

## OFAC and MIC Legal Updates

### New OFAC Guidelines on the 50% Rule

While there has always been an element of risk in dealing with any entity in which one or more persons on the OFAC SDN list have an ownership interest, the new policy extends its realm of influence by stating that any property or entities directly or indirectly 50% or more-owned by one—or more than one—person under sanctions is blocked regardless of whether it appears on the SDN list. Furthermore, a U.S. citizen is prohibited to procure goods, services, or technology from, or engage in transactions with, a blocked person directly or indirectly, including through a third party intermediary.

For Example: Blocked Person X owns 50% of Entity A, and Entity A owns 50% of Entity B. Entity B is considered to be blocked. This is so because Blocked Person X owns, indirectly, 50% of Entity B. In addition, Blocked Person X's 50% ownership of Entity A makes Entity A a blocked person. Entity A's 50% ownership of Entity B in turn makes Entity B a blocked person.

When the property of an entity owned 50% or more by a single blocked person comes within the United States or within the possession or control of a U.S. person and is blocked, the property remains blocked unless and until (1) OFAC authorizes the unblocking of or other dealings in the property or (2) OFAC removes the blocked person from the SDN List.

**DFDL Comment:** The revised OFAC guidelines appear to have widened in scope, causing companies that were not previously considered to be under the SDN list to be potentially at risk. At the moment, the entities and individuals that have already been blacklisted remain as such, and it appears that sufficient due diligence should be conducted to determine whether companies that have not already been blacklisted fall under the prohibited list or not. We advise to “act with caution” on individual companies before engaging in business activities with the new guidelines in mind.

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**The Myanmar Investment Commission (MIC) has taken an important step into the future of foreign investment in Myanmar by issuing Notifications on Environmental Impact, Tax Exemptions, and Joint Venture investments for foreign investors. We provide below a summary of the MIC Notifications which deal with crucial aspects of foreign investment in Myanmar.**

### **Rule: MIC Notification 49/2014**

#### **Relevant Scope of the Rule: Joint Venture Investment**

**DFDL Comment:** This notification replaces the Notification № 1 of 2013 and does two key things:

- substantially reduces the number of prohibited or restricted business activities for foreign investors, and
- Increases the number (from 42 to 94) of business activities which are can only be done in joint venture with a local Myanmar partner.

Business activities which are not contained in this Notification may be carried out as 100% foreign invested business. This measure opens up previously restricted business activities to 100% foreign investment, including retail trading and hotels.

Below are the lists of prohibited economic activities, business activities only allowed in Joint Venture, Joint Venture activities that need special permission from relevant ministries, and business activities that are only allowed in Joint Venture and are subject to other restrictions from the government.

#### List of Prohibited Economic Activities for Foreign Investors

1.	Manufacturing and related services of arms and ammunition for the national defense;
2.	Management and conservation of natural forests;
3.	Prospecting, exploration and production of jade/gem stones;
4.	Mid-scale and small scale production of minerals;
5.	Administration of electric power systems;
6.	Inspection work related to electric power
7.	Air navigation services
8.	Exploitation of minerals including gold in rivers and water ways
9.	Pilotage services
10.	Joint working for print media and broadcasting media without the approval of Union Government
11.	All the printing and publishing works related to periodicals, magazines and journals in a national ethnical language including the Myanmar language

#### List of Business Activities allowed only in the form of JV with Myanmar citizens

Agriculture	<ul style="list-style-type: none"> <li>▪ Production and Distribution of Hybrid Seeds</li> </ul>
Manufactured Products	<ul style="list-style-type: none"> <li>▪ Manufacturing and marketing of chemicals based on natural resources that are available domestically (excluding oil and gas, lubricants);</li> <li>▪ Manufacturing and marketing of solid, liquid, gaseous fuels and aerosols (acetylene, gasoline, propane, hair sprays, perfume, deodorant, insect spray) (excluding oil and gas, lubricants);</li> <li>▪ Manufacturing and marketing of oxidants (oxygen, hydrogen peroxide), compressed (acetone, argon, hydrogen, nitrogen, acetylene)</li> <li>▪ Manufacturing and marketing of corrosive chemicals (sulfuric acid, nitric acid)</li> <li>▪ Manufacturing and marketing of industrial chemical gases (including compressed, liquefied and solid forms)</li> <li>▪ Manufacturing of raw materials for drugs</li> <li>▪ Manufacturing and marketing of malt and malt liquors</li> <li>▪ Distilling, blending, rectifying, bottling and marketing of all kinds of spirits beverages and non-beverages;</li> <li>▪ Manufacturing and marketing of all kinds of clean water ice;</li> <li>▪ Manufacturing of purified drinking water;</li> <li>▪ Manufacturing and marketing of all kinds of ropes;</li> <li>▪ Manufacturing and marketing of enamel ware, cutlery, crockery of all kinds;</li> <li>▪ Manufacturing and marketing of plastic wares;</li> </ul>

