

Not Out of the Woods Yet: What the Lifting of Sudan Sanctions Means for Businesses and Non-Profits

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Today, on October 12, 2017, the U.S. is permanently revoking most sanctions against Sudan. This lifting represents the completion of a process that began in [January 2017](#), and was extended in [July 2017](#). The lifting was [announced](#) on October 6, 2017, along with a [report](#) from the Secretary of State detailing the positive steps taken by the Government of Sudan (GOS). This lifting of sanctions authorizes most, but not all, activities with Sudan involving U.S.-origin goods, software or technology (collectively, “items”), U.S. Persons, or U.S. Dollar-denominated transactions.

While the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC) is revoking the Sudanese Sanctions Regulations (SSR), the U.S. Department of State is not removing its designation of the GOS as a State Sponsor of Terrorism (SSOT). The continued status of Sudan as an SSOT has certain unexpected, but in some cases very important, implications. In particular, the U.S. Department of Commerce will continue to maintain strict export controls on Sudan and all items set forth on the Department of Commerce’s Commerce Control List will be subject to licensing requirements. We summarize below the key remaining restrictions. Sudan also remains subject to a U.S. arms embargo.

Restricted Parties

With the revocation of the SSR, OFAC also removed the designation of a number of persons and entities in Sudan as Specially Designated Nationals (SDNs). Virtually all transactions with SDNs are prohibited if a U.S. nexus (such as U.S.-origin items, U.S. Persons, or U.S. Dollars) is present.

However, a number of Sudanese entities and persons designated for other reasons, such as their activities in the Darfur and South Sudan conflicts or support for terrorism, will remain designated as SDNs. As such, companies will need to ensure that they have implemented screening, due diligence, and know your customer procedures to prevent any transactions involving these restricted parties.

Export Controls

The lifting of sanctions will allow the sale into Sudan of many consumer goods and commodities, but as a result of Sudan’s continuing SSOT designation, U.S. export controls remain in place regarding many dual-use items (*i.e.*, goods, software, and technology that have both civilian and military applications).

Thus, while OFAC is lifting sanctions by revoking the SSR, companies may still have separate compliance and export licensing obligations with the U.S. Commerce Department's Bureau of Industry and Security (BIS). Any items identified on the Commerce Control List (CCL) will generally require an export license (or applicable license exception) for export or re-export to Sudan. Items classified as EAR99 (that is, items subject to the lowest level of control under U.S. law) do not require BIS authorization for export or re-export to Sudan to a non-designated party.

Companies considering entering the Sudanese market should assess whether any of their products would require BIS authorization to be exported to Sudan.

Agricultural Commodities, Medicine, and Medical Devices

In 2000, the U.S. Congress passed the Trade Sanctions Reform and Export Enhancement Act (TSRA), which created a favorable licensing regime for sales of EAR99 agricultural commodities, medicine, and medical devices to a number of countries subject to U.S. sanctions, including Sudan.

As a result of the continuing SSOT designation, TSRA still technically requires OFAC licensing for the sales of such products to Sudan. To satisfy this requirement, OFAC issued [General License A](#), (GLA) which authorizes all such sales but requires such goods to be shipped within the 12-month period beginning on the date of the signing of the contract for export or re-export.

Unless and until the SSOT designation is lifted, companies engaging in such sales must continue to monitor shipments to ensure compliance with the 12-month period authorized under GLA. In contrast, companies seeking to export or re-export to Sudan EAR99 items that *are* not agricultural commodities, medicine, or medical devices may do so without adhering to this General License A requirement.

Finance and Banking

The SSOT designation means that the GOS is still, as a technical matter, subject to sanctions under the Terrorism List Governments Sanctions Regulations ("TLGSR," 31 C.F.R. Part 596). While the TLGSR prohibit U.S. Persons from engaging in financial transactions involving a terrorism list government, OFAC has issued a general license authorizing such financial transactions except when one of the two following circumstances applies:

- 1) The transaction constitutes a donation to a U.S. Person; or
- 2) The U.S. Person knows or has reasonable cause to believe that the transfer poses a risk of furthering terrorist acts in the United States.

In addition to carrying out sufficient due diligence to ensure that neither of these two prohibitions applies, companies should ensure that the payment instructions for any wire transfers involving the GOS refer to the TLGSR general license in order to avoid delays or problems in processing by financial institutions when the payment has any U.S. nexus.

Universities and Charities

Finally, universities, charities, and any other institutions that receive financial gifts or contributions need to consider the impact that the TLGSR restrictions may have on their activities.

While OFAC's [FAQs](#) make clear that U.S. educational institutions may continue to enroll and receive tuition and related educational payments from Sudanese students who receive stipends and scholarships from the GOS, the same does not hold true for U.S. Persons.

A few examples illustrate how this prohibition might apply. The following kinds of activities would be prohibited to U.S. universities if their financial benefactor was the GOS or an entity owned or controlled by the GOS (such as a state-owned enterprise):

- Endowing a scholarship at a U.S. university;
- Providing funds to a U.S. university to host a conference or symposium;
- Providing research grants to faculty members or graduate students at a U.S. university.

These restrictions could also have an impact on individual students at U.S. universities. For example, while U.S. students may now generally participate in study abroad programs in Sudan or at Sudanese universities, a U.S. student could not receive a living stipend from the GOS while studying Arabic in Khartoum.

Accordingly, universities will need to carefully review any arrangements with Sudanese universities or the GOS in order to ensure compliance with these restrictions.

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