

The Obama Administration Eases Sanctions Against Sudan

January 13, 2017

On January 13, 2017, the White House, the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC), and the U.S. Department of Commerce's Bureau of Industry and Security (BIS) announced a host of policy changes that, as of Tuesday, January 17, 2017, will result in the significant easing of Sudan sanctions. **As explained below, OFAC issued authorization for most transactions involving Sudan that previously were prohibited, while BIS announced changes in policy that will enable licensing of certain exports/re-exports to Sudan.** Also, funds and other property of the Government of Sudan and its entities that were previously blocked (frozen) will be unblocked as a result of this action.

The White House indicated that these changes are the result of ongoing U.S.-Sudan bilateral engagement and reflect developments related to bilateral cooperation, the ending of internal hostilities, regional cooperation, and improvements to humanitarian access. If the Sudanese government "sustains the positive actions" by July 12, 2017 and certain other conditions are met, prior Executive Orders imposing sanctions on Sudan will be revoked. In the interim, U.S. persons including U.S. companies can rely on a general license issued by OFAC to engage in Sudan-related activities previously prohibited by OFAC regulations but must comply with the general recordkeeping requirements.

Before making changes to internal compliance policies, companies should consider whether these developments may be affected by the new administration even before July 12, and whether adverse developments in Sudan may affect this easing by the summer.

Key industry-specific impacts:

Food/Medicine/Medical Devices - Exporters of food no longer need to rely on OFAC's prior general license for food, which had conditions related to payment terms and restrictions on military/law enforcement importers. Exporters of medicine and EAR99 medical devices are no longer required to obtain specific OFAC licenses for sale to non-exempt areas of Sudan. Pharmaceutical and medical device companies will no longer be prohibited from engaging in a range of marketing and promotional, educational, and service and repair activities related to sales of EAR99 medicine and medical devices that previously were prohibited.

Financial institutions, (re)insurers, and other service providers – These entities are no longer restricted from processing U.S. dollar payments or other transactions involving Sudan, including the provision of financing, (re)insurance, or other services for Sudan-related trade so long as the activity does not involve parties designated under another OFAC sanctions program (e.g., parties in Sudan targeted under Darfur sanctions or for supporting terrorism or weapons proliferation activities).

Aviation/transportation - Exporters of certain items subject to U.S. law intended to ensure the safety of civil aviation or the safe operation of fixed-wing commercial passenger aircraft are still required to obtain an export license from BIS, but now can benefit from a general policy of approval. Such a policy also applies to certain items that will be used to inspect, design, construct, operate, improve, maintain, repair, overhaul, or refurbish railroads in Sudan. Sales of aircraft remain subject to a general policy of denial.

OFAC Issues General License Authorizing Most Transactions

OFAC's [announcement](#) concerns amendments to the Sudanese Sanctions Regulations (SSR), 31 C.F.R. part 538. The [amendments](#), which add a general license to section 538.540 of the SSR, authorize all transactions previously prohibited by the SSR and Executive Orders 13067 and 13412. These changes allow U.S. persons to generally conduct transactions with individuals and entities in Sudan, including dealings with the Government of Sudan and its entities. They also unblock property of the Government of Sudan subject to U.S. jurisdiction. Although Sudan remains designated as a state sponsor of terrorism, the OFAC regulations in Part 596 targeting terrorism-list governments already contain a general license that authorizes financial transactions with the Sudanese government in light of this new general license in the SSR.

Therefore, as of January 17, 2017, the following activities will be authorized:

- Processing of transactions involving persons in Sudan;
- Importation of goods and services from Sudan;
- Exportation of EAR99 goods, technology, and services to Sudan;
- Transactions involving property in which the Government of Sudan has an interest, including the release of funds previously blocked.

