Cahill

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Congress Extends Statute of Limitations for Violations of U.S. Sanctions to Ten Years

Overview

On April 24, 2024, President Biden signed into law H.R. 815, a foreign aid bill that has received much media attention for its authorization of foreign aid appropriations to U.S. allies, including Ukraine, Israel, and Taiwan, and the proposed ban or sale of TikTok. Notably, the bill also includes a change to U.S. sanctions laws that has received much less attention: the statute of limitations for civil and criminal violations under the two primary sanctions laws, the International Emergency Economic Powers Act ("IEEPA") and the Trading with the Enemy Act ("TWEA"), has been doubled from five to ten years. Though it does not appear to apply retroactively based on the text of the bill, the new statute of limitations became effective immediately upon the signing of the bill for violations that were not yet time-barred. It remains to be seen how this change will be implemented with respect to potential civil enforcement, though the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") has indicated that it may provide further guidance on this point.

The change applies to both civil violations of the IEEPA and TWEA-based economic sanctions programs administered by OFAC and to criminal violations enforced by the U.S. Department of Justice. The new statute of limitations strengthens enforcement efforts by doubling a company's temporal scope of potential liability, leading to increased potential penalties, and providing the government with more time to investigate and determine charges.

Potential Impact and Considerations for Companies

This change will have a variety of implications for companies and may necessitate changes to internal controls and processes. These effects may be compounded by the U.S. government's increasing efforts to expand sanctions enforcement, as we have seen in recent years.

- The new statute of limitations may increase the burden on companies investigating alleged violations. When companies learn of possible sanctions violations, they typically conduct a five-year lookback to assess liability, in line with the previous statute of limitations. Now, companies would be well-advised to conduct a ten-year lookback, potentially increasing an investigation's scope and cost.
- The new measure will also impact the M&A due diligence process, as deal parties, banks, and lenders will want to evaluate a company's sanctions compliance over a longer lookback period. Additionally, companies engaging in M&A activities and other transactions will want to ensure that the representations and warranties regarding potential sanctions violations and related matters made by their counterparties in transaction agreements now have a ten-year time period.

- Companies should ensure they have adequate policies and procedures in place so relevant documents are retained for the appropriate period of time. In light of the statute of limitations changes, OFAC may increase its current five-year record keeping requirements to ten years.
- In some investigations, companies enter into tolling agreements with enforcement authorities, which suspend the statute of limitations pending the resolution of the matter. Due to its longer time horizon, the new statute of limitations may reduce the need for these agreements, which in turn may reduce to some extent the leverage companies have at the outset of an investigation by eliminating or minimizing the importance of an agreement that previously would have been crucial for OFAC to secure.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Brian Markley (partner) at 212.701.3230 or bmarkley@cahill.com; Brock Bosson (partner) at 212.701.3136 or bbosson@cahill.com; Jennifer Potts (counsel) at 212.701.3390 or jpotts@cahill.com; or Ryan Maloney (associate) at 212.701.3269 or RyanMaloney@cahill.com; or email publicationscommittee@cahill.com.