

US GOVERNMENT ADVISES HEIGHTENED CAUTION REGARDING OPERATIONS IN SUDAN

The U.S. Departments of State, Treasury, Commerce, and Labor have issued a [new Advisory](#) (the "**Advisory**") urging American businesses and investors to exercise caution when engaging with Sudanese State-Owned Enterprises ("**SOEs**") and military-controlled companies. According to the Advisory, recent actions by Sudan's Sovereign Council and security forces put U.S. businesses, individuals, and investors at risk in the country and the region. The Advisory strongly recommends renewed vigilance including due diligence with respect to human rights, KYC controls, and other compliance measures.

MILITARY SEIZURE OF POWER INCREASES RISK TO BUSINESSES, OTHERS

Sudan's former president Omar al-Bashir was removed from office in a coup d'état in 2019, at which point a civilian-led transitional government ("**CLTG**") initiated steps to enact market reforms and to enhance protections for political speech and participation in civil society. Further reforms were intended to stabilize the domestic legal regime related to commercial operations. Though Sudan was incentivized to enact the reforms through sovereign debt relief and other forms of economic support, the CLTG did not enact meaningful changes, and any reforms have been "upended" by the military takeover of the Sudanese government in October 2021. The country's commercial code continues to favor SOEs and other Sudan-based businesses.

The military takeover resulted in consolidation of direct military control over SOEs in a range of industries, including key sectors such as railroads, food production, infrastructure, and energy, including fuel and natural gas projects. According to the Advisory, "at least 650 of Sudan's publicly listed companies are SOEs, of which at least 200 are directly owned by the military." Private companies are held to higher standards than SOEs, which benefit from lax oversight, a lack of transparency, and widespread corruption. Sudan was ranked 171 out of 190 countries for ease of doing business by the [World Bank's Doing Business Report](#)

Key issues

- Though the Advisory applies only to SOEs and other military-controlled companies, not to other commercial operations in Sudan, dealings with private Sudanese entities or Sudan-origin goods could also present risks.
- U.S. businesses and individuals should be aware of reputational and other compliance risks when dealing directly with the Sudanese government.

in 2020, and Transparency International ranked Sudan 164 out of 180 in its [Corruption Perception Index](#).

Plans for civilian control of SOEs have been scrapped, and protests against the military takeover generated violent responses from the government, including the deaths of over 90 civilians, thousands of injuries, and a crackdown on freedoms of press and speech. The Advisory states that companies are advised against interacting with SOEs and military controlled companies as financial or technical assistance may be associated with human rights abuses and actors impeding the transition to a democratic form of government. Companies and investors subject to US jurisdiction are further urged by the Advisory to ensure that they do not engage with persons listed on the Office of Foreign Assets Control's ("**OFAC**") [Specially Designated Nationals and Blocked Persons list](#) (the "**SDN List**"), or entities that are owned 50% or more in the aggregate by SDNs.

SUPPLY CHAIN RISK: GOLD

The Advisory urges businesses that are directly or indirectly involved in the Sudanese gold trade to ensure that their practices comport with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and the Gold Supplement to the OECD Due Diligence Guidance. Gold from Sudan is on the Department of Labor's List of Goods Produced with Child Labor or Forced Labor, and the Advisory further notes that the United Nations concluded that many gold mines in Darfur are controlled by the Rapid Support Forces, i.e., Sudanese security forces, who smuggle the gold out of the country for sale elsewhere. Businesses should review their supply chains and take reasonable measures to guard against complicity in labor violations and other risks.

COMMERCIAL, ITAR, AND SANCTIONS RISK

The Advisory warns businesses and individuals that Sudan's commercial code does not provide fulsome legal mechanisms and tools to combat corruption, mitigate and resolve disputes, secure assets and collateral, or enforce contracts.

The Advisory reminds businesses and individuals that there is a United Nations arms embargo implemented by the U.S. government via the U.S. State Department's International Traffic in Arms Regulations ("**ITAR**") barring supplying arms or assistance and training to actors in Darfur.

The Advisory also reminds businesses that the U.S. has sanctioned certain Sudanese individuals and entities under a number of different sanctions programs, not all of which pertain to Sudan: for example, sanctions programs relating to Russia/Ukraine, election interference, malicious cyber-enabled activity, terrorism, and the Global Magnitsky sanctions. These sanctioned individuals and entities are listed on the SDN List, referenced above. U.S. sanctions also apply to entities owned 50% or more, directly or indirectly, by SDNs. U.S. individuals and entities may not engage in transactions with such sanctioned persons, unless there is an applicable license issued by OFAC or an exemption. Failure to comply with the U.S. sanctions can result in civil and potentially criminal penalties being imposed by the U.S. government. The Advisory recommends that both U.S. and non-U.S. organizations implement a "risk-based approach" to sanctions compliance in line with OFAC's previous guidance on implementing sanctions compliance programs.

HUMAN RIGHTS DUE DILIGENCE TOOLS

The Advisory identifies several government resources for human rights compliance, including:

- the U.S. Department of Labor's "Comply Chain," which provides information on due diligence measures specific to forced labor and child labor in supply chains; and
- FinCEN's Advisory to U.S. financial institutions, "Human Rights Abuses Enabled by Corrupt Senior Foreign Political Figures and their Financial Facilitators," which provide typologies on how actors exploit the financial system and red flag indicators that financial institutions can use to identify illicit activity.

The Advisory also identifies multiple sources of guidance for human rights best practices, including heightened due diligence in high-risk regions, including:

- the UN Guiding Principles on Business and Human Rights;
- the OECD Guidelines for Multinational Enterprises;
- the International Labour Organization's publication, "Combating Forced Labour: A Handbook for Employers and Business"; and
- the Office of the High Commissioner for Human Rights guide on "The Corporate Responsibility to Respect Human Rights."

The Advisory encourages businesses engaged with public and private security around their operations to implement the Voluntary Principles on Security and Human Rights, which provide guidance in providing security around business operations in a manner that respects human rights. The Advisory also encourages businesses that hire private security to hire from companies that are members or affiliates of the International Code of Conduct for Private Security Providers' Association.

CONCLUSION

We continue to see the use of advisories by the Biden Administration to advise the business community of specific legal risks of doing business in high-risk jurisdictions like Sudan. While the Advisory does not have the force of law, it provides insight into enforcement priorities and risk management/compliance expectations, which should not be overlooked.

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