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BLOG

OFAC Recent Actions and Updates

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In the lead up to the 2020 Presidential election, the Trump Administration was active in the sanctions space, implementing changes that may affect individuals and businesses who transact with Cuba, Yemen, or Iran. As reflected by today's actions, it seems that the focus has not changed after the election as the Trump administration continues to issue sanctions. In particular, it sanctioned a Lebanese entity under the Global Magnitsky Act (here), and several individuals and entities under the Syria program and the Executive Order on Hong Kong Normalization (both here). In particular, the Hong Kong related designations are important as they show the continued focus on implementing the newly imposed Hong Kong sanctions – and target the newly formed (July 2020) Hong Kong national security department.

I. Cuba: Amendments to Cuban Assets Control Regulations May Disrupt Remittances

On October 27, 2020, the Department of the Treasury's Office of Foreign Asset Control (OFAC) issued an amendment to the Cuban Assets Control Regulations (CACR) to remove military-run entities from the remittance process. This amendment narrows the scope of certain remittance-related general authorizations to exclude any transactions involving entities or sub-entities identified on the State Department's Cuba Restricted List. Specifically, the October 27, 2020 rule amends the general licenses relating to remittances (1) from persons subject to U.S. jurisdiction or from blocked accounts (2) provision of remittance forwarding services, and (3) from Cuban nationals to persons subject to U.S. jurisdiction.

As a result of these amendments, which become effective on November 26, 2020, persons subject to U.S. jurisdiction will no longer be authorized to process remittances to or from Cuba through FINCIMEX or any other entity or sub-entity on the Cuba Restricted List. The exclusion of Cuban military-controlled entity FINCIMEX from the remittance process is significant because it serves as a main remittance processor for agents in Cuba, meaning it processes much of the remittance money that is currently sent to Cuba. It is possible that these amendments will result in the closure of more than 400 Western Union offices in Cuba, although the business stated it is "exploring ways to comply with the new rules."

II. Yemen: Berman Amendment Language Left Out of Reissued Yemen Regulations

On October 29, 2020, OFAC amended and reissued the Yemen Sanctions Regulations. This final rule replaces the regulations that were published in abbreviated form on November 9, 2012, with a more comprehensive set of regulations that includes additional guidance from OFAC.

Interestingly, the reissued regulations do not contain the standard exemption language for information and informational materials adopted per the amendment of International Emergency Economic Powers Act (IEEPA) known as the Berman Amendment. Past practice would suggest, however that the exemptions still apply even if they are not included in the regulations. For example, in a 2014 guidance letter, OFAC cites to Executive Order 13551 as the reason "informational materials" are exempt from blocking prohibitions. EO 13551, however, contained only the standard language stating the "[blocking] prohibitions … apply except to the extent provided by statutes…" In other words, in the past, the fact that the Berman Amendment language has not been explicitly included has not necessarily meant that the exemptions did not apply.

III. Iran: Targeting the Financial Sector and Allowing Humanitarian Transactions in and the Provision of Educational Software to Iran

Trump's Administration plans to continue to put pressure in Iran until it "stops its support of terrorist activities and ends its nuclear programs."[1] To that effect, it identified the financial sector of Iran's economy as an additional avenue that funds the Iranian government's malign activities. On October 8, OFAC imposed additional sanctions on 18 Iranian banks, pursuant to section 1(a)(I) of Executive Order 13902. Sixteen Iranian banks were designated for operating in Iran's financial sector and one bank for being owned or controlled by a sanctioned Iranian bank. Additionally, it designated an Iranian military-affiliated bank under Treasury's counter-proliferation authority.

The consequences of these designations are twofold – the second of which is aimed primarily at non-U.S. Persons and has the greater impact. First, the property and interests in property of the designated targets in the U.S. or in the possession or control of U.S. persons must be blocked and reported and U.S. persons or persons within the United States (including transactions transiting the United States) are generally prohibited from participating in any transaction that involves property or interests in property of blocked or designated persons. Second, financial institutions and other persons that engage in certain transactions or activities with the sanctioned entities may expose themselves to secondary sanctions or be subject to an enforcement action (*i.e.,* for causing U.S. persons to violate sanctions). OFAC is providing a 45-day period for non-U.S. persons to wind down non-humanitarian transactions that may become subject to sanctions under E.O. 13902.

OFAC also emphasized that it continues to allow for humanitarian transactions to support the Iranian people, and issued General License L authorizing transactions and activities involving Iranian financial institutions sanctioned under E.O. 13902 that are authorized, exempt, or otherwise not prohibited under the Iranian Transactions and Sanctions Regulations.

On October 29, 2020, OFAC issued General License M which authorizes accredited graduate and undergraduate degree-granting U.S. academic institutions to export additional services to certain Iranian students that have been granted nonimmigrant visas by the U.S. State Department but are not physically in the U.S. due to the COVID-19 pandemic.

Specifically, General License M authorizes the provision of certain online educational services related to certain educational courses. This General License appears to be designed to mitigate the effect of COVID-19 on students from Iran and remains in effect until September 1, 2021.

IV. OFAC Interprets the Berman Amendment to Allow Application of Sanctions to Transactions Involving High-Value Art

On October 30, 2020, OFAC issued an advisory highlighting how vulnerabilities in the high-value-artwork market can lead to sanctions risk. Specifically, OFAC warns that high-value-art transactions may play a role in allowing blocked persons to access the U.S. market and financial system in violation of OFAC regulations, given the lack of transparency and high degree of anonymity and confidentiality that are often present in these transactions. To guard against the possibility of blocked persons using high-value-art transactions to access the U.S. market, OFAC encourages participants in the art market to implement a risk-based compliance program, including risk-based due diligence, to mitigate exposure to sanctions-related violations.

The advisory also states OFAC's position that the Berman Amendment, which generally exempts from sanctions regulations the importation or exportation of information or informational materials including but not limited to artwork, does not allow blocked persons to evade sanctions by exchanging financial assets for high-value artwork. Although the language in the advisory is limited to high-value artwork, which is defined as artwork worth more than $100,000, it is not clear if that limitation will hold. Earlier this year, in a U.S. Senate report titled *The Art Industry and U.S. Policies that Undermine Sanctions*, Treasury wrote that it "does not believe the Berman Amendment is a categorical bar to the application of IEEPA-based sanctions to transactions involving artwork. Evaluation of a specific license application relating to designated persons – including one that implicates Berman Amendment materials – must depend on the particular facts and circumstances presented."[2] It is conceivable then, that OFAC may lean toward interpreting the Berman Amendment to not categorically bar the application of IEEPA-based sanctions to transactions involving SDNs and lower-value artwork and other informational materials currently exempt from the regulations.

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[1] https://home.treasury.gov/news/press-releases/sm1147

[2] *See* https://www.courthousenews.com/wp-content/uploads/2020/07/psi-art.pdf

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