

KIRKLAND ALERT

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United States Expands Iran Sanctions

The U.S. government has taken additional measures to prevent further development by the Islamic Republic of Iran (Iran) of its nuclear weapons program and support for international terrorism. An Executive Order issued by President Obama imposes new sanctions against persons whose dealings with Iran may lend support to the country's petroleum and petrochemical industries; the U.S. Department of the Treasury under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 designated Iran as a jurisdiction of primary money laundering concern and proposed a rule to require U.S. financial institutions to conduct more thorough due diligence to ensure none of their foreign correspondent accounts have any Iranian financial institutions as ultimate beneficiaries; and the U.S. Departments of State and Treasury designated ten entities and one individual for their involvement with Iran's nuclear program. U.S. government authorities predict that these measures, particularly pursuant to the USA PATRIOT Act, will prompt, in significant part, financial institutions and other entities around the globe to cease doing business with Iran. Increasing pressure by the United States to isolate Iran raises new compliance challenges for U.S. and non-U.S. entities engaged in international trade and investment.

Executive Order 13590 — Targeting Iran's Petroleum and Petrochemical Exports

On November 20, 2011, President Obama issued Executive Order 13590, which authorizes sanctions against any individual or entity that engages in activities that "could directly and significantly contribute to the maintenance and enhancement" of Iran's ability to develop its petroleum resources or domestic production of petrochemical products.

Under the Executive Order, an individual or entity may be subject to sanctions if it knowingly orders, sells, leases, or provides to Iran goods, services, technology or other support valued at \$1MM or more, or \$5MM or more in the aggregate over one year, that "could directly and significantly" contribute to the development of Iran's petroleum resources. The threshold that may trigger sanctions for providing goods, services technology or other support related to Iran's domestic production of petrochemical products is significantly lower – \$250,000 per transaction, or \$1MM in the aggregate over a one-year period. An entity that is a successor-in-interest to, or, in certain circumstances, owns or controls, or is owned or controlled by, a person that engages in sanctionable conduct likewise may be subject to sanctions. The development of Iran's petroleum resources is defined as exploring for, extracting, refining or transporting by pipeline petroleum resources. Petroleum resources include petroleum, oil, natural gas, liquefied natural gas, and refined petroleum products. Petrochemical products include "any aromatic, olefin, and synthesis gas, and any of their derivatives, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea."

Sanctions for violating the terms of the Executive Order may be imposed by the U.S. Secretary of State, in coordination with the Treasury Department and other relevant agencies. These sanctions include prohibiting the violator from (i) receiving export assistance from the Export-Import Bank, (ii) receiving licenses for exports to the sanctioned person, (iii) receiving private loans from a U.S. bank in excess of \$10MM over 12 months, (iv) conducting financial transactions subject to U.S. jurisdiction, (v) conducting foreign exchange transactions subject to U.S. jurisdiction, (vi) conducting transactions with respect to property subject to U.S. jurisdiction, (vii) importing to the United States, and (viii) obtaining procurement contracts with the U.S. Government. In addition to these sanctions, a financial institution also may be prohibited from serving as a repository of U.S. Government funds and being designated as a primary dealer in U.S. Government debt instruments.

The Executive Order is effective as of November 21, 2011. According to statements by the U.S. Department of State, the new sanctions authorized by Executive Order 13590 are part of a broader policy effort by the United

States in conjunction with its allies to pressure Iran to comply with its obligations under international nuclear agreements, as well as end its support for international terrorist efforts. The United Kingdom and Canada also announced tougher sanctions on Iran in coordination with these recent U.S. actions.

Iran Identified as a Jurisdiction of “Primary Money Laundering Concern” and Subject to Proposed Special Measure Under the USA Patriot Act

On November 25, 2011, the Treasury Department issued a finding concluding that Iran is a jurisdiction of “primary money laundering concern” under Section 311 of the USA PATRIOT Act (Section 311).¹ Under Section 311 of the USA PATRIOT Act, upon a finding that reasonable grounds exist for concluding that a foreign jurisdiction is of “primary money laundering concern,” the U.S. Secretary of the Treasury is authorized to impose a “special measure” that places certain restrictions on activities by domestic financial institutions and financial agencies with respect to the primary money laundering concern. In conjunction with the announced finding, the Treasury Department, through the Financial Crimes Enforcement Network (FinCEN), has proposed the imposition of a “special measure” against Iran.

The Treasury Department’s finding is based on evidence that Iran directly supports international terrorism, is pursuing nuclear and related ballistic missile capabilities, relies on state agencies or state-owned or controlled financial institutions to facilitate weapons of mass destruction proliferation and financing, and uses deceptive financial practices such as front companies to facilitate illicit conduct and evade sanctions. The finding specifically describes deceptive practices employed by the Central Bank of Iran (“CBI”), such as attempting to evade sanctions by minimizing the direct involvement of large international banks with both CBI and designated Iranian banks, transferring funds to Iranian designated banks while concealing the recipients, and providing financing to UN sanctioned institutions for defense-related projects.

