

United States Rescinds Designation of Sudan as State Sponsor of Terrorism

December 16, 2020

Key Points

- On December 14, 2020, the U.S. Department of State officially rescinded Sudan's designation as an SST in light of Sudan's actions to normalize relations with Israel and resolution of terrorism claims.
- This action paves the way for the lifting of mandatory U.S. trade restrictions on business involving Sudan, the government of Sudan and Sudanese nationals that was based on Sudan's previous SST listing.
- Before embarking on any activity or transaction involving Sudan, companies should be diligent to assess the extent to which remaining federal and state restrictions, including state level divestment sanctions regarding Sudan, as well as contractual or other relevant restrictions regarding Sudan still in place, may affect new business opportunities.

Introduction

On December 14, 2020, the U.S. Department of State officially **rescinded** Sudan's designation as a State Sponsor of Terrorism (SST). This action, by itself, does not automatically lift U.S. trade restrictions on Sudan mandated by the SST designation. These trade restrictions include substantial U.S. export control restrictions as well as access to International Monetary Fund (IMF) support. Further regulatory action must be taken to implement removal of those restrictions. However, the State Department's action sets in motion a process that is expected to produce such action. With Sudan's removal, the countries remaining on the SST list are North Korea, Iran and Syria.

Background

Sudan was first designated as an SST in 1993. Subsequently, the U.S. government implemented a comprehensive economic sanctions program on Sudan pursuant to Executive Order 13067 (November 3, 1997) and Executive Order 13412 (October 13, 2006). This designation and these executive orders, among other things, generally prohibited U.S. persons from engaging in Sudan-related transactions, blocked the property of the government of Sudan and imposed a licensing requirement for most exports of items controlled under the Commerce Control List (CCL), maintained by the

Contact Information

If you have any questions concerning this alert, please contact:

Wynn H. Segall

Partner

wsegall@akingump.com

Washington, D.C.

+1 202.887.4573

Melissa J. Schwartz

Partner

mjschwartz@akingump.com

Washington, D.C.

+1 202.887.4539

Mahmoud (Mac) Fadlallah

Partner

mfadlallah@akingump.com

Dubai

+971 4.317.3030

Nnedinma C. Ifudu Nweke

Partner

nifudu@akingump.com

Washington, D.C.

+1 202.887.4013

Alexis G. Guinan

Counsel

aguinan@akingump.com

Washington, D.C.

+1 202.887.4318

Dallas Woodrum

Counsel

dwoodrum@akingump.com

Washington, D.C.

+1 202.887.4591

Cameron Peek

Associate

cpeek@akingump.com

Washington, D.C.

+1 202.887.4518

U.S. Department of Commerce, Bureau of Industry and Security (BIS). In 2017, both the Obama administration (shortly before President Trump took office) and the Trump administration took actions to lift the comprehensive economic sanctions imposed on Sudan, eventually resulting in the lifting of these sanctions on October 6, 2017 (see our [previous alert](#) for additional background). Notwithstanding the lifting of the comprehensive sanctions, certain restrictions remained as a result of Sudan's continuing status as an SST.

Two key actions paved the path to Sudan's removal from the SST list. First, Sudan's agreement to pay \$335 million to the victims of the bombing in 1998 of U.S. embassies in Kenya and Tanzania and the bombing in 2000 of the U.S.S. Cole. On October 19, 2020, President Trump [announced](#) that Sudan had agreed to pay this sum. Second, on October 23, 2020, Sudan announced that it would enter an [agreement](#) to normalize its relations with Israel.

Following those actions, on October 26, 2020, President Trump announced his intention to remove Sudan from the list of SSTs, [certifying](#), as required under 50 U.S.C. § 4813(c)(4)(B), among other statutes, that the government of Sudan had not supported acts of international terrorism in the preceding six-month period, and that Sudan had provided assurances it would not support acts of international terrorism in the future. This triggered a 45-day congressional review period mandated under 22 U.S.C. § 2780(f)(2), during which Congress could have blocked the removal of Sudan by enacting a joint resolution. This 45-day review period ended on December 10, 2020, without congressional enactment of such a joint resolution.

Summary of Changes

The rescission of Sudan's designation as an SST will begin to open up possibilities for a variety of previously restricted trade activities involving Sudan. However, the lifting of established restrictions will not be effective immediately as the U.S. restrictions are incorporated into several regulatory regimes that may take some time to be amended. However, affected areas include the following.

- **Exports of Agricultural Commodities, Medicine and Medical Devices:** Despite comprehensive sanctions on Sudan being lifted in 2017, its continued designation as an SST subjected it to statutory restrictions related to exports of agricultural commodities (including foods), medicine and medical devices under the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA). Pursuant to 22 U.S.C. § 7205, exports of these items to the government of Sudan or any entity in Sudan required a license from the Department of the Treasury's Office of Foreign Assets Control (OFAC), which OFAC had provided under General License A. However, General License A maintained the TSRA-mandated limitation on such exports by requiring that items be shipped within the 12-month period following the date of the signing of the contract for export or re-export. Following the removal of Sudan's designation as an SST, these restrictions will no longer apply to Sudan, once OFAC accordingly amends its regulations.
- **Export Controls on Defense Articles, Dual-use Items and Other Commodities:** We expect relevant regulators to ease controls on exports and re-exports of defense articles, dual-use items and other commodities to Sudan as a result of the removal of Sudan's SST status.

