

KIRKLAND ALERT

June 2013

U.S. Sanctions Update: New U.S. Sanctions Expand Targeting of Non-U.S. Companies Doing Business with Iran

U.S. sanctions targeting non-U.S. companies' business with Iran have greatly expanded in recent years, but have focused in significant respects on Iran's energy sector, including, in particular, Iran's petroleum and petrochemical sectors. Non-U.S. companies engaged in activities involving other sectors of the Iranian economy have felt somewhat secure from the reach of U.S. sanctions. Effective July 1, 2013, a new Executive Order and law may put an end to the sense of security of many such non-U.S. companies. Moreover, U.S. companies may be affected by these expanded sanctions because of the risk that their non-U.S. business partners could be sanctioned and become parties with which U.S. companies are prohibited from dealing. Companies, including those in the automotive, maritime and insurance industries, engaged in business activities involving Iran, as well as foreign financial institutions that may support such transactions, should be aware of these expanded sanctions and evaluate whether their activities could now be sanctionable.

On June 3, 2013, the President issued Executive Order 13645, which implements certain provisions of the Iran Freedom and Counter-Proliferation Act of 2012 and imposes additional sanctions on Iran.

Summary of Expanded U.S. Sanctions on Iran

On June 3, 2013, the President issued Executive Order ("E.O. 13645" or the "Order"), which implements certain provisions of the Iran Freedom and Counter-Proliferation Act of 2012 ("IFCA")¹ and imposes additional sanctions on Iran. The IFCA and E.O. 13645, both of which, with certain exceptions, become effective July 1, 2013, substantially expand the types of activities by non-U.S. companies and foreign financial institutions that could result in the imposition of sanctions. Any entity or person that is designated as a result of these sanctions becomes a "blocked" person or entity with which U.S. persons are prohibited from dealing and, further, U.S. persons are required to block, or freeze and report, any property or "interest in property" (which is broadly defined) of such designated persons or entities. A summary of some of the most significant of the expanded sanctionable activities follows. Foreign financial institutions that finance, conduct or facilitate certain of the activities described below also may be subject to sanctions.

Energy, Shipping, and Shipbuilding Sectors of Iran

Non-U.S. companies or persons that provide goods or services related to Iran's production or purchase of oil, gas, petrochemicals or otherwise related to the energy sector of Iran, or that own or operate vessels involved in the shipment of goods to Iran, or otherwise provide services or goods in connection with Iran's shipping or shipbuilding sectors, should evaluate whether such activities could be subject to sanctions.

The Order authorizes the “blocking” of all dealings with U.S. persons by any person that: (i) is part of the energy, shipping or shipbuilding sectors of Iran; (ii) operates a port in Iran; or (iii) knowingly provides significant support to anyone falling within (i) or (ii), or to an Iranian person included on the list of Specially Designated Nationals and Blocked Persons (“SDN List”), administered by the U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”)² (other than certain Iranian financial institutions).³ In addition, subject to certain limitations and exceptions, the Order authorizes the imposition of sanctions on any person that knowingly sells, supplies or transfers to or from Iran significant goods or services used in connection with the energy, shipping or shipbuilding sectors of Iran.⁴ Such sanctions include: (i) a prohibition on U.S. financial institutions from making loans or extending credit above certain monetary thresholds to the sanctioned party; (ii) a prohibition on transactions in foreign exchange subject to the jurisdiction of the United States; (iii) a prohibition on transfers of credit or payments between U.S. financial institutions involving the sanctioned party; (iv) blocking of and a prohibition on certain dealings by U.S. persons with the sanctioned party; and (v) a restriction on imports into the United States from the sanctioned person.

Iranian Automotive Sector

Companies involved in the automotive sector of Iran, as well as companies that supply automotive parts or components to Iran, should evaluate whether their activities could be subject to sanctions. Under E.O. 13645, sanctions may be imposed on any person that knowingly engages in a significant transaction⁵ for the sale, supply or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran.⁶ Sanctions also may be imposed on successor entities to entities engaged in sanctionable activities, persons who own or control entities engaged in the sanctionable activities, and entities owned or controlled by, or under common ownership with, entities engaged in the sanctionable activities. As a result, these expanded sanctions potentially could reach a variety of companies operating in the global automotive supply chain and their affiliates.

