



**SANCTIONS: MYANMAR**

Sr.	Topic	United States	European Union	United Kingdom	Canada
1	Who is legally obliged?	<ul style="list-style-type: none"> <li>▪ Any “<b>US person</b>” (US citizen or permanent resident; entity incorporated in the US, including a foreign branch; any person in the US)</li> <li>▪ Any person handling goods, technology or software of US origin or with US components</li> </ul>	Any national of, any company incorporated in, and any person operating from, an EU member state (or a non-member state having incorporated EU sanctions in its national law)	Any UK national; and any person operating from, and any company incorporated in, the UK, Jersey, Guernsey, the Isle of Man, and any of the British overseas territories  <b>Includes companies incorporated on the British Virgin Islands (“BVICos”)</b>	Any Canadian citizen, any company incorporated in Canada, and any person operating from Canada
2	May out-of-jurisdiction persons be held liable for sanctions breach (so-called “extraterritorial application”)?	Yes. Non-US persons may in particular become entangled in US sanctions by <ul style="list-style-type: none"> <li>▪ handling goods, technology or software of US origin or with US</li> </ul>	No	No	No



## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Sr.	Topic	United States	European Union	United Kingdom	Canada
		<p>components;</p> <ul style="list-style-type: none"> <li>▪ prompting a US person to breach US sanctions (e.g. by involving an employee who is a US national, instructing a US bank to make payment to a blocked person or camouflaging the origin or destination of funds); or</li> <li>▪ making or receiving USD transfers</li> </ul>			
3	Risk of “secondary sanctions” (sanctions imposed on a foreigner for providing funds or assistance to the Myanmar military)	Risk low in most cases	Risk low in most cases	Risk low in most cases	Risk low in most cases
4	What is prohibited?	<ul style="list-style-type: none"> <li>▪ Most dealings with designated persons</li> <li>▪ Transferring certain goods, technology or software of US origin or with US components to or within Myanmar</li> </ul>	<ul style="list-style-type: none"> <li>▪ Making available funds or economic resources to a designated person</li> <li>▪ Providing arms, dual use-goods, technology for interception, or services related</li> </ul>	<ul style="list-style-type: none"> <li>▪ Making available funds or economic resources to a designated person</li> <li>▪ Providing arms, dual use-goods, technology for interception, or services related</li> </ul>	<ul style="list-style-type: none"> <li>▪ Providing goods or services to a designated person or for this person’s benefit</li> <li>▪ Transferring arms and related materials to Myanmar or providing technical,</li> </ul>



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Sr.	Topic	United States	European Union	United Kingdom	Canada
			thereto, to a person or for use in Myanmar	thereto, to a person or for use in Myanmar	financial or other services related thereto.
5	List of designated (blocked) persons	<a href="#">List</a>	<a href="#">List</a> (registration required)	<a href="#">List</a>	<a href="#">List</a>
6	Criteria for sanctions to apply to non-listed entities	A listed person owns 50% or more of the non-listed entity	A listed person owns 50% or more of, or controls, the non-listed entity, unless the non-listed entity does not forward funds to the listed person	A listed person either (a) holds at least 50% of the entity's shares, or (b) holds at least 50% of the entity's voting rights, or (c) has the ability to direct the entity in accordance with the listed person's wishes	No specific guidance
7	May I receive a license from a non-listed government department if its head is listed? May I pay license fees to such a department? May I pay taxes to Myanmar's IRD?	Yes, no problem	Usually no problem	Usually no problem	Usually no problem
8	May a foreign subsidiary engage in conduct that is prohibited to its parent company?	Yes (but risky)	Yes (but risky)	Yes (but risky)	Yes (but risky)
9	Government department implementing the sanctions	<ul style="list-style-type: none"> <li>▪ Dealings with blocked persons: <a href="#">Office of Foreign Assets Control</a></li> <li>▪ Handling goods, technology or</li> </ul>	Regulator of the respective EU member state (or non-member state having incorporated EU sanctions in its national law)	<a href="#">Office of Financial Sanctions Implementation</a>	<ul style="list-style-type: none"> <li>▪ <a href="#">Ministry of Foreign Affairs</a></li> <li>▪ <a href="#">Royal Canadian Mounted Police</a></li> </ul>



## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Sr.	Topic	United States	European Union	United Kingdom	Canada
		software of US origin: <a href="#">Bureau of Industry and Security</a>			

[Norway](#) and [Iceland](#), are imposing the same sanctions as the EU. [Switzerland](#) and [Liechtenstein](#) have their own sanctions programme which is, however, equivalent to that of the EU (same list of sanctioned persons and, it appears, lists of restricted items).

