Say SoL Long to Short Limits: Doubling Down on the Sanctions Statute of Limitations

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Effective April 24, the statute of limitations ("SoL") under the International Emergency Economic Powers Act ("IEEPA") and the Trading with the Enemy Act ("TWEA") has been extended from five to ten years. It would have been easy to miss this change, buried within a supplemental emergency appropriation bill (H.R. 815) signed into law by President Biden on April 24, 2024, but its impacts will be profound for entities facing internal or government investigations for sanctions violations.

The change affects economic sanctions programs managed by the U.S. Department of Treasury, Office of Foreign Assets Control ("OFAC") and Department of Commerce programs administered under IEEPA (such as the Information and Communications Technology and Services ("ICTS") program). Note the change does not affect the five-year SoL for transactions under the Export Administration Regulations ("EAR") or International Traffic in Arms Regulations ("ITAR"), but this sanctions change raises a question about future legislative updates to the authorizing statutes for those export regulations.

Key Takeaways

1. **Higher Risk of Sanctions Enforcement**: Previously, sanctions civil enforcement actions and criminal prosecutions had been subject to the catch-all five-year statute of limitations (in 28 U.S.C. 2462). With the new extension, OFAC and the Department of Justice ("DOJ") now have a decade to pursue legal action against those suspected to be in violation of sanctions regulations. The new SoL took immediate effect on April 24, 2024. However, it remains yet to be seen whether OFAC and DOJ will seek to apply the new SoL retroactively.[1] In any case, U.S. government agencies will have more time and less pressure as they sift through waves of potential sanctions violations that are likely arising out of the sudden and sweeping sanctions on Russia in the past two years.
2. **More Russia Risk**: The extension of the SoL was first raised relating to Russia-related

sanctions. Thus, we should expect to see OFAC continue to prioritize enforcement of the Russia-related sanctions, including for the decade to come. This means that companies who may have stumbled when exiting Russia may no longer count on 2027 bringing potential relief. Moreover, those who continue to conduct limited business in Russia should assess the strength of their compliance programs.

3. **Heightened Compliance Imperatives**: In addition to Russia-related transactions, the SoL extension underscores the importance of strong compliance measures for companies generally engaging in international transactions. Due to the extended liability window, companies should ensure that compliance programs are comprehensive, up-to-date, and effectively implemented across all levels of operations. The SoL change likely mandates a change to company document retention or recordkeeping policies. While OFAC has not yet updated its document retention regulation (that currently requires five years), we may expect to see that change soon to match the new SoL.
4. **Increased Due Diligence**: The longer SoL adds a layer of complexity to risk management. Now, companies will need to conduct due diligence on potential vendors and customers for a longer period. For M&A, the extended SoL means new deals may be riskier because companies have typically not been retaining sanctions compliance records for ten years, so it may be difficult to assess sanctions compliance older than five years. Recently closed deals might warrant a refreshed sanctions review as well to determine whether the acquiring parties could be on the line for liabilities from 5-10 years ago that were initially not flagged as impacting sanctions enforcement risks.
5. **Global Ramifications**: While the extension directly impacts entities subject to U.S. jurisdiction, its implications are far-reaching. The United States plays a leading role in shaping international sanctions regimes, so the extension sets a precedent that may influence SoL developments in other jurisdictions. Businesses with cross-border operations or transactions should therefore take heed and prioritize ensuring compliance with applicable sanctions laws in relevant jurisdictions.

Overall, the extension of the SoL for U.S. sanctions violations is a significant shift in the regulatory framework governing international trade compliance. Businesses need to be aware of these changes and take appropriate actions to maintain compliance records over the extended period. Businesses can navigate the complexities of compliance in the evolving regulatory landscape of sanctions by implementing robust compliance frameworks and fostering a proactive approach to risk management.

FOOTNOTES

[1] As lawyers, we hesitate to engage in anything math-related, but this may mean we see U.S. agencies seeking to change 5-year SoL periods currently running to 10-year periods.

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National Law Review, Volume XIV, Number 129