The sanctions that may be imposed are set forth in Sections 6 and 7 of the Order and include: (i) denial of U.S. export-import bank guarantees and export and re-export licenses; (ii) a prohibition on U.S. government procurement, (iii) blocking of and a prohibition on certain dealings by U.S. persons with the sanctioned party; (iv) a restriction on imports into the United States from the sanctioned person; (v) a prohibition on U.S. financial institutions from making loans or extending credit above certain monetary thresholds to the sanctioned party; and (vi) a prohibition on transfers of credit or payments between U.S. financial institutions involving the sanctioned party.

Sale, Supply or Transfer of Certain Materials to or from Iran

In a further move to target the government of Iran, as well as Iran’s key sectors and activities deemed threatening to U.S. security, the Order authorizes the imposition of sanctions on persons who knowingly sell, supply or transfer to or from Iran a

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precious metal or graphite, raw or semi-finished metals (such as aluminum and steel), coal, and software for integrating industrial processes if: (i) Iran is using the materials as a medium for barter, swap or any other exchange or transaction or listing the materials as assets of the government of Iran for purposes of Iran's national balance sheet; or (ii) the materials are (a) to be used in connection with the energy, shipping or shipbuilding sectors of Iran or any sector of the economy controlled by Iran's Revolutionary Guard Corps, (b) transferred to or from any Iranian person included on the SDN List (other than certain Iranian financial institutions), or (c) used in connection with Iran's nuclear, military or ballistic missile programs.⁷

Underwriting, Insurance and Reinsurance Services

In a further targeting of non-U.S. companies that provide insurance-related services in connection with Iran, the Order authorizes the imposition of sanctions on persons that knowingly provide underwriting, insurance or reinsurance services: (i) for any activity with respect to Iran for which sanctions have been imposed by the U.S. government; (ii) to or for any person with respect to, or for the benefit of, any activity sanctioned under the IFCA or any persons designated as proliferators of weapons of mass destruction or terrorists; or (iii) to or for the benefit of any Iranian person on the SDN List.⁸

Dealings with Specially Designated Nationals and Blocked Persons

The Order also expands potential designations of those that have dealings with entities or individuals already designated under U.S. sanctions. In this regard, the Order generally authorizes the blocking of any person determined to: (i) have engaged in dealings with any Iranian person or certain other persons designated pursuant to Iran sanctions authorities that are included on OFAC's SDN List; or (ii) be part of the Iran's energy, shipping or shipbuilding sectors, operate a port in Iran, or knowingly provide support to such persons or an Iranian person included on the SDN List.

Dealings in Iranian Rials

Foreign financial institutions involved in exchange transactions relating to Iranian rials or that maintain Iranian rials should evaluate whether their activities could be subject to sanctions under E.O. 13645. Sanctions generally may be imposed on any foreign financial institution that: (i) knowingly conducts or facilitates any significant transaction⁹ related to the purchase or sale of Iranian rials or a derivative, swap, future, forward or other similar contract whose value is based on the exchange rate of Iranian rials; or (ii) maintains significant funds or accounts outside the territory of Iran denominated in Iranian rials.

Conclusion

The U.S. government is now targeting additional revenue-generating sectors of Iran's economy in an effort to curb Iran's nuclear program. Although there is some uncertainty regarding how these additional measures will be implemented and in-

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terpreted, the potential implications are very broad and potentially could reach a number of non-U.S. parties and, as a collateral consequence, U.S. parties that previously may not have been affected by U.S. sanctions on Iran.

In addition, the U.S. Congress is considering a number of new bills that would expand the scope of U.S. sanctions against Iran, including targeting additional sectors of Iran's economy. The U.S. government continues to focus its efforts on further isolation of Iran from the world economy by providing significant incentives to non-U.S. companies to discontinue their engagements with, in, involving, or in any way relating directly or indirectly to Iran.

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- 1 The IFCA was signed into law on January 2, 2013 as part of the National Defense Authorization Act for Fiscal Year 2013. See [Kirkland & Ellis' January 2013 Alert](#).
 - 2 Given that the SDN List is not organized in a manner that clearly identifies an "Iranian person," published guidance indicates that OFAC anticipates publishing a list on its website identifying such Iranian persons on the SDN List.
 - 3 See Section 1244 of the Act.
 - 4 *Id.*
 - 5 E.O. 13645 does not define "significant transaction," apparently intending to allow flexibility with respect to how the term is interpreted.
 - 6 Such sanctions also may be imposed on any person that is a successor entity to, owns or controls, or is owned or controlled by, or under common ownership with, a person engaged in such activities.
 - 7 See Section 1245 of the Act.
 - 8 See Section 1246 of the Act.
 - 9 See footnote 5.
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