# US Sanction

## Contents

1. Subjects
2. Measures
3. Issues related to US Jurisdiction over transactions outside the United States
4. Penalty
5. Targets
6. General Licenses



# US Sanction

## Subjects

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.

foreign subsidiaries of  
a U.S. parent company?

the branches of any foreign entities  
that are located in the United States?

# US Sanction

## Measures

1. 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

# US Sanction

## Measures

2. The prohibition also includes the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order

# US Sanction

## Measures

3. The prohibition also includes the receipt of any contribution or provision of funds, goods, or services from any such person.



# US Sanction

## Measures

4. entry of such persons into the United States, as immigrants or non-immigrants, is hereby suspended,

# US Sanction

## Measures

5. making of donations of the following types of articles:-

- (i) any transactions in foreign exchange,
- (ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,
- (iii) the importing or exporting of currency or securities,

by, to, or for the benefit of any person whose property and interests in property are blocked

# US Sanction

## Issues related to US Jurisdiction over transactions outside the United States

- **Transaction in U.S. Dollars**

Agreements to pay in USD for goods and services provided by and between non-U.S. parties outside the United States, and maintenance of accounts at overseas branches of U.S. banks are common and significant sources of sanctions risk for foreign businesses.

Non-U.S. parties should be mindful of these bases for U.S. jurisdiction when conducting transactions that are lawful in the jurisdiction(s) where the parties operate, but could violate U.S. sanctions by involving U.S. banks in transactions that have a sanctions nexus.

# US Sanction

## Issues related to US Jurisdiction over transactions outside the United States

- **Transaction in U.S. Dollars**

e.g. in 2019, the UniCredit Group entered into a combined **USD 611 million** settlement with OFAC in relation to more than 2,800 apparent violations of various U.S. sanctions programs, including:

the Weapons of Mass Destruction Proliferation Sanctions Regulations, the Global Terrorism Sanctions Regulations, the Cuban Assets Control Regulations, the **Burmese Sanctions Regulations**, the Sudanese Sanctions Regulations, the Syrian Sanctions Regulations, the Iranian Transactions and Sanctions Regulations, and the Libyan Sanctions Regulations.

# US Sanction

## Issues related to US Jurisdiction over transactions outside the United States

- **Transactions involving goods that are subject to U.S. export controls**

Foreign companies should identify suppliers in the U.S. as well as suppliers outside the U.S. that provide goods produced in the U.S., or with U.S. content, or from U.S. technology.

Foreign companies should ask suppliers whether their products are subject to U.S. export controls, and should implement controls to monitor any such items and ensure that retransfers comply with U.S. law.

# US Sanction

## Issues related to US Jurisdiction over transactions outside the United States

- **Transactions involving goods that are subject to U.S. export controls**

e.g. in 2018, the Jereh Group, headquartered in the city of Yantai, China, has agreed to settle potential civil liability with USD 2,774,972 settlement for 11 apparent violations of the Iranian Transactions and Sanctions Regulations (ITSR).

The apparent violations involved the exportation or re-exportation, and attempted exportation or re-exportation of U.S.-origin goods ultimately intended for end-users in Iran by way of China. The Jereh Group also exported certain U.S.-origin items with knowledge or reason to know that the items were intended for production of, for commingling with, or for incorporation into goods made in China to be supplied, transshipped, or re-exported to end-users in Iran.

# US Sanction

## Issues related to US Jurisdiction over transactions outside the United States

- **Transactions involving shared services/personnel in the US**

Transactions by and between foreign parties outside the U.S. are also subject to U.S. jurisdiction if they involve personnel or equipment in the United States.

Common scenarios include U.S.-based managers approving a transaction, or U.S.-based personnel providing support functions.

# US Sanction

## Issues related to US Jurisdiction over transactions outside the United States

- **Transactions involving shared services/personnel in the US**

e.g. in February 2020, Geneva-based SITA paid OFAC USD 8 million based in part on allegations that it provided sanctioned airlines with services that included transmitting messages via telecommunications switches in the U.S., and providing access to a software platform that was maintained by an entity in the United States.



# US Sanction

## **Penalty 50 U.S. Code § 1705**

Civil Penalty: an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed but not less than USD 250,000.

### Criminal Penalty

A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, an unlawful act described in subsection (a) of this section shall, upon conviction, be fined not more than \$1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

# US Sanction

**Targets** – Member of State Administration Council (SAC)

General Mya Tun Oo  
Admiral Tin Aung San  
Lieutenant General Ye Win Oo  
Lieutenant General Aung Lin Dwe

**Mahn Nyein Maung**  
**Thein Nyunt**  
**Sai Lone Saing**  
**Khin Maung Swe**

Newly added  
17 May 2021

# US Sanction

**Targets** – Newly Appointed Ministers / Chairman

Newly added  
17 May 2021

**Ko Ko Hlaing** is the Minister of International Cooperation;

**Tun Aung Myint** is the Minister for Ethnic Affairs;

**Tun Tun Naung** is the Minister of Border Affairs;

**Than Nyein** is the governor of the Central Bank of Burma;

**Pwint San** is the Minister of Commerce;

**Win Shein** is the Minister for Planning, Finance, and Industry;

**Thein Soe** is the chairman of the military-appointed Union Election Commission, the regime's electoral body;

**Thet Khaing Win** is the Minister of Health and Sports; and

**Khin Maung Yi** is the Minister of Natural Resources and Environmental Conservation.

# US Sanction

**Targets** – Family members

Newly added  
17 May 2021

**Hein Htet** is the adult child of SAC member General Maung Maung Kyaw, whom Treasury designated on February 22, 2021 pursuant to E.O. 14014;

**Kaung Htet** is also an adult child of General Maung Maung Kyaw; and

**Yin Min Thu** is the adult child of SAC member Admiral Tin Aung San, whom Treasury designated on February 11, 2021 pursuant to E.O. 14014.