**North Macedonia, Montenegro, Serbia, Albania, Bosnia and Herzegovina, Ukraine and Moldova appear to be implementing at least [some of the EU sanctions](#).**

To the extent of our knowledge, no other jurisdiction has imposed Myanmar-related economic sanctions.



## SANCTIONS IMPOSED BY THE UNITED STATES

### 1. Legal basis for the US's Myanmar-related sanctions

The current Myanmar-related sanctions programme of the US is in particular based on

- (a) [Executive Order 14014](#) dated 10<sup>th</sup> February 2021 and [Executive Order 13818](#) dated 20<sup>th</sup> December 2017, issued by the US president as authorised by various statutes of Congress, and the [Burma Sanctions Regulations \(31 CFR Part 525\)](#) and the [Global Magnitsky Sanctions Regulations \(31 CFR Part 583\)](#) issued by the US Treasury's [Office of Foreign Assets Control \("OFAC"\)](#) to implement the respective executive order, and the
- (b) [Export Administration Regulations](#) (Title 15 Code of Federal Regulations parts 730-774) issued by the [Bureau of Industry and Security \("BIS"\)](#) of the US Department of Commerce as authorised by the [Export Control Reform Act](#).

Furthermore, certain persons in Myanmar are sanctioned ("**blocked**") according to the Foreign Narcotics Kingpin Sanctions Regulations and the North Korea Sanctions Regulations.

### 2. May out-of-jurisdiction persons be held liable for US sanctions breach (so-called "extraterritorial application")?

US authorities are known to apply US law beyond the limits of US territory. We understand that they may find a person in breach of their sanctions regime in particular in the following scenarios, even if this person is not a US national, a company incorporated in the US, or operating from the US.

#### 2.1. Handling goods, technology or software of US origin

The [Export Administration Regulations](#) prohibit the [export](#) (from the US to Myanmar), [re-export](#) (from a third country to Myanmar) and [in-country-transfer](#) (transfer within Myanmar) of certain goods, technology or software which are of US origin or which contain components that are of US origin, often irrespective of the nationality, domicile or place of business of the persons dealing with the goods.

#### 2.2. Prompting a US person to breach US sanctions

In principle, only "**US persons**" are prohibited from dealing with persons blocked according to Executive Orders [14014](#) and [13818](#). A US person is any

- US citizen;



- permanent resident alien;
- entity organised under the laws of the US or any jurisdiction within the US, including foreign branches; or
- any person in the US.

However, we understand that non-US persons may face US sanctions exposure if they cause a US person to breach the executive orders as we understand that US authorities may consider such conduct to be a breach of the executive orders' anti-avoidance and anti-conspiracy provisions. This might, among others, be done by

- involving an employee who is a US national;
- instructing a US bank to make payment to a blocked person; or
- camouflaging the origin or destination of funds.

### 2.3. Making or receiving USD transfers

Payments in USD are inherently risky as almost all USD bank transfers are routed through a correspondent bank in the US, even if neither the sender's bank nor the recipient's bank is domiciled in the US. If the recipient is a blocked person, US authorities may, if they are aggressive, treat the sender as being in breach of US sanctions for having instructed the US correspondent bank to make funds available to a blocked person.

### 2.4. "Secondary sanctions"

Theoretically, it is possible that the US secretaries of the treasury and of state decide to directly target a non-US national operating outside the US and place this person on the OFAC's sanction list if they determine that this person supports the military in Myanmar.

However, this risk would often be quite low, as Myanmar would not be of sufficient strategic interest to the US government for it to be prepared to provoke a feud with a foreign government over the imposition of US sanctions on a foreign national.