### List of Business Activities allowed only in the form of JV with Myanmar citizens

	<ul style="list-style-type: none"> <li>▪ Manufacturing of rubber and rubber products;</li> <li>▪ Packaging;</li> <li>▪ Processing of hides, skins and leathers of all kinds, excluding synthetic leather, and manufacturing and marketing thereof including footwear, handbags, etc.;</li> <li>▪ Manufacturing and marketing of paper, paper board including carbon paper, waxed paper, toilet paper, etc.</li> </ul>
Production of Energy	<ul style="list-style-type: none"> <li>▪ Small scale, medium scale electric power generation works</li> </ul>
Construction	<ul style="list-style-type: none"> <li>▪ Establishment of golf courses and resorts meeting international standards</li> <li>▪ Establishment, sales and lease of residential apartments /condominiums</li> <li>▪ Establishment and sales of office/commercial buildings</li> <li>▪ Establishment, sales and lease of residential apartments in residential areas connected to industrial zones</li> <li>▪ Establishment of affordable housing</li> </ul>
Transport	<ul style="list-style-type: none"> <li>▪ Domestic and international air transport services</li> </ul>

### List of economic activities permitted under JV with specific conditions

**Opinion and remarks of the Ministry of Livestock, Fisheries and Rural Development on the following business activities:** Production of bee and bee products, Manufacturing of fishing nets, Construction of jetties for off-loading fish and markets for fish auctions, Research work relating to live stock and fisheries, Marine fisheries work, Preserved manufacturing of fisheries products, Importing, exporting, cultivation of animals and fish species, cultivation of fresh water and marine fish and prawn.

**Opinion and the remarks of the Ministry of Environmental Conservation and Forestry on the following business activities:** National parks, Eco-tourism, Economic business activities relating to the reduction of carbon emission, Extraction (logging) and planting, production on the basis of a long-term lease in reserved forests (reserved forest, protected public forest), Marketing and reproduction of genetically modified organisms after importing them, High technology research for the forestry sector and commercial business activities such as the production and maintenance of good quality, valuable or scarce species and tree tissue cultures, Development of high technology, research and human resources in the forestry sector, Extraction of natural resources in forest land and forest-covered land at the disposal of the government, Production of plants or wildlife animals for business, marketing and distribution within the country or abroad after importing and breeding them.

**Opinion and remarks of the Ministry of Industry for the following business activities:** Manufacturing and marketing of beverages, aerated water and other soft drinks, Production of seasoning powder, Manufacturing of pharmaceuticals used in medical treatment blended with any kind of controlled chemicals,

**Opinion and remarks of the Ministry of Transport for the following business activities:** Transport services for passengers and goods by vessels, Establishing and opening nautical institutes and training schools, Dockyard services, Inland water transport and related services on plots owned by the Inland Water Transport Department

**Opinion and remarks of the Ministry of Communications and Information Technology for the following business activities:** Domestic and international postal services

**Opinion and remarks of the Ministry of Health for the following business activities:** Private hospital business, Private clinic business, Private diagnostic services, Private pharmaceutical and equipment production, Research on preventive vaccines, diagnostic, screening and testing kits, Opening private universities of medicine and medical education related universities and training schools, Trading of raw materials for traditional medicine, Cultivation and production of traditional herbs, Research and laboratory analyses concerning traditional medicine, Manufacturing of traditional medicine, Traditional hospital business.

