

Alert

Sanctions Update: Iran, Global Magnitsky and Sudan

July 24, 2018

In late June 2018, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") took action on a number of fronts including re-implementing stricter sanctions against Iran, issuing detailed sanctions regulations under the Global Magnitsky Human Rights Accountability Act ("Global Magnitsky Act") and easing sanctions against Sudan.¹ Firms that engage in business that touches upon Iran or Sudan should carefully review these changes. Moreover, firms should make sure to incorporate the names of individuals designated under the Global Magnitsky Act into their screening process.

First, on June 27, 2018, building upon President Trump's May 8, 2018 decision to withdraw from the Joint Comprehensive Plan of Action ("JCPOA"),² and in an effort to impose the "strongest sanctions in history,"³ OFAC revoked Iran-related General Licenses H and I, which were issued in connection with the JCPOA. OFAC amended the Iranian Transactions and Sanctions Regulations, 31 C.F.R. Part 560 ("ITSR") accordingly to issue new general licenses authorizing the wind down of transactions previously authorized under General Licenses H and I. OFAC also amended the ITSR to eliminate authorization for transactions involving the importation into the United States of, and dealings in, Iranian-origin carpets and foodstuffs, as well as related letters of credit and brokering services (and to also provide for a wind down period).

Second, on June 28, 2018, OFAC announced the issuance of the Global Magnitsky Sanctions Regulations, 31 C.F.R. Part 583, which implement the Global Magnitsky Act and Executive Order 13818 ("Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption") and took effect on June 29, 2018. The Global Magnitsky Act allows the U.S. government to sanction foreign government officials implicated in human rights abuses anywhere in the world.

Last, effective June 29, 2018, OFAC removed the Sudanese Sanctions Regulations from the Code of Federal Regulations. This was the result of the revocation of certain provisions of Executive Orders on which the regulations were based. OFAC also amended the Terrorism List Government Sanctions Regulations to incorporate a general license authorizing certain transactions related to exports of agricultural commodities, medicines and medical devices, which, until June 29, appeared only on OFAC's website.

¹ See OFAC Recent Actions, U.S. Department of Treasury, [Revocation of JCPOA-Related General Licenses; Amendment of the Iranian Transactions and Sanctions Regulations; Publication of Updated FAQs](#) (June 27, 2018); OFAC Recent Actions, U.S. Department of Treasury, [Publication of Global Magnitsky Sanctions Regulations](#) (June 28, 2018); and OFAC Recent Actions, U.S. Department of Treasury, [Removal of the Sudan Regulations and Amendment of the Terrorism List Government Sanctions Regulations](#) (June 28, 2018).

² The President's May 8, 2018 decision to end the United States' participation in the JCPOA on Iran's nuclear program is outlined in [National Security Presidential Memorandum-11](#) of May 8, 2018.

³ See Press Release, U.S. Department of State, *After the Iran Deal: A New Iran Strategy* (May 21, 2018), available [here](#).

I. Iranian Sanctions Updates: Revocation of JCPOA-Related General Licenses; Amendment of the Iranian Transactions and Sanctions Regulations; Publication of Updated FAQs

General License H: Foreign Entities Owned or Controlled by a U.S. Person

General License H, issued in January 2016 in connection with the JCPOA,⁴ had authorized U.S.-owned or -controlled foreign entities to engage in transactions involving Iran that would otherwise have been prohibited.⁵ In addition, General License H authorized U.S. person employees, outside legal counsel and consultants to provide training, advice and counseling on operating policies and procedures, provided those services did not facilitate illegal transactions. General License H also authorized U.S. persons to make available to U.S.-owned or -controlled foreign entities certain “Authorized Business Support Systems,” including any automated and globally integrated computer, accounting, email, telecommunications or other business support system, platform, database, application or server broadly available to, and in general use by, the U.S. parent company’s global organization.

The effect of the revocation of General License H is to reinstate the prohibition in § 560.215 of the ITSR, which bars foreign entities owned or controlled by a U.S. person from engaging in transactions, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of Iran that would be prohibited if engaged in by a U.S. person.⁶

OFAC added § 560.537 to the ITSR to authorize, through 11:59 p.m. Eastern Standard Time on Nov. 4, 2018, all transactions and activities that are ordinarily incident and necessary to the wind down of transactions relating to foreign entities owned or controlled by a U.S. person that were previously authorized under General License H.⁷

General License I: Contingent Contracts Relating to Commercial Passenger Aviation

General License I had authorized certain transactions related to the negotiation of, and entry into, contracts for activities eligible for authorization under the *Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services* (“SLP”), provided that the performance of such contract was made expressly contingent upon the issuance of a specific license from OFAC authorizing the activity to be performed.⁸

OFAC also added § 560.536 to authorize, through 11:59 p.m. Eastern Daylight Time on Aug. 6, 2018, all transactions and activities that are ordinarily incident and necessary to the wind down of transactions

⁴ For a fuller explanation of U.S. sanctions lifted in connection with the JCPOA, see “‘Implementation Day’ Marks Rollback of Significant Nuclear-Related Sanctions on Iran,” *SRZ Alert*, Jan. 20, 2016, available [here](#).