## 3. Prohibited conduct according to the US sanctions programme

The US takes a two-pronged approach and, in essence, prohibits (a) almost any transaction with a sanctioned party, irrespective of the goods or services transacted, and (b) the transfer of certain goods, technology and software of US origin to or within Myanmar, often irrespective of the parties to the transaction.

More precisely, the following is prohibited:



- (a) The provision of any funds, goods, or services to a blocked person, and the receipt of any funds, goods, or services from a blocked person (sec. 2 [Executive Order 14014](#); sec. 4 [Executive Order 13818](#)), and
- (b) the export (from the US to Myanmar), re-export (from a third country to Myanmar) and transfer within Myanmar of goods, technology or software covered by the [Export Administration Regulations](#), unless such transfer is generally allowed or the transferor or transferee has obtained a license from the Bureau of Industry and Security.

The US's export control rules are complex and do not lend themselves to a short summary, but in a nutshell, if an item of US origin or with US components

- is listed in the [Commerce Control List](#);
- is destined for a [vessel or aircraft](#) located in, or owned, operated or controlled by, or leased or chartered to Myanmar or a Myanmar national;
- is destined for [a listed end-user](#); or
- may have some sort of military end use or a military end user,

an expert should check whether its transfer to or use in Myanmar would breach US sanctions.

#### 4. Freezing of funds

Furthermore, Executive Orders [14014](#) and [13818](#) order the freezing of all property and interests in property of a blocked person that are in or come within the US or are or come within the possession or control of any US person.

#### 5. List of sanctioned parties

The OFAC maintains a list of blocked persons (the so-called Specially Designated Nationals - “SDN” - List) which is [accessible and searchable online](#).

In addition to the persons appearing on the SDN List, unlisted entities of which a listed person owns 50% or more are also sanctioned (§ 525.406 [Burma Sanctions Regulations](#)).

(Of note, “control” of an entity by a sanctioned person does not automatically subject this entity to US sanctions, too; this consequence is only triggered by a sanctioned person owning 50% or more of the entity).



A spouse, family members and friends of a listed person are not automatically blocked persons themselves, but great care would have to be taken dealing with them as it would not be far-fetched to assume that they act as nominees of the listed person.

### 6. Impact of US sanctions on license applications and payments of license fees and taxes

The US has sanctioned many high profile persons, groups and organisations in Myanmar, among them

- the Commander-in-Chief of the Defence Services, State Administration Council Chairman Prime Minister Senior General Min Aung Hlaing;
- the State Administration Council (“**SAC**”);
- the Chairman of the Myanmar Investment Commission (“**MIC**”), Lieutenant-General Moe Myint Tun, and the MIC’s vice-chairman, U Aung Naing Oo; and
- the Minister of Planning and Finance U Win Shein (who oversees Myanmar’s internal revenue department).

It is clear that these and other sanctioned persons exercise control over the state’s entire administration or part of the state’s administration. This is particularly evident for the commander-in-chief of the defence services who has “the right to exercise the powers of legislature, executive and judiciary” (Article 419 [Constitution 2008](#)).

The US sanctions programme prohibit US persons (and non-US persons worried about getting entangled in US sanctions) from making or receiving direct payment or providing or receiving goods or services directly to/from these persons. However, what about the following:

- Receiving a license from a government department that itself is not sanctioned (such as the MIC), which is signed by a sanctioned individual (such as the MIC chairman);
- paying a license fee to a government department that itself is not sanctioned (such as the MIC), but headed by a sanctioned individual (such as the MIC chairman); or
- paying taxes to Myanmar’s internal revenue department, which is overseen by the (sanctioned) finance minister.

We are of the opinion that none of the conduct described in the above three bullet points would violate US sanctions, even if undertaken by a US person. This is because licenses are issued by, and payment of licenses fees and taxes are made to, the respective government department and not the (sanctioned) individual or group heading or otherwise controlling it.





