

Alert

OFAC Issues General License Relating to Investment Funds with Libyan Investors

April 12, 2011

On April 8, 2011, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued General License No. 4 — Guidance and General License with Respect to Investment Funds in Which There Is a Blocked Non-Controlling, Minority Interest of the Government of Libya ("General License").¹ The General License is specifically directed to investment funds that hold investments that are blocked pursuant to the economic sanctions imposed by the U.S. government earlier this year against the Government of Libya and the regime of Muammar Qadhafi.

As outlined in our prior *Client Alert*,² on Feb. 25, 2011, President Obama signed Executive Order 13566, freezing assets located within the United States, or within the possession or control of any United States person, belonging to the Government of Libya, its agencies, instrumentalities and controlled entities, Colonel Qadhafi and designated members of his family, and certain senior officials of the Libyan government. As a result, investment funds located in the U.S. or managed by a U.S. investment adviser are required to block, and not transfer, pay, export, withdraw or otherwise deal in, property interests of the Government of Libya or the individuals designated by the Executive Order. Such blocked property interests would include (for example) investments made by or on behalf of a sovereign wealth fund controlled by the Libyan government.

Because investments in investment funds typically are pooled together rather than held in separate accounts, it was not altogether clear how the Libyan blocking requirement would apply in the context of an investment fund. OFAC has not yet issued regulations implementing the new Libyan sanctions program and has not previously issued guidance under other sanctions programs applicable to blocked interests in investment funds. The General License issued on April 8 provides important guidance to the industry with respect to non-controlling, minority investments subject to Executive Order 13566.

Specifically, the General License authorizes U.S. persons "to continue the normal operations of an investment fund that is organized, located, managed, or administered in the United States in which the Government of Libya and any person whose property and interests in property are blocked pursuant to Executive Order 13566 have a non-controlling and minority interest." The General License defines "normal operations" as including, but not being limited to: "investment management functions; the purchase and disposition of portfolio investments; the custody of portfolio investments; the making of payments owed by the investment fund to its managers, other service providers, directors, government regulators, tax authorities, or investors whose property and interests in property are not blocked; or the receipt of funds, securities, or other assets."

¹ http://www.treasury.gov/resource-center/sanctions/Programs/Documents/libya2_gl4.pdf.

² See "FinCEN, OFAC, the UN, EU and UK Issue Advisories, Freeze Orders, Other Measures Related to Libya, Egypt and Tunisia," available at http://www.srz.com/031711_FinCEN_OFAC_UN_EU_UK_Issue/.

The General License also imposes a monthly reporting requirement with respect to investment funds that hold investments blocked pursuant to Executive Order 13566. According to the General License, reports must be submitted to OFAC on a monthly basis “providing an accounting of the value of the Libyan interest in the investment fund, as well as an explanation of any change from the previous report.”

The General License does *not* permit an investment fund to redeem a blocked Libyan investment or provide any other financial or economic benefit to the Libyan investor whose interests are blocked. Such an action would be prohibited under Executive Order 13566 and subject to criminal and civil penalties. More specifically, the authorization provided by the General License is subject to the following conditions:

(1) Any payment or transfer of funds, securities, or other assets in the possession or control of a U.S. person to the Government of Libya or any person whose property and interests in property are blocked pursuant to Executive Order 13566 may only be directed or made into a blocked account at a financial institution in the United States in the name of the blocked person.

(2) Transfers of funds, securities, or other assets by a U.S. person between blocked accounts created or funded pursuant to paragraph ... (1) in its branches or offices are authorized *provided that* (i) no transfer is made from an account within the United States to an account held outside the United States, and (ii) a transfer from a blocked account may only be made to another blocked account held in the same name.

(3) No immediate financial or economic benefit is accessible or made available to the Government of Libya or any other person whose property and interests in property are blocked pursuant to Executive Order 13566.

(4) U.S. persons *shall not* (i) make any loans to, or on behalf of, the Government of Libya or any person whose property and interests in property are blocked pursuant to Executive Order 13566; or (ii) debit a blocked account for repayment of a loan or as set-off for a debt owed by the Government of Libya or any person whose property and interests in property are blocked pursuant to Executive Order 13566.

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