

November 23, 2011

## **Additional U.S. Economic Sanctions with Respect to Iran**

On November 21, 2011, the United States Government took (3) three additional steps to increase the economic sanctions pressure on Iran. These steps consisted of the issuance of Executive Order 13590, the designation of Iranian entities and individuals found to have engaged in nuclear proliferation activities, and the identification of Iran as a Jurisdiction of Primary Money Laundering Concern.

**Executive Order 13590.** In Executive Order 13590 signed by President Obama, the United States expanded the universe of activity in or with respect to Iran that could lead to the imposition of U.S. sanctions against persons (entities and individuals) engaging in such activity. The Executive Order expands the universe of sanctionable activity that is already spelled out under the Iran Sanctions Act of 1996 ("ISA"), as amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA"). Executive Order 13590 provides for the imposition of sanctions on persons that knowingly provide:

**A. Goods, Services, Technology, or Support for the Development of Petroleum Resources in Iran:**

The sale, lease, or provision of goods, services, technology, or support to Iran that could directly and significantly contribute to the maintenance or enhancement of Iran's ability to develop petroleum resources located in Iran could trigger sanctions if a single transaction has a fair market value of \$1 million or more, or if a series of transactions from the same entity have a fair market value of \$5 million or more in a 12-month period.

**B. Goods, Services, Technology, or Support for the Maintenance or Expansion of the Petrochemical Sector in Iran:**

The sale, lease, or provision of goods, services, technology, or support to Iran that could directly and significantly facilitate the maintenance or expansion of its domestic production of petrochemical products could trigger sanctions if a single transaction has a fair market value of \$250,000 or more, or if a series of transactions from the same entity have a fair market value of \$1 million or more in a 12-month period.

Under the Executive Order, the term "knowingly," with respect to a conduct, a circumstance, or a result, means that the person has actual knowledge, or should have known, of the conduct, the circumstance, or the result. The term "petroleum resources" includes petroleum, oil, natural gas, liquefied natural gas, and refined petroleum products.

### **Sanctions Flowing from Designation as a Sanctioned Person or as a Sanctions Target**

Sanctions that may be imposed on a person found to have provided a good, service, technology, or support of the type described in Executive Order 13590, include prohibitions on: foreign exchange transactions; banking transactions; property transactions in the United States (freezing or blocking of assets and other property, which effectively precludes all transactions/business with the United States and/or U.S. persons); 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. Additionally, sanctions may be imposed on a successor of or on a person that owns or controls a person determined to have engaged in sanctionable activity.

### **Some Clarification of what Constitutes Sanctionable Activity**

The provision of insurance and maritime transportation services could trigger sanctions under Executive Order 13590. ISA, as amended by CISADA, provides some illustrative examples of what activities could meet the criteria for contributing to the enhancement of Iran's ability to import refined petroleum products, including providing ships or shipping services and insurance for the delivery of refined petroleum products to Iran.

According to guidance from the Department of State, although Executive Order 13590 does not identify the potentially sanctionable activity specifically, the State Department has indicated that it is possible that ships or shipping services could directly and significantly contribute to the maintenance or enhancement of Iran's ability to develop petroleum resources located in Iran or to the maintenance or expansion of Iran's domestic production of petrochemical products, for example by the transportation and delivery of petrochemical catalyst to Iran. It is reasonable to infer that the insurance of such cargo or insurance of the vessel transporting such cargo could also constitute sanctionable activity under Executive Order 13590.

With respect to shipment or transportation oil or petroleum from Iran, the State Department has informally indicated that such activities by themselves would not trigger sanctions under Executive Order 13590. The Executive Order targets contributions to Iran's ability to "develop" petroleum resources, which is defined as "to explore for, or to extract, refine, or transport by pipeline, petroleum resources." The State Department has indicated that "develop" does not include the transportation of petroleum resources from Iran by ship. A similar analysis applies with respect to petrochemicals. Therefore, the purchase and lifting of crude oil from Iran would not constitute sanctionable activity under Executive Order 13590.

### **The Range of Sanctionable Activity under CISADA and Executive Order 13590**

The range of sanctionable activity that insurers and vessel owners and managers, among others, now need to be mindful of and to avoid are those set forth above, which are in addition to the activities spelled out under CISADA. Readers will recall that sanctionable activity under CISADA deals with investments in Iran's petroleum sector, enhancing or maintaining Iran's production of petroleum products, and providing refined petroleum products to Iran or enhancing Iran's ability to import refined petroleum products. To summarize, CISADA directs the imposition specified sanctions if a person on or after the enactment of CISADA, has knowingly:

1. made an investment of \$20 million or more, or any combination of investments of at least \$5 million which in the aggregate equals or exceeds \$20 million in any 12-month period, that directly and significantly contributes to the enhancement of Iran's ability to develop petroleum resources;
2. sold, leased, or provided to Iran goods, services, technology, information, or provided support that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries. Sanctions in this regard would be triggered if any of the foregoing activities individually has a fair market value of \$1 million or more, or during a 12 month period, has an aggregate fair market value of \$5 million or more;
3. sold or provided to Iran refined petroleum products that have a fair market value of \$1 million or more, or during a 12 month period, have an aggregate fair market value of \$5 million or more; or
4. sold, leased, or provided to Iran goods, services, technology, information, or support (that have a fair market value of \$1 million or more, or during a 12 month period, have an aggregate fair market value of \$5 million or more) that could directly and significantly contribute to Iran's ability to import refined petroleum products, including:
  - a. entering into a contract to insure or reinsure the sale, lease or provision of such goods, services, technology, information or support;
  - b. financing or brokering such sale, lease or provision; or
  - c. providing ships or shipping services to deliver refined petroleum products to Iran.

**Designation of Iranian Entities.** On November 21, the US Treasury and State Departments designated additional Iranian entities and individuals as nuclear proliferators. As a result of their designation, the property and all interests in property of the newly designated persons are blocked. The blocking of property effectively means that U.S. persons are prohibited from engaging in any transactions with or involving the designated persons, and any assets of the designated persons within U.S. jurisdiction are blocked/frozen. The names of the persons designated have been added to and now appear on the U.S. Treasury Department Office of Foreign Assets Control (“OFAC”)’s List of Specially Designated Nationals and Blocked Persons.

**Identification of Iran as a Jurisdiction of "Primary Money Laundering Concern."** The U.S. Department of the Treasury identified the Islamic Republic of Iran as a jurisdiction of primary money laundering concern under Section 311 of the USA PATRIOT Act based on Iran’s support for terrorism; pursuit of weapons of mass destruction (WMD); reliance on state-owned or controlled agencies to facilitate WMD proliferation; and the illicit and deceptive financial activities that Iranian financial institutions – including the Central Bank of Iran – and other state-controlled entities engage in to facilitate Iran’s illicit conduct and evade sanctions.

As a result of the identification of Iran, the Treasury Department has issued regulations which propose to further prohibit U.S. financial institutions from providing correspondent accounts for Iranian banks. The proposed regulations, once promulgated, 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. The identification of Iran as a jurisdiction of primary money laundering concern and the related prohibitions and the special measures to be implemented as result of such identification apply to U.S. banks and other financial institutions.

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