



## Mitigating the Risk That Your Business May Be Subject to Potential Myanmar Sanctions

Kazuho Nakajima

### Potential Myanmar Sanctions

On February 1, 2021 the Myanmar military seized power in a coup, and detained Aung San Suu Kyi and other civilian leaders. The U.S., the U.K. and the E.U. condemned the Myanmar military's actions. China noted the coup and expressed its hope that all sides could manage their differences properly. The United Nations Security Council called for the release of the detained leaders, but stopped short of condemning the coup.

On February 2, the United States State Department issued a statement saying that it would take action against those responsible for the coup, including a careful review of the current U.S. sanctions relating to Myanmar's military leaders and companies associated with them. Generally, economic sanctions are imposed to regulate transactions with targeted countries, entities, or persons that the U.S. believes pose threats to its national security and foreign policy. At this time, the new U.S. administration has not stated whether, when, or how it will impose sanctions on those responsible for the coup and detentions.

However, if the U.S. decides to impose sanctions, they would be targeted not only at Myanmar military institutions and officials, but also at military-owned companies that control certain sectors of the Myanmar economy. For instance, military-owned companies may be added to the Specially Designated Nationals and Blocked Persons List ("SDN List") administered by the Department of the Treasury's Office of Foreign Assets Control ("OFAC"). Generally, once OFAC adds a person or entity to the SDN List, that person or entity's assets in the U.S. are blocked and U.S. persons are prohibited from dealing with the listed person or entity. OFAC has adopted a so-called "50% rule" which states that if 50% or more of an entity is owned, directly or indirectly, by one or more persons on the SDN List, the relevant entity also is subject to the same sanctions applicable to persons on the SDN List. Additionally, if the Secretary of the US Treasury determines that a person or entity has materially or significantly supported any person subject to the U.S. sanctions, that person or entity may be added to the SDN List.

U.S. sanctions also typically prohibit U.S. persons from being involved in business with targeted countries, persons, and entities.

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This prohibition affects payments made in U.S. dollars by non-U.S. companies, because these payments typically involve U.S. financial institutions as correspondent banks. Even if the payments do not violate U.S. sanctions, financial institutions sometimes decline to handle or be involved in such payments on the grounds of their own sanction-related or anti-money laundering policies. Separately, imports of Myanmar origin products into the U.S. or exports of U.S. origin products to Myanmar may be restricted, as with past sanctions against Myanmar.

### **To mitigate risk to your business**

As it is possible that your business partners, suppliers, or customers may be included on the SDN List and your business may be exposed to a risk of sanctions, it is important to verify whether or not your business partners, suppliers, or customers connected with your business in Myanmar are or are not controlled by Myanmar military-owned companies, in order to assess the sanction risks relating to your Myanmar businesses. Our firm's Yangon office has Myanmar lawyers who advise on local law and represent clients in negotiations with local counterparties in Burmese, and our experience in Myanmar business indicates that communications in Burmese better enable our clients to gather detailed information on Myanmar companies. Our Yangon office can help you contact local counterparties to request the disclosure of information, in Burmese, as necessary for you to assess potential sanction-related risks.

In addition, those engaged in Myanmar business may need to consider the exclusion of U.S. persons, payments in U.S. dollars, and products of U.S. origin, to avoid sanctions violations.

At this moment, it is premature to state whether U.S. sanctions against Myanmar will extend to secondary sanctions, namely, sanctions imposed on transactions that take place entirely outside the U.S. However, it is worth noting that secondary sanctions have been enacted by the U.S. in limited circumstances, such as those impacting Iran, North Korea, Russia, Venezuela, and Hong Kong. On February 2, the U.S. State Department stated that it would continue to work closely with its partners throughout the region and the world to support respect for democracy and the rule of law in Myanmar. Given that the new U.S. administration has made it clear that it intends to take a multilateral approach, the U.S. may urge allied countries to impose sanctions against Myanmar similar to those imposed by the U.S., instead of imposing secondary sanctions directly. In that sense, it is important to pay attention to applicable sanctions, laws and regulations in countries that share the values of democracy and rule of law with the U.S. (in particular, the U.K. and the EU).

Our firm's international trade team has extensive experience in dealing with legal issues involving transactions disrupted by sanctions, and our firm, including the Yangon office with its Myanmar qualified lawyers, can assist our clients in managing future sanctions risks involving Myanmar business.



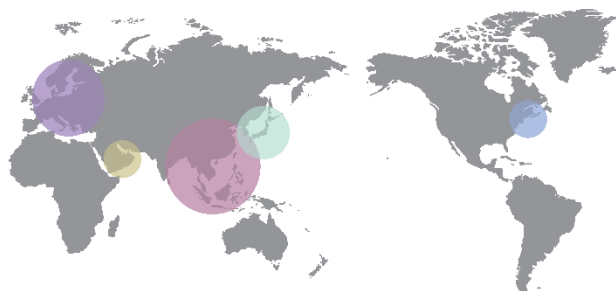
[Kazuho Nakajima](#)

Partner

[k.nakajima@nishimura.com](mailto:k.nakajima@nishimura.com)

Kazuho Nakajima graduated from the University of Tokyo (LL.B.) in 2001 and Columbia University School of Law (LL.M.) in 2009. Against the background of tensions between the U.S. and China, and rising concern over business and human rights in the international community, he engages in numerous commercial transactions under regulations from perspectives of national security and human rights, such as economic sanctions and export controls.

