

US moves to ease sanctions on Sudan

In one of his final acts as President, President Obama has signed a new Executive Order to ease comprehensive sanctions against Sudan. To give effect to the Order, the US Department of Treasury's Office of Foreign Assets Control (OFAC) has issued a general licence authorising all transactions previously prohibited by the Sudanese Sanctions Regulations (SSR), including transactions involving the Sudanese Government. As a result, there are now only five territories worldwide that remain subject to comprehensive US sanctions.

The new general licence

The new General Licence (New GL), which takes effect on 17 January 2017 following publication in the Federal Register, effectively authorises all transactions previously prohibited by the SSR and Executive Orders (EOs) 13067 and 13412, and unblocks the property of the Government of Sudan that has been previously frozen under the EOs.

The new GL does not, however, affect any other OFAC sanctions programmes, such as prohibitions under the Darfur Sanctions Regulations or the South Sudan Sanctions Regulations.

Similarly, it does not apply to transactions with persons designated pursuant to other EOs. For example, the property of certain Specially Designated Nationals (SDNs) blocked pursuant to EO 13400 "*Blocking Property of Persons in Connection With the Conflict in Sudan's Darfur Region*", will remain blocked.

OFAC has also issued a series of FAQs about the New GL available

[here](#), including a FAQ on exports of agricultural commodities, medicine, or medical devices to Sudan, available [here](#).

The New GL:

- unblocks any property or interests in property of the "Government of Sudan", defined under the SSR to include the state and the Government of Sudan, any of its political subdivisions, agencies, instrumentalities or entities owned or controlled by all of the above that were blocked under the SSR, including the return of previously blocked funds; and
- authorises all transactions prohibited by the SSR, EO 13067 and 13412, including all transactions that involve individuals or entities in Sudan or the Government of Sudan.

In effect, the New GL authorises all trade between the United States, US persons and Sudan that the SSR previously prohibited, leaving in place only those Sudan-related sanctions applicable under sanctions programmes other than the SSR,

Key issues

- President Obama has issued an Executive Order to drop comprehensive sanctions against Sudan.
- OFAC will adopt a General Licence on 17 January 2017 to give immediate effect to the changes under the Sudan Sanctions Regulations.
- There are now only five territories that are subject to comprehensive US sanctions: Crimea, Cuba, Iran, North Korea and Syria.

such as the blocking sanctions against Darfur-related SDNs. However, in connection with exports of agricultural commodities, medicine, or medical devices to Sudan, OFAC requires that all such exports be shipped within 12 months of the date of the signing of the contract for the relevant export.

The New GL also authorises all transactions by US persons relating to the oil and gas sectors of Sudan.

Finally, US persons are no longer prohibited from facilitating transactions between Sudan and third countries, if such transactions do not involve Darfur-related SDNs or other activities prohibited under OFAC's programmes other than the SSR.

Export Controls

The US Department of State has not yet removed Sudan from its list of state sponsors of terrorism. The New GL does not affect the restrictions of other US agencies applicable to countries on this list, and specifically, the requirements of the *Export Administration Regulations* administered by the Bureau of Industry and Security of the US Department of Commerce and the *International Traffic in Arms Regulations* administered by the US Department of State.

Transactions that involve export or re-export of export-controlled US-origin goods or foreign made goods that incorporate more than 10% of US origin controlled content to Sudan should continue to be carefully monitored and authorisations from the Department of Commerce sought where necessary.

Enforcement Actions

Similar to all recent OFAC actions in connection with the lifting of other sanctions, OFAC has indicated that the New GL does not affect past, present, or future OFAC enforcement actions or investigations with respect to any potential violations of the SSR that occurred prior to the effective date of the New GL.

New Executive Order

The New GL follows President Obama's issuance of a new EO "*Recognising Positive Actions by the Government of Sudan and Providing for the Revocation of Certain Sudan-Related Sanctions.*" (the January 2017 EO).

The January 2017 EO provides that:

- on or before 12 July 2017 and annually thereafter, various US regulators, including the Secretary of State and the Secretary of the Treasury shall provide to the President a report on whether the Government of Sudan has sustained its positive developments, including ceasing hostilities in conflict areas in Sudan, improving its human rights record and cooperating with the United States on addressing regional conflicts and the threat of terrorism; and
- provided the July 2017 report confirms such positive developments, sections 1 and 2 of EO 13067 will be revoked and EO 13412 revoked in its entirety, effective 12 July 2017. This will keep in place only the Sudanese national emergency declared under EO 13067 and subsequently expanded under EO 13400 in connection with the conflict in Darfur.

At present it remains unclear whether the new administration of President Elect Trump will maintain these changes or exercise its authority to revoke the January 2017 EO and/or New GL or otherwise further amend the current Sudanese sanctions after 20 January 2017. Any such

amendments, if they occur, would not have retroactive effect.

Analysis

These sweeping actions by the President and OFAC came as a surprise, without any advance notice, in contrast to the recent termination of the Burma sanctions that occurred over a long transition period. There are now only five territories that are subject to comprehensive US sanctions: the Crimea region, Cuba, Iran, North Korea and Syria.

However, the sustainability of the sanctions relaxation over the longer term will depend on whether Sudan satisfies the requirements for continued progress across a range of issues and the new administration agrees with the approach of the outgoing President. The uncertainty inherent in the initiative and its timing could have a dampening effect on the resumption of US trade and investment in Sudan until the Trump Administration issues the July 2017 report referenced above.

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