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CLIENT ALERT:

U.S. ROLLS BACK SANCTIONS AGAINST SUDAN

January 17, 2017

Introduction

On January 13, 2017 President Obama issued an Executive Order which will permanently revoke the sanctions against Sudan on July 12, 2017, provided that Sudan has sustained certain positive actions achieved in the last six months. In conjunction with the new E.O., the Office of Foreign Asset Control ("OFAC") has today issued a general license immediately authorizing all transactions which were prohibited by the Sudanese Sanctions Regulations ("SSR"). Essentially, this means that U.S. persons are now largely free to engage in transactions with and relating to Sudan.

Background

Over the last six months the U.S. government has been engaged with the Government of Sudan in an effort to end that government's offensive military operations, to improve humanitarian access in Sudan, to end Sudan's destabilizing role in South Sudan, to end the threat of the Lord's Resistance Army and to counter terrorist groups. Because Sudan has met the benchmarks set by the U.S. in all five areas, and has made further commitments, the U.S. has taken steps which may lead to the permanent revocation of the U.S. sanctions against Sudan.

Sanctions Relief Granted

The Executive Order issued on January 13th provides for the revocation, effective July 12, 2017, of the sanctions against Sudan set forth in E.O.s 13067 and 13412. However, the revocation will only become effective if, prior to July 12, 2017, the Secretary of State has published a notice in the Federal Register stating that the Government of Sudan has sustained the positive steps taken over the last six months.

Inthe meantime, OFAC has today amended the SSR, to immediately authorize all transactions prohibited by those regulations, as well as by E.O.s 13067 and 13412. According to a statement issued by OFAC, "As a result, U.S. persons will generally be able to transact with individuals and entities in Sudan, and the property of the Government of Sudan subject to U.S. jurisdiction will be unblocked." Because of the two step nature of the sanctions relief, entities and individuals who have been designated to the U.S. Specially Designated Nationals List ("SDN List") under the sanctions against Sudan will remain on that list until the sanctions are fully revoked on July 12, 2017. However, because of the general license issued by OFAC in today's amendment of the SSR, U.S. persons will be free to deal with those designated persons and entities.

In practical terms, today's amendment of the SSR, found in 31 CFR 538.540, permits U.S. persons to engage in the import and export of goods to and from Sudan, and permits U.S. ocean carriers to transport those goods. In addition, U.S. banks are now free to engage in financial transactions relating to Sudan, which means that freight and time charter hire for vessels transporting goods to and from Sudan can now be paid in U.S. dollars.

Notes of Caution

While today's amendment of the SSR is a general license lifting the trade sanctions imposed by the SSR and by E.O.s 13067 and 13412, it does not lift the Darfur related sanctions or designations to the SDN List under E.O. 13400. Therefore, any U.S. person engaging in trade with Sudan should still exercise due diligence to insure that they are not transacting business with a party designated to the SDN List under the Darfur related sanctions. Similarly, non-U.S. persons trading with Sudan should keep in mind that if they are engaging in transactions with entities designated to the SDN List under the Darfur sanctions, then a U.S. bank will not be able to process financial transactions related to that trade.

It should also be noted that the amendment of the SSR does not affect any other applicable regulations, such as the Export Administration Regulations administered by the Bureau of Industry and Security and the Department of Commerce. Any U.S. persons engaging in trade with or relating to Sudan will still need to comply with any other applicable provisions of law, found outside of the SSR. In particular, Section 906(a)(1) of the Trade Sanctions Reform and Export Enhancement Act remains in effect, requiring that any exports or reexports of argricultural commodities, medicine, or medical devices to Sudan must be shipped within 12 months of the signing of the contract for export or reexport.

As described above, the lifting of the sanctions against Sudan is a two step process, and they will only be permanently revoked on July 12, 2017 if Sudan sustains the progress it has made in the last six months. Any party entering a Sudan related transaction which will not be completed by July 12, 2017 must keep in mind that if Sudan does not sustain the progress it has made in the areas of concern to the U.S., the sanctions could snap back into effect. Therefore, it may be prudent to include in any contractual agreement for Sudanese trade entered into before the sanctions are permanently revoked a provision suspending or terminating the obligation to perform the contract if the sanctions are re-imposed.

Disclaimer: This Client Alert provides only a general summary of the current easing of certain U.S. regulations relating to Sudan, and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding trade with Sudan. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com) or Bill Pallas (pallas@freehill.com).

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