

CLIENT ALERT

The United States Substantially Relaxes Existing Embargo on Sudan

January 13, 2017

On January 13, 2017, the United States suspended most of the comprehensive embargo that it has maintained on Sudan since the Clinton Administration. As described further below, new authorizations have been issued to permit U.S. persons to engage in most commercial activity with Sudan, including the exportation of most goods or services to Sudan and persons in Sudan, and to unblock property previously frozen under these sanctions. However, sanctions relating to the Darfur region of Sudan remain, and these, along with other sanctions programs relating to terrorism and weapons of mass destruction, may continue to affect transactions with Sudan.

Issuance of New Executive Order

On January 13, President Obama issued [Executive Order \(EO\) 13761](#) which announced the new U.S. policy changes towards Sudan. In recognition of a series of “positive actions” by the Government of Sudan, the EO announced that it would terminate most aspects of the two previous EOs—EO 13067 (Nov. 3, 1997) and EO 13412 (Oct. 13, 2006)—that had authorized the comprehensive embargo on Sudan. Importantly, however, this revocation will only occur on July 12, 2017 and only after the Secretary of State, in consultation with other Administration colleagues, publishes a notice that “the Government of Sudan has sustained the positive actions that gave rise to this order....”

Relaxation of OFAC Sanctions

In parallel to the new Executive Order, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) dramatically relaxed the existing restrictions imposed in the Sudanese Sanctions Regulations (SSR). Specifically, OFAC issued a final rule establishing a new [General License \(31 C.F.R. 538.540\)](#) (which it refers to as the “2017 Sudan Rule”), authorizing all transactions prohibited by the SSR, including transactions in which the Government of Sudan has an interest.

As OFAC has clarified in a [Fact Sheet](#) on its website, pursuant to the 2017 Sudan Rule, “U.S. persons will generally be able to transact with individuals and entities in Sudan, and the property of the Government of Sudan subject to U.S. jurisdiction will be unblocked.” In particular, this means that U.S. persons can:

- Import goods or services of Sudanese origin.
- Export most goods, technology, and services to Sudan (a separate licensing requirement may apply to goods or technology subject to the Export Administration Regulations (EAR) as summarized in the subsection below).
- Engage in transactions with persons blocked pursuant to the SSR (designated by the tag [SUDAN]).
- Engage in transactions in which the Government of Sudan has an interest.
- Engage in “all transactions necessary to unblock any property or interests in property that were blocked pursuant to 31 C.F.R. 538.201”.
- Engage in transactions relating to the petroleum or petrochemical industries in Sudan.

OFAC has clarified in a set of [Frequently Asked Questions](#) posted on its website that the 2017 Sudan Rule supersedes existing general licenses as well as existing specific licenses or pending specific license applications. U.S. persons need only now comply with the terms of the 2017 Sudan Rule and not with any additional conditions contained in pre-existing and more restrictive general or specific licenses.

The 2017 Sudan Rule did not remove all restrictions on transactions with Sudan. In particular, the following restrictions remain:

- **Export of Agricultural Commodities, Medicine, or Medical Devices:** Due to a statutory restriction, exports or re-exports of agricultural commodities, medicine, or medical devices eligible for export under the Trade Sanctions Reform and Export Enhancement Act (TSRA) “must be shipped within the 12 month period beginning on the date of the signing of the contract for export or reexport.”
- **Transactions with Other SDNs:** While U.S. persons may now engage in transactions with persons designated pursuant to the SSR (identified with a [SUDAN] tag), the changes did not remove any other designations. U.S. persons, therefore, remain prohibited from engaging in virtually all transactions with persons remaining on the SDN list designated pursuant to other programs, including *inter alia*, Darfur ([DARFUR]), South Sudan ([SOUTH SUDAN]), terrorism ([SDGT]), or proliferation ([NPWMD]).
- **Other Agency Restrictions:** OFAC’s 2017 Sudan Rule also did not affect any restrictions administered by other agencies, including but not limited to the export restrictions administered by the Bureau of Industry and Security (BIS) (see below).

BIS Relaxations

Simultaneously, BIS issued a new [review policy](#) for certain limited Sudan-related exports. BIS will continue to require a license for the export or re-export to Sudan of nearly all goods, technology, or software subject to the EAR that are specified on the Commerce Control List, and will continue to maintain its general policy of denial for applications to export or reexport most controlled items when intended for any end-user or end-use in Sudan, with two exceptions. BIS has now adopted a general policy of approval for the following two types of exports or reexports:

- **Civil Aircraft:** items controlled only for AT reasons and “that are intended to ensure the safety of civil aviation or the safe operation of fixed-wing commercial passenger aircraft.”
- **Railroads:** items controlled only for AT reasons that “will be used to inspect, design, construct, operate, improve, maintain, repair, overhaul or refurbish railroads in Sudan.”

This general policy of approval, however, does not apply to transactions involving “sensitive” end-users, including Sudan’s “military, police, and/or intelligence services and persons that are owned by or are part of or are operated or controlled by those services.”

Additional Risk Factors

In addition to the lingering sanctions and export control restrictions summarized above, there are additional risk factors to consider before undertaking any transactions with Sudan. These include, *inter alia*:

- **State Sponsor of Terrorism:** These relaxations did not affect Sudan’s current designation as a state sponsor of terrorism.

- **Skepticism from the New Administration and the Hill:** The continuation of the relaxations will be heavily dependent on the views of the incoming Administration. President Trump's administration will be responsible for making the notification required in the EO and it could revoke these changes as quickly as President Obama's administration implemented them.
- **Corruption Risks:** Sudan currently ranks 165th out of 168 in Transparency International's 2015 [Corruption Perceptions Index](#).

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