

## BIDEN ADMINISTRATION ISSUES SANCTIONS AGAINST BURMA IN RESPONSE TO MILITARY COUP

On February 11, 2021 President Biden signed Executive Order (“EO”) 14014, ***Blocking Property with Respect to the Situation in Burma***, in response to the recent military coup in Burma. The same day it issued the EO, the U.S. Treasury Department designated thirteen new individuals and entities under the EO and added them to the Office of Foreign Assets Control’s (“OFAC”) list of Specially Designated Nationals (“SDN list”), and designated two more individuals on February 22, 2021. In a separate but coordinated move, the U.S. Commerce Department put in place new export controls against Burma while contemplating further action. The sanctions and export controls are limited in scope and target the Burmese military and actors deemed responsible for the coup.

The EU, which is Burma’s third largest trading partner, has condemned the violence but has been slower to impose sanctions. At the time of writing, no new EU sanctions have been imposed, and those expected are likely to be limited to visa-bans and asset-freezes on the new junta rather than any material trade controls. This is a step both Canada and the UK (whose sanctions policy is no longer driven by Brussels) have already taken unilaterally.

### TREASURY DEPARTMENT IMPLEMENTATION

The EO authorizes the U.S. Treasury Department (“Treasury”), in consultation with the Secretary of the U.S. State Department (“State”), to designate as SDNs individuals and entities determined to:

- have been involved in undermining the democratic process in Burma, actions that threaten the security of Burma, limiting the freedom of expression and assembly by the Burmese people, the arbitrary detention of anyone in Burma, or other “serious human rights abuse”;
- be an official of Burma’s military or security forces;
- be an official of the current government; or
- operate in the Burmese defense sector.

### Key issues

- President Biden signed Executive Order 14014 in response to the military coup in Burma.
- The Treasury Department has already designated 12 individuals and 3 entities as SDNs under the Executive Order.
- The Commerce Department has also announced certain limited export controls against Burma.
- Sanctions in Europe are likely to be more limited and will not include material trade controls, for now.

The EO also authorizes the designation of spouses or adult children of a person designated under the EO, those that have “materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of” a person designated under the EO, and entities owned or controlled by a person designated under the EO.

U.S. Persons are generally prohibited from engaging, directly or indirectly, with SDNs, as well as entities owned 50% or more in aggregate by SDNs.

### **Individuals on the SDN List and the Global Magnitsky Human Rights Accountability Act**

On the same day that the EO was issued, Treasury made the first designations under the EO, designating ten individuals and three entities who are connected to the Burmese military or security forces and allegedly responsible for the military coup. Two of the ten individuals were already designated as SDNs pursuant to the previous administration’s **Executive Order 13818 and the Global Magnitsky Human Rights Accountability Act** (“**Global Magnitsky Act**”): Commander-in-Chief of the Burmese military, Min Aung Hlaing, and Deputy Commander-in-Chief of the Burmese military, Soe Win. The Global Magnitsky Act allows OFAC to designate as SDNs individuals and entities that Treasury, State, and the Justice Department determined “to be responsible for or complicit in, or to have directly or indirectly engaged in, certain human rights abuses or corrupt acts anywhere in the world.” The Trump Administration originally added Min Aung Hlaing and Soe Win to the OFAC SDN list under the Global Magnitsky Act on December 10, 2019, citing their role in committing serious human rights abuses against the Rohingya people in the Rakhine State.

Subsequently, on February 22, 2021, Treasury designated **two more individuals** under EO 14014. The individuals are members of Burma’s State Administrative Council, a military organization that was involved in the coup in Burma. These designations build upon February 11 designations and were in response to “the Burmese security forces’ killing of peaceful protesters”. The US Secretary of State, in a Press Statement regarding the February 22 designations, noted that “[t]he United States will continue to work with a broad coalition of international partners to promote accountability for coup leaders and those responsible for this violence. We will not hesitate to take further action against those who perpetrate violence and suppress the will of the people. We will not waver in our support for the people of Burma.”

### **COMMERCE DEPARTMENT RESTRICTIONS**

In addition to the sanctions discussed above, the U.S. Commerce Department’s Bureau of Industry and Security (“**BIS**”), which administers the Export Administration Regulation (“**EAR**”), announced certain limited export controls against Burma. The export restrictions currently in place are limited in scope, and apply primarily to exports and reexports to Burmese military entities. BIS issued a **Notification in the Federal Register**, stating that it is limiting exports of “sensitive goods” to the military and entities involved with the military coup. Specifically, BIS announced a new presumption of denial policy for license applications to export and reexport items subject to the EAR to Burma’s Ministry of Defense, Ministry of Home Affairs, armed forces, and security services. BIS also revoked certain license exceptions that were previously available to Burma as a result of its status as a Country Group B country.

Notably, in a **Press Release**, BIS stated it is in the process of contemplating other sanctions against Burma, including potentially adding entities to the Entity List and adding Burma to the list of countries that must follow the EAR's recently-enhanced military end use and end user controls. BIS also noted that it may downgrade Burma's country group status in the EAR in the future, which would further impact licensing requirements and the availability of license exceptions.

## EU AND UK SANCTIONS

In Europe, the expected sanctions response is likely to be more muted. To date, the UK (together with Canada) has imposed its own sanctions on three members of the Burma military regime for their roles in serious human rights violations during the coup. These sanctions are in addition to the sanctions against sixteen individuals from the Burmese military already listed by the UK. The UK has also adopted due diligence requirements to prevent British aid indirectly supporting the military-led government, and additional measures to prevent British businesses from working with Burma's military.

On 22 February 2021, the EU announced that it "stands ready" to impose sanctions on those directly responsible for the military coup and their economic interests. The EU confirmed in a statement that sanctions are not likely to involve any trade controls, but the EU has said that it will continue reviewing all its policy tools as the situation evolves, including its policy on trade preferences. Whether there will be a return to the investment bans and more restrictive controls of the past will depend on how the situation evolves.

## CONCLUSION

The Biden Administration responded quickly to the situation in Burma, issuing an EO that gave Treasury the discretion to designate as SDNs those deemed to have been involved in the military coup. OFAC promptly made a first sweep of designations under the EO, followed by a second round of designations, and Treasury could designate additional entities and persons in the future. Likewise, the Commerce Department took prompt action and imposed export and reexport-related restrictions directed towards those responsible for the military coup. The Commerce Department has indicated that it may issue even more restrictive measures against Burma in the near future. The sanctions in Europe remain more muted for now but the prospect of further developments increases the compliance risk for those investing or doing business in Burma.

The U.S. sanctions and export controls against Burma are dynamic and could continue to change. These Burma developments further highlight that the new Biden administration will be taking a close look at OFAC, SDN, export control and other restrictions around the globe. While these most recent Burma actions to date have not been accompanied by identical parallel action by European, U.K. and other global allies, we anticipate that the Biden administration will take a more multilateral approach when adopting sanctions in other matters in the days ahead. We anticipate seeing a number of new actions across geographies and sectors in the near future. Companies should respond accordingly by monitoring potential changes and taking stock of those controls already in place. In particular, companies exposed to Burma should promptly review and update their existing compliance programs, including screening and due diligence procedures, to address and incorporate the new sanctions against Burma as well as other areas.

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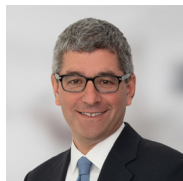
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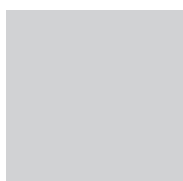
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