As OFAC has clarified in new FAQ 492, the new general license supersedes other general licenses in the SSR, and companies are therefore no longer required to abide by the more stringent requirements of those general licenses (such as restrictions on payment terms for those relying on a general license in section 538.523 for sale of food to Sudan). However, companies must continue to abide by OFAC's general recordkeeping and reporting obligations.

It should be noted that the changes do not affect transactions prohibited under any other OFAC sanctions program, including the Darfur Sanctions Regulations, the South Sudan Sanctions Regulations, or Executive Orders 13400 or 13664.

BIS Eases Some Export Control Restrictions

Most transactions involving goods, software, or technology (items) on the Commerce Control List (CCL), that is, non-EAR99 items subject to U.S. law, continue to require separate BIS

authorization, although companies will now benefit from a more favorable licensing policy for certain items.

The BIS [changes](#) implement a general policy of approval for applications for licenses to export or re-export to Sudan items on the CCL that are controlled only for anti-terrorism (AT) reasons that are:

- 1) Parts, components, materials, equipment, and technology intended to ensure the safety of civil aviation or the safe operation of fixed-wing, commercial passenger aircraft, or
- 2) Items used to inspect, design, construct, operate, improve, maintain, repair, overhaul or refurbish railroads in Sudan.

The general policies of approval for both of these categories apply only to civil uses by non-sensitive end-users within Sudan, which does not include military, police, or intelligence end users. In addition, the civil aviation and railroad items described above remain subject to a general policy of denial if they are controlled for any other reason (*e.g.*, missile technology) in addition to anti-terrorism.

There is also a new case-by-case review policy for applications to export or re-export four specific categories of items to Sudan:

- 1) Transactions involving the re-export of items to Sudan where Sudan was not the intended ultimate destination at the time of original export from the U.S., provided that the export from the U.S. occurred prior to the applicable contract sanctity date;
- 2) Transactions where the “U.S. content of foreign-produced commodities is 20% or less by value” (we note that BIS amendments do not appear to limit this to “controlled” U.S. content);
- 3) Transactions in which the commodities are medical items (effectively, this applies only to non-EAR99 medical items); and
- 4) Transactions in which the items are telecommunications equipment and associated computers, software, and technology for civil end use, including items useful for the development of civil telecommunications network infrastructure.

Companies seeking to take advantage of this case-by-case review policy must explain in their license applications how their proposed transactions are consistent with one or more of these four situations.

Future Revocation of Executive Orders

The White House [announced](#) that President Obama has signed an Executive Order, “Recognizing Positive Actions by the Government of Sudan and Providing for the Revocation of Certain Sudan-Related Sanctions,” that calls for the revocation of sanctions provisions in prior Executive Orders 13067 and 13412 on July 12, 2017 if the Government of Sudan “sustains the positive actions” that gave rise to this Executive Order and certain other conditions are met.

Please let us know if you have any questions or if we can be of assistance on these matters.

Contacts



Anthony Capobianco
Partner, Washington, D.C.
Tel +1 202 637 2568



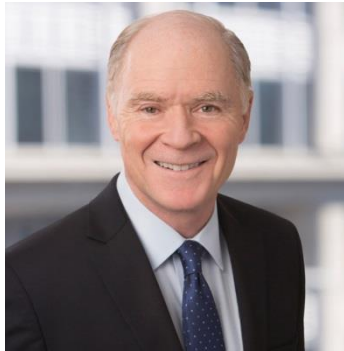
Brian Curran
Partner, Washington, D.C.
Tel +1 202 637 4886



Aleksandar Dukic
Partner, Washington, D.C.
Tel +1 202 637 5446



Ajay Kuntamukkala
Partner, Washington, D.C.
Tel +1 202 637 5552



Robert Kyle
Partner, Washington, D.C.
Tel +1 202 637 5494



Beth Peters
Partner, Washington, D.C.
Tel +1 202 637 5837



Stephen Propst
Partner, Washington, D.C.
Tel +1 202 637 5894

Adam Berry
Associate, Washington, D.C.
Tel +1 202 637 2871