CLIENT UPDATE

U.S. GOVERNMENT IMPOSES NEW SANCTIONS AGAINST IRAN

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The U.S. Government continues to broaden the scope and reach of the economic and trade sanctions that it maintains against Iran. In the last month, the Obama Administration has targeted the Iranian automobile, energy, shipping, precious and other metals, and airline sectors and those entities, wherever located, that do business with those industries.

On June 3, 2013, President Obama issued Executive Order 13645 (the "Order"), effective on July 1, 2013, which implements provisions of the Iran Freedom and Counter-Proliferation Act (the "IFCPA") and the Iran Threat Reduction and Syria Human Rights Act of 2012 ("ITRSHRA") and potentially expands the reach of those laws.[1] The Order, which is accompanied by an interpretative set of "frequently asked questions" on the website of the Office of Foreign Assets Control, was issued less than one week after the U.S. Treasury Department announced measures targeting the Iranian petrochemical and aircraft industries as well as entities that aided in the Iranian government's attempts to evade U.S. sanctions.[2]

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1 We previously profiled ITRSHRA and the IFCPA and their respective implications; *see Debevoise & Plimpton Financial Institutions Report*, "Expansion of U.S. Sanctions Against Iran and Syria" (Oct. 2012); *Debevoise Client Update*, "Further Expansion of U.S. Sanctions Against Iran" (Jan. 2013).

2 Press Release, "Treasury Announces New Sanctions Against Iran: Actions Target the Iranian Petrochemical Industry as well as the Iranian Regime's Attempts to Evade Sanctions and Support Terrorism," May 31, 2013, available at http://www.treasury.gov/press-center/press-releases/Pages/jl1965.aspx

These actions do not affect securities issuers' reporting obligations under Section 13(r) of the Exchange Act.[3]

THE ORDER

As explained further below, the Order authorizes the imposition of sanctions on non-U.S. financial institutions that deal in Iran's currency (the rial) and non-U.S. entities that engage in "significant transactions" – a term that the Order does not define – with the automotive sector of Iran. Additionally, the Order authorizes the blocking of the U.S. property of entities or individuals who materially aid Iranian specially designated nationals ("SDNs"), engage in certain transactions with the Iranian shipping, shipbuilding, energy, and metals sectors or engage in corruption or misappropriation related to the export of food or medicine to Iran. The Order also expands existing restrictions on dealing with the Iranian petrochemical industry.

Restriction on Dealing in Rials

The Order authorizes sanctions against any foreign financial institution, defined to include an institution's holding companies, affiliates, or subsidiaries, that (i) knowingly conducts or facilitates any "significant transaction" related to the purchase or sale of Iranian rials or a financial instrument whose value is based on the Iranian rial; or (ii) maintains "significant funds" or accounts outside the territory of Iran denominated in the Iranian rial. The term "significant transaction" is left undefined by the Order.

A foreign financial institution that violates the restrictions could be prohibited from the opening of correspondent or payable-through accounts in the United States, or, if the foreign financial institution already maintains a correspondent account, could face strict conditions on or the closure of such an account. As an even more severe sanction, any property of such a foreign financial institution that is in or comes within the United States or the possession or control of a "United States person" could be blocked. The term "United States person" is defined broadly to include any entity organized under the laws of the United States or any jurisdiction within the United States, including any foreign branches. Thus, foreign financial institutions that become subject to such sanctions could potentially be foreclosed not only from dealing with the U.S. financial markets or with U.S. domestic banks abroad, but also from any business involving U.S. customers or counterparties.

[3] We previously reported on those reporting requirements, *see Debevoise Client Update*, "SEC Reporting Companies Must Disclose Certain Iran-Related Activities" (Jan. 2013).

Restrictions on Engaging with the Iranian Automotive Sector

The Order also targets Iran's automotive sector. In particular, the Order sanctions any person that knowingly engages in a "significant transaction" for the sale, supply or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran. The "automotive sector of Iran" is defined broadly to include the manufacturing of light and heavy vehicles, including passenger cars, trucks, buses, minibuses, pick-up trucks, and motorcycles, as well as certain equipment manufacturing relating to such vehicles.

Among other sanctions, persons that are sanctioned under the automotive sector restrictions could face denial of Export-Import Bank extensions of credit or guarantees, the denial of licenses to export goods or technology to the sanctioned person and the blocking of property in the United States. U.S. persons could also be prohibited from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person. Sanctions also could extend to blocking all of the sanctioned individual or entity's property in the United States or in the possession of a U.S. person, a measure that would cut off the sanctioned individual or entity from doing any business with the United States or U.S. individuals or companies, including financial institutions.