In spite of having control, the sanctioned individual or group would not own the department's property. [OFAC's 50% rule speaks only to ownership and not to control](#). An entity that is controlled (but not owned 50% or more) by one or more blocked persons is not considered automatically blocked itself.

## 7. Impact of the US sanctions on payments in USD and Myanmar-related bank transfers

### 7.1. Reluctance of many banks to assist with Myanmar-related transactions

Banks operating from or incorporated in the US are obliged to (a) refrain from executing any bank transfer to a sanctioned party (sec. 2 [Executive Order 14014](#); sec. 4 [Executive Order 13818](#)) and (b) freeze funds belonging to a sanctioned party (sec. 1 Executive Orders [14014](#) and [13818](#)).

As a consequence, many banks worldwide - even if they are not incorporated in or operating from the US - are reluctant to open Myanmar-related bank accounts and/or assist with money transfers to or from Myanmar, even if a specific transaction would not breach any sanctions regime, as banks are worried about becoming entangled in US sanctions due to the tendency of US authorities to enforce them not only against US persons, but also against non-US persons.

Investors in Myanmar therefore have to make prior enquiries with their bank of choice whether this bank is actually willing to assist in the Myanmar-related business.

### 7.2. Impact on USD payments

Almost all USD bank transfers worldwide are routed through a correspondent bank in the US, even if neither the sender's bank nor the recipient's bank is domiciled in the US. If the recipient is a blocked person, the US correspondent bank is obliged to inform the US authorities ([§ 501.604 Foreign Assets Control Regulations](#)) and reject the transfer. It probably would not freeze the funds (as they would not belong to the sanctioned party yet), but the transfer would not get through.

If they are aggressive, the US authorities may, however, act on the information received from the US correspondent bank and prosecute a non-US sender as being in breach of US sanctions for having instructed the US correspondent bank to make funds available to a blocked person.

## 8. Conduct by foreign subsidiaries of US persons

As strange as it may sound, foreign subsidiaries of US persons may in principle engage in conduct that would be prohibited to their US headquarters by Executive Orders [14014](#) and [13818](#) (as a subsidiary incorporated outside of the US is, in contrast to a foreign branch, not a "US person"). Involving a foreign



subsidiary may therefore, at least in theory, serve as a conduit for a US person to circumvent US sanctions.

However, this would be extremely risky, as in order to work, such a set-up would have to ensure that the foreign subsidiary is completely autonomous from its US headquarters in its sanction-busting activities. If the US headquarters' management is involved in the foreign subsidiary's management, or the transaction is ordered or approved by the US headquarters, chances are high that the US authorities would consider the US headquarters to have engaged in a prohibited conduct.

### 9. Involvement of nominees on the Myanmar side

Businesses or assets in Myanmar may be held by a nominee on the outside but in reality owned by an undisclosed principal. As diligently as he might search, it is often impossible for an outsider to discover the existence of the principal.

If the principal is sanctioned, but the nominee is not, would a US person (or a non-US person worried about getting entangled in US sanctions) be considered to have breached US sanctions for dealing with the nominee?

OFAC does not have to prove fault to start an enforcement action as [US sanctions regulations offences are strict liability offences](#). However, it is to be hoped that OFAC would refrain from imposing a civil penalty if the (alleged) offender, having done a proper due diligence, had no reason to know that he was in breach of US sanctions, as OFAC's [enforcement guidelines](#) list (no) "reason to know" as a mitigating factor.

(There would certainly be no criminal penalty as this would require "willful conduct".)

### 10. Mitigating measures

**Non-US persons** may wish to ensure that their business does not involve any

- goods, technology or software of US origin or with components of US origin;
- US persons; and
- payments in USD.

**US persons** (and non-US persons worried about getting entangled in US sanctions) may wish to

- review their supply chain for potential US sanctions exposure;
- conduct a background check on Myanmar business partners;



- review the goods, technology or software that they are handling for controlled items of US origin;
- review OFAC's "[compliance commitments framework](#)" and determine what of it can be reasonably implemented;
- do a similar exercise with the BIS's "[export compliance guidelines](#)";
- alert employees handling Myanmar-related matters to sanctions risks, e.g. through a training programme;
- have employees fill in a form to identify potential sanctions exposure prior to accepting a transaction;
- document their efforts to ensure compliance; and
- establish a reporting mechanism that ensures that any discovered violation is promptly reported to the [Office of Foreign Assets Control](#) or the [Bureau of Industry and Security](#), to limit penalties.