Johann Strauss
Associate
jstrauss@akingump.com
Dubai
+971 4.317.3040

Andrew R. Schlossberg
Associate
aschlossberg@akingump.com
Washington, D.C.
+1 202.887.4314

- Currently, both U.S. and non-U.S. persons require authorization from BIS to export or re-export items that are listed on the CCL (i.e., items subject to U.S. export controls, except for low-level items designated as EAR99). While BIS is expected to ease current restrictions on exports of dual-use items under the Export Administration Regulations (EAR), there is no required timeline for such action and it remains to be seen how the agency will proceed. However, BIS can be expected to remove Sudan from Country Group E:1, which will allow for the application of a variety of significant EAR license exceptions and to lift previous licensing requirements that are subject to anti-terrorism policy control restrictions.
- Additionally, the International Traffic in Arms Regulations (ITAR), maintained by the U.S. Department of State's Directorate of Defense Trade Controls (DDTC), currently establishes a policy of denial for licenses of many exports of defense articles and defense services to Sudan. The timing for DDTC action to review and amend these regulations, and the potential scope of such action, is unclear at this time.
- **Access to IMF Debt Relief:** Removal of Sudan's designation as an SST eliminates a critical impediment to Sudan's access to debt forgiveness under the IMF's Heavily Indebted Poor Countries initiative. Specifically, in order to qualify for the initiative, Sudan must have the support of a majority of initiative donors, which includes the United States. Still, other eligibility conditions remain which Sudan must fulfill before it can participate in the initiative, including establishing a track record of reform and sound policies through IMF- and World Bank-supported programs and developing a Poverty Reduction Strategy Paper through a broad-based participatory process in the country.¹
- **U.S. State Divestment and Procurement Restrictions:** More than 20 U.S. states have enacted laws that prohibit investments by and require divestment of public funds from, and/or prohibit state governmental entities from contracting with, companies that engage in certain types of business activities involving Sudan. Generally, these laws were enacted in response to, yet independently of, the U.S. government's designation of Sudan as an SST. Certain state laws expire automatically upon Sudan's removal from the SST list, while others remain in effect until specific conditions are met. Such conditions vary by state, but include a declaration that the Darfur genocide has ceased, the lifting of all sanctions against the government of Sudan or other humanitarian aims being achieved. It is not yet clear how states will interpret the rescission of Sudan's SST status, and whether states will consider this sufficient to meet the expiration criteria of their respective laws. We expect that at least some of these laws will continue to stay in effect until the respective state takes action to amend its law.
- **List-Based Sanctions:** In 2017, when the Obama and Trump administrations lifted comprehensive sanctions on Sudan, OFAC unblocked the property of individuals and entities designated on the Specially Designated Nationals and Blocked Persons List ("SDN List") under the Sudanese Sanctions Regulations (SSR). However, this action did not affect other U.S. sanctions programs that intersected with activities involving Sudan or Sudanese nationals, including the South Sudan and Darfur-related sanctions programs, which remain in place and which will continue to remain in place notwithstanding Sudan's removal from the SST list.

- **Business Risks to be Considered:** Businesses that determine to engage in business activities associated with Sudan must consider an array of risks and be mindful of other restrictions on their ability to conduct activities relating to Sudan.
 - Clients should review existing debt facilities to identify any covenants which may restrict activities in or relating to Sudan.
 - In the mergers and acquisitions (M&A) context, historical compliance with Sudan-related restrictions remains relevant in the context of due diligence and compliance with law representations in light of the five-year statute of limitations period for sanctions and export controls violations, which includes the period of time during which Sudan was an SST, subject to comprehensive U.S. sanctions, and/or subject to more stringent export controls licensing requirements.
 - In the funds context, side letters and other limited partnership agreements should be reviewed to identify any restrictions on activities relating to Sudan, even if authorized under U.S. sanctions laws.
 - Investors and funds in particular also should be mindful of state level divestment sanctions laws pertaining to Sudan and determine to what extent such laws, affecting Sudan related activities, continue to impose relevant restrictions.
 - Public and private investors that apply Socially Responsible Investment principles and policies may continue to restrict investments in companies that engage in business in Sudan for some time following the rescission of Sudan's designation as an SST.

Conclusion

The removal of Sudan's status as an SST is a significant step towards removing remaining restrictions on trade and transactions with Sudan. Agency action, including by BIS, DDTC and OFAC, is still required to implement regulatory changes to effectively lift significant trade restrictions on Sudan in the coming weeks or months. Moreover, businesses should be mindful of other legal or contractual restrictions on their ability to commence activities relating to Sudan. Accordingly, companies considering business opportunities associated with Sudan should be diligent and proceed in a careful manner to ensure that the pace of their activities is calibrated to the implementation of necessary revisions in relevant U.S. law and are compliant with their contractual obligations.

¹ See *Debt Relief Under the Heavily Indebted Poor Countries (HIPC) Initiative*, THE WORLD BANK (Mar. 25, 2020), <https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/11/Debt-Relief-Under-the-Heavily-Indebted-Poor-Countries-Initiative>.