

Client Alert

Sudan Sanctions Revocation: The Key Takeaways

November 1, 2017

On October 6, 2017, the U.S. Department of State announced the revocation of economic sanctions on Sudan and the Government of Sudan under Executive Orders 13067 and 13412. The State Department cited “the Government of Sudan’s sustained positive actions to maintain a cessation of hostilities in conflict areas in Sudan, improve humanitarian access throughout Sudan, and maintain cooperation with the United States on addressing regional conflicts and the threat of terrorism” as the basis for the revocation. The revocation became effective on October 12, 2017.

The Sudanese Sanctions Regulations (SSR), first issued in 1998, have greatly restricted business involving Sudan for almost two decades. The sanctions blocked transactions by U.S. persons with the Government of Sudan and prohibited U.S. persons from exporting goods, technology, or services to Sudan. The regulations further prohibited the performance by any U.S. person of a contract “in support of an industrial, commercial, public utility, or governmental project in Sudan” as well as transactions related to the petroleum or petrochemical industries there. Consequently, dealings involving Sudan entailed high regulatory risk.

As a result of the revocation, effective, October 12, 2017, U.S. persons are no longer prohibited from engaging in transactions previously prohibited under the SSR. The State Department’s announcement represents the culmination of a process that began with a general license on January 17, 2017, providing relief from the SSR based on progress made by Sudan on the issues noted above, and was coupled with a process set forth in a new Executive Order, 13761 (and later amended by Executive Order 13804), for a permanent revocation of sanctions if progress was sustained. Although the revocation of these sanctions eliminates many risks involved with dealings in Sudan, some risks still remain. These include:

- **Risks under other sanctions programs.** The revocation does not affect sanctions imposed under Executive Orders other than 13067 and 13412, including sanctions relating to Darfur, South Sudan, or Global Terrorism. This means that various Sudanese persons, and persons that operate in Sudan, designated under other programs remain designated. Vigilant screening remains important. Furthermore, because Sudan remains designated as a “State Sponsor of Terrorism” (SST), the Terrorism List Governments Sanctions Regulations (TLGSR) prohibit U.S. persons 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. A general license in the TLGSR authorizes U.S. persons to engage in financial transactions with respect to stipends and scholarships covering tuition and related educational, living, and travel expenses provided by the Government of Sudan to Sudanese nationals who are enrolled as students in an accredited educational institution in the United States. Likewise, OFAC regulations continue require a license for the export of agricultural commodities, medicine, or medical devices to

the Government of Sudan or to entities there. OFAC has provided a new general license to allow such exports.

- **Export control risks.** Goods, technology, and software subject to the Export Administration Regulations (EAR) enforced by the Department of Commerce that are controlled for anti-terrorism purposes still require a license for export, re-export, or transfer to Sudan. The effect of this is that nearly any item on the Commerce Control List (CCL) requires a license for export to Sudan. Items not listed on the CCL but which are subject to the EAR (known as EAR99 items) also will require a license for certain end uses or end users. In addition to the licensing requirements for items subject to the EAR, any item subject to the International Traffic in Arms Regulations (ITAR) administered by the Department of State also requires a license to export to Sudan or South Sudan. Because the ITAR lists Sudan (not the Republic of South Sudan) as a proscribed destination pursuant to a United Nations Security Council arms embargo, the U.S. does not grant such licenses.
- **Risk that sanctions will be re-imposed.** The State Department's decision to keep Sudan listed as a State Sponsor of Terrorism and its identification of many areas of continued concern there are a reminder that the U.S. government could choose at a later date to re-impose sanctions should Sudan backslide on its progress to date. In particular, the State Department has said that it will be looking to Sudan to fully implement U.N. resolutions relating to North Korea's nuclear program. Sudan's continued listing as a State Sponsor of Terrorism also carries a continued risk of negative publicity and reputational harm for companies conducting business with Sudan. Reporting of such transactions by public companies is monitored, and may be requested, by the Office of Global Security Risk at the Securities and Exchange Commission.
- **Outstanding judgments against Sudan.** Plaintiffs with outstanding judgments against the government of Sudan related to its support of terrorism, such as the recent \$10.2 billion judgment against the nation for harboring terrorists responsible for the 1998 U.S. embassy bombings, could seek to attach any of Sudan's interests in property that enters into the United States.

In addition to these risks, U.S. persons remain liable for violations of the SSR that predate January 18, 2017.

In sum, the revocation of economic sanctions against Sudan under Executive Orders 13067 and 13412 represents a substantial easing of commercial restrictions and an opportunity for new business, but significant risks remain. Companies considering dealings with Sudan should be aware of the various "rump" restrictions that remain in place and should maintain a vigilant screening process given the many sanctioned parties that still may operate there. They also may wish to consider whether any past dealings they may have had with Sudan before January 18, 2017 complied with the SSR, as there remains the possibility that OFAC may bring enforcement actions for older activity that predates the loosening of sanctions.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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