

October 25, 2012

President Obama Issues Executive Order Authorizing Imposition of Sanctions on Non-US Persons Who Transact with Iran

On October 9, 2012, President Obama issued an Executive Order implementing certain provisions of the Iran Threat Reduction and Syria Human Rights Act of 2012 (“ITRA”). The Order authorizes the Secretary of State and Secretary of the US Treasury to apply sanctions against non-US persons and US companies for the acts of foreign subsidiaries who engage, or have engaged, in transactions related to Iran’s oil & gas sector or its alleged attempts to develop weapons of mass destruction. The Order is the latest in a series of actions by the Obama administration and the US Congress designed to apply pressure on Iran through sanctions against non-US persons who transact with Iran.

Introduction

In passing ITRA, the US Congress provided authorization for the President to take certain actions to increase pressure on non-US persons who engage with Iran. The Order implements certain provisions of ITRA and provides formal authority to the Secretary of State and the Secretary of the Treasury to implement various ITRA provisions. The Order generally does not announce new Iranian sanctions measures but rather provides direction to executive agencies in fulfillment of the ITRA mandate.

Authorization for the Secretary of State and Secretary of the Treasury to Impose Sanctions Against Certain Non-US Persons

Section 1 of the Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to impose sanctions on non-US persons determined to have engaged in certain activities relating to Iran’s energy and financial sectors as proscribed under the Iran Sanctions Act of 1996, as amended (“ISA”). ITRA amends the ISA (which has previously been amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA”)) to require the imposition of sanctions against non-US persons who engage in the following activities:

- *Joint Ventures Relating to the Development of Iranian Petroleum Resources* – Knowing participation in a joint venture established on or after January 1, 2002 relating to the development of petroleum resources outside of Iran if the Government of Iran is a substantial partner or investor in the joint venture or could, *e.g.*, through a direct operational role,

receive technical knowledge or equipment not previously available to Iran that could directly and significantly contribute to the enhancement of Iran's ability to develop petroleum resources in Iran.

- *Transportation of Crude Oil From Iran* – Having a controlling beneficial ownership of, or otherwise owning, operating, controlling, or insuring, a vessel that is used to transport Iranian crude oil. Such activity is not prohibited for the transportation of crude oil from Iran to countries that have been granted an exception under the NDAA for reducing their crude oil imports from Iran, or if the President has not made a sufficiency finding under the National Defense Authorization Act of 2012 (“NDAA”) with regard to the global availability of non-Iranian crude oil. On March 30, 2012, President Obama announced such a finding; therefore, transportation of Iranian crude oil as described above is sanctionable for shipments to countries that have not been granted an exception.
- *Concealing Iranian Origin of Crude Oil and Refined Petroleum Products* – Having a controlling beneficial ownership of, or otherwise owning, operating, controlling, or insuring a vessel that conceals the Iranian origin of crude oil or refined petroleum products transported on the vessel, or obscuring or concealing the ownership, operation, or control of the vessel by the Government of Iran, the National Iranian Tanker Company, or the Islamic Republic of Iran Shipping Lines (or any other entity determined by the President to be owned or controlled by the Government of Iran).
- *Exports, Transfers and Transshipments That Contribute to Iran's Development of Weapons of Mass Destruction and Advanced Conventional Weapons* – Exporting, transferring, or facilitating the transshipment of goods, services, or technologies that would contribute materially to Iran's ability to develop weapons of mass destruction and advanced conventional weapons.
- *Joint Ventures Relating to the Mining, Production, or Transportation of Uranium* – Participating in a joint venture established on or after February 2, 2012 (i) that involves any activity relating to the mining, production, or transportation of uranium, or (ii) through which uranium is transferred directly or indirectly to Iran, from which the Government of Iran receives significant revenue, or through which Iran could receive technological knowledge or equipment not previously available to Iran that could contribute to the ability of Iran to develop nuclear weapons or related technologies.

Under Section 1 of the Order, the President authorized the imposition of the following sanctions measures against persons deemed to have engaged in a proscribed activity under the ISA:

- Prohibition against any United States financial institution from making loans or providing credits to the sanctioned person;
- Prohibition against any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest;
- Prohibition against any transfers of credit or payments between financial institutions that are subject to the jurisdiction of the United States and involve any interest of the sanctioned person;
- Blocking of all property and interests in property of the sanctioned person that are in the United States or come within the possession or control of a foreign branch of a United States person;
- Prohibition against any United States person from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person;
- Restriction or prohibition against imports of goods, technology, or services into the United States from the sanctioned person;

- Imposition of the sanctions described above against officers of sanctioned entities.