⁵ General License No. H, “[Authorizing Certain Transactions Relating to Foreign Entities Owned or Controlled by a United States Person](#)” (Revoked on June 27, 2018).

⁶ 31 C.F.R. § 560.215.

⁷ 31 C.F.R. § 560.537. See also OFAC FAQ No. 4.4 from [Frequently Asked Questions Regarding the Re-Imposition of Sanctions Pursuant to the May 8, 2018 NSPM Relating to the Joint Comprehensive Plan of Action \(JCPOA\)](#) (hereafter referred to as the “JCPOA Wind Down FAQs”) (Updated June 27, 2018).

⁸ General License No. I, “[Authorizing Certain Transactions Related to the Negotiation of, and Entry into, Contingent Contracts for Activities Eligible for Authorization Under the Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services](#)” (Revoked on June 27, 2018).

related to the negotiation of contingent contracts for activities that were, at the time of the negotiation, eligible for authorization under the JCPOA SLP pursuant to General License I.⁹

Sections 560.534 and 560.535: Iranian-Origin Foodstuffs, Carpets, and Related Letters of Credit and Brokering Services

In addition, OFAC amended § 560.534 (authorizing the importation into the United States of, and dealings in, certain Iranian-origin carpets and foodstuffs) and § 560.535 (authorizing certain related letters of credit and brokering services) to narrow the scope of the licenses to only authorize, through 11:59 p.m. Eastern Daylight Time on Aug. 6, 2018, the wind down of transactions that were previously under those general licenses.¹⁰ Thus, except for such wind down transactions, transactions involving these Iranian-origin foodstuffs and carpets and related letters of credit and brokering services are no longer authorized.

II. Global Magnitsky: Publication of Global Magnitsky Sanctions Regulations

As noted above, OFAC announced the issuance of the Global Magnitsky Sanctions Regulations, 31 C.F.R. Part 583 (the “Regulations”), which implement the Global Magnitsky Act¹¹ and Executive Order 13818.¹² The Regulations, effective June 29, 2018, were published in abbreviated form, and OFAC intends to issue a more comprehensive set of regulations, which may include guidance, general licenses and statements of licensing policy. This is the first time that OFAC focused sanctions specifically on those responsible for human rights abuses and corruption.

Section 583.201 of the Regulations prohibits all transactions prohibited by E.O. 13818, and incorporates the names of persons listed in or designated pursuant to E.O. 13818, whose property and interests in property are blocked, into OFAC’s Specially Designated Nationals and Blocked Persons List (“SDN List”) with the identifier “GLOMAG.”¹³

Further, pursuant to § 583.202(a), any transfer *after* the effective date¹⁴ that is in violation of the Regulations and involving any property or interest in property blocked pursuant to § 583.201 is null and void. Pursuant to § 583.202(b), transfers *prior* to the effective date shall not be the basis for an assertion or recognition of any right, power or privilege with respect to any property or interest in property blocked pursuant to § 583.201, unless the person who holds or maintains such property had written notice of the transfer prior to that date or by written evidence recognized such transfer.

⁹ 31 C.F.R. § 560.536. *See also* JCPOA Wind Down FAQ No. 4.3, available [here](#).

¹⁰ 31 C.F.R. §§ 560.534 and 560.535. *See also* JCPOA Wind Down FAQ No. 4.5, available [here](#).

¹¹ The Global Magnitsky Act authorized the President, among other things, to impose sanctions with respect to any person that “is responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights” or “is a government official, or a senior associate of such an official, that is responsible for, or complicit in, ordering, controlling or otherwise directing, acts of significant corruption,” or has provided material assistance for such corruption. 22 U.S.C. § 2656 note.

¹² E.O. 13818, invoking authority provided by the International Emergency Economic Powers Act (“IEEPA”), imposed financial sanctions and visa restrictions on persons determined to be responsible for or complicit in, or to have directly or indirectly engaged in, certain human rights abuses or corrupt acts anywhere in the world. *See* Executive Order 13818, “Executive Order Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption” (Dec. 21, 2017), available [here](#); OFAC’s Global Magnitsky FAQs (Dec. 21, 2017), available [here](#).

