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U.S. Government Suspends Comprehensive Sanctions on Sudan

Effective Jan. 17, 2017, the U.S. government significantly eased restrictions on transactions between U.S. persons and Sudan, against which comprehensive sanctions had previously been in place. Specifically, on Jan. 13, 2017, President Obama issued an Executive Order (EO), "Recognizing Positive Actions by the government of Sudan and Providing for the Revocation of Certain Sudan-Related Sanctions," which added a new Office of Foreign Assets Control (OFAC) general license (GL) authorizing all transactions previously prohibited under the Sudanese Sanctions Regulations (SSR). The new GL is valid for a period of six months. Provided the government of Sudan sustains the "positive actions" that led to the move, the EO provides for the final termination of the SSR July 12, 2017.

The new OFAC GL authorizes U.S. persons to engage in transactions with individuals and entities in Sudan, and unblocks the property of the government of Sudan that had previously been "frozen" under the SSR. Further, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) has eased its policy of review for certain categories of Sudan-related export and reexport licenses. The new GL and the licensing policy changes will have major implications for U.S. companies and individuals that wish to do business in Sudan, as discussed below.

<u>Effects of the Sanctions Changes</u>

A. OFAC General License Suspending Sudan Sanctions

The new GL authorizes U.S. individuals and entities to engage in the following Sudan-related activities that were previously prohibited under the SSR:

- Process transactions involving persons in Sudan;
- Engage in imports from and exports to Sudan;
- Engage in transactions involving the petroleum and petrochemical industries, including oil field services and oil and gas pipelines;

- Engage in transactions involving the government of Sudan; and
- Facilitate transactions between Sudan and third countries.

Practically speaking, the new GL effectively suspends the comprehensive sanctions that were previously in place with respect to Sudan.

Owing to legal complexities that cannot be resolved via EO, exports and reexports of agricultural commodities, medicine, or medical devices to Sudan must still be (1) made pursuant to one-year, written contracts; and (2) shipped within the 12-month period beginning on the date of the signing of the contract.

B. BIS Revised Licensing Policy

BIS maintains a licensing policy of denial for export or reexport to Sudan of nearly all items subject to the Export Administration Regulations (EAR) identified on the Commerce Control List (CCL), though as before, items classified as EAR99 do not generally require a BIS license for export or reexport to Sudan. Pursuant to the EO, BIS is revising its licensing policy of denial for the following items to a general policy of approval:

- Parts, components, materials, equipment, and technology controlled on the CCL for anti-terrorism purposes only, intended to ensure the safety of civil aviation or the safe operations of fixed-wing, commercial passenger aircraft; and
- Items that will be used to inspect, design, construct, operate, improve, maintain, repair, overhaul, or refurbish railroads in Sudan.

The licensing policy of approval will apply only to exports or reexports to Sudan for civil uses by nonsensitive end-users. BIS is not removing or adding any license requirements for export or reexport to Sudan.

Limits of the Sanctions Revisions

The sanctions developments described above do not authorize transactions prohibited under the separate Darfur Sanctions Regulations (31 C.F.R. part 546) or the South Sudan Sanctions Regulations (31 C.F.R. part 558). Accordingly, individuals and entities blocked under these limited sanctions regimes remain blocked, and prohibitions on certain transactions with respect to Darfur and South Sudan remain in effect.

Further, OFAC's sanctions revisions do not remove export license requirements under the EAR administered by BIS. BIS will continue to require a license to export or reexport to Sudan all items subject to the EAR that are identified on the CCL, and applications for such export licenses will generally be subject to a policy of denial. As before, export or reexport of EAR99 items will not require a license unless the transaction involves a prohibited end-user or end-use. Finally, the United States continues to maintain an arms embargo against Sudan.

Compliance with U.S. Sanctions Law

While a significant number of Sudan-related restrictions have been lifted, many important limitations remain in place, including licensing requirements and certain designated individuals and entities. For instance, certain individuals and entities in Sudan (and elsewhere) remain blocked pursuant to other U.S. sanctions programs, including OFAC's Darfur and South Sudan sanctions. As a result, companies should continue to screen all parties to international transactions against all of the most up-to-date U.S. and relevant non-U.S. sanctions lists to ensure no transactions with prohibited persons take place. Further, exports and reexports to Sudan of nearly all items identified on the CCL remain subject to BIS's licensing policy of denial. Companies should therefore continue to ensure that their products are appropriately classified for export and continue to apply for BIS export licenses where necessary. A violation of U.S. sanctions can result in both criminal and civil enforcement in the United States. Further, any potential violation committed or in process prior to the sanctions revisions may still be investigated and prosecuted by OFAC or BIS. Accordingly, U.S. companies who have done business in Sudan should continue to retain records of all transactions for five years after the date of the transaction, as required by U.S. export controls and economic sanctions regulations.

Finally, it is important to note that the changes described above were made pursuant to EO, which may be changed at any point by the president. Further, Congress, subject to presidential veto, has the power to review all regulations within 60 days of their implementation. Accordingly, companies should exercise caution in their Sudan-related operations, as the new administration may overturn the previous administration's policies and regulations.

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