### 11. Potential penalties for violating US sanctions

- (a) Prohibited dealings with a blocked person (section 206 [International Emergency Economic Powers Act](#)):
- Civil penalty not exceeding USD 250,000 (adjusted for inflation) or twice value of the transaction;
  - criminal penalty not exceeding USD 1,000,000 (or twice the gain derived from the offence) and/or up to 20 years imprisonment.
- (b) Prohibited dealings in goods, technology or software of US origin (Export Control Reform Act, [USC 4819](#)):
- Civil penalty not exceeding USD 300,000 (adjusted for inflation) or twice the value of the transaction;
  - criminal penalty not exceeding USD 1,000,000 (or twice the gain derived from the offence) and/or up to 20 years imprisonment.

### 12. US authorities responsible for administering US sanctions

- Dealings with blocked persons: [Office of Foreign Assets Control](#)
- Dealings in goods, technology or software of US origin: [Bureau of Industry and Security](#)



## **SANCTIONS IMPOSED BY THE EUROPEAN UNION**

### **1. Legal basis for the EU's Myanmar-related sanctions**

EU sanctions are part of the EU's common foreign and security policy and unanimously decided by the Council of the European Union ("**Council**"; in this case composed of the foreign ministers of the 27 EU member states) according to Articles 29, 31 [Treaty on the European Union](#). This decision is implemented by a "**Council Regulation**" according to Article 215 [Treaty on the Functioning of the European Union](#) which has force of law in each EU member state.

The EU's Myanmar sanctions are laid down in [Council Regulation \(EU\) No 401/2013](#) (last amended on 22<sup>nd</sup> February 2022).

### **2. May out-of-jurisdiction persons be held liable for EU sanctions breach (so-called "extraterritorial application")?**

#### **2.1. As such, no obligations imposed on non-EU persons**

The EU is adamant that the obligations imposed by its sanctions regimes apply only to EU nationals and persons located or doing business in the EU (see, e.g., this [report by the Commission of the European Union](#) relating to the "Blocking Statute", a piece of EU legislation aimed at countering the extraterritoriality of certain US sanctions.)

More precisely, the EU's Myanmar-related sanctions may impose obligations (only) on the following persons (Article 10 [Council Regulation \(EU\) No 401/2013](#)):

- any person within the territory of the EU, including its airspace;
- any person on board any aircraft or any vessel under the jurisdiction of an EU member state;
- any person inside or outside the territory of the EU who is a national of an EU member state;
- any legal person, entity or body which is incorporated or constituted under the law of an EU member state;
- any legal person, entity or body in respect of any business done in whole or in part within the EU.

Differently to the comparable case of US sanctions, it is extremely unlikely that a non-EU national operating outside the EU will be prosecuted by the authorities of an EU member state for having violated EU sanctions, even if this person conspired to breach EU sanctions. Apart from the wording of Art. 10 [Council Regulation \(EU\) No 401/2013](#), such prosecution should be made impossible by the criminal and administrative penalty laws of the various EU member states that, we understand, in



principle allow prosecution only if an offence was committed in the territory of the member state or by or against a national of the member state.

## 2.2. “Secondary sanctions”

Theoretically, it is possible though that the foreign ministers of the EU member states decide to target a non-EU national operating outside the EU and place this person on the EU’s sanctions list if they determine that this person supports the military in Myanmar.

However, it would be rather unlikely for the EU to be willing to infuriate a foreign government by imposing sanctions on one of its nationals over Myanmar, a country of little strategic interest to the EU and its member states.

## 2.3. Adoption of the EU’s Myanmar-related sanctions programme by non-member states

[Norway](#) and [Iceland](#), are imposing the same sanctions as the EU. [Switzerland](#) and [Liechtenstein](#) have their own sanctions programme which is, however, equivalent to that of the EU (same list of sanctioned persons and, it appears, lists of restricted items).

