

Insights

U.S. IMPOSES ADDITIONAL MEASURES AGAINST BURMA/MYANMAR

Mar 11, 2021

SUMMARY

Building on the export controls and sanctions measures already imposed by the U.S. government in February in response to the military coup in Burma, the Bureau of Industry and Security (“BIS”) imposed additional export control restrictions on March 8, 2021, and OFAC designated additional parties as Specially Designated Nationals and Blocked Persons (“SDN”).

The final rule published by BIS on March 8, 2021 implements the following changes to the Export Administration Regulations (“EAR”) affecting Burma:

1. moving Burma from Country Group B to Country Group D:1;
2. adding Burma to the countries subject to military end use and military end user restrictions in § 744.21 of the EAR; and
3. moving Burma from Computer Tier 1 to the more restrictive Computer Tier 3 in the License Exception for computers.

The shift of Burma from Country Group B to the more restrictive Country Group D:1 reduces the availability of license exceptions for exports, reexports, and in-country transfers. Use of certain provisions of the following licenses exceptions is curtailed by this change:

1. Shipments of Limited Value (LVS);
2. Shipments to Group B Countries (GBS);
3. Technology and Software under Restriction (TSR);
4. Computers (APP);
5. Temporary Imports, Exports, Reexports, and Transfers (in-country) (TMP);

6. Servicing and Replacement Parts and Equipment (RPL);
7. Aircraft, Vessels, and Spacecraft (AVS);
8. Additional Permissive Reexports (APR); and
9. Encryption commodities, technology, and software (ENC).

If you are currently relying on any of these license exceptions to authorize transactions involving Burma, future exports, reexports and transfers should be evaluated with these new restrictions in mind to determine whether a license will be required going forward.

Burma has also now been added to the military end use/end user restrictions included in § 744.21 of the EAR, joining China, Russia and Venezuela. This triggers license requirements for items identified in Supplement No. 2 to Part 744 if they are intended for a military end use or military end user, as each of those terms are broadly defined in § 744.21. Separately, items controlled for national security purposes will now be reviewed by BIS under the more stringent license review policy already applied under § 742.4(b)(7) to China, Russia and Venezuela. Under this policy, items controlled for national security purposes will be subject to a presumption of denial if the items would materially contribute to the development, production, maintenance, repair, or operation of certain weapons systems of Burma, China, Russia or Venezuela.

Furthermore, the movement of Burma from Computer Tier 1 to Computer Tier 3 limits use of license exception Computers (APP).

In a separate action, BIS added four entities associated with Burma to the [Entity List](#). BIS determined the entities contributed to the democratic instability following the military coup d'état. Specifically, BIS added the Ministry of Defence, the Ministry of Home Affairs, Myanmar Economic Corporation, and Myanmar Economic Holdings Limited. On March 10, 2021, OFAC also [designated](#) an additional two individuals and four entities under the Burma-related sanctions pursuant to Executive Order 14014. These include:

1. Seventh Sense Creation;
2. A&M Mahar Company Ltd.;
3. Sky One Construction Company Ltd.;
4. The Yangon Gallery;
5. Daw Khin Thiri Thet Mon; and
6. Aung Pyae Sone.

The increased restrictions affecting exports to Burma and the additional Entity List and SDN designations are intended to prevent EAR-controlled items from reaching those responsible for the military coup and to prevent U.S. persons from providing any assistance or support. Any activities with Burma or listed parties should be scrutinized to mitigate any risks of non-compliance.

RELATED PRACTICE AREAS

- International Trade

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