¹³ 31 C.F.R. § 583.201.

¹⁴ The term “effective date” means “the effective date of the applicable prohibitions and directives contained in this part as follows: (1) With respect to a person listed in the Annex to Executive Order 13818 of Dec. 20, 2017, 12:01 a.m. Eastern Standard Time on Dec. 21, 2017 and (2) With respect to a person whose property and interests in property are otherwise blocked pursuant to § 583.201, the earlier of the date of actual or constructive notice that such person’s property and interests in property are blocked.” 31 C.F.R. § 583.302(a).

However, transfers may be validated before, during or after such transfer by a license or other authorization from OFAC. Transfers that would otherwise be null and void by virtue of the Regulations shall not be deemed to be null and void if the applicant establishes that (1) the transfer did not represent a willful violation of the Regulations by the person with whom the property is or was held or maintained; (2) the person with whom the property is or was maintained did not have reasonable cause to know that such transfer required a license or authorization, or, if a license or authorization did purport to cover the transfer, that license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and (3) the person with whom the property is or was held or maintained filed a report in OFAC setting forth the circumstances relating to the transfer promptly upon discovery that (i) such transfer violated the Regulations, (ii) such transfer was not licensed or authorized by OFAC or (iii) if a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.¹⁵

Except as otherwise provided, U.S. persons holding funds subject to § 583.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.¹⁶

The Regulations exempt certain transactions, including: (a) any postal, telegraphic, telephonic or other personal communication that does not involve the transfer of anything of value; (b) the importation and exportation of any information or informational materials (as defined in § 583.306), subject to certain qualifications outlined in § 583.205(b)(2)-(3); and (c) transactions ordinarily incident to travel, including importation or exportation of baggage for personal use, maintenance including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel.¹⁷

In addition, U.S. financial institutions are authorized to debit for payment or reimbursement normal service charges from any blocked account held at the financial institution.¹⁸ The provision of certain specified legal services – including but not limited to the provision of legal advice regarding compliance with U.S. law (so long as the advice is not provided to facilitate transactions in violation of the Regulations) – is also authorized, provided that receipt of payment for legal fees must be authorized pursuant to § 583.507 or via specific license.¹⁹ In addition to the specific types of legal services permitted in § 583.506(a), persons whose property and interests are blocked pursuant to § 583.201 may also seek the issuance of a specific license to cover any other legal services.²⁰ Notably, entry into a settlement agreement or the enforcement of any order through any judicial process purporting to affect

¹⁵ 31 C.F.R. §§ 583.202(c)-(d).

¹⁶ 31 C.F.R. § 583.203(a).

¹⁷ 31 C.F.R. § 583.205.

¹⁸ 31 C.F.R. § 583.505(a).

¹⁹ 31 C.F.R. § 583.506(a). Furthermore, payments for legal services from funds originating outside the United States are generally authorized, provided the funds do not originate from a source within the United States, any source within the possession or control of a U.S. person, or any person other than the person on whose behalf the legal services authorized pursuant to § 583.506(a) are to be provided, whose property and interests in property are blocked. 31 C.F.R. § 583.507(a). In addition, persons who receive payments pursuant to § 583.507(a) must submit annual reports to OFAC as specified in § 583.507(b).

²⁰ 31 C.F.R. § 583.506(b).

property or interests in property blocked pursuant to § 583.201 is prohibited unless licensed pursuant to the Regulations.²¹

Entities are blocked if, individually or in the aggregate, they are owned by 50 percent or greater by one or more persons whose property or interest in property is blocked pursuant to § 583.20.²²

III. Sudan: Removal of the Sudan Sanctions Regulations; Amendment of the Terrorism List Government Sanctions Regulations

Removal of the Sudanese Sanctions Regulations

On Oct. 11, 2017, the Secretary of State, in consultation with the Secretary of the Treasury, the Director of National Intelligence, and the Administrator of the U.S. Agency for International Development, published notice in the Federal Register that the Government of Sudan had taken positive actions, including a reduction in offensive military activity, cessation of hostilities in conflict areas, improvement of humanitarian access, and cooperation with the United States on addressing regional conflicts and the threat of terrorism.²³ For those reasons, effective Oct. 12, 2017, sections 1 and 2 of Executive Order 13067, “Blocking Sudanese Government Property and Prohibiting Transactions With Sudan” were revoked, and Executive Order 13412, “Blocking Property and Prohibiting Transactions With the Government of Sudan” was revoked in its entirety. On June 29, 2018, consistent with the revocation of the provisions upon which the regulations were based, OFAC took the final step of removing the Sudanese Sanctions Regulations, 21 C.F.R. Part 538 (“SSR”) from the Code of Federal Regulations.²⁴