**North Macedonia, Montenegro, Serbia, Albania, Bosnia and Herzegovina, Ukraine and Moldova appear to be implementing at least [some of the EU sanctions](#).**

## 3. Prohibited conduct according to the EU sanctions programme

Similarly to the US, the EU takes a two-pronged approach and, in essence, prohibits (a) almost any transaction with a sanctioned party, irrespective of the goods or services transacted, and (b) the export of certain goods and services to Myanmar, irrespective of the recipient of these goods or services.

More precisely, the following is prohibited to any national of, any company incorporated in, and any person operating from, an EU member state (or a non-member state having incorporated EU sanctions in its national law):

- (a) Making available funds or economic resources, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex IV of [Council Regulation \(EU\) No 401/2013](#); and
- (b) selling or otherwise providing goods and providing services described in Articles 3, 3a, 3b and 3c [Council Regulation \(EU\) No 401/2013](#) to any person in Myanmar or for use in Myanmar (in a nutshell, these are arms, dual use-goods and equipment and technology used for the interception of communication, and technical or financial services related thereto).



## 4. Freezing of funds

Furthermore, Article 4a para. 1 [Council Regulation \(EU\) No 401/2013](#) orders the freezing of all funds and economic resources belonging to, held or controlled by any natural or legal person, entity or body listed in Annex IV.

## 5. List of sanctioned parties

All Myanmar-related parties subject to EU sanctions are listed in Annex IV of [Council Regulation \(EU\) No 401/2013](#).

Furthermore, the EU maintains a continuously updated list of sanctioned persons which [is accessible online](#) (registration required). However, one has to be a bit careful when searching the list as, e.g., “Myanma Oil and Gas Enterprise” is found, but the acronym “MOGE” is not.

In addition to the persons appearing on this list, unlisted entities (a) of which a listed person owns 50% or more or (b) which are controlled by a listed person are, in principle, also sanctioned, unless funds made available to the unlisted entity stay with the unlisted entity and are not pocketed by the listed person (para. [55d Sanctions Guidelines 2018](#)).

A spouse, family members and friends of a listed person are not automatically blocked persons themselves, but great care would have to be taken dealing with them as it would not be far-fetched to assume that they act as nominees of the listed person.

## 6. Impact of EU sanctions on license applications and payments of license fees and taxes

Similarly to the US, the EU has included many individuals and organisations with government functions on its sanctions list.

Equally similarly, it should, however, still be possible for any national of, any company incorporated in, and any person operating from, an EU member state (or a non-member state having incorporated EU sanctions in its national law), to

- (a) receive a license issued by, and pay the license fee to, a non-listed government department such as the MIC, even if the department head is listed, and
- (b) pay taxes to the (non-listed) internal revenue department of Myanmar in spite of it being overseen by a listed person.



This is because the listed person would have control over the non-listed department, but one would not expect the non-listed department to forward the license fee, tax payment or other payment to the listed person (cf. para. [55d Sanctions Guidelines 2018](#)).

### 7. Impact of the EU sanctions on payments in EUR and Myanmar-related bank transfers

#### 7.1. Reluctance of EU banks to assist with Myanmar-related transactions

Banks operating from or incorporated in the EU (or a non-member state having incorporated EU sanctions in its national law) are obliged to (a) refrain from executing any bank transfer to a sanctioned party (Article 4a para 2 [Council Regulation \(EU\) No 401/2013](#)) and (b) freeze funds belonging to a sanctioned party (Article 4a para 1 [Council Regulation \(EU\) No 401/2013](#)).

This, and their apprehension of breaching more aggressively enforced US sanctions, makes many European banks reluctant to open Myanmar-related bank accounts and/or assist with money transfers to or from Myanmar, even if a specific transaction would not breach any sanctions regime. As European banks do not make much money in or from Myanmar, many European banks have made the assessment that assisting with Myanmar-related transaction is generally not worth the risk.

Investors in Myanmar wishing to use the services of a European bank therefore have to make prior enquiries with their bank of choice whether this bank is actually willing to assist in the Myanmar-related business.

