

EXPANDED U.S. SANCTIONS WILL AFFECT COMPANIES DOING BUSINESS IN IRAN

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On November 21, in response to a report by the International Atomic Energy Agency on Iran's nuclear program, the United States announced a series of actions designed to increase pressure on the Islamic Republic of Iran to forego its nuclear aspirations. These actions include expanding sanctions against foreign entities transacting business with Iran's petroleum and petrochemical sectors and identifying Iran as a "primary money laundering concern." These are discussed in greater detail below. Additionally, the United States designated several Iranian entities as Specially Designated Nationals (SDNs) for their role in facilitating Iran's pursuit of weapons of mass destruction.

Executive Order 13590

Executive Order 13590 (E.O. 13590), issued by the president of the United States and effective as of November 21, significantly enhances the U.S. economic sanctions regime targeting Iran's energy sector. In particular, E.O. 13590 appears to restate and, in some cases, expand certain aspects of the sanctions described in the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA).

Presently, CISADA provides for the imposition of sanctions on non-U.S. entities that engage in certain, primarily energy related trade transactions with Iran. These are administered by the U.S. State Department. CISADA also targets non-U.S. financial institutions dealing with Iran. The financial provisions are administered by the Office of Foreign Assets Control (OFAC). Among the available sanctions are the denial of Export-Import Bank assistance, denial of U.S. export licenses, the prohibition of U.S. procurement from a sanctioned party, restrictions on imports into the United States by a sanctioned party, and denial of certain U.S. banking and financial services and transactions, including the

prohibition of foreign exchange transactions.

Notably, under CISADA the U.S. president may impose sanctions on any person or entity that, among other activities, makes an investment of \$20 million or more, either singly or in the aggregate, over a 12 month period that significantly contributes to the enhancement of Iran's ability to develop its petroleum resources.

By contrast, while the executive order does not purport to modify or supersede CISADA, it uses similar language to authorize many of the same sanctions against any person or entity that knowingly sells, leases, or provides goods, services, technology, or support to Iran that has a fair market value of **\$1,000,000** or an aggregate fair market value of **\$5,000,000** during a 12-month period that could directly and significantly contribute to the maintenance or enhancement of Iran's ability to develop petroleum resources located in Iran. Thus, it effectively reduces the CISADA transactional thresholds relating to the development of Iran's petroleum resources.

E.O. 13590 further authorizes sanctions against any person or entity that knowingly sells, leases, or provides goods, services, technology, or support to Iran that has a fair market value of **\$250,000** or that has an aggregate fair market value of **\$1,000,000** or more during a 12-month period that could directly and significantly contribute to the maintenance or expansion of Iran's domestic production of **petrochemical products**. Again, this is similar to CISADA language, but differs in two significant aspects.

First, the threshold amounts are significantly lower than those provided in CISADA for petroleum investments. Second, whereas CISADA specifically addresses Iran's production of "refined petroleum products" and the development of its "petroleum resources," E.O. 13590 includes "petrochemical products" (defined as any aromatic, olefin, and synthetic gas

or their derivatives including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea). Thus, many facilities and products that were arguably left out of CISADA are now included within the U.S. sanctions program.

If a person or entity is found to have violated these provisions, the secretary of state has the authority to impose sanctions, including prohibitions on: foreign exchange transactions; banking transactions; property transactions in the United States; U.S. Export-Import Bank financing; U.S. export licenses; imports into the United States; loans of more than \$10 million from U.S. financial institutions; U.S. government procurement contracts; and, for financial institutions, designation as a primary dealer or repository of U.S. government funds.

Designation of Iran As a Primary Money Laundering Concern

In addition to the expanded focus on the petroleum and petrochemical sectors, the United States also designated Iran as a “primary money laundering concern” under the USA PATRIOT Act. Whereas previously the United States targeted for sanctions specific Iranian financial institutions that appeared on the SDN list, the identification of Iran as a money laundering concern effectively places the entire Iranian financial sector under scrutiny, including Iran’s Central Bank, all private Iranian banks and branches, and subsidiaries of Iranian banks operating outside of Iran.

The direct effect of this action applies mainly to U.S. banks by increasing the due diligence measures required of U.S. banks in their dealings with foreign financial institutions in order to prevent any improper indirect access by Iranian banking institutions to the U.S. financial system. However, it should be further noted that these actions by the United States were apparently taken in concert with the United Kingdom and Canada. Both the U.K. and Canada have also announced their intentions to tighten restrictions on financial and trade transactions with Iran. Thus, it is likely that other foreign financial institutions will curtail their business with Iran in order to continue transacting business with and through the United States, U.K. and Canadian banks.

The application of U.S. economic sanctions regulations is heavily dependent on the specific facts of a particular transaction. Thus, it is difficult to ascertain how the new prohibitions might impact a company or an individual without analyzing the details of each transaction on a case-by-case basis. However, the recent actions taken by the United States, U.K. and Canada make clear their intent to increase scrutiny of business activities involving Iran, particularly if those activities are in any way related to Iran’s energy or financial sectors.

To discuss any questions you may have regarding the issues discussed in this alert, how they may apply to your particular circumstances, or economic sanctions in general, please contact:

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