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Sudan Sanctions Revoked

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October 9, 2017 – On October 6, 2017 the U.S. Government announced that, effective October 12, 2017, the comprehensive U.S. trade embargo with respect to Sudan and the blocking of the Government of Sudan will be revoked. However, export controls on controlled items and prohibited parties remain in place as well as restrictions associated with Sudan's status as a terrorist-supporting country and state government restrictions.

What it means

In January 2017, the Treasury Department's Office of Foreign Assets Control (OFAC) issued a general license suspending sanctions. Thus, U.S. persons already have been authorized since that date to export and import goods, services, and technology to and from Sudan, provided they otherwise complied with any remaining trade restrictions (such as restrictions on dealing with prohibited parties and export controls on non-EAR99 items). Accordingly, the October 6 announcement does not change the legal landscape for U.S. persons. However, the formal termination of the Sudan sanctions program will provide more certainty for businesses that had been wary of transacting with Sudan pursuant to a general license that was not permanent.

Certain export controls and restrictive measures still apply

While OFAC's comprehensive sanctions and the blocking of the Government of Sudan have been terminated, certain restrictive measures remain in place.

- **Export Controls.** Sudan export restrictions have not changed and continue to apply both to U.S. and non-U.S. persons dealing in items subject to U.S. export jurisdiction.
 - The Commerce Department's Bureau of Industry and Security (BIS) prohibits exports and reexports to Sudan of most items on the Commerce Control List (CCL). This policy is set forth in §742.10 of the Export Administration Regulations (EAR), which provides for anti-terrorism controls on Sudan. A few items such as mass market encryption products, low-level electronics, diesel engines, and civil aircraft parts and components, are excluded from restriction if they originally were exported from the United States without knowledge that they would be reexported to Sudan. Additionally, BIS will retain the favorable licensing policy for civil aviation and railroad parts and components announced in January. BIS does not restrict the export

to Sudan of non-controlled (EAR99) items. Finally, certain controlled items, including consumer communications devices and related software, are eligible for license exceptions under the EAR, although the number and scope of available license exceptions is limited because Sudan is still listed as a state sponsor of terrorism.

- The State Department's Directorate of Defense Trade Controls implements an arms embargo against Sudan, listing it as a proscribed country with a licensing policy of denial under section 126.1 of the International Traffic in Arms Regulations (ITAR).
- **Prohibited Parties.** U.S. persons remain prohibited from transacting with individuals or entities based in Sudan that are identified on OFAC's Specially Designated Nationals and Blocked Persons (SDN) List, as well as entities owned 50% or more by such individuals or entities.
- **State Sponsors of Terrorism (SST) Designation.** Sudan remains on the SST List administered by the U.S. State Department.
 - This triggers certain license requirements for the export or reexport of agricultural commodities, medicine, or medical devices to Sudan under section 906 of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA). To account for this, OFAC issued General License A, effective October 12, 2017, which authorizes all exports and reexports of agricultural commodities, medicine, or medical devices to Sudan or entities in Sudan, or to any person in a third country purchasing specifically for resale to Sudan or entities in Sudan. In accordance with TSRA requirements, exports and reexports must be shipped within the 12-month period beginning on the date of the signing of the contract for export or reexport. General License A mirrors the general license previously incorporated into the SSR.
 - Additionally, because Sudan remains on the SST List, U.S. persons continue to be prohibited under the Terrorism List Governments Sanctions Regulations (TLGSR), 31 C.F.R. Part 596, from engaging in transfers from the Government of Sudan that would constitute a donation to a U.S. person, or with respect to which a U.S. person knows, or has reasonable cause to believe, would pose a risk of furthering terrorist acts in the United States. This prohibition is primarily applicable to financial institutions that might process such transactions.
- **State Divestiture Laws.** Absent a presidential certification, the Sudan Accountability and Divestment Act of 2007 (SADA) will continue to authorize state and local governments to divest from certain companies directly invested in certain sectors of the Sudanese economy. This provision does not require states to impose such sanctions, but rather eliminates federal pre-emption concerns for states or localities that decide to engage in such divestments. The SADA also requires federal contractors to certify that they are not engaged in certain business in Sudan, although this provision can be waived by the President.

Enforcement actions will continue

Consistent with past practice, the revocation of U.S. sanctions with respect to Sudan and the Government of Sudan will not impact ongoing or potential enforcement cases for activities which occurred prior to January 2017 (when sanctions with Sudan were suspended). As shown by the October 5, 2017, OFAC settlement with White Birch USA – which related to transactions with Sudan occurring between April and December 2013 – civil (and potentially criminal) enforcement investigations will continue to work their way through the system for years to come.

Practical advice for businesses transacting in Sudan

- Businesses engaged in the export or re-export of U.S. origin goods or technology to Sudan should continue to confirm whether their products are EAR99 or regulated on the CCL. In the case of the latter, business should evaluate whether licenses are required or whether license exceptions might be available.
- U.S. persons should continue to exercise a heightened degree of due diligence when doing business in Sudan to ensure that they are not directly or indirectly transacting with SDNs, or with entities owned 50% or more by SDNs.

Conclusion

The revocation of the Sudan sanctions represents the culmination of a process of cutting back on the sanctions that has been underway for some time. There remain pitfalls for businesses, so enhanced due diligence is prudent.

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