#### 7.2. Impact on bank transfers using SWIFT

The [Society for Worldwide Interbank Financial Telecommunication](#) (SWIFT) is a Belgian cooperative society providing services related to the execution of financial transactions and payments between banks worldwide. Basically, if Bank A wants to send money to Bank B abroad, it sends a message in a pre-determined format to Bank B through SWIFT's server. It is a very common system, widely used by banks worldwide to communicate with each other.

As such, the EU's Myanmar-related system does not impact this flow of information, even if Bank A sends money to a bank account with Bank B that is held by a sanctioned person, as SWIFT's contracts are with the banks and not with persons having accounts with these banks. Furthermore, SWIFT only forwards messages and does not "make available funds or economic resources".

The EU's Myanmar-related sanctions should therefore not impact money transfers using SWIFT.





### 7.3. Impact on EUR payments

Although the EUR is the legal tender in 19 of the 27 EU member states, the use of EUR as the currency in a transaction as such does not trigger any violation of EU sanctions.

However, EUR bank transfers tend to be routed through a bank in the EU, even if neither the sender's bank nor the recipient's bank is domiciled in the EU. The EU bank involved in the settlement of the EUR transfer in principle must inform the competent authority in the member state (Article 4e(1)(a) [Council Regulation \(EU\) No 401/2013](#)) and reject transfer if the recipient is a sanctioned party. It probably would not freeze the funds (as they would not belong to the sanctioned party yet), but the transfer would not get through.

### 8. Conduct by subsidiaries incorporated outside of Europe

Subsidiaries (as opposed to a branch) incorporated outside of the EU (and non-member states having incorporated EU sanctions in their national laws) may theoretically serve as a conduit for Europeans to circumvent EU sanctions.

However, this would be extremely risky, as in order to work, such a set-up would have to ensure that the non-European subsidiary is completely autonomous from its European headquarters in its sanction-busting activities. If the European headquarters' management is involved in the non-European subsidiary's management, or the transaction is ordered or approved by the European headquarters, chances are high that authorities in Europe would consider the European headquarters to have engaged in a prohibited conduct.

### 9. Involvement of nominees on the Myanmar side

The involvement of a non-sanctioned nominee on the Myanmar side may make it difficult or impossible to detect that a transaction in reality benefits a sanctioned person.

A person bound to comply with EU sanctions is, however, absolved from all liability for the breach of EU sanctions (Article 4f(2) [Council Regulation \(EU\) No 401/2013](#)) if he did a proper due diligence, but failed to detect that the transaction benefitted a sanctioned person.





## 10. Mitigating measures

Businesses from outside of Europe engaged in Myanmar do not have to do anything to mitigate exposure to EU sanctions as the EU sanctions programme does not apply to them. They might, however, wish to check with their bank whether EUR bank transfers (if any) might be stopped in transit in the EU.

Nationals of, companies incorporated in, and persons operating from, an EU member state (or a non-member state having incorporated EU sanctions in its national law) may wish to

- review their supply chain for potential EU sanctions exposure;
- conduct a background check on Myanmar business partners;
- review whether they are providing arms, dual use-goods or equipment, technology used for the interception of communication, or services related thereto;
- review the EU's "[guidance on internal compliance programme](#)" (this is specifically for dual-use goods, but one should probably assume that this is also what the EU more generally has in mind for sanctions-related compliance programmes) and, if available, guidelines published by the national regulator, and determine what of it can be reasonably implemented;
- alert employees handling Myanmar-related matters to sanctions risks, e.g. through a training programme;
- have employees fill in a form to identify potential sanctions exposure prior to accepting a transaction;
- document their efforts to ensure compliance; and
- establish a reporting mechanism that ensures that any discovered violation is promptly reported to the national regulator, to limit penalties.

## 11. Potential penalties for violating EU sanctions

Penalties vary from EU member state to EU member state (and non-member state having incorporated EU sanctions in its national law) as they are not uniformly set by the EU, but determined by the respective state.