This is the first time that the Treasury Department has identified the entire Iranian financial sector — including Iranian state-owned commercial banks, specialized Iranian government banks, and privately owned finan-

cial institutions — as being involved in money laundering.² According to Treasury Secretary Timothy F. Geithner, otherwise responsible financial institutions or companies that engage in transactions with Iran’s banking system are “at risk of supporting Iran’s illicit activities.”

On November 28, 2011, FinCEN published in the *Federal Register* a Notice of Proposed Rule Making (“NPRM”), to impose a special measure against Iran.³ According to an official briefing, the finding and proposed special measure targeting Iran represent the first such actions since 2003 against an entire foreign jurisdiction, as opposed to a particular financial institution. Burma is the only other sovereign jurisdiction currently to be subject in its entirety to a section 311 special measure.

The proposed special measure would prohibit the opening or maintaining of correspondent accounts by any U.S. financial institution or agency for or on behalf of a foreign banking institution, if the correspondent account involves Iran. For purposes of the proposed rule, a “correspondent account” is defined “as an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transaction related to the financial bank.” This proposed rule would appear in large part to supersede the narrower final rule FinCEN issued in October of this year, which aimed to prohibit U.S. financial institutions from opening or maintaining a correspondent account or a payable-through account in the United States for a foreign financial institution that is found to knowingly facilitate significant transactions or provide significant financial services for Iranian-linked financial institutions that are designated under U.S. economic sanctions laws.

The proposed special measure would require U.S. financial institutions to implement additional due diligence measures in order to prevent any improper indirect access by Iranian banking institutions to U.S. correspondent accounts. According to FinCEN, *at a minimum*, the due diligence must include:

1. Notifying those correspondent account holders that the financial institution knows or has reason to know provide services to Iranian banking institutions, that such correspondents may not provide Iranian banking institutions with access to

the correspondent account maintained at the covered institution; and

2. Taking reasonable steps to identify any indirect use of the financial institution's correspondent accounts by Iranian banking institutions.

Written comments on the notice of proposed rule-making are due on or before January 27, 2012. Imposition of a special measure on Iran, according to a US government official, places “a heavy burden” on foreign financial institutions to ensure that, through their correspondent account relationship, they are not providing Iran access to the U.S. financial system. According to this official, “the risk of being cut off entirely from the U.S. financial system” generally causes such entities to immediately come into compliance, making the new Section 311 measure a “powerful” tool against Iran’s targeted activities related to nuclear proliferation and international terrorism.

New Designations Related to Nuclear Proliferation and Support for Iran’s Nuclear Program

On November 21, 2011, the Obama administration announced that ten companies and one individual with ties to Iran’s nuclear industry had been designated under Executive Order 13382 (June 29, 2005).⁴ Executive Order 13382 authorizes the U.S. Secretaries of State and Treasury to freeze all assets under U.S. jurisdiction of entities or persons deemed to be proliferators of weapons of mass destruction or supporters of such entities. U.S. persons are, moreover, prohibited from engaging in any transaction with designated entities or persons.

These new designees are alleged to be part of Iran’s nuclear procurement network, providing services,

equipment and technology support. Four of the companies — The Nuclear Reactors Fuel Company, Noor Afzar Gostar Company, Fulmen Group and Yasa Part — were designated by the U.S. Department of State pursuant to its authority to designate entities that “have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery.” EO 13382 §1(ii). The other seven designees — Modern Industries Technique Company (MITEC), The Iran Centrifuge Technology Company (TESA), Parto Sanat, Paya Partov, Neka Novin, Simatic Development Co. and an individual named Javad Rahiqi — were designated by the Treasury Department, under its authority to designate entities that “have provided, or attempted to provide, financial, material, technological or other support for [nuclear proliferation efforts], or goods or services in support of [such efforts] or any person whose property and interests in property are blocked pursuant to [EO 13382].” *Id.* at §1(iii).

Many of the entities designated pursuant to Executive Order 13382 have been similarly designated by the European Union or the United Nations or have close ties to organizations already designated by these authorities. U.S. officials indicate that they hope these sanctions will have a secondary effect of encouraging other foreign governments and non-U.S. companies to be wary of relationships with these entities, further increasing pressure on the Iranian regime to comply with its international nuclear responsibilities. These designations, along with other recent aggressive sanctions, highlight the need for companies trading in the Middle East or doing business with entities with ties to this area to be vigilant with respect to quickly changing regulations and increasingly cumbersome trade restrictions.

¹ The Finding can be viewed at <http://www.gpo.gov/fdsys/pkg/FR-2011-11-25/pdf/2011-30332.pdf>.

² FinCEN noted that prior regulations that have applied Section 311 special measures to jurisdictions of primary money laundering concern have not included the jurisdiction’s central bank within the scope of the regulation. However, in the case of Iran this inclusion is justified due to the deceptive practices CBI engages in and encourages among Iranian state-owned banks.

³ The NPRM can be viewed at <http://www.gpo.gov/fdsys/pkg/FR-2011-11-25/pdf/2011-30332.pdf>.

⁴ More details on the entities designated are available at <http://www.state.gov/r/pa/prs/ps/2011/11/177608.htm>.

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