In addition, the sanctions could be extended to successor entities, to persons who own or control or are under common control with entities engaged in sanctionable conduct. As a result, the sanctions potentially could have broad reach into the global automotive supply chain.

Foreign financial institutions that knowingly conduct or facilitate a "significant financial transaction" in connection with the automotive sector of Iran could also face prohibitions on the opening of correspondent or payable-through accounts in the United States, or, if the foreign financial institution already maintains a correspondent account, could face strict conditions on or the closure of such an account. The term "significant financial transaction" is left undefined by the Order.

Transactions Involving Iranian Persons Who Are Specially Designated Nationals

The Order also authorizes blocking of property of foreign individuals or entities that engage in transactions with Iranian SDNs, or non-Iranian SDNs designated as owned or controlled by the Iranian government or an Iranian financial institution, unless an exception for certain natural gas projects applies (under section 603(a) of ITRSHRA).

The Order also targets foreign financial institutions' relations with SDNs. In particular, sanctions under the Order are triggered if a non-U.S. financial institution knowingly conducts or facilitates any "significant financial transaction" on behalf of any Iranian person included on the SDN List, with a few exceptions (for humanitarian and other dealings). As above, sanctioned foreign financial institutions may be prohibited from opening a correspondent or payable-through account in the United States, or, if the foreign financial institution already maintains a correspondent account, could face strict conditions on or the closure of such an account. Sanctioned foreign financial institutions may also be subject to blocking as described above.

Increased Sanctions Targeting the Iranian Energy, Shipping and Shipbuilding Sectors and Precious and Other Metals Sectors

The Order implements (a) IFCPA section 1244, which generally calls for the blocking of property of businesses that are in the energy, shipping, or shipbuilding sectors of Iran; that operate a port in Iran; or that knowingly provide significant support to any of them, and (b) IFCPA section 1245, which generally calls for sanctions on persons who knowingly sell, transfer, or supply certain precious, other metals, and certain other industrial materials to or from Iran. If a company is designated, it will effectively be cut off from doing business with the United States or U.S. individuals or companies, including financial institutions.

Increased Sanctions Targeting Petrochemicals

The Order further expands sanctions against the Iranian petrochemical industry imposed by a prior executive order, Executive Order 13622. In particular, foreign financial institutions and other persons could face sanctions not only for conducting or facilitating any significant financial transaction for the purchase or acquisition of Iranian petrochemical products, but also for significant financial transactions for the sale, transport or marketing of such products.

U.S. TREASURY DEPARTMENT MEASURES

The Order comes in the context of the continued ratcheting up of sanctions against Iran. Just prior to the release of the Order, the U.S. Treasury Department also announced a series of actions to "intensify sanctions pressure on Iran."

As explained in its press release, the U.S. Treasury Department targeted the Iranian petrochemical industry because it is the second largest source of revenue for the Iranian Government. The Department sanctioned eight petrochemical companies that it determined to be owned or controlled by the Iranian Government and two companies for knowingly engaging in significant transactions for the purchase or acquisition of petrochemical products from Iran.

The Treasury Department also imposed sanctions on Cyprus and Ukraine-based Ferland Company Limited ("Ferland") for engaging in a scheme with the National Iranian Tanker Company ("NITC") to deceptively sell Iranian crude oil in an attempt to avoid sanctions against Iran. NITC was previously identified by the Treasury Department as a Government of Iran entity in 2012. According to the Treasury Department, the scheme involved numerous ship-to-ship transfers of oil and culminated with Ferland's furnishing a falsified certificate of origin as part of its cargo documentation. The sanctions imposed on Ferland prohibit (1) visas for corporate officers, (2) loans from U.S. financial institutions, (3) financial transactions subject to U.S. jurisdiction, (4) transactions with respect to property and interests in property under U.S. jurisdiction, and (5) foreign exchange transactions subject to U.S. jurisdiction.

In addition, the Treasury Department took steps against companies and individuals located in Kyrgyzstan, Ukraine, and the U.A.E. that it believes have supported Iran Air and Mahan Air, two entities designated for sanctions pursuant to previous Executive Orders for providing material support to "Iran's worldwide illicit activities."

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The further expansion of U.S. sanctions and increased enforcement of existing U.S. sanctions evidence the Obama Administration's continued efforts to exert economic pressure on the Iranian regime. Whether based in the U.S. or elsewhere, firms should continue to bear in mind the increasingly punitive sanctions that may result from engaging in business with Iran and ensure that their compliance programs are updated accordingly.

Please do not hesitate to contact us with any questions.

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