# US Sanction

## Targets - Entities

**Myanmar Ruby Enterprise,**

**Myanmar Imperial Jade Co., Ltd.**

**Cancri (Gems and Jewellery) Co., Ltd.**

**Myanma Economic Holdings Public Company Limited (MEHL)**

**Myanmar Economic Corporation Limited (MEC)**

the **State Administrative Council (SAC)** is designated for being a political subdivision, agency, or instrumentality of the Government of Burma.

Newly added  
17 May 2021

# US Sanction

## Targets

### OFAC's 50 Percent Rule (13<sup>th</sup> August 2014)

REVISED GUIDANCE ON ENTITIES OWNED BY PERSONS WHOSE PROPERTY AND INTERESTS IN PROPERTY ARE BLOCKED

The rule speaks only to ownership and not to control. An entity that is controlled (but not owned 50 percent or more) by one or more blocked persons is not considered automatically blocked pursuant to OFAC's 50 Percent Rule.

OFAC may, however, designate the entity under an available sanctions criteria or otherwise identify the entity as blocked property if determined to be controlled by one or more designated persons and add the entity to OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List)

*Beware: target criteria of sanctions of other jurisdictions are varied.*

# US Sanction

## Targets

### **Minority Interest**

a designated person has a minority interest in another entity, this does not necessarily mean that financial sanctions also apply to them as the ownership and control criteria may not have been met.

It will be necessary to consider whether a designated person is in control e.g. because the affairs of the entity are conducted in accordance with the designated person's wishes.

If they are, then the ownership and control criteria will be met. You should remain vigilant to any changes in the stake held by the designated person in case it increases to greater than 50% (or they obtain a majority interest) at which point financial sanctions will also apply to that entity.

# US Sanction

## Targets

### Example relating to entities

For example, Entity X is not listed on the list.

However, your research shows that the majority owner of Entity X is designated Entity Y.

As the ownership and control criterion has been met, Entity X is also subject to the same restrictions as designated Entity Y.



# US Sanction

## Targets

### Example relating to individuals

Person A (an individual) is not listed on the list.

However, your research shows that Person A is a family member of designated Person B and there is evidence that Person B is using Person A to enter into transactions.

As Person B is in control of Person A, Person A is also subject to the same restrictions as designated Person B.

# US Sanction

## **GENERAL LICENSE NO. 1** (dated: 25<sup>th</sup> March 2021) **Official Business of the United States Government**

all transactions and activities prohibited by Executive Order (E.O.) 14014 that are for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof are authorized.

# US Sanction

## **GENERAL LICENSE NO. 2** (dated: 25<sup>th</sup> March 2021) **Official Activities of Certain International Organizations and Other International Entities**

the conduct of the official business of the following entities, by employees, grantees, or contractors thereof are authorized.

- The United Nations, including its Programmes, Funds, and Other Entities and Bodies, as well as its Specialized Agencies and Related Organizations
- International Centre for Settlement of Investment Disputes (ICSID) and the Multilateral Investment Guarantee Agency (MIGA);
- The African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank Group (IDB Group), including any fund entity administered or established by any of the foregoing;

# US Sanction

## **GENERAL LICENSE NO. 2** (dated: 25<sup>th</sup> March 2021) (continued)

- International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies;
- International Development Law Organization (IDLO);
- The Association of Southeast Asian Nations (ASEAN);
- The Colombo Plan;
- The Consultative Group on International Agricultural Research (CGIAR) System Organization and the International Agricultural Research Centers supported by the CGIAR;
- The Extractive Industries Transparency Initiative (EITI); and
- The Global Fund to Fight AIDS, Tuberculosis, and Malaria and the Global Alliance for Vaccines and Immunizations.

# US Sanction

## **GENERAL LICENSE NO. 3** (dated: 25<sup>th</sup> March 2021) **Certain Transactions in Support of Nongovernmental Organizations' Activities**

All transactions and activities prohibited by Executive Order (E.O.) 14014 that are ordinarily incident and necessary to the activities described in paragraph (b) by nongovernmental organizations are authorized, including the processing and transfer of funds; payment of taxes, fees, and import duties; and purchase or receipt of permits, licenses, or public utility services.

- Activities to support humanitarian projects
- Activities to support democracy building in Burma
- Activities to support education in Burma
- Activities to support non-commercial development projects directly benefiting the people of Burma, including preventing infectious disease and promoting maternal/child health, sustainable agriculture, and clean water assistance
- Activities to support environmental and natural resource protection in Burma

# US Sanction

## **GENERAL LICENSE NO. 4** (dated: 25<sup>th</sup> March 2021)

### **Authorizing the Wind Down of Transactions Involving Myanmar Economic Corporation Limited and Myanma Economic Holdings Public Company Limited**

All transactions and activities prohibited by Executive Order (E.O.) 14014 that are ordinarily incident and necessary to the wind down of transactions involving:-

- Myanmar Economic Corporation Limited (MEC),
- Myanma Economic Holdings Public Company Limited (MEHL),
- or any entity in which MEC or MEHL owns, whether individually or in the aggregate, directly or indirectly, a 50 percent or greater interest

are authorized through 12:01 a.m. eastern daylight time, **June 22, 2021.**

# US Sanction

## TIPS!

- Due Diligence / Screening
- If license is required, apply for the license
- Building contractual protection
- Stay up to date with sanctions development
- In case of doubt, contact the expert lawyer.

# Thank you for our attention.



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