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U.S. Creates New Ethiopia Sanctions Program Related to Conflict in Tigray

On September 17, 2021, President Biden issued an Executive Order ("the EO") authorizing the Department of the Treasury's Office of Foreign Assets Control ("OFAC") to implement targeted sanctions in response to the ongoing humanitarian crisis in Ethiopia related to the conflict in Tigray. Specifically, the EO gives OFAC the ability to impose a range of measures – including asset blocking – on persons who expand or extend the ongoing crisis in northern Ethiopia, obstruct a ceasefire or peace process, commit serious human rights abuses, or undermine democratic processes or institutions in Ethiopia. While OFAC has not yet designated any persons under the new program, Secretary of State Anthony Blinken warned that "[a]bsent clear and concrete progress toward a negotiated ceasefire and an end to abuses … the United States will designate imminently specific leaders, organizations, and entities under this new sanctions regime."

Designations Under the EO

The EO provides for the designation of any foreign person who the Secretary of the Treasury determines to be responsible for or complicit in, or to have engaged in, any of the following:

- Actions that threaten the peace, security, or stability of Ethiopia, or extend or expand the humanitarian crisis in northern Ethiopia;
- Obstructing a ceasefire or peace process;
- Corruption or serious human rights abuses in or related to northern Ethiopia;
- Obstructing the delivery or distribution of humanitarian assistance;
- Targeting civilians with acts of violence;
- Planning, directing, or carrying out attacks on United Nations or African Union officials;
- Undermining democratic institutions in Ethiopia; or
- Undermining the territorial integrity of Ethiopia.

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The EO also provides for sanctions on a range of political and military entities and individuals, including any foreign person who is:

- A military or security force that operates or has operated in northern Ethiopia since November 1, 2020;
- Any entity, including any government entity or political party that has, or whose members have, engaged in activities contributing to the crisis in northern Ethiopia;
- A political subdivision, agency, or instrumentality of the Governments of Ethiopia or Eritrea, the ruling People's Front for Democracy and Justice, the Tigray People's Liberation Front, the Ahmara regional government, or the Ahmara regional or irregular forces;
- A leader, official, senior executive officer, or director of any of the foregoing, provided that the leader has contributed to the crisis in northern Ethiopia;

The EO also permits sanctions on the spouses and adult children of any sanctioned person, persons who have materially assisted, sponsored, or provided support for any sanctioned person, and persons who are owned or controlled by, or acted on behalf of, any sanctioned persons.

Menu-Based Sanctions

Rather than implementing comprehensive sanctions, the EO gives OFAC the option to utilize menu-based sanctions and take one or more of the following actions as necessary in order to accomplish the objectives of the new sanctions program:

(a) Block all property and interests in property of the sanctioned person (i.e., designation on the SDN List);

(b) Prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of the sanctioned person;

(c) Prohibit any United States financial institution from making loans or providing credit to the sanctioned person

(d) Prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest; or

(e) Impose any of the above sanctions on the principal executive officers of any sanctioned entity.

Inapplicability of OFAC's 50 Percent Rule

In contrast to most other OFAC sanctions regimes, OFAC's 50 Percent Rule does not automatically apply to persons blocked pursuant to the EO. Accordingly, an entity owned at least 50 percent by a person designated solely pursuant to the EO is not considered blocked unless it is itself a sanctioned person listed separately on the SDN List. Similarly, OFAC clarified in an FAQ that if a person is listed on OFAC's Non-SDN Menu-Based Sanctions List ("NS-MBS List") as subject to one or more of the sanctions described in (b) - (e) above, those non-blocking sanctions do not apply to an entity owned at least 50 percent by such sanctioned person, unless that entity is separately listed on the NS-MBS List.

General Licenses

Concurrently with the creation of the Ethiopia sanctions program, OFAC issued three general licenses in order to ensure "that U.S. sanctions do not limit the ability of civilians located in Ethiopia and the region to receive humanitarian support from the international community." Accordingly, the general licenses permit the following:

- General License No. 1: Authorizes all transactions and activities that are for the conduct of the official business of the United Nations, the Red Cross, the African Union, and other specified humanitarian and non-governmental organizations. This general license applies to the specified entities and their employees, grantees, and contractors.
- General License No. 2: Authorizes transactions and activities related to certain activities of non-governmental organizations in Ethiopia and Eritrea, including (1) humanitarian projects to meet basic human needs; (2) activities to support democracy building; (3) activities to support education; (4) activities to support non-commercial development projects; and (5) activities to support environmental and natural resources protection.
- General License No. 3: Authorizes all transactions and activities that are ordinarily incident and necessary to the exportation of reexportation of agricultural commodities, medicine, and medical devices to Ethiopia or Eritrea. The general license only applies to such items that fall within the definitions in Section (b) of the license concerning "covered items."

Key Takeaways

The issuance of an EO and the creation of the Ethiopia-related sanctions program indicate that the Biden administration is committed to putting pressure on military and political leaders in Ethiopia in order to resolve the ongoing humanitarian crisis in the Tigray region. At the same time, the broad general licenses and the non-application of the 50 Percent Rule for either the blocking or non-blocking sanctions suggest that the Biden administration is focused on enabling humanitarian assistance to the region, and will likely take a gradual approach to designating individuals and entities. If you have any questions regarding the Ethiopia sanctions program or how it may affect your business, please reach out to the contacts listed below.

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Authors:

Michael T. Gershberg

Gregory Bernstein

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Contacts:

Washington, D.C.

Michael T. Gershberg	+1.202.639.7085	michael.gershberg@friedfrank.com

London

Dr. Tobias Caspary	+44.20.7972.9618	tobias.caspary@friedfrank.com

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