Blocking of Property of Individuals Engaged in Activities Relating to Human Rights Abuses in Iran

Sections 2 and 3 of the Order mandate the blocking of all property, and interests in property, of individuals who are determined by the Secretary of the Treasury, in consultation with the Secretary of State, to have engaged in censorship or other activities with respect to Iran or who have facilitated the commission of human rights abuses in Iran. Such activities include:

- Knowingly transferring, or facilitating the transfer of, goods, service, or technologies to Iran (or any entity organized under the laws of Iran or otherwise subject to the jurisdiction of the Government of Iran) or any Iranian national that are likely to be used by the Government of Iran to commit serious human rights abuses against the people of Iran. This provision covers activity that occurred after August 10, 2012, that date ITRA was signed into law.
- Knowingly providing services, on or after August 10, 2012, that are likely to be used by the Government of Iran to commit serious human rights abuses against the people of Iran; or
- Engaging in censorship or other activities with respect to Iran on or after June 12, 2009 that prohibit the exercise of freedom of expression or assembly by citizens of Iran, or that limit access to broadcast or print media, including the facilitation or support of international frequency manipulation by the Government of Iran.

Imposing Liability Against US Parent Companies for Violations of Sanctions by Foreign Subsidiaries

Section 4 of the Order mandates penalties against US companies for violations of Iran sanctions measures by their foreign subsidiaries. Additionally, Section 12 of the Order mandates penalties for transactions by US companies and their foreign subsidiaries that evade or circumvent Iran sanctions measures applicable to US persons.

Authorizing Sanctions Against Non-US Persons Who Engage in Transactions Relating to Iranian Refined Petroleum Products

Sections 5, 6 and 7 of the Order authorize sanctions against non-US persons who, between July 1, 2010 and August 10, 2012¹, sold, leased or provided to Iran goods, services, technology, information or support with a fair market value of \$1,000,000 or more, or with an aggregate fair market value of \$5,000,000 or more during a 12-month period, and that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, including assistance with respect to the construction, modernization or repair of Iranian petroleum refineries and the enhancement of Iran's ability to import refined petroleum products, or the sale of refined petroleum products to Iran. Activities by financial institutions that facilitate such transactions could be deemed sanctionable under this provision. The Order authorizes the following actions with respect to such persons:

¹ ITRA amends the ISA to authorize sanctions against non-US persons who engage in transactions relating to Iranian refined petroleum products "on or after the date of the enactment" of ITRA on August 10, 2012. Section 5 of the Order covers transactions that occurred prior to the enactment of ITRA, but following the enactment of CISADA on July 1, 2010.

- Denial by the Export-Import Bank of any guarantee, insurance, extension of credit or participation in an extension of credit in connection with the export of any goods or services to the sanctioned person;
- Refusal of Federal agencies to grant specific licenses or any other specific permission or authority under any statute that requires the prior review and approval of the US Government as a condition for the export or reexport of goods or technology to the sanctioned person;
- Denial by the Federal Reserve of designation of the sanctioned person as a primary dealer in US Government debt instruments;
- Refusal by Federal agencies to appoint the sanctioned person as an agent of the US Government or as a repository for US Government funds;
- Debarment from federal procurement;
- Prohibition for US financial institutions to make loans or provide credits to the sanctioned person totaling more than \$10,000,000 in any 12-month period, with exceptions for persons engaged in activities to relieve human suffering and provided the purpose of such loans or credits is for such activities;
- Prohibition against any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest;
- Prohibition against any transfers of credit or payments between financial institutions that are subject to the jurisdiction of the United States and involve any interest of the sanctioned person;
- Blocking of all property and interests in property of the sanctioned person that are in the United States or come within the possession or control of a foreign branch of a United States person; or
- Restriction or prohibition against imports of goods, technology, or services into the United States from the sanctioned person.

Conclusion

Although the Order does not generally break new ground in the US Iran sanctions program, it represents another significant step in the US Government's expansion of the Iran sanctions program to activities engaged in by non-US persons. The President's action in issuing the Order reinforces the mandate of the Iran Sanctions Act and provides legal authority for executive agencies to act under the terms of the ISA. As always, you should continue to monitor US foreign policy and follow developments in this area closely.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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