

INTERNATIONAL BUSINESS ALERT

SEPTEMBER 9, 2021

MATT LAPIN

202.778.3030

mlapin@porterwright.com

Potential impact of post-9/11 sanctions against the Taliban on dealing with the government of Afghanistan

As a result of the Taliban now being in control of the national government in Afghanistan, U.S and other governments and international bodies are being forced to readdress sanctions imposed on the Taliban prior to and in the wake of 9/11. As such, individuals, companies and organizations engaged in transactions involving the government of Afghanistan will need to re-evaluate and address potential sanctions compliance risks.

Historical application of sanctions against the Taliban

More than 20 years ago, [Executive Order 13129 \(July 4, 1999\)](#) authorized sanctions against the Taliban. A few years later, [Executive Order 13224 \(September 23, 2001\)](#) authorized sanctions against individuals and groups for their participation in or assistance to terrorist groups. Various individuals, groups and entities have been specifically designated under these authorized sanctions. Similar sanctions were issued by the U.N., E.U. and various countries.

Taken together, these sanctions designations prohibit U.S. persons (and anyone utilizing the U.S. financial system) from engaging in transactions involving assets (funds, goods, services, property, etc.) in which the Taliban or related designated individuals and organizations have an interest.

Application of sanctions against the Taliban as the government of Afghanistan

Effective Aug. 17, 2021, the U.S. announced that a substantial portion of Afghanistan's official foreign reserves held in the United States – \$9.4 billion worth – were frozen and could not be accessed by the Taliban. This indicates the U.S. administration views the government of Afghanistan

This law alert is intended to provide general information for clients or interested individuals and should not be relied upon as legal advice. It does not necessarily reflect the views of the firm as to any particular matter or those of its clients. Please consult an attorney for specific advice regarding your particular situation.

Please see our other publications at www.porterwright.com/media.

as “sanctioned,” as a result of the Taliban’s de facto control of the government in Kabul and therefore controlling interest in official foreign reserves.

There is significant momentum for the U.S. and other G-7 nations to maintain sanctions on the Taliban (and thus the government of Afghanistan) as a form of ongoing containment of potential risks of international terrorism and encouragement of respect for human rights. That said, the Taliban may be seeking alternative funding sources from China and Russia.

Reports have also indicated that the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC), issued one or more licenses authorizing support for humanitarian assistance to people in Afghanistan, including the delivery of food and medicine, despite U.S. sanctions on the Taliban. It has also been reported that OFAC has told financial institutions that they may process personal remittances to Afghanistan.

Conclusion

U.S. persons (U.S. citizens, any company located within the U.S. or any U.S. company operating anywhere) could be subject to the restriction of engagement in any transaction involving the government of Afghanistan, specifically designated officials or any entity in which either has 50% or greater ownership interest. Non-U.S. citizens (including non-U.S. headquartered companies) risk potential application of secondary sanctions (being designated by OFAC as a sanctions evader).

To effectively assess these risks, companies should consider:

- Identifying any transactions potentially involving Afghanistan. This may require recalibrating sanctions screening processes used to screen trade and transactions
- Ensuring third parties involved in such transactions are aware of sanctions requirements
- Identifying in third party due diligence, any risks posed by the third party in engaging in “sanctions evasion” activity, particularly for companies based in Russia, China or other countries that may seek to deal directly with the Taliban.

For more information please contact [Matt Lapin](#) or any member of Porter Wright’s [International Business & Trade Practice Group](#).