CLIENT UPDATE
2016 MAY

FOREIGN INVESTMENT

Updates to the U.S. Sanctions Regime in Myanmar

Introduction

On 17 May 2016, the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**") amended the "Burmese Sanctions Regulations, 31 C.F.R. part 537" ("**BSR**"), and updated the Specially Designated Nationals and Blocked Persons ("**SDN**") List. While the primary sanctions prohibiting U.S. persons from dealing with "blocked persons", including persons on the SDN list (as well as any entity owned in the aggregate, directly or indirectly, 50% or more by one or more such persons, commonly known as 50% rule) still remain, the amendments to the BSR support trade and facilitate the movement of goods within Myanmar to a greater extent. For example, the amendment now permits U.S. persons residing in Myanmar to conduct a wider range of transactions, and allow most transactions with Myanmar financial institutions.

Brief Overview of Myanmar Sanctions Regulations

Broadly, the U.S. sanctions are intended to limit the ability of U.S. persons to engage in certain Myanmar-related transactions.

As background, the U.S. sanctions against Myanmar began on 20 May 1997, when U.S. President Bill Clinton issued Executive Order 13047, determining that the Government of Myanmar had committed large scale repression of the democratic opposition. U.S. sanctions against Myanmar have subsequently been expanded through several other Executive Orders, and other pieces of legislation enacted by the U.S. Congress, cumulating in the BSR.

In July 2012, the United States formally eased sanctions on Myanmar, through the issuance of OFAC licenses. The two types of licenses, namely general licenses which broadly authorise a particular transaction as well as specific licenses which are more targeted, have been subsequently incorporated within the BSR. The most recent amendments to the BSR involved the addition and extension of such OFAC licenses, as discussed below.

Restrictions on Myanmar Banks Lifted

OFAC's removal of three state-owned banks from the SDN List, namely Myanma Economic Bank ("**MEB**"), Myanmar Foreign Trade Bank and Myanma Investment and Commercial Bank is significant, in particular because delisting MEB means that the Yangon Stock Exchange, which is 51% owned by MEB, is no longer treated as "blocked" under OFAC's 50% rule. This also facilities applications for a number of regulatory licences and permits, given that it is not uncommon for licence fees to be paid to designated bank accounts in such previously sanctioned banks.

Separately, OFAC added Innwa Bank and Myawaddy Bank to an existing general license, thereby authorising all transactions involving these banks, except new investment in or with those banks and any transactions involving other SDNs. Innwa Bank and Myawaddy Bank are currently SDNs given their affiliation with the Myanmar's Ministry of Defence.

With these changes, all SDN banks in Myanmar have now either been delisted or added to a general license, which will provide greater flexibility in transacting within Myanmar's financial sector. Practically speaking, such a move may also allay previously-held concerns of foreign financial institutions in respect of inward and outward remittances into Myanmar (in particular those involving US dollars), which should ease some of the current difficulties faced by foreign corporations in Myanmar.

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General Licenses Authorising Trade-Related Transactions

OFAC also made two amendments related to trade-related transactions. First, OFAC extended General License 20 indefinitely, and incorporated this into the BSR. General License 20, which "authorizes transactions that are ordinarily incident to exports to or from Burma that are otherwise prohibited involving an individual or company that is designated or otherwise blocked by OFAC's sanctions", is generally intended to authorise transactions with SDNs in intermediary roles. For instance, U.S. companies can use major port facilities in Yangon, which are currently operated by an SDN.

Second, OFAC expanded this authorization by adding a general license permitting certain transactions incident to the movement of goods within Myanmar. This is a helpful clarification given that there is a fair amount of basic infrastructure which would be used for transport of goods within Myanmar (eg. major highways or toll ways), that is either owned or operated by SDNs.

Changes to the SDN List

On a separate note, OFAC removed seven state-owned enterprises from the SDN List: Myanmar Timber Enterprise; Myanmar Pearl Enterprise; Myanmar Gem Enterprise; No. 1 Mining Enterprise; No. 2 Mining Enterprise; No. 3 Mining Enterprise; and Co-Operative Export-Import Enterprise. These seven state-owned enterprises are now under civilian control, or otherwise no longer exist. Delisting these entities may facilitate future investment in respect of mining activities, although investors should bear in mind that certain segments of the Myanmar extractive industry are still subject to other sanctions restrictions.

On the other hand, OFAC added to the SDN List six companies that are owned 50 percent or more by Steven Law or Asia World Co. Ltd. This signals the intent to continue with sanctions on SDNs and even though these entities would have been blocked by the 50% rule in any case, listing these companies may help with counterparty due diligence by U.S. persons.

General License Authorizing Personal Transactions Related to U.S. Persons Residing in Myanmar

OFAC added a general license that allows U.S. persons to conduct most transactions otherwise prohibited by the BSR that are ordinarily incident to U.S citizens residing in Myanmar. This includes paying rent and other living expenses as well as buying goods and services for personal use. Such a license serves to limit the broad prohibition of dealing with SDNs at a practical level.

Concluding Remarks

It is noteworthy that the amendments come on the back of a significant shift in Myanmar's political landscape over the past six months, with Myanmar's first democratic nationwide election in 25 years as well as the subsequent political transition to an elected government led by the National League for Democracy.

While not extensive, the amendments demonstrate the U.S. administration's support for Myanmar's continued political development and broad-based economic growth.

While there might some who remain skeptical of Myanmar's reforms, the recent amendments to the BSR, coupled with the recent relaxations in Myanmar's foreign investment regime, ought to be considered a significant stage in a reform process which has been underway since November 2010, when a civilian (albeit military-backed) government took charge. Simply put, this may well be the "push" needed for foreign investors staying on the sidelines to take the plunge in Myanmar, touted to be the world's fastest-growing economy according to the International Monetary Fund's latest World Economic Outlook.

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ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community ("**AEC**") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch "Business in ASEAN", a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN's business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at http://www.businessinasean.com/.

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