## 12. Authorities responsible for administering EU sanctions

EU sanctions are not administered by the EU, but by the EU member states (and the non-member states having incorporated EU sanctions in their national laws, although, of course, strictly speaking, non-member states are not administering "EU sanctions", but their own sanctions which just happen to be the same as the EU's).



Each EU member state is required to maintain a homepage showing up-to-date information as to which national authority is, or which national authorities are, responsible for administering the sanctions; links to these homepages are provided in [Council Regulation \(EU\) No 401/2013](#).

Non-member states applying EU sanctions are not shown on this list; the competent national regulator has to be found by doing a corresponding search.

### SANCTIONS IMPOSED BY THE UNITED KINGDOM

1. UK sanctions oblige any UK national (section 21(3) [Sanctions and Anti-Money Laundering Act 2018](#); and any person operating from, and any company incorporated in, the UK, [Jersey](#), [Guernsey](#), the [Isle of Man](#), and any of the [British overseas territories](#). They do not oblige out-of-jurisdiction persons.

Of note, **companies incorporated on the British Virgin Islands**, often abbreviated as “BVIcos” and often used as investment vehicle by persons who would otherwise have no connection to the UK, must therefore comply with UK sanctions regulations.

2. In essence, UK sanctions prohibit:
  - (a) Making available funds or economic resources, directly or indirectly, to or for the benefit of a designated person (regulations 12-15 [The Myanmar \(Sanctions\) Regulations 2021](#)); and
  - (b) selling or otherwise providing restricted goods and technology to any person or for use in Myanmar (regulations 18-28 [The Myanmar \(Sanctions\) Regulations 2021](#); in a nutshell, these are arms, dual use-goods and equipment and technology used for the interception of communication, and technical or financial services related thereto).
3. The UK publishes an up-to-date, consolidated [list of designated persons](#) which is, however, somewhat tricky to search.

Unlisted entities are also sanctioned if a listed person either (a) holds at least 50% of the entity’s shares, or (b) holds at least 50% of the entity’s voting rights, or (c) has the ability to direct the entity in accordance with the listed person’s wishes (part 4 [Office of Financial Sanctions Implementaion - “OFSI” - guidance](#)).



OFSI guidance furthermore specifically provides that a “family member or friend” of a listed person is also sanctioned if there is evidence that the listed person uses the friend or family member to enter into transactions.

4. UK sanctions would ordinarily not prohibit the receipt of a license from, or the payment of license fees or taxes to, a non-listed department that is overseen by a listed person as such payments would ordinarily not “benefit” the listed person.
5. The [Office of Financial Sanctions Implementation](#) is the authority in charge of the UK’s Myanmar-related sanctions programme.

### SANCTIONS IMPOSED BY CANADA

1. Canadian sanctions oblige any Canadian citizen, any company incorporated in Canada, and any person operating from Canada (section 2 [Special Economic Measures Act](#), regulations 3, 4, 13 [Special Economic Measures \(Burma\) Regulations](#)). They do not oblige out-of-jurisdiction persons.
2. In essence, Canadian sanctions prohibit:
  - (a) Providing goods or services to a designated person or for this person’s benefit (regulation 3 [Special Economic Measures \(Burma\) Regulations](#)); and
  - (b) transferring arms and related materials to Myanmar or providing technical, financial or other services related thereto (regulation 4 [Special Economic Measures \(Burma\) Regulations](#)).

3. Canada provides a searchable [list of designated persons](#). There are no official criteria (such as a 50% rule) as to when a non-listed entity is owned or controlled by a listed person; in practice it appears that [“any entity associated with” a listed person is also sanctioned](#).

Great care would have to be taken when dealing with a spouse, family member or friend of a listed person as it would not be far-fetched to assume that they act as nominees.

4. Canadian sanctions would ordinarily not prohibit the receipt of a license from, or the payment of license fees or taxes to, a non-listed department that is overseen by a listed person as the non-listed department would not act “on behalf” of the listed person (regulation 3(d) [Special Economic Measures \(Burma\) Regulations](#)).
5. Canadian sanctions are implemented by the [Ministry of Foreign Affairs](#) and the [Royal Canadian Mounted Police](#).



## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

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