**Opinion and remarks of the Ministry of Information for the following business activities :** Direct To Home (DTH) DVB-T2, Cable TV, Production of movies, showing of movies.

**List of Economic Activities only allowed in Joint Venture and are subject to special restrictions:**

Notification 49/2014 of the MIC sets out specific economic activities that must be Joint Venture with specific restrictions as stated below.

List of Economic Activities in JV and subject to Special Restrictions	
Economic activities allowed only in Joint Venture with Ministry of Energy:	<ul style="list-style-type: none"> <li>▪ Importing/exporting, transporting, storing and marketing of petroleum, natural gas and lubricants; construction, installation or provision of storage tanks, jetties for loading/off-loading oil, pipelines and related equipment and buildings required in order to carry out the above businesses.</li> <li>▪ Import, manufacturing and erection of machinery, equipment and spare parts required to:               <ul style="list-style-type: none"> <li>– carry out exploration and defining of petroleum and natural gas by geological, geophysical or geochemical methods, and related businesses</li> <li>– carry out drilling/ production/laboratory analyses of petroleum and natural gas, and related businesses</li> <li>– to transport petroleum and natural gas or to construct pipeline networks and related works.</li> <li>– To construct, manufacture or install all kinds of offshore platforms</li> </ul> </li> <li>▪ New construction and installation of all kinds of petrochemical complexes, refurbishment by investment of old factories and implementing the business</li> </ul>
Manufacturing of Cigarettes:	<ul style="list-style-type: none"> <li>▪ In the first three years of production, at least 50% of the tobacco used must be locally produced, or alternatively, a minimum of 50% of the raw materials must be purchased from the proceeds of the export of local tobacco.</li> <li>▪ 90% of the products must be exported</li> <li>▪ Investors must submit a structured plan on the usage of local raw materials and the export of the products within the business proposal.</li> <li>▪ Must obtain the opinion and remarks of the Ministry or Industry.</li> </ul>
Production and marketing of explosive chemicals, auto inflammable liquids and solids, chemicals that de-ionize due to heat, calcium phosphate etc. can only be done in Joint Venture with the government.	
Domestic distribution and export of crop products:	<ul style="list-style-type: none"> <li>▪ Production of value added goods is allowed with foreign share participation up to 49%</li> <li>▪ Domestic trade and export of products allowed only in joint venture</li> </ul>
Joint Venture with the government :	<ul style="list-style-type: none"> <li>▪ E-Lottery Business, construction of satellite town, urban rehabilitation and development, Transportation, railway maintenance.</li> </ul>
Joint Venture with relevant ministry:	<ul style="list-style-type: none"> <li>▪ Construction of railways/stations/buildings</li> <li>▪ Operating and maintenance of railway</li> <li>▪ Laying of fiber optics</li> </ul>

List of Economic Activities in JV and subject to Special Restrictions

- Construction of tower
- Transport of goods
- Generation of power for Railway

**Rule: MIC notification 50/2014**

**Relevant Scope of the Rule: Environmental Impact Assessment**

**DFDL Comment:** The new notification on Environmental Impact Assessments is relatively unchanged from the previous notification 1/2013, with the exception that it precludes large scale timber industries, installation of a national grid, and electric power generation from obtaining an Environmental Impact Assessment certificate.

**Rule: MIC Notification 51/2014**

**Relevant Scope of the Rule: Revised Tax Benefits**

**DFDL Comment:** This Notification withdraws exemptions and relief from customs duty and relief from commercial tax on the economic activities set out below:

**Economic Activities**

(a)	Production of liquor, beer, cigarette and similar products and related services
(b)	Sale of gasoline, diesel, lubricant, natural gas.
(c)	Vehicle repair and similar services
(d)	Activities carried out by citizens without the use of substantial capital/advance technology that excludes labor intensive activities.
(e)	Cultivation, production through long term lease of forest area (forest reserve and protected forest area outside forest reserve) ,felling and extraction of timber
(f)	Extraction and production of natural resources *please note this excludes drilling and production of oil and gas*
(g)	Construction and resale of buildings
(h)	Vehicles and machinery rental
(i)	Restaurants and sale of food.

The Notification does not apply to MIC-approved business projects that predate this notification. (25 August 2014).