We note that while the sanctions set forth in the SSR have been lifted, other sanctions on Sudan remain in effect, including E.O.s 13067 and 13400, which are the basis for the Darfur Sanctions Regulations, 31 C.F.R. Part 546 (“DSR”), and continue to block the property and interests in property of persons previously designated under the SSR.

Amendment of the Terrorism List Government Sanctions

Section 906 of the Trade Sanctions Reform and Export Enhancement Act of 2000, 22 U.S.C. § 7205 (“TSRA”) requires a license for certain exports and re-exports to Sudan of agricultural commodities, medicine, and medical devices as a result of Sudan’s inclusion on the State Sponsors of Terrorism List.

²¹ 31 C.F.R. § 583.506(d).

²² 31 C.F.R. § 583.406.

²³ Notice Regarding Positive Actions by the Government of Sudan, 82 F.R. 47287 (Oct. 11, 2017), available [here](#).

²⁴ As background, President Clinton issued E.O. 13067 on Nov. 3, 1997, blocking all property and interests in property of the Government of Sudan that were in, or came into, the U.S., or that came within the possession or control of a U.S. person. E.O. 13067 also greatly restricted business involving Sudan, prohibiting, among other things, U.S. persons from exporting goods, technology or services to Sudan and the performance by any U.S. person of a contract in support of a project in Sudan. OFAC issued the SSR to implement E.O. 13067. E.O. 13067, “Blocking Sudanese Government Property and Prohibiting Transactions With Sudan,” (Nov. 3, 1997), available [here](#). On Oct. 13, 2006, President Bush issued E.O. 13412, taking additional steps to sanction Sudan and to implement the Darfur Peace and Accountability Act of 2006. E.O. 13412, “Blocking Property and Prohibiting Transactions With the Government of Sudan,” (Oct. 13, 2006), available [here](#). On Jan. 13, 2017, more than ten years later, and in acknowledgement of progress made by the Government of Sudan, President Obama issued E.O. 13761, which was an initial step towards repealing the sanctions against Sudan. E.O. 13761 states that the situation giving rise to prior E.O.s 13067 and 13412 has improved, and therefore, provided that certain criteria could be met during a review period, sections 1 and 2 of E.O. 13067 would be revoked, and E.O. 13412 would be revoked in its entirety, effective July 12, 2017. See E.O. 13761, “Recognizing Positive Actions by the Government of Sudan and Providing for the Revocation of Certain Sudan-Related Sanctions,” (Jan. 13, 2017), available [here](#). This period was extended on July 11, 2017 until Oct. 12, 2017, pursuant to E.O. 13804. See E.O. 13804, “Allowing Additional Time for Recognizing Positive Actions by the Government of Sudan and Amending Executive Order 13761,” (July 11, 2017), available [here](#).

Effective Oct. 12, 2017, General License A authorized exports and re-exports of these items to Sudan. Until June 29, this license was only available on OFAC's website; on June 29, OFAC incorporated the license into the Terrorism List Government Sanctions Regulations, 31 C.F.R. Part 596 as new § 596.506. OFAC does not require a specific license for financing these exports and re-exports.

However, the Department of Commerce's Bureau of Industry and Security ("BIS") may require licenses to export or re-export to Sudan certain items including commodities, software, and technology that are on the Commerce Control List ("CCL") and, in limited circumstances, items that are not specifically listed on the CCL but are otherwise subject to the Export Administration Regulations ("EAR") if such transactions implicate certain end-use or end-user concerns.²⁵

Authored by Seetha Ramachandran, [Betty Santangelo](#), [Gary Stein](#), [Jennifer M. Opheim](#) and [Mari S. Dopp](#).

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

Schulte Roth & Zabel
New York | Washington DC | London
www.srz.com

This communication is issued by Schulte Roth & Zabel LLP for informational purposes only and does not constitute legal advice or establish an attorney-client relationship. In some jurisdictions, this publication may be considered attorney advertising. ©2018 Schulte Roth & Zabel LLP. All rights reserved. SCHULTE ROTH & ZABEL is the registered trademark of Schulte Roth & Zabel LLP.

²⁵ See 15 C.F.R. Part 744.