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US Issues New Executive Order Authorizing Additional Iran Sanctions and Sanctions New Entities Pursuant to CISADA; Congress Approves New Iran Sanctions Legislation

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On July 31, 2012, President Obama issued Executive Order 13622 (the "Order")[1] to strengthen the Iran sanctions framework by further targeting Iran's oil and petrochemical sectors as well as its shipping trade. The Order, entitled "Authorizing Additional Sanctions with Respect to Iran," authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to impose new sanctions on foreign financial institutions ("FFIs") determined to have knowingly conducted or facilitated specified significant financial transactions with the National Iranian Oil Company ("NIOC") or Naftiran Intertrade Company ("NICO"), or any entities owned, controlled by, or acting on behalf of NIOC or NICO.

The Order also authorizes sanctions against FFIs found to have knowingly conducted or facilitated significant transactions for the purchase or acquisition of petroleum, petroleum products, or petrochemical products from Iran, and provides that these FFIs may be prohibited from opening or maintaining correspondent or payable-through accounts in the United States. Further, the Order authorizes the US Treasury Department's Office of Foreign Assets Control ("OFAC") to block the property and interests in property of any person determined to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, NIOC, NICO, or the Central Bank of Iran ("CBI"), or the purchase or acquisition of US bank notes or precious metals by the Government of Iran. The Order also heightens the US State Department's authority to impose sanctions under the Iran Sanctions Act ("ISA"), as amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA"), on non-US entities engaged in significant transactions for the purchase of petroleum and petroleum products from Iran.

By imposing these new measures, the Order aims to bolster existing Iran sanctions by deterring roundabout transactions through NIOC or NICO with the already designated CBI, and also aims to further weaken the Iranian regime by lowering the revenue stream from the sale of petrochemical products that had been used to replace revenue lost as a result of previously enacted sanctions.

OFAC has stated that in determining whether financial transactions or services are "significant," it will consider a number of factors related to the transactions or services, including, but not limited to: size, number, and frequency; type, complexity, and commercial purpose; the level of awareness or involvement by the bank's management; whether the activity or payment illustrates a pattern or practice or an isolated event; the ultimate economic benefit conferred upon the designated person(s); and whether the transactions involved the use of deceptive financial practices to obscure the identities of the parties involved. The term "knowingly" is defined in this context to mean that the financial institution knew or should have known of the conduct, circumstance, or result.

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OFAC has also indicated that for purposes of this Order, barter arrangements or other non-cash transactions involving petroleum, petroleum products, or petrochemical products originating from Iran are sanctionable, as are barter transactions knowingly conducted with NIOC, NICO, or the CBI to the extent that those transactions constitute material support for, or services to, those entities.

Persons who conduct or facilitate transactions for the sale of food, medicine, or medical devices to Iran are exempt from these new sanctions so long as they acquire proper licenses from OFAC. Furthermore, the existing exceptions provided for in the National Defense Authorization Act for Fiscal Year 2012 ("NDAA") remain in effect, such that FFIs from countries determined by the Secretary of State to have significantly reduced their purchases of Iranian crude oil are also excepted from these new sanctions measures. In jurisdictions that do not have a "significant reduction" exception under the NDAA, however, Iranian trade partners that continue to purchase petroleum or petroleum products or engage in significant dealings with NIOC or NICO may be subjected to sanctions under this Order.

New CISADA Findings Against Bank of Kunlun and Elaf Islamic Bank

Pursuant to CISADA, OFAC announced the addition of two FFIs, Bank of Kunlun in China and Elaf Islamic Bank in Iraq, to its List of Foreign Financial Institutions Subject to Part 561 ("Part 561 List"),[2] finding that each bank knowingly facilitated significant financial transactions or provided significant financial services to Iranian banks designated for their connection to Iran's support for terrorism or weapons proliferation. These sanctions were imposed pursuant to CISDADA, not the NDAA. Under the NDAA, Chinese financial institutions recently received a 180-day renewable exception.

As a result of these new findings against Bank of Kunlun and Elaf Islamic Bank, financial institutions are now prohibited from opening or maintaining correspondent or payable-through accounts for these banks in the United States, and are provided a ten-day period pursuant to US Treasury Department regulations in which to engage in transactions necessary to close any preexisting accounts. In effect, these measures bar Bank of Kunlun and Elaf Islamic Bank from directly accessing the US financial system. Notably, this action does not require US financial institutions to block or reject financial or trade transactions involving either bank, or to freeze any assets that these banks may hold within US jurisdiction. OFAC has advised, however, that financial institutions are expected to employ heightened due diligence in any dealings with these banks, given their demonstrated willingness to facilitate transactions on behalf of designated Iranian banks. Any US financial institution that maintains or opens a correspondent or payable-through account for these banks is subject to civil penalties in the amount of up to US$250,000 or twice the value of the transaction, whichever is greater, and criminal penalties for willful violations of up to US$1 million or up to 20 years in prison. FFIs could potentially be subject to CISADA sanctions if they are found to have knowingly facilitated significant transactions on behalf of Iranian banks by continuing to deal with entities that have been sanctioned under CISADA, such as Bank of Kunlun or Elaf Islamic Bank.

US Congress Approves New Iran Sanctions Legislation

On August 1, 2012, the US Congress passed new legislation intended to strengthen Iran sanctions laws for the purpose of compelling Iran to abandon its pursuit of nuclear weapons and other threatening activities. The bill, entitled the "Iran Threat Reduction and Syria Human Rights Act of 2012" (the "Act"), implements a host of sanctions measures which: strengthen preexisting sanctions under ISA; impose additional financial sanctions aimed at further restricting Iran's access to the international financial system; impose new sanctions targeting Iran's Islamic Revolutionary Guard Corps ("IRGC") as well as human rights violators in Iran and Syria, and their enablers; and prohibit the provision of insurance or reinsurance to the National Iranian Tanker Company ("NITC"), NIOC, or their successors, as well as of the provision of transport or shipping vessels to support violent extremists in Iran or persons that transport crude oil from Iran. Persons who choose to engage in such activities may be subject to sanctions.

In particular, Section 219 of the Act outlines new Securities and Exchange Commission ("SEC") disclosure requirements, which provide that issuers must disclose publicly in their annual or quarterly reports sanctionable activity and require the Executive Branch to conduct an investigation into the possible imposition of sanctions on such companies under the relevant Iran sanctions laws, many of which have extraterritorial application.

Conclusion

These latest actions reflect increased US Government efforts to deny access to the US financial system by the Government of Iran and affiliated entities, and to further weaken Iran's energy sector. The expansive reach of these additional measures and the potentially severe sanctions that may be imposed for noncompliance further reinforce the need for extreme caution, heightened due diligence, and robust internal compliance with respect to any transaction that could potentially relate to Iran.

1. A copy of Executive Order 13622 is available here.
2. A copy of the Part 561 List, which contains full identifier information for Bank of Kunlun and Elaf Islamic Bank, is available here.