

On Tuesday, January 17, 2017, the Treasury Department's Office of Foreign Assets Control (OFAC) will publish in the Federal Register a far-reaching amendment to its Sudanese Sanctions Regulations (SSR), 31 CFR Part 538.

While styled as a "general license," the amendment will have the practical effect of terminating the embargo of Sudan that the US imposed in 1997. All of the prohibitions contained in OFAC's SSR, 31 CFR Part 538, will be rescinded on January 17, even though the relevant Executive Orders will not be officially revoked until July 2017 (unless, of course, the incoming Trump administration reverses the outgoing Obama administration's decision to lift sanctions).

What Will This Mean in Practice?

- **Exports** – US companies can once again export their products and services to customers in Sudan. Depending upon the product, customer and end use, they may have to obtain an export license under the Export Administration Regulations (EAR), but OFAC's blanket ban on exports has been lifted. (Licensing policy under the EAR is being amended to create a presumption of favorable consideration of applications to export to Sudan parts to ensure the safety of civil aviation and items to inspect, operate improve, maintain, repair and overhaul railroads.) The one exception is military items subject to the State Department's International Traffic in Arms Regulations (ITAR). The export to Sudan of ITAR-controlled products, services or technical data will remain prohibited. Those who export to Sudan food, agricultural commodities, medicine or medical devices will be subject to an odd requirement that their export shipments take place within one year of signing the export contract, and all US exporters will be required to retain documents relating to their export sales for a five-year period.

- **Investments** – US companies will also now be allowed to invest in Sudan. This may be of particular interest to US energy companies.
- **Blocked Assets/Banking** – For years, US companies have been required to "block" the property of the Government of Sudan. OFAC listed as "specially designated nationals" (SDNs) Sudanese companies that were owned or controlled by the Government of Sudan. US banks and US companies were generally likewise required to block funds transfers if one of the listed SDNs had any interest in the funds. All such blocked funds have now been unblocked. Of course, some of those funds were blocked almost 20 years ago, so there will be some time and some confusion in trying to reconstruct who today has a rightful claim to the unblocked funds. Significantly, US and non-US banks will be able to effect dollar-denominated funds transfers to/from Sudan without violating US sanctions.

Additional Constraints

The US's Darfur and South Sudan sanctions remain in effect. Thus, US persons continue to be prohibited from engaging in transactions with any SDNs designated under these programs. However, there are only eight SDNs designated under the Darfur program (seven individuals and one entity), and only six SDNs designated under the South Sudan program (all individuals). So the practical impact of US sanctions under these two programs is quite limited.

Sudan will also remain on the US list of State Sponsors of Terrorism. This impacts primarily the scope of permissible action of the US government, however, and has little immediate bearing on private companies interested in pursuing commercial opportunities in Sudan. Additionally, the OFAC General License specifies that it "does not affect past, present, or future enforcement actions or investigations with respect to any violations, including apparent or alleged violations, of the Regulations that occurred prior to the effective date of this final rule." Nonetheless, for US companies looking to begin working with Sudan, with the few exceptions noted, Sudan is open for business effective January 17, 2017.

Contacts

Daniel Waltz

Partner, Washington DC
T +1 202 457 5651
E daniel.waltz@squirepb.com

Aline Doussin

Partner, London/Brussels
T +44 207 655 1146
E aline.doussin@squirepb.com

George Grammas

Partner, Washington DC
T +1 202 626 6234
E george.grammas@squirepb.com

Kevin McCart

Partner, Washington DC
T +1 202 457 6457
E kevin.mccart@squirepb.com

Stephen McHale

Partner, Washington DC
T +1 202 457 6344
E stephen.mchale@squirepb.com

Caffey Norman

Partner, Washington DC
T +1 202 457 5270
E caffey.norman@squirepb.com

Elizabeth Ryan

Partner, Washington DC
T +1 202 457 5669
E elizabeth.ryan@squirepb.com

Patrick Slevin

Partner, Washington DC
T +1 202 457 6197
E patrick.slevin@squirepb.com

Benjamin Wood

Partner, Washington DC
T +1 202 457 6685
E benjamin.wood@squirepb.com

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