

US Announces Tentative Lifting of Sudan Sanctions; OFAC Issues Guidance on Providing Sanctions Advice

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On January 13, 2017, President Obama and the Department of the Treasury's Office of Foreign Assets Control (OFAC) announced the interim lifting of sanctions on Sudan, with a path to a permanent revocation of sanctions in six months if certain conditions are met. The sanctions relief is focused on sanctions under OFAC's Sudanese Sanctions Regulations (SSR), including the embargo on Sudan and the sanctions on the government of Sudan, and does not impact Sudan's status as a state sponsor of terrorism or separate OFAC Darfur-related sanctions. The Sudan sanctions easing also does not affect U.S. sanctions applicable to South Sudan.

Separately, on January 12, 2017 — in a move unrelated to the lifting of sanctions on Sudan — OFAC issued "Guidance on the Provision of Certain Services Relating to the Requirements of U.S. Sanctions Laws," which seeks to provide additional clarity on the permitted scope of sanctions compliance services.

Lifting of Sanctions on Sudan

The U.S. government announced that the lifting of OFAC's Sudan sanctions is the result of successful bilateral negotiations over the last six months between the United States and Sudan focusing on achieving progress on five issues: (1) ending the Sudanese government's offensive military operations in Darfur, Southern Kordofan and the Blue Nile regions; (2) improving humanitarian access; (3) ending Sudan's destabilizing role in South Sudan; (4) improving counterterrorism cooperation; and (5) countering the threat of the Lord's Resistance Army.

The lifting of sanctions is structured as a two-step process governed by new Executive Order 13761 and OFAC's amendments to the SSR.

In step one, OFAC issued a new general license (GL), which became effective January 17, 2017, and authorizes all transactions prohibited by the SSR as well as the executive orders underlying the Sudan sanctions. Step two is scheduled for July 12, 2017, and depends on a determination by the U.S. government that the government of Sudan has sustained the positive developments on the five issues outlined above that gave rise to the lifting of sanctions in step one. Step two would entail the termination of OFAC's Sudan sanctions under the SSR and of relevant provisions of the underlying executive orders.

The transactions newly authorized by the GL include:

- the processing of transactions by U.S. persons (including banks) involving persons in Sudan;
- the importation of goods and services from Sudan by a U.S. person;
- the exportation of goods, technology and services to Sudan by a U.S. person; and
- transactions involving property in which the government of Sudan has an interest.

In sum, the GL allows for business between the United States and Sudan and unfreezes Sudanese assets blocked under the SSR, including assets of the government of Sudan. As a result, there is also no longer an OFAC prohibition on non-U.S. persons availing themselves of the U.S. financial system (*e.g.*, by clearing U.S.-dollar transactions through a U.S. financial institution) in conducting their Sudan-related business.

OFAC has clarified that the GL supersedes all other general licenses in the SSR, and therefore, U.S. persons are no longer required to abide by the conditions in those other licenses, as of January 17, 2017. In addition, U.S. persons are not required to renew or obtain a new specific license from OFAC to engage in activities prohibited by the SSR.

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The GL does not, however, eliminate the need to comply with other OFAC sanctions programs, including restrictions under OFAC's Darfur-related and South Sudan sanctions. In addition, the GL does not affect any past, present or future OFAC enforcement investigations or actions related to any apparent violations of the SSR that occurred before January 17, 2017.

The GL also does not remove the requirement to follow other applicable laws that may affect dealings with Sudan, such as the International Traffic in Arms Regulations (ITAR) administered by the Department of State and the Export Administration Regulations (EAR) enforced by the Commerce Department's Bureau of Industry and Security (BIS). Specifically, all transactions involving Sudan that are subject to the ITAR continue to require an export license or other approval from the State Department. Exports of most goods, software and technology (collectively "items") that are subject to the EAR also continue to require a license from BIS prior to their export, re-export or transfer to Sudan. However, in a change in policy announced in conjunction with the GL, BIS has explained that it will generally grant license applications for exports, re-exports and transfers of certain EAR-controlled items that are intended to ensure the safety of civil aviation or the safe operation of fixed-wing commercial passenger aircraft, or that will be used in certain applications in railroad construction and repair in Sudan.

The July 2017 decision to permanently revoke the Sudan sanctions that are the subject of the GL will depend on continued and satisfactory positive developments in U.S.-Sudan bilateral engagement and will be made by the incoming Trump administration. For the time being, however, U.S. persons may engage in transactions with Sudan prohibited by the SSR, provided these transactions do not violate any other applicable sanctions regulations or other law.

Guidance on Providing Sanctions Compliance Services

Unlike the easing of sanctions on Sudan, the guidance on the "[Provision of Certain Services Relating to the Requirements of U.S. Sanctions Laws](#)" (Guidance) does *not* reflect a change in OFAC's policy with respect to the provision of these types

of legal and compliance services. Rather, OFAC stated that the Guidance was issued to ensure that both U.S. and foreign individuals and entities understand that U.S. persons may provide services consistent with OFAC's continuing policy.

The Guidance sets out two broad categories of services that U.S. persons may provide to "covered persons,"¹ but it also expressly states that it "does not describe every allowable service relating to the requirements of U.S. sanctions laws." The two categories of permitted services are:

- Providing information or guidance regarding the requirements of U.S. sanctions laws administered by OFAC, including statutes, regulations and executive orders. For example, a U.S.-person compliance officer working at a covered person entity may advise employees of that entity on the requirements of U.S. sanctions laws.
- Opining on the legality of specific transactions under U.S. sanctions laws regardless of whether it would be prohibited for a U.S. person to engage in those transactions. U.S. persons, including in-house counsel, may solicit information from covered persons and conduct research to make a determination as to the legality of transactions under U.S. sanctions laws provided there is no importation of services that would be prohibited.

Nothing in the Guidance affects restrictions in OFAC's sanctions regulations on prohibited facilitation by U.S. persons. The Guidance reminds U.S. persons that they may not otherwise approve, finance, facilitate or guarantee any transaction by a foreign person where the transaction by that foreign person would be prohibited by sanctions regulations if performed by a U.S. person or within the United States.

¹ For the purposes of the Guidance, "covered person" means any U.S. or foreign person other than a person (i) whose property and interests in property are blocked pursuant to any part of 31 C.F.R. Chapter V, including persons on OFAC's List of Specially Designated Nationals and Blocked Persons, or (ii) to whom a U.S. person is prohibited from exporting services or from whom a U.S. person is prohibited from importing services pursuant to any part of 31 C.F.R. Chapter V.

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