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COMPLIANCE PROGRAMS

U.S. Lifts Embargo on Sudan, Though Certain Sanctions and Export Control Restrictions Remain

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On Oct. 6, the U.S. government announced that it will lift the majority of economic sanctions on Sudan effective Oct. 12. While this development marks an end to the 20-year U.S. embargo on Sudan, there are a number of remaining limitations that U.S. companies will need to understand prior to pursuing business in Sudan or with Sudanese counterparties. In particular, the easing of sanctions will not affect export control restrictions or certain list-based sanctions.

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The View from Washington

The decision to revoke certain sanctions on Sudan largely was anticipated given the preliminary decision on Jan. 13 to ease them, though that had occurred in the Obama administration. ''Sudan Criticizes Trump's Visitor Ban After Sanctions Lifted,'' Bloomberg (Jan. 30). Nonetheless, in doing so, the Trump administration further demonstrated its use of sanctions as a tool of statecraft. For example, the U.S. Department of State's announcement highlighted that the Government of Sudan's recent actions ''*show that it is serious about cooperating with the United States*'' on matters including addressing regional conflicts and the threat of terrorism. The Secretary's Report on Whether the Government of Sudan Has Sustained the Positive Actions That Gave Rise to E.O. 13761, U.S. Department of State (Oct. 12). It emphasized that further normalization of relations would require additional cooperation, such as being ''*committed to the full implementation of UN Security Council resolutions on North Korea*,'' and that the U.S. otherwise ''*is prepared to use additional tools to apply pressure*'' if progress does not continue. *Ibid.* In this respect, the Trump administration is tying sanctions relief not only to prior milestones met, but also to the fulfillment of its national security and foreign policy priorities going forward.

Sudan Developments

As a result of the revocation, U.S. persons will generally be allowed to engage in transactions and dealings that were previously prohibited under the Sudanese Sanctions Regulations (''SSR'') (31 C.F.R. Part 538). For example, the revocation of sanctions relating to petroleum and petrochemical industries will present meaningful business opportunities for U.S. energy companies.

Notwithstanding the lifting of sanctions, various restrictions remain in place:

■ ***State Sponsor of Terrorism Designation***. Because Sudan remains on the U.S. Department of State's State Sponsors of Terrorism List (''SST List'') (along with Iran and Syria), the designation sustains a range of sanctions on Sudan including a ban on arms-related exports and sales, controls on exports of dual-use items, and certain prohibitions on economic assistance. State Sponsors of Terrorism, U.S. Department of State (2016).

■ ***Commerce Department Licenses***. A license from the U.S. Department of Commerce Bureau of Industry and Security (''BIS'') is still required for the export and re-export to Sudan of certain items (e.g., commodities, software, and technology) on the Export Administration Regulations' Commerce Control List (''CCL''). Furthermore, a license may be required from BIS for items not specifically listed on the CCL (i.e., items designated as ''EAR99'') depending on the end-use and/or end-user.

■ ***Agricultural Commodities, Medicine, and Medical Devices.*** Because Sudan remains on the SST List and the revocation of sanctions did not affect Section 906 of the Trade Sanctions Reform and Export Enhancement Act of 2000 (''TSRA'') (22 U.S.C. § 7205), exports and re-exports to Sudan of agricultural commodities, medicine and medical devices remain subject to licensing requirements from the U.S. Department of the Treasury Office of Foreign Assets Control (''OFAC''). Nevertheless, to address this restriction, OFAC issued a general license authorizing exports and re-exports of such TSRA items to Sudan under certain circumstances, including a requirement that they be shipped within 12 months of the signing of the relevant contract. General License A: Authorizing Certain Transactions Pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA), U.S. Department of the Treasury Office of Foreign Assets Control (Oct. 6).

Note also that the revocation of sanctions on Sudan will not affect any past, present, or future OFAC enforcement investigations or actions associated with any apparent violations of the SSR prior to Oct. 12.

Key Takeaways

■ As certain persons in Sudan remain the target of U.S. economic sanctions, companies pursuing business with Sudan should regularly perform enhanced diligence of potential contractual counterparties and their beneficial owners, including sanctions- and export control-related restricted party screening.

■ U.S. companies seeking to pursue business in the economy of Sudan, particularly in government-controlled sectors such as energy, still need to be watchful of export control restrictions, including licensing requirements, as well as institute safeguards against elevated corruption risks associated with Sudan.

■ U.S. health-care and pharmaceutical companies anticipating pursuing business in Sudan should carefully review the requirements of OFAC's general license with respect to medicine and medical items in order to ensure compliance going forward.

■ Parties who wish to conduct business in Sudan should review any loan agreements with financial institutions to ensure compliance with any provisions that may be drafted in such a way as to continue to prohibit any business or dealings in Sudan notwithstanding the revocation of sanctions.

■ Multinational companies exploring business opportunities in Sudan should also take into careful consideration certain EU sanctions that remain in place.

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