Nishimura & Asahi has 18 offices throughout Japan and in the markets that matter, with Asia as the starting point.



## Tokyo

Otemon Tower, 1-1-2 Otemachi, Chiyoda-ku, Tokyo 100-8124 Japan  
Tel +81-3-6250-6200 +81-3-6250-7210 (Nishimura & Asahi LPC Principal Office)

## Nagoya

Tel +81-52-533-2590

LPC Partner Hiroki Fujii

## Osaka

Tel +81-6-6366-3013

LPC Partners Hiromune Usuki  
Taisuke Igaki  
Yuichiro Hirota  
Masanori Ban

## Fukuoka

Tel +81-92-717-7300

LPC Partners Tsuneyasu Ozaki  
Kengo Takaki  
Yasuko Maita

## Bangkok

Tel +66-2-168-8228  
E-mail info\_bangkok@nishimura.com  
Partners Hideshi Obara  
Tomoko Shimomukai  
Thailand Partners\* Chavalit Uttasart  
(SCL Nishimura)  
Jirapong Sriwat

## Jakarta\*1

**Walalangi & Partners**  
Tel +62-21-5080-8600  
E-mail info@wplaws.com  
Representative Luky Walalangi  
**Rosetini & Partners Law Firm**  
Tel +62-21-2933-3617  
E-mail info\_jakarta@nishimura.com  
Partner Noriaki Machida

## Yangon

Tel +95-1-8382632  
E-mail info\_yangon@nishimura.com  
Representative Yusuke Yukawa  
Vice Representative Isamu Imaizumi

## Beijing

Tel +86-10-8588-8600  
E-mail info\_beijing@nishimura.com  
Chief Representative Azusa Nakashima  
Representative Masashi Shiga

## Shanghai

Tel +86-21-6171-3748  
E-mail info\_shanghai@nishimura.com  
Chief Representative Toshihiro Maeda  
Representative Takashi Nomura  
Seita Kinoshita

## Singapore

Tel +65-6922-7670  
E-mail info\_singapore@nishimura.com  
Co-representatives Masato Yamanaka  
Shintaro Uno  
Partners Masataka Sato  
Yuji Senda  
Ikang Dharyanto\*

Note: We are in formal law alliance with Bayfront Law LLC, a Singapore law practice, under name of Nishimura & Asahi-Bayfront Law Alliance.

## Okada Law Firm (Hong Kong)\*2

Tel +852-2336-8586  
E-mail s.okada@nishimura.com  
Representative Saori Okada

## New York

**Nishimura & Asahi NY LLP**  
Tel +1-212-830-1600  
E-mail info\_ny@nishimura.com  
Managing Partner Katsuyuki Yamaguchi  
Vice Managing Partners Megumi Shimizu  
Partners Kaoru Tatsumi  
Yusuke Urano

## Dubai

Tel +971-4-386-3456  
E-mail info\_dubai@nishimura.com  
Masao Morishita

**Frankfurt (main office)**  
**Nishimura & Asahi Europe  
Rechtsanwaltsgesellschaft mbH**  
Tel +49-(0)69-870-077-620

**Düsseldorf (branch office)**  
**Nishimura & Asahi Europe  
Rechtsanwaltsgesellschaft mbH**  
Tel +49-(0)211-5403-9512

E-mail info\_europe@eml.nishimura.com  
Co-representatives Noriya Ishikawa  
Dominik Kruse

## Hanoi

Tel +84-24-3946-0870  
E-mail info\_hanoi@nishimura.com  
Partner for Hikaru Oguchi  
Vietnam offices  
Representative Akira Hiramatsu

## Ho Chi Minh City

Tel +84-28-3821-4432  
E-mail info\_hcmc@nishimura.com  
Partner for Hikaru Oguchi  
Vietnam offices  
Representative Kazuhide Ohya  
Vietnam Partners\* Vu Le Bang  
Ha Hoang Loc

## Taipei

**Nishimura & Asahi Taiwan**  
Tel +886-2-8729-7900  
E-mail info\_taipei@nishimura.com  
Co-Representatives Ing-Chian Sun  
Sheng-Chieh Chang

\*1 Associate office \*2 Affiliate office  
\* Please note that we are not engaged in a Gaiokokuho Kyodo Jigyō (the operation of a foreign law joint enterprise).

### Public Relations Section, Nishimura & Asahi

Otemon Tower, 1-1-2 Otemachi, Chiyoda-ku, Tokyo 100-8124, JAPAN  
Tel: +81-3-6250-6202 Fax: +81-3-6250-7200 URL: <https://www.nishimura.com/en>